

CASE OF UŽUKAUSKAS v. LITHUANIA - Application no. 16965/04 (2010)

In the Chamber's judgment in the **CASE OF UŽUKAUSKAS v. LITHUANIA** 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)

I. Principal facts

The applicant, Robertas Užkauskas is a Lithuanian national. The case concerns the complaint by the applicant about the Lithuanian courts having taken decisions in his case on the basis of classified evidence presented by the police and never disclosed to him.

The applicant held a firearms licence which was revoked by the Lithuanian authorities on the ground that he was listed in the operational records file compiled by law-enforcement officers which contained information about his alleged risk to society. He was required to hand in his arms to the police in return for payment.

He challenged the entry of his name in the operational records file in the domestic courts, which, however, dismissed his action on the basis of classified material submitted by the police, without disclosing it to the applicant.

II. Complaints and procedure

Relying on Article 6 § 1 of the Convention, Mr Užkauskas complained about the proceedings before the courts having been unfair, in particular as a result of him not having had access to the evidence on which the courts' decisions had been based.

III. Decision of the Court

The Court recalled that, in court proceedings, each party had to be given a reasonable opportunity to present their case under conditions which placed neither of them at a disadvantage vis-à-vis each other. Further, both parties needed to have access to the presented evidence and observations by other party. However, in some cases it was legitimate to withhold evidence from the defence in order to preserve the fundamental rights of another individual or to safeguard an important public interest.

While the Court accepted the Lithuanian Government's position that documents constituting State secrets might be disclosed only to those with relevant authorisation, it noted that Lithuanian law and judicial practice provided that such information could not be used as evidence in court against anyone, unless it had been declassified. In addition, it could not be the only evidence on which courts based their decisions.

The data in the operational files in respect of Mr Užkauskas had been of decisive importance for his case given that the courts had based their decisions primarily on the information contained in them. Had Mr Užkauskas known the content of those records

he might have been able to persuade the judges that the police had acted without good reason and thus to have his name removed from those files. The judges, however, had examined behind closed door those records, which had been presented by the police and had constituted the only evidence of the applicant's alleged danger to society. Accordingly, the decision-making process had not complied with the requirement of adversarial proceedings or equality of arms and had not incorporated adequate safeguards to protect the interests of the applicant.

There had, therefore, been a violation of Article 6 § 1 of the Convention.

I.V Just satisfaction

The court held that Lithuania was to pay the applicant:

- 3,500 euros (EUR) in respect of non-pecuniary damage;
- 1,290 euros (EUR) in respect of costs and expenses.