EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 48460/16
Kęstutis BUTKUS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 8 January 2019 and 21 January 2020 as a Chamber composed of:

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 August 2016,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

# THE FACTS

1. The applicant, Mr Kęstutis Butkus, is a Lithuanian national who was born in 1964 and lives in Bendoriai, in the Vilnius Region. He was represented before the Court by Mr L. Blažulionis, a lawyer practising in Vilnius.

2. The Lithuanian Government ("the Government") were represented by their Acting Agent, most recently Ms L. Urbaitė.

## A. The circumstances of the case

3. In 1998 the applicant obtained a certificate permitting him to work as a bankruptcy administrator – to administer the bankruptcy of private companies (*įmonių bankroto administratoriaus pažymėjimas*).

4. On 8 July 2008 he obtained a certificate permitting him to work as a restructuring administrator – to administer the restructuring of private companies (*įmonių restruktūrizavimo administratoriaus pažymėjimas*).

### *1. The applicant's conviction*

5. On 3 July 2009 the applicant was convicted of embezzlement of property of high value, committed while acting as a representative of a company's bankruptcy administrator. He was sentenced to three years and six months' imprisonment. On 29 October 2010 an appellate court upheld the conviction but changed the sentence to a fine of 37,500 Lithuanian litai (LTL – approximately 10,860 euros (EUR)). The applicant paid the fine on 11 November 2010. On 12 April 2011 the Supreme Court upheld the judgment of the appellate court.

6. In line with the relevant provisions of the Criminal Code, the crime of which the applicant had been convicted was classified as serious and the conviction would be spent (*teistumas išnyks*) five years after the serving of the sentence (see paragraph 18 below).

7. On an unspecified date the applicant applied to the Vilnius District Court to have the conviction expunged from his criminal record (*panaikinti teistumą*) before the end of the five-year period (see paragraph 18 below) on the grounds that a year and a half had passed since he had paid the fine, he had not committed any further criminal offences, he was employed, and his employer had given him a positive character reference. On 8 June 2012 the Vilnius District Court granted his request and expunged the conviction from his criminal record.

### *2. Amendment of the Law on the Restructuring of Companies*

8. On 1 October 2010 a new version of the Law on the Restructuring of Companies entered into force (see paragraphs 20 and 21 below). It introduced a new requirement that an individual seeking to work as a restructuring administrator had to be of "high moral character" (*nepriekaištingos reputacijos*). The Law provided that an individual would not be held to be of high moral character if, *inter alia*, he or she had been convicted of a serious or very serious crime, irrespective of whether the conviction was spent, or if he or she had been convicted of any other criminal activity and the conviction was not spent.

### *3. Revocation of the applicant's certificate permitting him to work as a restructuring administrator*

9. On 7 August 2014 the relevant department of the Ministry of Economy revoked the applicant's certificate permitting him to work as a restructuring administrator on the grounds that, in line with the Law on the Restructuring of Companies, the applicant did not fulfil the high moral

character requirement because he had been convicted of a serious crime (see paragraphs 5 and 6 above).

10. The applicant lodged a complaint with the Vilnius Regional Administrative Court. He submitted that the new stricter version of the Law on the Restructuring of Companies had been applied to him retroactively and that he had been punished twice for the same criminal act. He also argued that he fulfilled the high moral character requirement set forth in that Law – he had never received any disciplinary penalties related to his work as a restructuring administrator, nor had his conviction been related to that work; furthermore, he had been given a light sentence – a fine, and the conviction had been expunged from his criminal record before the end of the five-year period (see paragraph 7 above). The applicant lastly submitted that a permanent ban on convicted individuals working as restructuring administrators was disproportionate and discriminatory.

11. At the applicant's request, on 21 August 2014 the Vilnius Regional Administrative Court granted an interim measure and suspended the revocation of his certificate until a final decision in the case.

12. On 23 March 2015 the Vilnius Regional Administrative Court dismissed the applicant's complaint and upheld the decision to revoke his certificate (see paragraph 9 above). It stated that the Law on the Restructuring of Companies imperatively provided that an individual who had been convicted of a serious or very serious crime could not be held to be of high moral character and thus could not work as a restructuring administrator, irrespective of whether the conviction was spent. It observed that, at the time when the applicant had obtained his certificate, the same high moral character requirement had appeared in rules adopted by the Minister of Economy (see paragraph 22 below). It also held that the applicant had not been punished twice for the same criminal act because the criminal conviction for embezzlement and the revocation of his certificate for failure to fulfil the high moral character requirement concerned different acts and had had different purposes.

13. The applicant lodged an appeal against the decision of the Vilnius Regional Administrative Court, raising essentially the same arguments as before (see paragraph 10 above). On 17 February 2016 the Supreme Administrative Court dismissed the applicant's appeal and upheld the first-instance decision in its entirety.

*4. Other criminal proceedings against the applicant*

14. On 22 June 2015 the Vilnius Regional Court convicted the applicant of fraud and forgery of documents which had been committed by an organised group in the context of bankruptcy procedure and had caused significant damage. In the same judgment the applicant was acquitted of embezzlement of property of high value committed by an organised group. He was given a suspended sentence of three years' imprisonment.

15. On 3 July 2017 the Court of Appeal allowed an appeal lodged by the prosecutor and convicted the applicant of embezzlement of property of high value committed by an organised group in the context of bankruptcy procedure. It also upheld his conviction for forgery of documents which had been committed by an organised group and had caused significant damage. However, the court changed the charge of embezzlement to provision of false information for the purpose of avoiding tax obligations, and discontinued that part of the case as time-barred. The applicant's sentence remained unchanged.

16. At the date of the latest information submitted to the Court (17 July 2019), the case was pending before the Supreme Court.

#### *5. Law on the Insolvency of Legal Entities*

17. On 1 January 2020 the Law on the Insolvency of Legal Entities (*Juridinių asmenų nemokumo įstatymas*) entered into force. It replaced several previous laws relating to various aspects of insolvency, including the Law on the Restructuring of Companies. The new Law has retained the requirement for individuals seeking to administer insolvency procedures to be of high moral character. However, in contrast with the previous Law on the Restructuring of Companies, the new Law provides that an individual who has been convicted of certain intentional crimes is not considered to be of high moral character only as long as the conviction has not become spent or has not been expunged from his or her criminal record (see paragraphs 23 and 24 below).

### B. Relevant domestic law and practice

#### *1. Criminal Code*

18. Article 97 § 1 of the Criminal Code provides that an individual who has been convicted of a criminal offence by a final court judgment is regarded as having an unspent conviction. Article 97 § 3 (3) (b) provides that where an individual has been convicted of a serious intentional criminal offence, the conviction is spent after five years. Article 97 § 7 provides that when at least half of the period of an unspent conviction has lapsed, a court may, at the request of the convicted individual, reduce the term of the unspent conviction or rule that the conviction should be expunged from his or her criminal record.

#### *2. Law on the Restructuring of Companies*

19. The Law on the Restructuring of Companies entered into force on 1 July 2001. From that date until 1 October 2010 it did not contain a high moral character requirement for restructuring administrators.

20. A new version of the Law entered into force on 1 October 2010 and remained valid until 1 January 2020 (see paragraph 23 below). During that time, its relevant provisions provided (with the exception of Article 16 § 2, which was partly amended on 1 July 2014 – see paragraph 21 below):

**Article 16. Requirements for individuals seeking to obtain the right to provide restructuring administration services**

"1. [An individual] seeking to obtain the right to provide restructuring administration services must:

1) be of high moral character;

...

2. An individual cannot be held to be of high moral character if he or she:

1) has been convicted of a serious or very serious crime, irrespective of whether the conviction is spent, or has been convicted of any other criminal offence and the conviction is not spent;

2) has been dismissed from working as a prosecutor, judge, advocate, assistant advocate, notary, trainee notary, notary's representative, court bailiff, bailiff, bailiff's representative, or assistant bailiff for disciplinary violations, or has been dismissed from civil service as a disciplinary penalty, or has been dismissed from [other type of] employment for a serious disciplinary breach, or his or her certificate permitting him or her to provide restructuring administration services has been revoked, and less than three years have passed since the dismissal or the revocation;

..."

**Article 18. Issuing and revoking a restructuring administrator's certificate**

"...

3. A restructuring administrator's certificate shall be revoked when:

...

4) the restructuring administrator no longer fulfils the high moral character requirement contained in Article 16 § 2 of this Law;

..."

21. Article 16 § 2 was partly amended on 1 July 2014 and read:

"2. An individual cannot be held to be of high moral character if he or she:

1) has been convicted of a serious or very serious crime, irrespective of whether the conviction is spent, or has been convicted of any other intentional criminal offence and the conviction is not spent;

2) has been dismissed from work or office for disciplinary violations, or has lost the right to engage in a certain kind of work for failure to fulfil the high moral character requirement established in the relevant laws or for breaches of the rules of ethics, and less than three years have passed since the dismissal or loss of that right;

..."

### *3. Rules on the right to provide bankruptcy and restructuring administration services*

22. The relevant parts of the Rules on the right to provide bankruptcy and restructuring administration services, adopted by the Minister of Economy and in force from 10 October 2006 until 11 May 2011, provided:

> "2. Definitions of terms used in these Rules:
>
> ...
>
> High moral character – an individual cannot be held to be of high moral character if he or she has been convicted of a serious or very serious crime, irrespective of whether the conviction is spent, or has been convicted of any other criminal offence and the conviction is not spent ... ;
>
> 5. An individual seeking to provide bankruptcy administration services must:
>
> 5.1. be of high moral character;
>
> ...
>
> 10. An individual seeking to provide restructuring administration services must fulfil the requirements set forth in paragraph 5.1 ... of these Rules ..."

### *4. Law on the Insolvency of Legal Entities*

23. The Law on the Insolvency of Legal Entities entered into force on 1 January 2020. According to its accompanying explanatory report, the purpose of the Law was to, *inter alia*, consolidate the legal framework of bankruptcy and restructuring, thereby making insolvency procedures more efficient. The Law on the Insolvency of Legal Entities replaced the Law on the Bankruptcy of Companies and the Law on the Restructuring of Companies (see paragraphs 19-21 above) – upon its entry into force these laws became invalid.

24. Under the Law on Insolvency of Legal Entities, the functions of a bankruptcy administrator and a restructuring administrator have been combined into a new single role of insolvency administrator (*nemokumo administratorius*). As to the requirement for an insolvency administrator to be of high moral character, the relevant provisions of the Law read as follows:

> **Article 118. Requirements for an individual seeking to obtain the right to administer insolvency procedures**
>
> "The right to administer insolvency procedures shall be granted to an individual who fulfils the following requirements:
>
> 1) is of high moral character;
>
> ..."
>
> **Article 120. High moral character**
>
> "1. An individual shall not be considered to be of high moral character if:

1) he or she has been convicted of an intentional crime to property, pecuniary rights, pecuniary interests, economics, business, financial system, civil service or public interest, and the conviction has not become spent or has not been expunged from his or her criminal record (*teistumas neišnykęs arba nepanaikintas*);

..."

# COMPLAINT

25. The applicant complained that the permanent ban on him working as a restructuring administrator after a criminal conviction was contrary to Article 8 of the Convention, taken alone and in conjunction with Article 14.

# THE LAW

26. The applicant complained about the permanent ban on him working as a restructuring administrator because of his previous conviction. He relied on Article 8 of the Convention, taken alone and in conjunction with Article 14.

These provisions read as follows:

**Article 8**

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

**Article 14**

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

## A. The parties' submissions

### *1. The Government*

27. The Government submitted that the applicant had failed to show that the revocation of his certificate had affected his "private life" to the extent necessary to fall within the ambit of Article 8 of the Convention. They pointed out that the applicant was the owner of a company which had the right to provide restructuring administration services, as long as its head was an individual who had the right to provide such services – and that in fact the applicant had appointed someone else as the head. Furthermore, domestic law did not prevent a legal entity which was a restructuring

administrator from authorising an individual to act as its representative. As a result, the applicant could participate in the restructuring procedure without being a restructuring administrator himself, as the owner or an authorised representative of his company. In the Government's view, the applicant had not demonstrated how the revocation of his certificate had affected his remuneration, his ability to establish and develop relationships with others, or his professional reputation. They also pointed out that even after the revocation of his certificate the applicant continued to be a member of the National Association of Business Administrators. The Government therefore argued that the applicant's private life had not been affected to a very significant degree (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 115-17, 25 September 2018) and Article 8 of the Convention was therefore inapplicable.

28. The Government further submitted that the domestic legislation had been changed and the permanent ban on individuals working as restructuring administrators after a conviction had been revoked. The Law on the Insolvency of Legal Entities, which entered into force on 1 January 2020 and replaced the previous Law on the Restructuring of Companies, provided that individuals who had been convicted of intentional crimes were considered not to be of high moral character only as long as their conviction had not become spent or been expunged from their criminal record (see paragraphs 23 and 24 above). The Government contended that the new legal regulation had "a significant positive impact on the applicant's ability to engage in professional activities".

*2. The applicant*

29. The applicant submitted that, in accordance with the Court's case-law, a far-reaching ban on taking up private sector employment affected "private life" within the meaning of Article 8 of the Convention. He argued that the permanent and irreversible ban on him working as a restructuring administrator, irrespective of whether his conviction was spent, was disproportionate. He submitted that as a result of the revocation of his certificate, he had had to resign as head of his company and hire someone else in his place, and that his reputation had deteriorated. He had thereby sustained both material loss and mental suffering.

30. The applicant did not comment on the legislative changes introduced in the Law on the Insolvency of Legal Entities (see paragraph 28 above).

## B. The Court's assessment

31. The Court takes note of the Government's argument that Article 8 of the Convention is not applicable in the present case because the applicant has failed to show that the impugned measure has affected his private life to a very significant degree, as required under the Court's case-law (see

paragraph 27 above and *Denisov*, cited above, §§ 115-17). However, the Court considers that it is not required to address this submission, because even assuming Article 8 of the Convention to be applicable, there are grounds to strike the present application out of its list of cases.

32. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may "at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...". To be able to conclude that this provision applies to the instant case, the Court must answer two questions in turn: firstly, whether the circumstances complained about directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 30, 20 December 2007, and the cases cited therein). In the present case, that entails first of all establishing whether the Lithuanian law still provides for a permanent ban on convicted individuals working as restructuring administrators (or in an equivalent capacity – see paragraph 24 above); after that, the Court must consider whether the measures taken by the authorities constitute sufficient redress in respect of the applicant's complaint (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I).

33. With reference to the first question, the Court observes that the Law on the Insolvency of Legal Entities entered into force on 1 January 2020, replacing, *inter alia*, the Law on the Restructuring of Companies (see paragraph 23 above). In contrast to the latter Law, which provided that individuals convicted of serious or very serious crimes could not be considered to be of high moral character irrespective of whether their conviction had been spent (see paragraphs 19-21 above), the Law on the Insolvency of Legal Entities provides that convicted individuals cannot be considered to be of high moral character only if their conviction has not become spent or been expunged from their criminal record (see paragraph 24 above). Therefore, in accordance with the new Law, as long as the applicant does not have an unspent conviction, he may seek to obtain the right to work as an insolvency administrator (a new profession created by the Law on the Insolvency of Legal Entities, combining the previous functions of bankruptcy administrators and restructuring administrators – see paragraph 24 above).

34. Accordingly, the legal regulation about which the applicant complained has ceased to exist. It therefore remains to be determined whether the aforementioned legislative changes are sufficient to provide redress for the possible effects of the situation about which he complained to the Court.

35. In his application to the Court, the applicant complained specifically about the permanent nature of the ban on working as a restructuring

administrator after a criminal conviction (see paragraph 29 above). He did not allege that the revocation of his certificate permitting him to work as a restructuring administrator had, in and of itself, breached his rights under the Convention, or that a temporary ban on working as a restructuring administrator after a criminal conviction would have amounted to such a violation.

36. The Court observes that the Law on the Insolvency of Legal Entities, which has eliminated the permanent ban on convicted individuals working as insolvency administrators, entered into force slightly less than four years after the final decision on the revocation of the applicant's certificate (see paragraphs 13 and 33 above). The Court has previously held that it is not its role to substitute its view of what the appropriate interval would be until an applicant could claim to have regained his or her good name (see *Lekavičienė v. Lithuania*, no. 48427/09, § 55, 27 June 2017). In its view, the period of approximately four years during which the applicant was unable to obtain the right to work as a restructuring administrator because of his previous conviction cannot be considered excessive or disproportionate, and the applicant has not argued otherwise.

37. Accordingly, the Court considers that the Law on the Insolvency of Legal Entities, which has given the applicant an opportunity to seek the right to work as an insolvency administrator approximately four years after the final decision on the revocation of his certificate, constitutes sufficient redress for his complaints under Articles 8 and 14 of the Convention (see, *mutatis mutandis*, *Linkevičienė and Others v. Lithuania* (dec.), nos. 33556/07 and 2 others, §§ 110-12, 20 June 2017).

38. Having regard to all the above considerations, the Court concludes that both conditions for the application of Article 37 § 1 (b) of the Convention (see paragraph 32 above) have been met in the present case. The matter giving rise to this complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*. Accordingly, the application should be struck out of the Court's list of cases.

For these reasons, the Court, unanimously,

*Decides* to strike the application out of its list of cases.

Done in English and notified in writing on 13 February 2020.

Andrea Tamietti
Deputy Registrar

Ganna Yudkivska
President