



Refusal to include two lawyers in the Bar Association's list of advocates did not violate the Convention

The cases concern the refusal by the Lithuanian Bar Association to include the two applicants in its list of advocates. Mr Jankauskas was struck off the list of trainee advocates, after it emerged that he had failed to declare a previous conviction in his application to be included in the list. Ms Lekavičienė was refused re-admittance to the list of practicing advocates, on the grounds that she had previously been convicted of defrauding the publicly-funded legal aid system. Both applicants complained to the European Court that the prohibition on their practicing law had violated their right to private life.

In today's **Chamber** judgments¹ in the cases of [Jankauskas v. Lithuania \(no. 2\)](#) (no. 50446/09) and [Lekavičienė v. Lithuania](#) (application no. 48427/09), the European Court of Human Rights held, unanimously, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The Court examined the exclusion of the applicants from the list of advocates as an interference with their right to respect for private life, as it must have affected their professional reputation and relationships. However, the findings of the domestic authorities – that the applicants had not possessed a sufficiently high moral character - had been consistent with domestic law and had not been unreasonable in the circumstances. The interference with the applicants' private lives had therefore been justifiable, in order to protect the rights of others by ensuring the good and proper functioning of the justice system.

Principal facts

Mr Jankauskas

Ramūnas Jankauskas, is a Lithuanian national who was born in 1972 and lives in Pakruojis (Lithuania). Mr Jankauskas had previously been a pre-trial investigator, but he was convicted of abuse of that office and soliciting bribes. After he had served his sentence and his conviction had expired, he made a successful application to the Lithuanian Bar Association to be admitted as a trainee advocate. However, he did not declare his previous conviction. After information about the conviction later came to light, Mr Jankauskas was struck off the trainee advocates' list by a decision of the Court of Honour of Advocates. This was on the grounds that he had withheld information relevant to the assessment of his reputation, demonstrating that he did not have a sufficiently high moral character. Mr Jankauskas challenged the decision in the domestic courts, but he was unsuccessful.

Ms Lekavičienė

Vladislava Ramunė Lekavičienė, is a Lithuanian national who was born in 1942 and lives in Vilnius (Lithuania). She was admitted to the Bar as an advocate, but in December 2003 she removed her name from the list of practicing advocates due to a pending criminal case against her.

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.

In August 2004 Ms Lekavičienė was convicted of over thirty instances of forgery and fraud, relating to untruthful claims that she had provided legal services within the framework of the State-paid legal-aid scheme. Her conviction expired in August 2007, shortly after which time she requested readmission to the Bar. Citing the short period of time that had elapsed and the nature of the crimes committed, the Bar Association refused her request on the grounds that she did not possess the requisite high moral character. The refusal was appealed through the court system and was ultimately upheld by the Supreme Court.

Complaints, procedure and composition of the Court

Both applicants complained that the decisions to exclude them from the list of advocates had violated their right to respect for private and family life, as enshrined in Article 8 of the European Convention.

The applications of Mr Jankauskas and Ms Lekavičienė were lodged with the European Court of Human Rights on 9 September 2009 and 21 August 2009, respectively.

The judgments were given by a Chamber of seven judges, composed as follows:

Ganna **Yudkivska** (Ukraine), *President*,
 Vincent A. **De Gaetano** (Malta),
 Egidijus **Kūris** (Lithuania),
 Iulia **Motoc** (Romania),
 Carlo **Ranzoni** (Liechtenstein),
 Marko **Bošnjak** (Slovenia),
 Péter **Paczolay** (Hungary),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court held that the exclusion of the applicants from the list of advocates had amounted to an interference with their right to respect for private life, as the exclusions must have affected the applicants' professional reputation and professional relationships. However, the Court found that there had been no violation of Article 8, because the interference had been "in accordance with the law", in pursuit of a legitimate aim, and "necessary in a democratic society" in order to achieve that aim.

The exclusions had been carried out in accordance with the law, because the decisions of both the Bar Association and the domestic courts had relied on relevant passages of the Law on the Bar and the Code of Ethics for Advocates. The exclusions had been carried out in pursuit of the legitimate aim, because they had been enforced in order to protect the rights of others, in accordance with the advocates' obligations and the need to safeguard the good functioning of the justice system overall.

Furthermore the Court held that both the exclusions had been "necessary in a democratic society". According to the Court's case law, lawyers play a most important role in the administration of justice. That special role entails a number of duties and restrictions, particularly with regard to their professional conduct, which must be discreet, honest and dignified. Similar principles are advanced in Recommendation R (2000) 21 by the Committee of Ministers of the Council of Europe.

In Lithuania, domestic case law had also emphasised the high standards applicable to the profession of an advocate. The findings by the domestic courts had been consistent with that case law. Mr Jankauskas had committed crimes whilst working in law enforcement which had been extremely

cynical in nature. Ms Lekavičienė had systematically cheated the court system out of money. Given the nature of the applicants' conduct, the conclusions made by the domestic tribunals had not been unreasonable.

Furthermore, in the case of Mr Jankauskas, the domestic findings were based not only on the applicant's offences, but also on the fact that he had failed to declare these when applying to the Bar. The Court shared the conclusion that he should have understood the need to do so. In the case of Ms Lekavičienė, the Court noted that the expiry of an individuals' conviction does not necessarily mean that the person has regained a high moral character. In the applicant's case, the domestic court had found that an insufficient time – four years – had passed since her conviction for forgery and fraud. It is not for the European Court to substitute its view of what would be an appropriate interval. As for the applicants' argument that the standards applicable to them had been unreasonably high in comparison to other law-related professions, the Court noted that the reputation-related requirements for prosecutors and judges had been even more stringent. Furthermore, there was nothing in the domestic courts' decisions that prevented either applicant from reapplying to the Bar in the future.

In these circumstances, the Court considered that the interference with the applicants' right to respect for their private life had not exceeded what had been "necessary in a democratic society" for protecting the rights of others by ensuring the good and proper functioning of the justice system. Accordingly, there had been no violation of Article 8.

The judgments are 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.