

**CASE OF SIDABRAS AND DŽIAUTAS v. LITHUANIA Applications
no. 55480/00 and 59330/00**

In the Chamber's judgment in the case of **SIDABRAS AND DŽIAUTAS v. LITHUANIA** the European Court of Human Rights held, unanimously:

- by five votes to two, that there had been **a violation of Articles 14** (prohibition of discrimination) of the European Convention on Human Rights **taken in conjunction with Article 8** (right to respect to private life) of the Convention;
- unanimously, that there had been **no violation of Article 10** (freedom of expression) taken alone or in conjunction with Article 14.

I. Principal Facts

The case concerns two applicants, Mr Juozas Sidabras and Mr K stutis Džiautas, who are Lithuanian nationals. They both worked for the Lithuanian branch of the KGB (the Soviet Security Service). After 1990, the first Applicant, Mr Sidabras, found employment as a tax inspector at the Inland Revenue and the second Applicant, Mr Džiautas, worked as a prosecutor at the Office of the Prosecutor General of Lithuania, investigating organised crime and corruption cases in particular.

In May 1999, the Applicants were found to have the status of "former KGB officers" and to be subject to the employment restrictions imposed by Article 2 of the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation. As a result of these restrictions, both Applicants were dismissed from their positions.

Both, Mr Sidabras and Mr Džiautas, brought an administrative action against the security intelligence authorities pleading that their dismissal was unlawful. On 9 September 1999, the Higher Administrative Court held that Mr Sidabras's dismissal had been justified. In the same year 1999 the Court of Appeal dismissed his appeal. On 6 August 1999, the Higher Administrative Court allowed Mr Džiautas's claim and reinstated him. However, following an appeal by the security intelligence authorities, on 25 October 1999 the Court of Appeal quashed the previous judgment. His appeal to the Supreme Court has failed.

II. Complaints and procedure

Relying on Art.8 (Right to respect private and family life) taken alone or in conjunction with Art. 14 (Prohibition of discrimination) of the Convention, the Applicants complained that the prohibition to obtain employment in various branches of the private sector, on the ground that they had been former KGB officers, violated Article 8 and 14 of the Convention.

In support of their claims the first Applicant stressed that he had left the KGB in 1986 and the second Applicant that he had left in 1990, thirteen and nine years respectively before the entry into force of the KGB Act. Furthermore, Mr Sidabras emphasized that he had been actively involved in various activities promoting Lithuania's independence. The second Applicant submitted that he had been decorated as a prosecutor for his work in investigating various offences, including crimes against the State. None of those facts had been examined by the

domestic courts. Finally, the Applicants submitted that because of this issue both Applicants had suffered constant embarrassment on account of their past.

III. Decision of the Court

The Court has first examined the Applicants' complaints under Article 14 of the Convention taken in conjunction with Article 8, and then examined their complaints under Article 8 alone.

The Court reminds that Article 14 of the Convention prohibits discriminatory treatment of individuals in the enjoyment of their Convention rights and freedoms. This provision has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols.

The Court submitted that a far-reaching ban on taking up private sector employment does effect "private life". The Court held that the Applicants "were treated differently from other persons in Lithuania who had not worked for the KGB and who as a result had no restrictions imposed on them in their choice of professional activities".

The Court also observed that the Applicants were treated in inappropriate way as "the KGB Act was to regulate the employment prospects of persons on the basis of their loyalty or lack of loyalty to the State".

The Court therefore considered that the prohibition on occupying various private sector posts for former KGB agents caused consequential effects on the enjoyment of their right to respect for their "private life" within the meaning of Article 8. Consequently, the Article 14 was applicable in the circumstances of this case taken in conjunction with Article 8.

The Court noted that the Applicants' employment prospects were restricted not only in the State sector, but also in various spheres of the private sector. Moreover, referring to particular occupations, it was impossible to ascertain any reasonable link between the positions concerned and the legitimate aims sought by the ban on holding those positions. In the Court's view, such a legislative scheme constitutes a "lack of the necessary safeguards for avoiding discrimination and for guaranteeing an adequate and appropriate judicial control of the imposition of such restrictions".

The Court also considered relevant the fact that the 1999 Act came into effect almost a decade after Lithuania had declared its independence and the applicants left the KGB many years before the entry into force of the 1999 Act.

The Court concluded that the ban on the Applicants seeking employment constituted a disproportionate measure. The Court therefore held, by five votes to two, that there had been a violation of Article 14 taken in conjunction with Article 8.

Finally, the Court held, unanimously, that there had been no violation of Article 10, taken alone or in conjunction with Article 14.

IV. Just satisfaction

The court held that Lithuania was to pay:

- each of the applicants 7,000 euros (EUR) in respect of pecuniary and non-pecuniary damage,
- 2,681.37 EUR and 2,774.05 EUR respectively for costs and expenses.

V. The judgement contains partly concurring opinion of judge Mularoni, partly dissenting opinion of judge Loucaides and partly dissenting opinion of judge Thomassen.