

CASE OF JOKŠAS v. LITHUANIA - Application no. 25330/07 (2013)

In the Chamber's judgment in the case of **JOKŠAS v. LITHUANIA** (12.11.2013) the European Court of Human Rights held, unanimously, that there had been:

-A violation of the article 6 § 1 of the Convention (Right to a fair trial);

-No violation of Article 10 of the Convention (Freedom of expression), taken alone or in conjunction with 14 thereof (Prohibition of discrimination):

;

I. Principal facts

The applicant, Mr. Alvydas Jokšas, is a Lithuanian national. The case concerned the discharging of Mr. Jokšas from the Lithuanian military. In March 2006 the daily Kauno Diena newspaper published an article in which Mr. Jokšas criticized new legislation for not adequately protecting the rights of servicemen in disciplinary proceedings.

Despite having an ongoing contract, in June 2006 he was dismissed from his position and discharged on the grounds that he had reached retirement age.

The applicant appealed to the Lithuanian courts claiming that he had been discriminated against because he had defended another serviceman and because of the statement he had made to the newspaper. The applicant requested the court, to oblige army officials to produce certain documents regarding his dismissal and regarding the situation of four servicemen, who to his knowledge had continued to serve in the military in the same Battalion despite the fact that they had reached retirement age. He noted that those documents are in the custody of the battalion commanders and he could not obtain them on his own. The appellate Court did not address the applicant's request for the supplementary documents to be obtained, nor did the Court deal with the allegation of discrimination against the applicant because of his service status.

II. Complaints, procedure and composition of the Court

Relying on the Article 6 § 1 the applicant argued that the Vilnius Regional Administrative Court and the Supreme Administrative Court, in their decisions, had been partial and unfair, in that they had ignored his procedural rights. Given that the essence of his case concerned allegedly unlawful dismissal from military service on a discriminatory basis, to fully present his case the applicant had asked both courts to order his battalion's commanding officers to provide evidence, which he was not able to obtain on his own, concerning four soldiers who had served in the same military unit. If reaching a particular age was an absolute ground for dismissal from military service, those four servicemen should already have been dismissed on the same basis, that is, their age, moreover this should have happened much earlier than when the applicant was dismissed. However, the courts simply ignored the request, without even giving

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reasons for refusal. The applicant thus considered that there was a breach of his right to adduce evidence which was essential to a fair hearing of his claims of discrimination for his views and ideas

III. Decision of the Court

The applicant was dissatisfied that when examining his complaint of dismissal from the military service on discriminatory grounds the administrative courts had ignored his repeated requests for access to the military files of four specific servicemen. On this point the Court observes that one of the elements of a fair hearing within the meaning of Article 6 § 1 is the right to adversarial proceedings. Each party must in principle have the opportunity to make known any evidence needed for his claims to succeed.

The Court noted that an allegation of discrimination was at the heart of the applicant's complaint before the domestic courts. Therefore, a comparison between his situation and that of the other servicemen who had allegedly been allowed to continue serving after reaching their retirement age but before the expiry of their contracts was indispensable for the applicant to be able to present his grievance.

The domestic courts' failure to assist the applicant in obtaining evidence in this regard and to give it consideration, or at least to provide reasons why this was not necessary, had denied the applicant an essential means to argue his case. In disputes concerning civil rights, such as the present one, such a limited assessment could not be considered an effective judicial review under Article 6 § 1. Therefore, the proceedings before the domestic courts, taken as a whole, did not satisfy the requirements of a fair and public hearing within the meaning of Article 6 § 1. There has accordingly been a breach of that provision.

IV. Just satisfaction:

6,000 euros (EUR) (non-pecuniary damage)

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