



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

DECISION

ON THE INQUIRY SET FORTH IN THE DECREE OF THE PRESIDENT OF THE REPUBLIC (NO. 1K-1565) “ON THE INQUIRY TO THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA” OF 6 NOVEMBER 2008 WHETHER THE REPUBLIC OF LITHUANIA’S LAW ON ELECTIONS TO THE SEIMAS WAS NOT VIOLATED DURING THE 2008 ELECTION TO THE SEIMAS OF THE REPUBLIC OF LITHUANIA

8 November 2008

Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court: Armanas Abramavičius, Toma Birmontienė, Pranas Kuconis, Kęstutis Lapinskas, Zenonas Namavičius, Ramutė Ruškytė, Egidijus Šileikis, Algirdas Taminskas, and Romualdas Kęstutis Urbaitis

The court reporter—Daiva Pitrėnaitė

The Constitutional Court of the Republic of Lithuania, at its procedural sitting, considered the inquiry “whether during the 2008 election of the members of the Seimas of the Republic of Lithuania, the provisions of Article 3 of the Law on Elections to the Seimas and Item 4 of Paragraph 1 of Article 78 thereof which enshrine the principle of equal elections and democratic procedures of elections, the following of which is necessary for the recognition of the results of elections as legitimate and lawful, were not violated” which was set forth in the 6 November 2008 Decree (No. 1K-1565) “On the Inquiry to the Constitutional Court of the Republic of Lithuania” of the President of the Republic of Lithuania, the petitioner.

The Constitutional Court

has established:

1. On 12 October 2008, an election to the Seimas took place. The members of the Seimas were not elected in 68 single-member constituencies from total number of 71 such constituencies. On 26 October 2008 a repeat voting took place in these single-member constituencies.

2. On 2 November 2008, the Central Electoral Commission of the Republic of Lithuania confirmed the final results of the 2008 election to the Seimas by its Decision (No. 191) “On the Final Results of the Election to the Seimas of the Republic of Lithuania of 12 October 2008”. This decision of the Central Electoral Commission was announced on the Internet on 2 November 2008, and in the official gazette “Valstybės žinios”—on 6 November 2008 (Official Gazette *Valstybės žinios*, 2008, No. 127-4891).

3. On 6 November 2008, the Homeland Union-Lithuanian Christian Democratic Party lodged a complaint titled “Concerning Violations of the Law on Elections to the Seimas and Recognition of the Results of Elections in Lazdijai-Druskininkai Single-member Constituency No. 71 as Invalid” with the President of the Republic, whereby it requested to apply to the Constitutional Court with an inquiry whether in Lazdijai-Druskininkai Single-member Constituency No. 71 Article 3 of the Law on Elections to the Seimas and Item 4 of Paragraph 1 of Article 78 thereof were not grossly violated.

4. By his Decree (No. 1K-1565) “On the Inquiry to the Constitutional Court of the Republic of Lithuania” of 6 November 2008, the President of the Republic applied to the Constitutional Court with an inquiry “whether during the 2008 election of the members of the Seimas of the Republic of Lithuania, the provisions of Article 3 of the Law on Elections to the Seimas and Item 4 of Paragraph 1 of Article 78 thereof which enshrine the principle of equal elections and democratic procedures of elections, the following of which is necessary for the recognition of the results of elections as legitimate and lawful, were not violated”.

The Constitutional Court

holds that:

1. On 12 October 2008, an election to the Seimas took place. The members of the Seimas were not elected in 68 single-member constituencies from total number of 71 such constituencies. On 26 October 2008 a repeat voting took place in these single-member constituencies.

2. In Lazdijai-Druskininkai Single-member Constituency No. 71 the repeat voting took place regarding Justinas Karosas and Algirdas Šakalys—two candidates to members of the Seimas who had received most of the votes during the first electoral round.

3. After the repeat voting was over and upon counting the votes, on 27 October 2008, at 7.00 hours, the protocol of the electoral commission of Lazdijai-Druskininkai Single-member Constituency No. 71 was signed in which it was specified that 14,623 voters took part in the voting. 14,223 ballot-papers were recognised to be valid; 7,128 votes were cast for the candidate for members of the Seimas J. Karosas, and 7,095 votes were cast for the candidate for members of the Seimas A. Šakalys, i.e. J. Karosas received 33 votes more than A. Šakalys.

4. On 29 October 2008, the Central Electoral Commission received a complaint from Rasa Baškienė, the representative of the Homeland Union-Lithuanian Christian Democratic Party at the Central Electoral Commission for elections, whereby it is requested to establish whether the 27 October 2008 protocol of the counting of votes of the electoral commission of Lazdijai-Druskininkai Single-member Constituency No. 71 was drawn up correctly and, in case violations of the Law on Elections to the Seimas were established, to recognise the results of the initial counting of votes of the repeat voting of the election to the Seimas of 26 October 2008 in Lazdijai-Druskininkai Single-member Constituency No. 71 as invalid.

5. By the Decision of the Central Electoral Commission (No. 196) “Regarding the Complaint from R. Baškienė, the Representative of the Homeland Union-Lithuanian Christian Democratic Party at the Central Electoral Commission for the Elections, Concerning Alleged Gross Violations of the Law on Elections to the Seimas and Tampering with Documents and the Request to Recognise the Results of Elections in Lazdijai-Druskininkai Single-member Constituency No. 71 as Invalid” of 31 October 2008, the complaint of R. Baškienė, the representative of the Homeland Union-Lithuanian Christian Democratic Party at the Central Electoral Commission for elections, was rejected. The Central Electoral Commission drew the conclusion that the complaint was groundless.

6. On 2 November 2008, the Central Electoral Commission adopted the Decision (No. 191) “On the Final Results of the Election to the Seimas of the Republic of Lithuania of 12 October 2008”, whereby it was decided:

“1. To establish the results of the repeat voting of the Election to the Seimas of 26 October 2008 in 68 single-member constituencies (Annex 1);

2. To establish the final ranks of the lists of candidates for members of the Seimas in the multi-member constituency of the election to the Seimas of 12 October 2008 (Annex 2);

3. According to the results of the election in multi-member and single-member constituencies, to establish the persons who have been elected to the Seimas of the Republic of Lithuania (Annex 3). To grant the certificate of a member of the Seimas to the elected members of the Seimas in the March 11th Hall of the Seimas of the Republic of Lithuania, at 12.00 hours, on 5 November 2008;

<...>

5. To announce the final results of the election on the Internet and in the next issue of the official gazette ‘Valstybės žinios’.

This decision of the Central Electoral Commission was announced on the Internet on 2 November 2008 and in the official gazette “Valstybės žinios”—on 6 November 2008 (Official Gazette *Valstybės žinios*, 2008, No. 127-4891).

7. In this context, it needs to be noted that the Republic of Lithuania’s Law on the Procedure of the Publication and Entry into Force of Laws and Other Legal Acts, *inter alia*, provides: the official publication of laws and other legal acts shall be their publishing in the official gazette “Valstybės žinios”, the day of their publication in official gazette “Valstybės žinios” shall be the day of their release; in cases established by this law, the official publication of other legal acts shall be their publishing in the mass media or in the internet websites of a corresponding institution (Paragraph 1 (wording of 7 July 2005) of Article 2)); the decisions of the Central Electoral Commission regarding the final results of elections to the Seimas must be published in the official gazette “Valstybės žinios” (Item 7 (wording of 10 December 2002) of Paragraph 1 of Article 3).

8. Paragraph 1 of Article 93 (wording of 11 December 2004) of the Law on Elections to the Seimas provides that the Central Electoral Commission shall establish the final election results after it has investigated all complaints and established all election results in the constituency, including the voters who have voted on ships and abroad. In addition, Paragraph 2 of the same article provides, *inter alia*, that the Central Electoral Commission shall announce the final election results not later than within 7 days following the election or the repeat voting and that the Central Electoral Commission shall first of all announce the final results on the Internet and in the next issue of the official gazette “Valstybės žinios”.

Thus, Paragraph 2 (wording of 11 May 2004) of Article 93 of the Law on Elections to the Seimas provides for two sources for announcement of the final results of elections to the Seimas: the Internet and the official gazette “Valstybės žinios”.

9. It needs to be noted that, in its ruling of 27 June 2007, the Constitutional Court held that: in general, the legislature may also regulate the official publication of legal acts in a differentiated manner on other grounds and to establish alternative (in comparison with the general procedure of the official publication of legal acts) sources, ways and procedure of the official publication of legal acts; such situations are possible when a certain legal act must come into force immediately, right after being issued; in such cases, one must ensure the necessary, expeditious, and as-fast-as-possible official publication of legal acts; the official public publication of the whole legal act is not an end in itself—it is necessary so that the subjects of law would know what the corresponding legal act is, that they would be able to familiarise themselves with the whole legal act and to follow it; the purpose and essence of the official public publication of an entire legal act is that it becomes accessible to the subjects of law and no doubts remain regarding the authenticity of its contents.

10. It needs to be noted that the provision of Paragraph 2 of Article 93 of the Law on Elections to the Seimas, whereby the Central Electoral Commission shall first of all announce the final results on the Internet and in the next issue of the official gazette "Valstybės žinios" is in various aspects related to the provision of Paragraph 2 of this article that the Central Electoral Commission shall announce the final election results not later than within 7 days following the election or the repeat voting, as well as to other provisions of the Law on Elections to the Seimas and the provisions of the Law on the Constitutional Court. For example, in the aspect of counting the corresponding time periods, this provision is related to Paragraph 5 of Article 86 of the Law on Elections to the Seimas, under which the parties which have nominated candidates for members of the Seimas, as well as candidates for members of the Seimas, may lodge complaints against the decisions of the Central Electoral Commission or against the refusal of the Central Electoral Commission to investigate complaints about the violations of the Law on Elections not later than within 24 hours after the official announcement of the election results, to the Seimas or the President of the Republic; in such cases, the Seimas or President of the Republic shall, not later than within 48 hours, apply to the Constitutional Court with the inquiry concerning the violation of the Law in Elections to the Seimas. The aforesaid provision is related with Paragraph 1 of Article 94 of the same law, under which, after the official announcement of election results the Central Electoral Commission shall issue certificates of members of the Seimas to the elected candidates within 3 days, and it is also related with Paragraph 1 of Article 95 of the same law, under which, not later than within 3 days of the official announcement of the election results, the Seimas as well as the President of the Republic may apply to the Constitutional Court with the inquiry whether the Law on Elections to the Seimas has been violated. In the said aspect, the provision of Paragraph 2 of Article 93 of the Law on Elections to the Seimas is related to Paragraph 1 of Article 77 of the Law on the Constitutional Court, under which the Seimas or the President of the Republic may apply to the Constitutional Court with inquiries concerning possible violations of electoral laws during an election of the President of the Republic or an election to the Seimas within 3 days of the publication of the official election results. In this context, Paragraph 4 of Article 95 of the Law on Elections to the Seimas should be mentioned, under which, on the grounds of the conclusions of the Constitutional Court, the Seimas shall adopt the final decision concerning the violation of the Law on Elections to the Seimas, Paragraph 5 of this article, under which, if the Constitutional Court makes the conclusion that the Law on Elections to the Seimas has been severely violated or election documents have been falsified and this has had an essential influence on the establishment of the election results, the Seimas may adopt one of the resolutions provided for in this law, while under Paragraph 6 of this article, the Seimas shall also pass a resolution on legally and illegally elected

members of the Seimas. Paragraph 3 of Article 77 of the Law on the Constitutional Court should also be mentioned, under which, the inquiry concerning possible violations of electoral laws during an election of the President of the Republic or an election to the Seimas shall be examined within 72 hours of its filing with the Constitutional Court; the terms specified in this article shall also include non-working days.

11. It also needs to be noted that while construing the said provisions of the Law on Elections to the Seimas and the Law on the Constitutional Court in the context of the provision of Paragraph 2 of Article 93 of the Law on Elections to the Seimas that the Central Electoral Commission shall first of all announce the final results on the Internet and in the next issue of the official gazette “Valstybės žinios”, there may arise certain obscurities regarding the counting of the corresponding time periods, since it is possible that the announcement of the final results of the elections on the Internet and the announcement thereof in the official gazette “Valstybės žinios” happen at a different time. Therefore, the duty arises for the legislature to establish such legal regulation which would not create ambiguities how the time periods linked to the announcement of the final results of elections by the Central Electoral Commission should be counted and how one should ensure the authenticity of the final results of elections which are officially announced by the Central Electoral Commission.

12. It needs to be mentioned that the Decision of the Central Electoral Commission (No. 191) “On the Final Results of the Election to the Seimas of the Republic of Lithuania of 12 October 2008” of 2 November 2008 was published on the Internet on 2 November 2008, and in the official gazette “Valstybės žinios”—on 6 November 2008, even though after the announcement of this decision of the Central Electoral Commission on the Internet, the official gazette “Valstybės žinios” was issued on 4 November 2008.

13. It needs to be noted that the provision “the Central Electoral Commission shall first of all announce the final results on the Internet and in the next issue of the official gazette ‘Valstybės žinios’” of Paragraph 2 of Article 93 of the Law on Elections to the Seimas is *lex specialis* with regard to the provisions of the Law on the Procedure of the Publication and Entry into Force of Laws and Other Legal Acts which establish the procedure of announcement of the acts of the Central Electoral Commission.

The essence of the principle *lex specialis derogat legi generali* is that when there is a competition between general and special norms, the special norm shall be applied (the Constitutional Court’s rulings of 18 October 2000, 21 January 2008, and 15 March 2008).

It has been mentioned that under Item 7 (wording of 1 January 2003) of Paragraph 1 of Article 3 of the Law on the Procedure of the Publication and Entry into Force of Laws and Other

Legal Acts, the decisions of the Central Electoral Commission regarding the final results of elections to the Seimas must be officially announced in the official gazette “Valstybės žinios”. Because of the fact that the provision “the Central Electoral Commission shall first of all announce the final results on the Internet and in the next issue of the official gazette ‘Valstybės žinios’” of Paragraph 2 of Article 93 of the Law on Elections to the Seimas is *lex specialis* with regard to the provisions of the Law on the Procedure of the Publication and Entry into Force of Laws and Other Legal Acts which consolidate the procedure of publication of acts of the Central Electoral Commission, while establishing an exact date when the official results of elections were announced—upon their publication on the Internet or in the official gazette “Valstybės žinios”, one must follow *lex specialis*—the provisions of the Law on Elections to the Seimas.

14. Taking account of the arguments set forth, it should be held that the results of the election to the Seimas were officially announced on 2 November 2008, when they were published on the Internet.

15. In this context, it needs to be noted that, as mentioned before, under Paragraph 1 of Article 95 of the Law on Elections to the Seimas, not later than within 3 days of the official announcement of the election results, the Seimas as well as the President of the Republic may apply to the Constitutional Court with an inquiry whether the Law on Elections to the Seimas has been violated and, under Paragraph 1 of Article 77 of the Law on the Constitutional Court, the institutions specified in Article 74 of the same law apply to the Constitutional Court with inquiries concerning possible violations of electoral laws during an election of the President of the Republic or an election to the Seimas within 3 days of the publication of the official election results.

Thus, while construing Paragraph 2 of Article 93 and Paragraph 1 of Article 95 of the Law on Elections to the Seimas and Paragraph 1 of Article 77 of the Law on the Constitutional Court in a systemic manner, the conclusion should be drawn that the beginning of the time period established in Paragraph 5 of Article 86, Paragraph 1 of Article 95 of the Law on Elections to the Seimas and Article 77 of the Law on the Constitutional Court within which one must present an inquiry regarding violation of the Law on Elections to the Seimas is counted as from the announcement of the final results of elections to the Seimas on the Internet.

16. It has been mentioned that the official results of the election to the Seimas were announced on the Internet on 2 November 2008. It has also been mentioned that the President of the Republic received a complaint from the Homeland Union-Lithuanian Christian Democratic Party regarding the results of the election in Lazdijai-Druskininkai Single-member Constituency No. 71 on 6 November 2008, and, on the same day, i.e. after more than 3 days after the announcement of the final results of the election to the Seimas on the Internet had elapsed, he applied to the

Constitutional Court with an inquiry whether during the 2008 election to the Seimas the Law on Elections to the Seimas was not violated.

It has also been mentioned that, under Paragraph 1 of Article 77 of the Law on the Constitutional Court and under Paragraph 1 of Article 95 of the Law on Elections to the Seimas, not later than within 3 days of the official announcement of the election results, the President of the Republic may appeal to the Constitutional Court with an inquiry whether the Law on Elections to the Seimas has been violated.

It needs to be held that the 6 November 2008 inquiry of the President of the Republic whether during the 2008 election to the Seimas the Law on Elections to the Seimas was not violated was submitted to the Constitutional Court after the time period for submitting such inquiry established in Paragraph 1 of Article 95 of the Law on Elections to the Seimas and Article 77 of the Law on the Constitutional Court had elapsed, therefore, this inquiry does not fall under the jurisdiction of the Constitutional Court.

17. Under Item 3 of Paragraph 1 of Article 80 of the Law on the Constitutional Court, the Constitutional Court shall refuse to examine an inquiry concerning the presentation of a conclusion when the consideration of a concrete issue does not fall under the jurisdiction of the Constitutional Court.

18. Taking account of the arguments set forth, the Constitutional Court should refuse to consider the inquiry “whether during the 2008 election of the members of the Seimas of the Republic of Lithuania, the provisions of Article 3 of the Law on Elections to the Seimas and Item 4 of Paragraph 1 of Article 78 thereof which enshrine the principle of equal elections and democratic procedures of elections, the following of which is necessary for the recognition of the results of elections as legitimate and lawful, were not violated” which was set forth in the 6 November 2008 Decree (No. 1K-1565) “On the Inquiry to the Constitutional Court of the Republic of Lithuania” of the President of the Republic, the petitioner.

Conforming to Paragraphs 3 and 4 of Article 22, Article 28 and Item 3 of Paragraph 1 of Article 80 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania adopts the following

decision:

To refuse to consider the inquiry “whether during the 2008 election of the members of the Seimas of the Republic of Lithuania, the provisions of Article 3 of the Law on Elections to the Seimas and Item 4 of Paragraph 1 of Article 78 thereof which enshrine the principle of equal elections and democratic procedures of elections, the following of which is necessary for the recognition of the results of elections as legitimate and lawful, were not violated” which was set

forth in the 6 November 2008 Decree (No. 1K-1565) “On the Inquiry to the Constitutional Court of the Republic of Lithuania” of the President of the Republic of Lithuania, the petitioner.

This decision of the Constitutional Court is final and not subject to appeal.

The decision is pronounced in the name of the Republic of Lithuania.

Justices of the Constitutional Court:

Armanas Abramavičius

Toma Birmontienė

Pranas Kuconis

Kęstutis Lapinskas

Zenonas Namavičius

Ramutė Ruškytė

Egidijus Šileikis

Algirdas Taminskas

Romualdas Kęstutis Urbaitis