

Monika Kowalska
UMCS w Lublinie
monika.kowalska@poczta.umcs.lublin.pl

Constitutional responsibility of the president in post-communist countries – case study (Lithuania, Romania, the Czech Republic)

*Odpowiedzialność konstytucyjna prezydenta
w państwach postkomunistycznych – studium przypadku
(Litwa, Rumunia, Czechy)*

Summary:

The article presents the empirical side of the issues of constitutional responsibility in the countries of “new democracy,” such as, Lithuania, Romania and the Czech Republic. It very often happens that the more power one has, the more temptation there is to abuse one’s office. That is why, the responsibility of the people of the highest government levels as the heads of states, is to guarantee the rule of law in every democratic state. The control is necessary when the law is not being obeyed or somebody is acting in defiance of generally abiding rules. Thereby, the constitutional responsibility is very important. It should be enforced by independent courts or in the impeachment procedure. Such a solution has been adopted in most European post-communist countries, and more importantly, very often applied for practical purposes.

Keyword: constitutional responsibility, impeachment, president

Streszczenie:

Artykuł przedstawia empiryczną stronę zagadnienia odpowiedzialności konstytucyjnej w krajach „nowej demokracji” na przykładzie Litwy, Rumunii oraz Czech. Praktyka uczy nas, iż na każdym kto w mniejszym lub większym zakresie jest dysponentem władzy państwowej, ciąży pokusa jej nadużywania. Dlatego też odpowiedzialność osób zajmujących w państwie najwyższe stanowiska urzędnicze – a do nich z całą pewnością należy zaliczyć urząd głowy państwa – jest gwarancją praworządności w każdym współczesnym państwie demokratycznym. Odpowiedniej kontroli wymagają zarówno ich zachowania polegające tak na wadliwym stosowaniu prawa, bądź też podejmowane niezgodnie z treścią obowiązujących norm. Stąd w zestawie środków, które mają zapewnić kontrolę nad sprawowaniem władzy wykonawczej w sposób zgodny z prawem, znajduje się odpowiedzialność konstytucyjna egzekwowana przez niezależne organy typu sądowego lub w formule procedury impeachment. Takie też rozwiązania zostały przyjęte w większości europejskich państw postkomunistycznych, a co istotniejsze znalazły w niektórych z nich też praktyczne zastosowanie.

Słowa kluczowe: odpowiedzialność konstytucyjna, impeachment, prezydent

1. Introductory remarks

Constitutional responsibility establishment exists in all modern democratic countries, although it is rarely used and was pushed to the unique role. Constitutional responsibility of the highest positions in the country was originally developed as a form of parliamentary control over the government with the aim of stopping people occupying power against violation of law and general execution of power to the detriment of society. However in modern political practice it has been supplanted by – much younger (shaped in XVIII century) yet less formalized – parliamentary responsibility. On the other hand, keep in mind that the rules of parliamentary responsibility in contemporary political solutions covers only members of the government. In relation to the president the path of constitutional responsibility remains the only possible form of verification of the legality of his actions.

Constitutional responsibility genesis goes back to the times of medieval England¹ and is related to the recognition of certain judicial powers of the parliament at that time, and the institution of impeachment is its prototype. The first time the issue of constitutional responsibility was regulated in legal form was the Constitution of United States of America in 1787². Its authors referred to the patterns of the impeachment, though they have made some changes. One of the reasons they resulted from was the need to include within its scope the President (as a consequence of the lack in adopted solutions of the presence of Cabinet institution acting under the direction of the Prime Minister). In addition, as a result of a rigorous introduction in the United States of America the principal of separation of powers³, the local system does not know the institution of parliamentary accountability of the executive power focused in the hands of the President of the United States of America. Hence the constitutional responsibility was treated there as an “extraordinary warranty the rule of law.”⁴ Also, the countries of the old continent gradually started on their legal and constitutional regulations – especially at the end of XIX century and the early XX century – to sanction procedures to enforce accountability for violation of law

¹ The first case of application of the impeachment procedure took place during the reign of King Edward III – in 1376 – when high-ranked royal official William Latimer was accused of fraud, although some kind of the political background was in fact a desire of the parliament to force the King towards administrative reform.

² Originally it were British patterns that have been used in American colonial legislative, and then were used in federal constitution.

³ R. M. Małajny, *Doktryna podziału władzy „Ojców Konstytucji” USA*, Katowice 1985, passim.

⁴ J. Jaskiernia, *Zagadnienie podstaw do wszczęcia procedury impeachmentu przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny”, 1975 no. 4, p. 123.

by the highest officials in the country (primarily members of the executive power), which they could commit in the course of their official duties.

A kind of “second life” for procedure of impeachment, or more broadly enforcing the constitutional responsibility, happened in the 90’ XX century in the post-communist countries. In the newly prepared and adopted in these countries essential laws a procedural mechanism to enforce the constitutional responsibility of the highest official appeared invariably, and was seen as one of the practical hedging instruments for implementation of highly exposed in the constitutional regulations such basic political principles like the rule of the law or legalism of public authorities activities. Depending on the constitutional experience, political culture of a country or determinants of contemporary political situation – each countries of Central, Eastern and South Europe tended to various forms of enforcement of accountability of highest officials in the country. However, regardless the formula, in every constitution provision on constitutional and criminal accountability mainly of representatives of the executive power find their place, as a possible addition to their political responsibilities. Countries such Russia, Ukraine, Belarus and Lithuania have procedural mechanism in the formula of impeachment or one that is similar. Poland, in accordance with its tradition, has a constitutional responsibility carried out by special judicial authority acting as the Tribunal of State, while other “new democracy” countries entrusted this task above all to constitutional courts.

Table no. 1. Enforcements authorities in the constitutional responsibility of European post-communist republics.

Country	The authority enforcing the constitutional responsibility
Albania	Constitutional Court
Belarus	Parliament (Chamber of Deputies and Council of the Republic) – the majority of 2/3 of the full
Bulgaria	Constitutional Court
Croatia	Constitutional Tribunal – the majority of 2/3 of the full
Montenegro	Parliament after finding by the Constitutional Court violations of the Constitution
Czech Republic	Constitutional Court
Estonia	Common courts
Lithuania	Seim (Parliament) – the majority of 3/5 of the total number of deputies
Latvia	Seimas (parliament) – the majority of 2/3
Macedonia	Constitutional Court
Moldova	Parliament – the majority of 2/3
Poland	Tribunal of State

Russia	The Council of the Federation (the second chamber of parliament) – the majority of 2/3 of the total number of votes
Romania	Supreme Court; referendum
Serbia	Constitutional Court
Slovakia	Constitutional Court
Slovenia	Constitutional Court
Ukraine	The Verhovna Rada (parliament) – 3/4 majority of the constitutional composition
Hungary	Constitutional Tribunal

Source: Own study based on: the constitution of each country.

2. Lithuania – Rolandas Paksas’ case

So far, the most significant example of application of the relevant procedures in order to deprive office carried out with positive results among the “new democracy” countries took place in Lithuania against the incumbent in 2003-2004 President Rolandas Paksas, which has been proved, among other things, that issuing a decree on awarding a special procedure of citizenship to Yuri Borisovowi (Russian entrepreneur, who is one of the main sponsors of the presidential election campaign of 2002)⁵ violated the Constitution and the Lithuanian legislation on citizenship⁶. Subsequent charges related to the disclosure of country secrets by him by informing mentioned businessman on an investigation that was in the run against him by the relevant service of the country and the use of its position by influencing the private commercial company “Žemaitijos keliai” with a purpose of increment financial benefits to his close friends. It was the first in Europe case of dismissal from the position held office of the head of country. The primary impulse to initiate the procedure of impeachment, which was based on art. 86, paragraph 2 of the Constitution of the Republic of Lithuania, according to which the President of the Republic may be removed from office ahead of time by the Seimas “only for gross violation of the Constitution or breach of oath, also when it transpires that a crime has been committed” (in addition to art. 74 of the Constitution of the Republic of Lithuania, according to which “The President of the Republic, the President and justices of the

⁵ S. Thomas, *Financial supporter of impeached Lithuanian President Rolandas Paksas and the key person of the impeachment, lost his case*, <http://www.eurolitigation.eu/2011/06/financial-supporter-of-impeached.html>, [accessed: 10.11.2016].

⁶ Lithuanian Constitutional Court in its judgment of 30 December 2003, stated that a presidential decree granting citizenship under exceptional case of Yuri Borisov was at variance with the constitutional principles of the rule of law and violated three of its particularistic provisions and the law on citizenship. M. Giżyńska, *Sąd Konstytucyjny Republiki Litewskiej*, Olsztyn 2010, p. 122.

Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal as well as the Members of the Seimas who have grossly violated the Constitution or breached their oath, or if it transpires that a crime has been committed, may by a 3/5 majority vote of all the Members of the Seimas be removed from office or their mandate of a Member of the Seimas may be revoked. This shall be performed according to the procedure for impeachment proceedings which shall be established by the Statute of the Seimas.)”⁷ It was to submit to Parliament in October 2003 by Mecys Laurinkus, the head of the Country Security Department at that time (*Lietuvos Respublikos Valstybės Saugumo Departamentas*), information about relationship of President Rolandas Paksas’ close associates with Russian mafia, even though at that time he had not been accused.

First the attention was drew to the trade advisor of the presidential National Security Remigjus Acasa with representatives of Russian organized crime. More specifically it was meant to facilitate the acquisition of shares in privatized companies in Lithuania, and later the use of Lithuania’s membership in the European Union as a bridge to boost EU markets without the restrictions of existing economic entities of Russia. According to the head of the Country Security Bureau President Rolandas Paksas knew about the suspicions against his advisor, but did nothing to change the situation⁸. The case came to light when agents of country security services have recorded conversations of Russian businessman Yuri Borisov, accused of illegal arms trade with countries supporting terrorism (including Sudan and Iraq) and have discovered that he is seeking unlawful favors from the President. Against Borisov, who has managed the company “Avia Baltica” specializing in servicing helicopters among others, investigation has been launched on the likelihood of blackmail. It was alleged that Rolandas Paksas, yet as a candidate taking part in the competition for the highest office of the Lithuanian country, had to conclude with Yuri Borisov (the main sponsor of the presidential election campaign) agreement, according to which after winning the presidential election he would have had given the Russian entrepreneur Lithuanian citizenship and facilitate economic relations and “Setting tenders” for the benefit of his commercial interests. As the head of the Security Office has recalled in his speech in Seimas, subordinate to him services of the country were in possession of telephone conversation recordings, during which this businessman had complained to Rolandas Paksas for his tardiness, and using that as a threat of scandal in the

⁷ *Konstytucja Litwy*, Warszawa 2000, p. 46 and 51.

⁸ M. Piotrowski, *Impeachment na przykładzie prezydenta Litwy – Rolandasa Paksasa*, www.racjonalista.pl/kk.php/s,4213, [accessed: 11.11.2016].

event of insubordination. In addition, there were allegations of unauthorized disclosure of classified information⁹.

The appearance of then President in the context of shared responsibility for the situation and the possible opportunity of him being influenced by the Russian forces, gave the Lithuanian Seimas the rise to the creation of parliamentary commission of inquiry (headed by Social Democrat Aloyzas Sakalas), its main task was supposed to be a thorough examination of the level of threat to national security in connection with the submitted by the Lithuanian secret services report on the state of the nation. This committee was to verify whether the alleged contacts advisors of President Rolandas Paksas with the criminal world could have impact on his decisions, and therefore, whether and to what extent the Russian criminal environment could have an impact on the highest structure of the Lithuanian country, endangering the public order and security. The final evaluation committee submitted to the Parliament in the report was, unfortunately for the President and his associates, not favorable. In its view, because the contacts of the president and his closest advisers, representatives of the Russian criminal world were to be classified as threatening to a considerable security of Lithuania. According to committee president and its immediate surroundings it has become vulnerable to blackmail by mafia structures. It was also pointed out to the cases of their direct influence on the activities of private companies, mixing private and public interest, actions of corruption in the privatization of country enterprises, violation of the constitutional balance between the highest country institutions and the abuse of power by the presidential advisors, a further circumstance aggravating presidential environment have been proven transfer (among others by the president Rolandas Paksas) secret information to interested parties of the suspect pending the investigation¹⁰. Thus, it was assessed that there was a violation of the constitution and a breach of the presidential oath.

In this situation, the parliament acting on the initiative entitled group of deputies requesting initiation of the process of accusations against the head of country – Rolandas Paksas¹¹, according to the Statute of the Seimas passed a resolution to ap-

⁹ *Impeachment Paksasa*, <http://cba.gov.pl/pl/newsy-serwisu-antykorup/3429,Impeachment-Paksasa.html>, [accessed: 11.11.2016]; S. Girdzijauskas, <http://jbanc.org/old/impeachment.html>, [accessed: 12.11.2016].

¹⁰ M. Giżyńska, *Odpowiedzialność konstytucyjna głowy państwa w Republice Litewskiej (na tle przypadku Rolandasa Paksasa)*, in: *Z zagadnień współczesnych społeczeństw demokratycznych*, eds. A. Jamróz, S. Bożyk, Białystok 2006, pp. 332 – 333; D. Górecki, R. Matonis, *Odpowiedzialność konstytucyjna Prezydenta Republiki Litewskiej Rolandasa Paksasa*, „Przegląd Sejmowy”, 2004 no. 4(63), pp. 43 – 44.

¹¹ According to the art. 230 the Statute of the Seimas, the right to request the initiation of impeachment procedures shall have, among others, a group of not less than 1/4 of all members of Parliament; in

point another commission of inquiry to draw up a justification of the allegation, applications and assistance in the preparation process of indictment. The very process of prosecution is a parliamentary procedure used by the Parliament to the people mentioned in art. 74 of the Constitution (including the President of the Republic) who have committed acts discrediting the authority of the government, which aims to resolve the issue of the responsibility of these people. The effectiveness of action in this regard is to increase the appointment of a special commission of inquiry, consisting of addition to deputies apolitical representatives of the judiciary and the bodies of investigation and prosecution (specialist factor), in a number not exceeding 12 members¹². And so it happened in this case, and the result of the inquiry of the commission decided to formulate Rolandas Paksas six complaints of gross violation of the Constitution. He was accused of surrender to be influenced by individuals and taking action on their behalf against the interests of the Lithuanian country. First of all, they accused him of being under the overwhelming influence of Yuri Borisov, who became the main hero of the affair called “Paksagate” next President Paksas. The Russian entrepreneur who is as it turned out, the main sponsor of the presidential campaign Rolandas Paksas, which in return was granted extraordinary Lithuanian citizenship, was also on the initiative of the President to be appointed even his advisor analyzes and forecasts, which, however, raised a backlash. It was the submission to Yuri Borisov, suspected also about cooperation with the Russian special services and the international special forces suspected him of supplying parts for helicopters to countries accused of supporting terrorism, that has become one of the main reasons for starting by Seimas procedures for removing President Rolandas Paksas from the office¹³.

Formulated by the committees investigating allegations against the president sounded as follows: 1 – President Rolandas Paksasowi was accused of taking action in violation of the country’s interests in favor of Yuri Borisov, and unlawful granting Lithuanian citizenship Russian entrepreneurs in exchange for financial support for his presidential election campaign – which was to discredit the authority of the institution of the head of the Lithuanian country and become susceptible to the influence of people associated with the Russian secret services and organized crime;

this case, the proposal received the support of 86 deputies numbering 141 deputies of the Lithuanian Parliament.

¹² Art. 236 the Statue of the Seimas, in: „Przegląd Sejmowy”, 2001 no. 6, p. 198.

¹³ <http://antykorupcja.gov.pl/ak/retrospekcje/retro/4097,Impeachment-Paksasa.html>, [accessed: 11.11.2016]; J.J. Komar, *Czy Jurij Borysow będzie doradcą prezydenta Paksasa?*, <http://wyborcza.pl/1,75248,1986567.html>, [accessed: 12.11.2016]; S. Girdzijauskas, <http://jbanc.org/old/impeachment.html> [accessed: 12.11.2016].

2 – Yuri Borisov and his company “Avia Baltica” were accused of deliberate disclosure concerned about the conduct of the special services of surveillance and secret investigation; 3 – accused of illegal influence on the activities of private entities, among other things, to take over the shares of the company “Žemaitijos keliai” by relatives of President Rolandas Paksas using his position for achieving personal benefit; 4 – accused of causing a conflict of public and private interests, through the use of confidential information and intentional actions of the president and his advisors interfering in the processes of privatization of country enterprises; 5 – President was accused of discrediting the authority of the government of the country through his public statements about the work of the temporary committee of inquiry appointed by Parliament to investigate whether the actions of President Paksas and his advisers did not contribute to the security risks and the actions of Lithuania jurisprudence of the Constitutional Court of December 30, 2003¹⁴; 6 – accused of not taking preventive action and even to create the basis for fraud by unauthorized interference in the activities of individuals and private companies by the president’s consulting surroundings¹⁵.

However, in accordance with the provisions of the Lithuanian procedure for impeachment (see art. 230) “in cases where an indictment against a person is initiated due to gross violation of the Constitution, the Parliament at the request of a special commission of inquiry or on its own initiative asks the Constitutional Court with a request for an opinion on whether concrete actions of a person are unconstitutional.”¹⁶ So it was done in this case as well. After considering the matter, the Constitutional Court in its judgment of 31 March 2004. Considered for reasonable as affecting the provisions of the Basic Law of the three charges made against President Rolandas Paksas, concerning: 1 – a serious breach of the law in giving citizenship to Yuri Borisov in extraordinary mode; 2 – deliberate failure to state secrets as a result of uncontrolled release of documents and information; 3 – abuse of his position in

¹⁴ The Constitutional Court acting on the request of the Seimas (initiated by the temporary committee of inquiry) has ruled unconstitutional to a presidential decree of 11 April 2003 on the assignment in an expedited citizenship Lithuanian Y. Borisov and breach by it article 16 paragraph 1 of the Law on Citizenship of the Republic of Lithuania.

¹⁵ D. Górecki, R. Matonis, pp. 46 – 47; M. Giżyńska, *Odpowiedzialność konstytucyjna głowy państwa w Republice Litewskiej (na tle przypadku Rolandasa Paksasa)...*, p. 334-335

¹⁶ In the literature it is noted that, unfortunately, quite rare legal solution is equipped to the court’s constitutional authorization enabling the prior expression of opinion as to the compliance of the law people indicted in procedures for enforcing constitutional responsibility or for other separate country authorities or in impeachment procedure. E. Zwierzchowski, *Sądownictwo konstytucyjne*, Białystok 1994, p. 152; M. Giżyńska, *Zakres kompetencji litewskiego Sądu Konstytucyjnego w „innych sprawach”*, „Przegląd Prawa Konstytucyjnego”, 2010 no. 1, pp. 8 – 9.

the country to influence business transactions, by, among others, acting in favor of those close to him in the process of privatization of country-owned commercial companies. The Constitutional Court did not agree but the legitimacy of the other pleas¹⁷.

The conclusions of the Constitutional Court did not, however, have the character ultimately decisive of this procedure, despite their last resort and incontestability¹⁸, because in the impeachment procedure it is the Seimas that decides on an exclusive basis by the power of resolution adopted by a majority of 3/5 of total number of its deputies on the impeachment of the president (which means the necessity to take a decision at least a majority of 85 votes in the 141 seat parliament). The process of prosecution is carried out from the beginning to the end on the forum on the Lithuanian Parliament, and the Constitutional Court in the procedure of impeachment may play only a consultative role¹⁹. However, what is important, in its opinion, the Constitutional Court also concluded a further important conclusion. In its opinion, only it – as constitutionally secured in this aspect the authority of the judiciary – can speak about the unconstitutionality of actions of the highest officials in the country, doing so in a final and irrefutable manner. The prerogative of the Parliament as a political body remains in this situation only to consider and decide whether these (confirmed by the court) allegations of violations of the law are enough to justify the deprivation of the country's official his position or not. Determination whether the officer violated the highest law in the country is strictly a legal issue and not political, therefore it is not without reason that the Constitutional Court was constitutionally empowered to take decisions in evaluating the unconstitutionality action of country officials. This is to ensure to avoid a situation in which political

¹⁷ E. Jarašiūnas, *Law and Facts in Constitutional Cases Pertaining to Impeachment of High Officials*, in: *Law and Fact in Constitutional Jurisprudence*, Vilnius 2005, p. 179 – 182; D. Górecki, R. Matonis, pp. 49 – 52.

¹⁸ As is art. 107 of the Constitution of the Republic of Lithuania and art. 83 of the Law of the Republic of Lithuania of 3 February 1993 on the Constitutional Court. The text of Polish Law in: *Sądy konstytucyjne w Europie*, t. 4, ed. J. Trzeciński, Warszawa 2000, p. 143 – 184 and “Przegląd Sejmowy”, 1995 no. 3, pp. 167 – 196.

¹⁹ Moreover, the very art. 245 Rules of Procedure of the Parliament of the Republic of Lithuania in relation to art. 105 and 106 of the Constitution provides that Parliament only “If necessary, asks the Constitutional Court to review whether the concrete actions of the individual against whom the accusation was addressed, are contrary to the Constitution”, then that under article 73-74 of the Law on the Constitutional Court, present a proposal which in practice is a response to the request of the applicant (in this case the Parliament) whether concrete action officer of the country (in this case the president) indicted in the procedure of constitutional responsibility violated the constitution. D. Górecki, *Sąd Konstytucyjny na Litwie*, in: *Sądy konstytucyjne w Europie*, t. 4, ed. J. Trzeciński, Warszawa 2000, pp. 134–135.

entity (which undoubtedly remains the Parliament) would decide on the fairness of the allegations. If it were to adopt a different interpretation of the applicable law (i.e. recognizing the opportunity to assess the constitutionality of actions by the highest officials of the country by parliament itself, with the exception of coexistence in this procedure the authority of the judiciary), according to the court this would create a problematic legal situation. That would mean nothing else than the recognition of omnipotence also in this aspect of country authority making its decision, first of all premises of a political nature and not necessarily legal²⁰. This opinion is intended to provide a kind of guideline for future action, because according to regulations under constitutional law – the right to initiate action in this regard the Constitutional Court belonging only to the Seimas.

At the beginning of April 2004, last steps in the procedure for impeachment were carried out. April 6, after hearing a statement on the president Rolandas Paksas (not feeling guilty suggested that he became a victim of the political game and the conspiracy of elites and special services, which turned out to be an uncomfortable country decider²¹), Seimas following the opinion of the Constitutional Court, acknowledged the validity of each of the three charges, which legal effect was definitive deprivation of his position of President Rolandas Paksas and transfer temporarily the duties of head of country President of the Parliament Arturasowi Paulauskowi. In subsequent ballots (on individual complaints) number of votes for the recognition Paksas was guilty was: 86 votes (17 against), 86 votes (18 against) and in the final vote, 89 votes (14 against). Therefore, until the election of a new head of country (early presidential elections have been written out on 13 June 2004) the duties of President in accordance with the provisions of the Constitution the President of the Parliament Arturas Paulauskas²².

Interestingly Rolandas Paksas announced his candidacy in timetabled prematurely as a result of the removal of presidential election. However on 4 May 2004, the parliament made amendments to the law on election of the president introducing regulation according to which a person removed from office in the presidential im-

²⁰ D. Górecki, R. Matonis, p. 49; M. Giżyńska, *Sąd Konstytucyjny Republiki Litewskiej*, Olsztyn 2010, pp. 122 – 123.

²¹ S. Girdzijauskas, <http://jbanc.org/old/impeachment.html>, [accessed: 12.11.2016]; S. Lee Meyers, *Lithuanian Parliament Removes Contry's President After Casting Votes On The Tree Charges*: http://www.nytimes.com/2004/04/07/world/lithuanian-parliament-removes-country-s-president-after-casting-votes-three.html?_r=0, [accessed: 12.11.2016]; J. J. Komar, *Paksas trwa do końca*, <http://archive.is/3HvuP>, [accessed: 12.11.2016].

²² M. Piotrowski, *Impeachment na przykładzie prezydenta Litwy – Rolandasa Paksasa*, www.racjonalista.pl/kk.php/s,4213, [accessed: 11.11.2016].

peachment procedure is deprived of right to be elected to this position for a period of five years. The effect of this change was the refusal of the Central Election Commission to register the candidacy Rolandas Paksas in the upcoming elections²³. In addition, Parliament only two months later (i.e. 15 July) completed the restrictions the law on election of the president by additional restrictions. It was considered that the person convicted in the procedure of impeachment shall be barred for life opportunities not only to apply for the presidency, but also the mandate of a deputy to the parliament, and also prohibits the exercise of any other public function, which would require an oath before the nation.

In this situation, Rolandas Paksas decided to complain to the European Court of Human Rights²⁴. In his application, Rolandas Paksas accused the country of Lithuania of introduction after his removal from the presidency arbitrary changes to prevent him from holding public office for life. Accordance to applicable since 2004 the election law, he has become a permanently and irreversibly deprived of such a possibility. Changes in electoral law made by the Parliament (lifetime ineligibility for president and the deputy mandate) he treated as a completely disproportionate and violate the right to free elections. He further argued that those regulations were in relation to him applied practically retroactively. The European Court of Human Rights judgment against Lithuania with complaints of former president found, despite a significant breach of the Lithuanian Constitution by him, steady and pronounced without possibility to appeal to candidate in national elections, is too harsh sanction, and the striking rate of legislative actions taken by the Lithuanian Parliament, the effect of which was to carry out such significant changes in the regulation of election only reinforced the impression of intentionality prevent the applicant as a candidate in the presidential election announced by its removal. Moreover, the mere prohibition of permanent and irreversible nature introduced to the electoral regulations to prevent applying electoral mandate considered contrary to the principle of proportionality and in a situation that violates the Rolandas Paksas' passive voting rights²⁵. Accordingly, the European Court of Human Rights recommended to carry out changes in the relevant provisions of national law which would carry the imposition by the Lithuanian legislature more proportionate period of prohibition.

²³ J. J. Komar, *Szlaban na Paksasa*, http://www.archiwum.wyborcza.pl/Archiwum/1,0,4050940,20040505RP-DGW,Szlaban_dla_Paksasa,.html, [accessed: 12.11.2016].

²⁴ See more: *Europejski Trybunał Praw Człowieka: Wybór orzeczeń 2011*, elaborated by M. A. Nowicki, Warszawa 2012, p. 484 – 488.

²⁵ The basis of the complaint Rolandas Paksas vs. Lithuania was the establishment of a breach of article 3 of Protocol No. 1 constituting the right to free elections.

So far the Lithuanian country in 2012 decided to amend the electoral law, according to which the politician removed from office by impeachment will not be able to stand for election to the Parliament for four years. However, according to the opinion of the Lithuanian Constitutional Court only legitimate and proper way to refer to the decision of the European Court is an introduction to constitution amendments, which consists in determining the duration of the ban on performing those functions or to provide a process to determine whether a person is ready to swear an oath²⁶. So far, however, this has not been done.

3. Romania – case of Ion Iliescu and Traian Basescu

As many as three attempts to appeal Office of the Head of Country took place in Romania, the first of which concerned the person of the President Ion Iliescu (in 1994), and the other two of President Traian Basescu (2007 and 2012). According to the art. 95 of the Romanian Constitution “In case of having committed grave acts infringing upon constitutional provisions, the President of Romania may be suspended from office by the Chamber of Deputies and the Senate, in joint sitting, by a majority vote of Deputies and Senators, and after consultation with the Constitutional Court²⁷. The prior application to suspend the Romanian head of country should be made by at least one third of the number of deputies and senators (and immediately communicated to the president). If this request would be approved in the above-indicated procedure by parliament, in the next 30 days a referendum on recalling the president would be carried out²⁷. In Romania, the constitutional re-

²⁶ B. Buzyńska, *Impeachment to nie koniec kariery polityka*, <http://www.wilnoteka.lt/pl/artykul/impeachment-nie-koniec-kariery-polityka>, [accessed: 19.11.2016]; *Aby wypełnić międzynarodowe zobowiązania, Litwa będzie musiała wprowadzić poprawki do konstytucji*, <http://www.liberties.eu/pl/news/etpc-decyzje-onz-niezaimplementowane-litwa>, [accessed: 19.11.2016]; *Ban for Lithuania's impeached president Rolandas Paksas to run for parliament lifted*, <http://www.15min.lt/en/article/politics/amended-law-allows-lithuania-s-impeached-president-rolandas-paksas-to-run-for-parliament-526-205609>, [accessed: 19.11.2016]; *Constitutional Court bans former impeached president Rolandas Paksas from running for parliament*, <http://www.15min.lt/en/article/politics/constitutional-court-bans-former-impeached-president-rolandas-paksas-from-running-for-parliament-526-246550>, [accessed: 10.11.2016]; S. Tarasiewicz, *Paksas nadal nie może startować w wyborach prezydenckich*, http://kurierwilenski.lt/2014/01/23/paksas-nadal-nie-moze-startowac-w-wyborach-prezydenckich/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+KurierWilenski+%28Kurier+Wile%25%84ski%29, [accessed: 19.11.2016].

²⁷ *Konstytucja Rumunii*, Warszawa 1996, p. 56 – 57. See more: S. Grabowska, *Formy odpowiedzialności konstytucyjnej w Republice Rumunii*, in: *Formy odpowiedzialności konstytucyjnej w państwach europejskich*, eds. S. Grabowska, R. Grabowski, Toruń 2010, p. 264 – 270; W. Brodziński, *System konstytucyjny Rumunii*, Warszawa 2006, pp. 35 – 36; B. Pytlik, *Prezydent Rumunii*, in: *Prezydent w państwach współczesnych. Modernizacja instytucji*, ed. J. Osiński, Warszawa 2009, p. 598 – 599.

sponsibility is therefore enforced together by the joint chambers of parliament, as well as speaking directly in the form of a referendum on the appeal of the function of the President of the Nation. And both aspects of Head of Country accountability must correlate with each other at the same time. The indictment against President of Romania may be placed also on charges of treason by both chambers of parliament gathered at the joint meeting if at least 2/3 of the statutory number of deputies and senators vote in favor of the resolution in question. The final judgment in this regard is, however, belonging to the High Court of Cassation and Justice (equivalent to the Polish Supreme Court). Thus, in this case, after the release by him and validation of the court judgment declaring the President guilty of the charges against him, he loses his office by law²⁸. Earlier (i.e. from the moment of putting it in the indictment decision of parliament), he shall be suspended only in the exercise of office, and his function until “the cessation of obstacles” (i.e. till the judgment of acquittal, or in the opposite situation, swearing-in of the head of country elected in an early presidential election, as a consequence of emptying the presidency as a result of him filing the office) takes over “in this order, on the President of the Senate or the President of the Chamber of Deputies” (according to art. 98 paragraph 1 of the Constitution of Romania).

For the first time the Romanian Parliament initiated the procedure which subject was the charge of breaking the constitution, namely the constitutional rule of separation of powers in 1994 to President Ion Iliescu. Proposal for a Council composed by the then political opposition, has not received a positive recommendation from the Constitutional Court, and not received adequate support from the voters on the members of the Chamber of Deputies and the Senate. In favor of the proposal voted 166 deputies, while 242 from the voters were against²⁹. Another attempt has concerned President Traian Basescu, whom in 2007 was charged with breach of the Constitution. In accordance with the Constitution, a proposal was put to the judgment of the Constitutional Court, however, the court recognized that there are insufficient grounds for the suspension of the president from office.

²⁸ See more: S. Grabowska, *Odpowiedzialność karna głowy państwa na przykładzie Prezydenta Rumunii*, „Przegląd Prawa Konstytucyjnego”, 2010 no. 1, pp. 129 – 135; W. Brodziński, *Parlament Rumunii*, Warszawa 2002, p. 32.

²⁹ B. Dziemidok-Olszewska, *System polityczny Rumunii*, in: *Systemy polityczne państw Europy Środkowej i Wschodniej*, eds. W. Sokół, M. Żmigrodzki, Lublin 2005, p. 452; W. Sokolewicz, *Sąd Konstytucyjny w Rumunii*, in: *Sądy Konstytucyjne w Europie*, t. 2, ed. J. Trzeciński, Warszawa 1997, p. 163; W. Brodziński, *Republika Rumunii*, in: *Wzajemne stosunki między władzą ustawodawczą a wykonawczą (Białoruś, Czechy, Litwa, Rumunia, Słowacja, Węgry)*, Łódź 1996, p. 119.

And although the parliament sitting in a joint session of both chambers, after a debate, opted (taking decisions by a majority of 322 votes to 108 deputies opposing) for the suspension of the exercise of the office of President Traian Basescu, and also contributed to the rejection of his opposition taken in the case of a resolution by the Constitutional Court, which held that all the conditions have been completed during legal decision to suspend the head of country, ultimately this did not happen. It was the outcome of the vote in the referendum on the dismissal of President Traian Basescu from office conducted 19 May 2007, in which 75% of voters were against the appeal³⁰. Thus, Traian Basescu remained in the office of the president, exercising it to the end of his term. Interestingly, he also won the next presidential election. On the December 6th 2009 he was elected to his second term, defeating in the second round of elections with the minimum number of votes (50.33% to 49.66%), his main rival Mircea Geoană (candidate of the Social Democrats).

Also during this term of office there was an attempt to remove President Traian Basescu from office by the procedure of article 95 of the Romanian Constitution. In July 2012 representatives of the center-left coalition government of Social-Liberal Union (SLU) have accused the president of “serious violation of the Constitution”, accusing him of committing an action that could jeopardize the functioning of country institutions. Among other things the President has been accused of arrogating to itself powers reserved for the government and supporting the austerity measures that would lead ultimately to “the impoverishment of the population” (in 2010 there has been the introduction of the country’s draconian savings program, resulting from an agreement with the European Union and International Monetary Fund). Speaking in his defense President Traian Basescu countered that it is SLU that seeks to “subjugate country institutions, especially the judiciary” and their action should be attributed to harmful character for the effective functioning of country institutions, an example of which was to be limiting the privileges of the Constitutional Court, or assign the right to issue regulations in urgency procedure³¹. A few days earlier the scope of competence of the Constitutional Court was restricted, taking away the opportunity to assess the possible actions of parliamentarians taking a decision on the possible

³⁰ S. Grabowska, *Formy odpowiedzialności konstytucyjnej w Republice Rumunii*, pp. 272 – 273; *Romania president survives vote*: <http://news.bbc.co.uk/2/hi/europe/6665919.stm>, [accessed: 26.11.2016]; E. Maxfield, *Europe and Romania’s presidential impeachment referendum May 2007*, <https://www.sussex.ac.uk/webteam/gateway/file.php?name=epern-ref-no15.pdf&site=266>, [accessed: 26.11.2016].

³¹ *Początek debaty ws. procedury impeachmentu prezydenta Traiana Basescu*, <http://wiadomosci.wp.pl/kat,8311,title,Poczatek-debaty-ws-procedury-impeachmentu-prezydenta-Traiana-Basescu,wid,14733755,wiadomosc.html>, [accessed: 26.11.2016].

suspension of the head of country (and thus the president was deprived of the possibility of challenging the legality on taken parliamentary resolution) however, the power of the Constitutional Court to express a non-binding opinion on the allegations violation of the constitution maintained. In this specific case the Constitutional Court ruled, moreover, that Traian Basescu has violated some of its permissions, but has not broken the constitution. On 6th July 2012 a proposal to suspend President Traian Basescu from office passed in Parliament. For the resolution voted 258 to 432 parliamentarians, reaching the required constitutional majority. Therefore, the temporary head of country took over the then President of the Senate in the person Crin Antonescu. It is worth mentioning that a few days earlier, deputies canceled the chairmen of both chambers of parliament belonging to close to President Basescu's Democratic Liberal Party (D-LP), replacing them with politicians from the prime minister Victor Ponta's entourage³².

Constitutionally required referendum on recalling the president has been ordered on July 29, 2012. Traian Basescu, like the Democratic Liberal Party (D-LP), his political ally, urged Romanian citizens to boycott the referendum considering that the fate largely depend on the turnout during voting. According to the law, in Romania if the referendum is to be considered valid, at least half of those entitled to vote must part in it. The political environment focused around the person of President Traian Basescu acknowledged that the possible poor turnout will give him a better chance to remain in office, hence their call for absenteeism during the voting³³. For the cancellation of President Traian Basescu in the referendum 87.5% of those eligible voted, but the turnout did not exceed the threshold (in fact amounted to 46.24%). Thus, the referendum had to be declared null and void by the Romanian Constitutional Court precisely because of too low turnout. In this regard representatives of the ruling coalition challenged in the Constitutional Court timeliness of permanent electoral lists and the calculation of attendance. The judges, however, eventually rejected the objections concerning the method of calculating the turnout, but ordered the government to explain inconsistencies on electoral lists and optionally update

³² *Prezydent Traian Basescu przekazał czasowo władzę rywalowi*, <http://wiadomosci.wp.pl/kat,8311,title,Prezydent-Traian-Basescu-przekazał-czasowo-wladze-rywalowi,wid,14747571,wiadomosc.html>, [accessed: 26.11.2016].

³³ *Rozpoczęło się referendum ws. impeachmentu prezydenta Rumunii*, <http://wiadomosci.wp.pl/kat,8311,title,Rozpoczelo-sie-referendum-ws-impeachmentu-prezydenta-Rumunii,wid,14799576,wiadomosc.html>, [accessed: 26.11.2016].

them³⁴. Thus President Traian Basescu has been restored to fulfill his office, which he did until the end of the term.

4. Czech Republic – case of Vaclav Klaus

A similar experience in 2013 also affected the Czech President Vaclav Klaus, who was charged with treason. Generally, in accordance with art. 54 paragraph 3 of the Constitution of the Czech Republic from 1992: “The president is not from the exercise of his office”. At the same time, however, art. 65 paragraph 2 of the Constitution adds that “President of the Republic may be prosecuted for high treason before the Constitutional Court based on the action of the Senate. The penalty can be loss of presidential authority and competence to regain it.”³⁵ Therefore, to the competence of the upper chamber of the Czech Parliament belongs the right to bring the head of country indicted. The application in this case must first be filed with the support of at least 1/3 of the senatorial counting 81 members (so at least 27 senators), and the Senate makes decisions about bringing in the indictment of the president by the Constitutional Court accused of committing treason by a majority of more than half of the senators present the presence of at least 1/3 of the senatorial as a quorum³⁶. The proceedings before the Constitutional Court is based on the order of criminal proceedings and it is initiated at the time of delivery of the Senate’s prosecution to Constitutional Court and it is dealt with first before the other proposals. In the event of a Constitutional Court verdict confirming the approval by the head of country treason, President of the Republic loses the office and the ability to be reelected and so called presidential pension³⁷.

In relation to Vaclav Klaus steps were already taken in 2004 (the signatures were being collected under appropriate application in the Senate) with aim to initiate

³⁴ *Referendum w sprawie odwołania Basescu nieważne*, <http://wiadomosci.wp.pl/kat,8311,title,Trybunal-referendum-w-sprawie-odwolania-Basescu-niewazne,wid,14859961,wiadomosc.html>. [accessed: 26.11. 2016].

³⁵ Ustawa konstytucyjna Czeskiej Rady Narodowej z dnia 16 grudnia 1992 r. *Konstytucja Republiki Czeskiej*, Sbirka Zákonů České Republiky 1993, no 1.

³⁶ See more: J. Filip, *Formy odpowiedzialności konstytucyjnej w Republice Czeskiej*, in: *Formy odpowiedzialności konstytucyjnej w państwach europejskich*, eds. S. Grabowska, R. Grabowski, Toruń 2010, pp. 103 – 105.

³⁷ Oddział piąty „Postępowanie w sprawie konstytucyjnego oskarżenia prezydenta Republiki” ustawy o Sądzie Konstytucyjnym z 16 czerwca 1993 r., in: *Sądy konstytucyjne w Europie*, t. 2: *Bułgaria, Czechy, Rumunia, Słowacja, Węgry*, ed. J. Trzeciński, Warszawa 1997, pp. 127 – 130. More information on the history and importance of the body and the jurisdiction of the Court see: M. Kruk, *Sąd Konstytucyjnego Republiki Czeskiej*, in: *Sądy konstytucyjne w Europie*, t. 2: *Bułgaria, Czechy, Rumunia, Słowacja, Węgry*, ed. J. Trzeciński, Warszawa 1997, pp. 65 – 89.

the procedure leading to depriving him of office, accusing him of negligence in making appointments of judges in the Constitutional Court thereby rendering the Court on the obstruction of its activities. However, an official request against him was sent to the Senate in 2013. The basic objection to Vaclav Klaus concerned the ordinance by him on 1 January 2013 an amnesty on the occasion of the twentieth anniversary of the division of Czechoslovakia. Covered by the amnesty were those sentenced to up to one year imprisonment; and sentenced to imprisonment for 10 years who in 2013 would be 75 years and the person against whom investigation has been going on for at least eight years and which threatens to ten years in prison³⁸. Amnesty sparked serious protests from civil society (the public petition on the appeal of President Klaus has signed up more than 73 thousand people). It was considered too broad and the president was accused of stopping the prosecution of many people involved in all sorts of scandals and releasing on the freedom of his supporters, convicted for things as corruption and economic crimes. The amnesty covered, *inter alia*, five managers of Union Bank, which went bankrupt in 2003 without paying 130 thousand customers their savings. On this decision, also benefited the managers of investment funds, and which were the subjects of one of the biggest corruption scandals in the country's history (the process continued for 16 years)³⁹. President Klaus also accused of violating the constitution by refusing to ratify the part of EU treaties, and the complaint for refusing the appointment of judges of the Constitutional Court has returned⁴⁰.

The application of the process was removed by the Constitutional Court due to the fact that the presidency of Vaclav Klaus came to have its end, and in accordance to applicable Czech law procedure can concern and roll only against an acting head of country. Thus, ultimately the decision of the Senate was perceived as a symbo-

³⁸ *Vaclav Klaus's controversial amnesty*, <http://www.economist.com/blogs/easternapproaches/2013/01/czech-politics>, [accessed: 2.12.2016]; A. Rod, *Vaclav Klaus's partial amnesty and its impact on the Czech system of justice*, <http://4liberty.eu/vaclav-klauss-partial-amnesty-and-its-impact-on-the-czech-system-of-justice/>, [accessed: 2.12.2016]; *Amnestie prezidenta republiky zed ne. 1.1.2013*, http://zpravy.idnes.cz/amnestie-vaclava-klause-z-ledna-2013-dl7-domaci.aspx?c=A130101_134945_domaci_ven, [accessed: 2.12.2016].

³⁹ *Prezydent Vaclav Klaus stanie przed Trybunałem Konstytucyjnym*, <http://wiadomosci.wp.pl/kat,8311,title,Prezydent-Vaclav-Klaus-stanie-przed-Trybunałem-Konstytucyjnym,wid,15384284,wiadomosc.html>, [accessed: 10.12.2016].

⁴⁰ *Vaclav Klaus impeachment over treason charge*, <http://www.bellenews.com/2013/03/04/world-europe-news/vaclav-klaus-faces-impeachment-over-treason-charge/>, [accessed: 10.12.2016]; *Czech President Vaclav Klaus faces treason charge*, <http://www.bbc.com/news/world-europe-21660234>, [accessed: 10.12.2016]; *Klaus oskarżony o zdradę. Trafi przed trybunał*, <http://www.tvn24.pl/klaus-oskarzony-o-zdrade-trafi-przed-trybunal,309799,s.html>, [accessed: 10.12.2016].

lic blow, mainly in reputation and person of Vaclav Klaus. In practice the possible sanction that could touch him at that moment, would be withdrawal of so-called presidential retirement pension, as it was nearing the end of his second term, and the constitution forbade him to have to apply for another re-election.

5. Concluding remarks

In conclusion, it is worth noting the fact that although modern constitutional responsibility is used rarely and is treated as merely an extraordinary form. However, this is still considered by the Constitutional legislation of modern democratic states as an essential instrument of control of rule of law according to activities of the highest country officials.

Of course, in the literature we often emphasize of the fact that this form of responsibility was in political system practice effectively replaced by political responsibility – form much less formalized, which does not require absolute reliance in its investigation of the legal criteria, and thus is much more effective from the point of view of implementation of short-term political interests vying for power in the country entities or just the controllers. These comments relate, however, mainly to control measures against members of the government offices. Note, however, that in the case of the head of country constitutional responsibility is often the only possible formula for giving the opportunity to verify the activities of the President and effective enforcement of responsibility for it with the effect of losing occupied office. Of course, it draws attention to the fact that it has become common to entrust the role of the initiator of the procedure of constitutional responsibility to parliamentary entity, and therefore naturally driven by political reasons, hence the threat of politicization always remains a viable. Therefore, as shown in the article examples of activities undertaken in the field of disciplining the highest dignitaries in the country burdened with charges of abuse of power, activities of these entities should be supplemented or even entrusted to bodies such court, managing legal criteria. The opportunity itself to assess the legality of entities wielding power in the country should be obvious guarantee of the rule of law of its structures. So the set of methods that have adequate control in the implementation of power should not miss, even exceptionally possible for practical application constitutional responsibility, what is best certified in the case of Lithuanian President Rolandas Paksas. The practice teaches us, that on anyone, who to a lesser or greater extent is the holder of power, rests the temptation to abuse it.

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