

## **CASE OF UŽUKAUSKAS v. LITHUANIA – Application no. 16965/04**

In the Chamber's judgment in the case **UŽUKAUSKAS v. LITHUANIA**, the European Court of Human Rights held, unanimously that there had been:

- **a violation of article 6 of the Convention (right to a fair hearing).**

### **I. Principal facts:**

The applicant, Mr Robertas Užkauskas is a Lithuanian citizen. The case originates of the claim of the applicant, according to which the proceeding for removing his names from an “operational records file” has been unfair in that the principles of fairness and equality of arms had not been respected. He invoked Article 6 § 1 of the Convention (right to a fair hearing).

In 1999, the applicant was granted a license to keep firearm. On 17 July 2002, the validity of his license was extended. In November 2002, the applicant submitted a request for a license to keep another to keep another type of firearms. On 19 December 2002, police officials refused to grant a new license to the applicant considering that he had been listed in an “operational records file” (database where police authorities register the names of persons that are suspected of being involved or preparing criminal activity) six days earlier, on 13 December 2002. On April 16 2003, the police notified the applicant that his license to keep pistol and a hunting rifle had been revoked and that under article 38 of the Law on the Control of Guns and Ammunition and the applicant was obliged to hand in his firearms to the authorities. He was notified that he would receive money for his guns.

The applicant challenged the entry of his names into the operational records file. On 25 September 2003, the Kaunas Regional Administrative Court dismissed his action based on classified material which had been submitted by the police and observed by the judges without it being closed to the applicant. The court found that listing the name of the applicant in the operational record was lawful in view of the information about him held by the police. The applicant appealed complaining that the court had not examined the classified material during the hearing and he had no access to it. On 29 October, the Supreme Administrative Court upheld the decision noting that the evidence was classified as a “state secret”. In July 2004, the applicant was granted a new license and his guns were returned to him.

### **II. Complaints and procedure:**

The case was brought to the Court as the applicant claimed that there had been a violation of Article 6 § 1 of the Convention (right to a fair hearing).

### **III. Decision of the Court:**

#### **Decision regarding the applicability of Article 6 § 1 of the Convention:**

The Court was to consider whether 6 § 1 of the Convention applies under its civil head. According to the principles laid down in its case-laws (for instance *Gulmez v. Turkey* no. 16330/02, § 28 , 20

May 2008), it ascertained first whether there was a contestation over a right which arguably exist under domestic law. The Court found that although State authorities enjoy a wide margin of discretion in assessing if the applicant was eligible for a firearm license, the revocation of the license and the judicial proceeding to determine the lawfulness and reasonableness of registering the applicant into the operational record file had an effect on the civil rights of the applicant.

The Court reminded that the license was revoked because an operational file has been opened. In operational files, police authorities register names of persons that are suspected of being involved or preparing criminal activity. The applicant has tried repeatedly to challenge the decision on opening of a file on him and he also tried (without success) to get access to the information held by the police that had, without doubt, an impact on the applicant's reputation (which merits protection under Lithuanian law).

The Court also noted when information about a person's private life is systematically collected and stored in file, the registered information falls within the scope of "private life" that is protected under Article 22 of the Constitution of Lithuania. Furthermore, the applicant's obligation to hand in his firearms to the State authorities involved an interference with his right to the protection of property (guaranteed by Article 1 of Protocol No. 1 to the Convention, Article 23 of the Lithuanian Constitution).

In the light of the above, the Court decided that Article 6 § 1 of the Convention is applicable under its civil head.

### **Decision of the Court on the alleged violation of Article 6 § 1 of the Convention**

According to the case-law of the Court (*Frette v. France*, no. 36515/97, § 47, ECHR 2002-1), the principle of equality of arms which requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place the litigant at a substantial disadvantage in front of the opponent. This principle also implies the opportunity for the parties to have knowledge of and discuss all evidence included or observations filed with a view to have an influence on the decision of the Court. In some cases, there may be competing interest (such as public interest) which must be weighed against the right to defense. It may be possible to withhold certain evidence from the defense, however, any difficulties caused to the this part by the limitation of his/her rights must be sufficiently counterbalanced.

The Court agreed with the Lithuanian Government on that document which constitute "State secret" may only be disclosed to persons who possess appropriate authorization. However, such an information may not be used as evidence in court against a person unless it has been declassified and it may not be the only evidence on which courts would base their decisions. In the present case, the operational file was the only evidence of the applicant's alleged danger to society. Therefore, it was of decisive importance. Despite several attempts from the part of the applicant to get access to the classified material, Lithuanian authorities have repeatedly refused his claim. As the evidence was classified as "State secret", Lithuanian courts made their decisions behind closed doors and they merely presented their conclusions the applicant. Therefore, it was not possible for the applicant to have been apprised of the evidence against him and he did not have the opportunity to answer it.

Considering the above, the Court found that the Lithuanian decision-making procedure did not comply with the requirements of adversarial proceedings or equality of arms and did not incorporate adequate safeguards to protect the interests of the applicant. Consequently, the Court decided that **there has been a violation of Article 6 of the Convention** (right to a fair hearing).

**Jus satisfaction:** The Court awarded the claimed sum in full to the applicant and Lithuania was to pay 4,455 Lt (approximately EUR 1,290) to the applicant..