



Case concerning legislation banning former KGB employees from working in the private sector

In today's **Chamber** judgment¹ in the case of [Sidabras and Others v. Lithuania](#) (application no. 50421/08), the European Court of Human Rights held:

by four votes to three, that there had been **no violation of Article 14 (prohibition of discrimination), taken in conjunction with Article 8 (right to respect for private and family life)** of the European Convention on Human Rights, on account of the first two applicants, Mr Sidabras and Mr Džiautas, not being able to obtain employment in the private sector, and

unanimously, that there had been **a violation of Article 14, taken in conjunction with Article 8** of the European Convention, on account of the third applicant, Mr Rainys, not being able to obtain employment in the private sector.

The three applicants, formerly a tax inspector, a prosecutor and a lawyer in a private telecommunications company, complained about Lithuania's failure to repeal legislation ("the KGB Act"²) banning former KGB employees from working in certain spheres of the private sector, despite ECtHR judgments in their favour in 2004 and 2005.

The Court found in particular that neither Mr Sidabras nor Mr Džiautas had plausibly demonstrated that they had been discriminated against after the ECtHR judgments in their case. Mr Sidabras had not provided any particular information as to who had refused to employ him as a result of restrictions under the relevant legislation, or when. Nor did the Court see anything to contradict the domestic courts' conclusion in Mr Sidabras' case that he had remained unemployed because he lacked the necessary qualifications. As concerned Mr Džiautas, he had himself acknowledged that he was a trainee lawyer as of 2006 and that he had never attempted to obtain other private sector jobs.

However, as concerned Mr Rainys, the Court was not convinced that the Government had demonstrated that the domestic courts' explicit reference to the KGB Act – namely, the fact that Mr Rainys' reinstatement to his job could not be resolved favourably while the KGB Act was still in force – had not been the decisive factor forming the legal basis on which his claim for reinstatement in the telecommunications company had been rejected.

Principal facts

The applicants, Juozas Sidabras, Kęstutis Džiautas, and Raimundas Rainys, are Lithuanian nationals who were born in 1951, 1962, and 1949 respectively. Juozas Sidabras lives in Kaunas and Kęstutis Džiautas, and Raimundas Rainys live Vilnius (both in Lithuania).

Mr Sidabras was a tax inspector, Mr Džiautas a prosecutor and Mr Rainys a lawyer in a private telecommunications company until being dismissed from their posts in 1999 (the first two

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

² 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, adopted on 16 July 1998, which entered into force on 1 January 1999.

applicants) and in 2000 (the third applicant) as they were found to have the status of “former KGB officers”. Thus, under the relevant legislation (“the KGB Act”), they were banned from applying for various private-sector posts. All three men subsequently brought proceedings before the domestic courts, which were unsuccessful.

The three applicants then lodged applications with the European Court of Human Rights and in judgments of 27 July 2004 (in the case of [Sidabras and Džiautas v. Lithuania](#) – nos. 55480/00 and 59330/00) and 7 April 2005 (in the case of [Rainys and Gasparavičius v. Lithuania](#) – nos. 70665/01 and 74345/01) it held that there had been violations of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) with regard to the ban on Mr Sidabras, Mr Džiautas and Mr Rainys finding employment in the private sector on the ground that they had been former KGB officers. In those judgments the Court emphasised that the State-imposed restrictions on a person’s opportunity to find employment with a private company for reasons of lack of loyalty to the State could not be justified in the same manner as restrictions on access to their employment in the public service. Moreover, the employment restrictions had been imposed on the applicants a decade after Lithuanian independence (in 1990) and the applicants’ KGB employment had been terminated. The Council of Europe’s Committee of Ministers, responsible for the supervision of enforcement of ECtHR judgments, has since begun the monitoring of those judgments’ enforcement and all three applicants have been paid the amounts awarded to them for non-pecuniary damage. However, no final resolution has as yet been adopted.

Following those ECtHR judgments, the KGB Act remaining in force, the applicants initiated new court proceedings. The first two applicants lodged applications with the administrative courts claiming damages for arbitrary discrimination. The third applicant sought reinstatement in his previous job at the private telecommunications company. In the cases of Mr Sidabras and Mr Džiautas (the first two applicants), the Supreme Administrative Court ultimately concluded in April 2008 that there was no proof that they had in fact been prevented from obtaining a private sector job because of the restrictions in the KGB Act. On the contrary, as concerned Mr Sidabras it found that he had not found employment because he lacked the necessary qualifications. In the case of Mr Rainys the Supreme Court, although accepting that his dismissal had been unlawful, ultimately concluded in June 2008 that the question of Mr Rainys’ reinstatement to his job could not be resolved favourably while the KGB Act was still in force. In that decision, the Supreme Court also declared that the other arguments made by the parties in their appeals on points of law were legally irrelevant.

Mr Sidabras, having been refused various positions because he lacked the relevant qualifications, language skills or work experience and having himself turned down other jobs because he considered that the salary was too low or the work place too far away, was appointed his mother’s carer in December 2008.

Mr Džiautas has been on the list of trainee lawyers since 2006. He was going to take the Bar exam.

Mr Rainys has been working as a lawyer in companies specialising in the field of railways and television.

Complaints, procedure and composition of the Court

All three applicants complained about Lithuania’s failure to repeal the legislation banning former KGB employees from working in certain spheres of the private sector, despite the ECtHR judgments in their favour. Mr Rainys alleged in particular that the State had chosen to pay compensation instead of amending the relevant legislation. They relied on Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 46 (binding force and execution of judgments) of the European Convention.

The application was lodged with the European Court of Human Rights on 14 October 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido Raimondi (Italy), *President*,
 András Sajó (Hungary),
 Nebojša Vučinić (Montenegro),
 Helen Keller (Switzerland),
 Robert Spano (Iceland),
 Jon Fridrik Kjølbro (Denmark) and,
 Lech Garlicki (Poland), *ad hoc Judge*,

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Articles 8 \(right to respect for private and family life\) and 14 \(prohibition of discrimination\), together with Article 46 \(binding force and implementation\)](#)

First, the Court decided to examine the applicants' complaints solely under Articles 8 and 14 of the Convention. It noted in particular that the Government had implemented its previous judgments in favour of all three applicants as concerned payment of compensation and that it was for the Council of Europe's Committee of Ministers under Article 46 to supervise the implementation of any general measure, such as repealing the KGB Act of 1999. In any event, the issues at stake under Articles 8, 14 and 46 were closely intertwined.

As concerned the first two applicants, Mr Sidabras and Mr Džiautas, the Court recalled that the Lithuanian Supreme Administrative Court had concluded that there was no proof that, after the ECtHR judgments in their favour of 2004, they had been prevented from obtaining a private sector job because of the restrictions in the KGB Act. Mr Sidabras had not provided any particular information as to who had refused to employ him as a result of those restrictions, or when. Nor did the Court see anything to contradict the Supreme Court's conclusion in his case that Mr Sidabras had remained unemployed for justified reasons, namely because he lacked the necessary qualifications. Similarly, Mr Džiautas had failed to substantiate his claim that, after the ECtHR judgment in his favour of 2004, he had continued to be discriminated against on account of his status. Indeed, he had himself acknowledged that he was a trainee lawyer as of 2006 and that he had never attempted to obtain other private sector jobs.

The Court therefore found that neither Mr Sidabras nor Mr Džiautas had plausibly demonstrated that they had been discriminated against after the ECtHR judgments in their case.

There had therefore been no violation of Article 14, taken in conjunction with Article 8 as concerned the first two applicants.

However, as concerned Mr Rainys, the Court was not convinced that the Government had demonstrated that the Supreme Court's explicit reference to the KGB Act – namely, the fact that Mr Rainys' reinstatement to his job could not be resolved favourably while the KGB Act was still in force – had not been the decisive factor forming the legal basis on which his claim for reinstatement had been rejected. Even though the Government and the telecommunications company had insisted that the reasons for not reinstating him in his former job had been economic, technological and organisational, the Supreme Court had not only not examined those reasons but had even declared that the other arguments made by the parties in their appeals on points of law were legally irrelevant.

There had therefore been a violation of Article 14, taken in conjunction with Article 8, as concerned Mr Rainys.

Article 41 (just satisfaction)

The Court held that Lithuania was to pay Mr Rainys 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 for costs and expenses.

Separate opinions

Judge Keller expressed a concurring opinion, Judges Spano and Kjølbrot expressed a joint concurring opinion and Judges Sajó, Vučinić and Garlicki expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.