

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

SECOND SECTION

CASE OF MARAZAS v. LITHUANIA

(Application no. 42177/19)

JUDGMENT

STRASBOURG

19 October 2021

This judgment is final but it may be subject to editorial revision.



In the case of Marazas v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Aleš Pejchal, *President,*
Egidijus Kūris,
Marko Bošnjak, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 42177/19) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 31 July 2019 by a Lithuanian national, Mr Algimantas Marazas, born in 1966 and living in Ginkūnai ("the applicant") who was represented by Mr N. Ulčinas, a lawyer practising in Šiauliai;

the decision to give notice of the application to the Lithuanian Government ("the Government"), represented by their Agent, Ms K. Bubnytė-Širmenė;

the parties' observations;

Having deliberated in private on 21 September 2021,

Delivers the following judgment, which was adopted on that date:

SUBJECT-MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 6 § 1 of the Convention that he was refused free legal aid in civil proceedings related to his commercial activities.

2. The applicant was the head and a shareholder of a company. The company obtained a loan from a bank and the applicant guaranteed the loan with his personal property. Following the company's bankruptcy, the bank lodged a civil claim against him. The first-instance and appellate courts allowed the claim and ordered him to pay approximately 726,000 euros (EUR). The decision of the appellate court was adopted on 23 October 2018 and an appeal on points of law could be lodged with the Supreme Court until 23 January 2019. Under the Code of Civil Procedure, such an appeal could only be lodged by a lawyer.

3. On 7 November 2018 the applicant applied for State guaranteed legal aid. On 7 December 2018 the Šiauliai State Guaranteed Legal Aid Service (hereinafter "the Legal Aid Service") refused his request. It acknowledged that the applicant's financial situation warranted granting him legal aid. However, the civil case was related to his commercial activities, and the State Guaranteed Legal Aid Act explicitly excluded the possibility of granting legal aid in such cases. The applicant complained about that decision to the administrative courts, but they dismissed his complaints.

4. Subsequently the applicant lodged an appeal on points of law himself, but the Supreme Court refused to accept it for examination, because it had not been lodged by a lawyer and because the arguments presented therein did not meet the relevant legal requirements.

5. The applicant complained under Article 6 § 1 of the Convention that the refusal to grant him legal aid had deprived him of access to a court.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

6. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

7. The relevant general principles concerning the right of access to a court and the granting of legal aid in civil proceedings have been summarised in *Urbšienė and Urbšys v. Lithuania* (no. 16580/09, §§ 43-46, 8 November 2016, and the cases cited therein).

8. There was no dispute between the parties that the applicant's request for legal aid had been refused for the sole reason that the civil case in question had been directly related to his commercial activities (see paragraph 3 above). The assessment carried out by the Legal Aid Service in its decision of 7 December 2018 was limited to ascertaining the link between the civil proceedings and the applicant's commercial activities and it did not include any consideration of his particular circumstances. Nor was it disputed that the applicant's financial situation had been difficult, that the civil proceedings had entailed serious financial consequences for him, and that he could not lodge an appeal on points of law without a lawyer (see paragraph 2 above). The Court has already found a violation of Article 6 § 1 of the Convention in similar circumstances (ibid., §§ 48-54).

9. The Government argued that the present case could be distinguished from *Urbšienė and Urbšys* (cited above). They submitted that following the Court's finding of a violation in the latter case, the State Guaranteed Legal Aid Act had been amended. From 1 January 2019, when the amendment entered into force, persons who had been refused legal aid for the same reason as the applicant had the right to lodge a new request and ask the Legal Aid Service to reconsider its decision in the light of their particular circumstances. When examining the new request, the Legal Aid Service had to take into account, *inter alia*, the person's financial situation, his or her capacity to effectively represent himself or herself, the complexity of the case, the amount of the pecuniary claims lodged in the case, and the potential negative consequences to the person. The Government thus

contended that the applicant had had the possibility to have his request for legal aid examined in the light of his particular circumstances.

10. The Court reiterates that its task is not to assess the domestic law *in abstracto*, but to determine whether the manner in which it was applied to, or affected, the applicant gave rise to a violation of the Convention (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, and the cases cited therein). It also reiterates that the Convention is designed to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, among many other authorities, *Cudak v. Lithuania* [GC], no. 15869/02, § 58, ECHR 2010).

11. When the aforementioned legal amendment entered into force, twenty-three days remained until the expiry of the time-limit for the applicant to lodge an appeal on points of law (see paragraph 2 above). Within that period, he was expected to lodge a new request with the Legal Aid Service; the latter had to examine it and, in the event of a favourable conclusion, appoint a lawyer; moreover, the lawyer needed time to get acquainted with the case and to prepare an appeal on points of law. By comparison, the examination of the applicant's initial request by the Legal Aid Service took one month (see paragraph 3 above). Accordingly, the Court is not persuaded that, following the entry into force of the legal amendment, the applicant had a realistic possibility to obtain legal aid and lodge an appeal on points of law in time. Although under domestic law he had the right to ask the Supreme Court to renew the said time-limit if it had been missed for important reasons, the Court finds that the Government did not demonstrate the effectiveness of that measure with sufficient examples of comparable cases.

12. Therefore, in the circumstances of the present case, the Court finds that the new avenue provided in the amendment to the State Guaranteed Legal Aid Act was not sufficiently accessible to the applicant in practice.

13. It follows that, similarly to *Urbšienė and Urbšys* (cited above, § 53), the applicant was refused legal aid because of a rigid application of the domestic provisions without any consideration of his particular circumstances. Consequently, there has been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 19 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Hasan Bakırcı	Aleš Pejchal
Deputy Registrar	President