

§ 3 Recent examples of impeachment

I. The removal from office of the President of the Republic of Korea

Park Geun-hye

- daughter of former dictatorial president and first female president of Korea
- impeached *for violating numerous articles of the constitution* by conspiring with her close friend *Choi Soon-sil*, who had no official position but acted like an advisor, in extorting huge sums of money and receiving favours from large domestic companies, and for allowing her to access classified documents, directly interfere with government politics and even decide about nomination of ministers and vice-ministers
- 03.12.2016: after mass demonstrations impeachment proposed in the National Assembly
- 09.12.2016: National Assembly adopts motion for impeachment with 234 of 300 majority, including half the deputies of Park's party; Prime Minister becomes Acting President
- 10.03.2017: Const. Court unanimously confirms impeachment and removes Park from office
- 06.04.2018: Park sentenced to 24 years imprisonment and a 18 billion won fine

II. The removal from office of the President of the Federative Republic of Brazil *Dilma Rousseff*

- successor of popular president Lula da Silva and first female president of Brazil
- impeached *for criminal administrative misconduct and disregard for the federal budget* (art. 85 no. V, VI) by engaging in dubious accounting manoeuvres to allocate funds to social programs without direct allocation from the Congress; since these tricks were common before, analysts consider the impeachment partisan
 - allegations of failing to act on a scandal of massive corruption tied to a state-owned oil company when Rousseff was in charge of it before becoming president trigger the proceedings but are not included in the impeachment because the Prosecutor-General finds Rousseff not corrupt and argues that a sitting president cannot be investigated for crimes committed prior to election
- 02.12.2015: President of Chamber of Deputies accepts impeachment request referring to the oil company scandal for deliberation
 - he is later arrested himself for corruption
- 11.04.2016: special committee of the Chamber of Deputies votes on a report against Rousseff
 - 37 of its members are facing themselves criminal charges
- 17.04.2016: Chamber adopts impeachment with 367 to 137 majority
 - 303 members are facing themselves criminal charges or investigation
- 12.05.2016: Senate decides to begin impeachment trial
- 31.08.2016: Senate convicts Rousseff with 61 to 20 majority, making Vice-President *Michel Temer* the new President, but fails after a controversial splitting into two votes to disqualify her from holding a public office in the future
 - Temer faces impeachment requests himself and is later arrested for corruption
- Supreme Federal Court is called upon several times and clarifies procedural issues but avoids pronouncing on the substantive question

III. The impeachment of the President of the United States of America

Bill Clinton

- second president impeached in U.S. history after Andrew Johnson (1868)
- impeached *for perjury and obstructing justice* (as "high crimes and misdemeanours") by lying under oath as defendant in a sexual harassment lawsuit brought in by another woman about his extramarital sexual relationship with a White House intern; referring not to his conduct of office but to his private life, the impeachment shows strong signs of a political vendetta

- 09.09.1998: special prosecutor *Kenneth W. Starr* submits a report about an investigation against Clinton to the Congress, alleging 11 causes for impeaching
- 08.12.1998: start of the impeachment inquiry
- 19.12.1998: House of Representatives impeaches Clinton and adopts articles of impeachment
- 12.02.1999: Senate acquits Clinton by vote of 55 to 45 of the charge of perjury and 50 to 50 of the charge of obstruction

IV. The two impeachments of the President of the United States of America *Donald Trump*

1) The first impeachment: the Trump-Ukraine scandal

- impeachment *for abuse of power and obstruction of Congress* (as "high crimes and misdemeanours") by
 - soliciting the interference of the Ukrainian Government in the 2020 U.S. Presidential election by publicly announcing investigations into Trump's opponent Joseph Biden
 - defying the subpoenas issued by the House of Representatives in the investigation of this affair by directing executive officials not to comply with them
- 10.2019: first hearings of the House of Representatives, often obstructed by White House orders to executive officials not to testify or cooperate
- 31.10.2019: House of Representatives formally opens impeachment inquiry
- 11.-12.2019: public hearings of the House of Representatives
- 18.12.2019: House of Representatives impeaches Trump and adopts articles of impeachment with majority of 230 to 197 (for the charge of abuse of power) and 229 to 198 (for the charge of obstruction of Congress)
- 01.2020: impeachment trial before the Senate under Chief Justice John Roberts with few further hearings
 - no hearings of important witnesses such as former advisor John Bolton
- 05.02.2020: Senat acquits Trump by vote of 52 to 48 of the charge of abuse of power and 53 to 47 of the charge of obstruction of Congress
 - votes sharply divided along party lines

2) The second impeachment: the incitement to storm the capitol

- impeached *for incitement of insurrection* (as "high crimes and misdemeanours") by addressing a crowd on 06.01.2021 in a park in Washington, reiterating false claims that "we won this election, and we won it by a landslide" and making statements such as "if you don't fight like hell you're not going to have a country anymore", which encouraged a mob to storm the Capitol, endangering the lawmakers and the Vice-President and interfering with the Joint Session to certify the results of the presidential election
- 12.01.2021: Vice-President *Mike Pence* rejects the request to declare Trump unable to discharge his powers and duties under the 25th amendment to the constitution
- 13.01.2021: House of Representatives impeaches Trump 8 days before his term ends and adopts article of impeachment with majority of 232 (incl. 10 Republicans) to 197
- 08.-13.02.2021: impeachment trial before the Senate under Senate President Pro Tempore Patrick Leahy
 - 04.01.: Donald Trump declines invitation to testify before Senate
 - 09.10.: Senate rejects (again) objection that impeachment trial after end of president's term is unconstitutional
 - 10./11.01.: presentations by the impeachment managers (House of Representatives delegation) before Senate
 - in particular presentation of a dramatic video how the Capitol riots unfolded, incited by the President
 - 12.01.: presentations by Trump's counselors before Senate
- 13.02.2021: Senate acquits Trump by vote of 57 to 43

- the aftermath:
 - 13.02.: former Senate Majority leader *Mitch McConnell* who voted for acquit states that there is "no question that President Trump is practically and morally responsible" for provoking the riots; after that he is attacked by Trump
 - 16.02.: a member of the House of Representatives sues Trump under the Ku Klux Klan Act of 1871 for conspiracy to disrupt the U.S. Congress
 - 04.01.2022: National Committee of the Republican Party declares the storm on the Capitol a "legitimate political discourse" and rebukes two Republican lawmakers for participating in an investigation by the House of Representatives; this makes Senator *Mitch McConnell* remind his party comrades that it was a "violent insurrection"
 - 19.02.2022: Court admits civil lawsuits of lawmakers and police officers against Donald Trump for his role in the riots
- problem: impeachment trial against former president after the end of his term?
 - formalistic reasoning: only sitting president can be impeached and tried
 - teleological reasoning: legal institution of impeachment shall ensure that president is held accountable by Congress for all his actions during his office; otherwise, even an attempted coup d'Etat could not be politically sanctioned if committed at the end of his term; impeachment may still serve to disqualify him from public office in the future
 - OWN REASONING: impeachment trial only if president is impeached or impeachment inquiry started without undue delay while he is still in office
 - sub-problem: who is to preside impeachment trial against a former president?

V. Lessons learnt from the recent examples of impeachment (final discussion)