



Former judge did not have effective legal avenue to challenge decision not to reappoint him following his term as a government minister

In today's **Chamber judgment**¹ in the case of [Misiūnas v. Lithuania](#) (application no. 38687/22) the European Court of Human Rights held, unanimously, that there had been a **violation of Article 6 § 1 (right of access to court)** of the European Convention on Human Rights.

The applicant is a former judge who had taken up a post in the Government. When his term in Government came to an end, he submitted requests to be reappointed as a judge. The President of the Republic declined to reappoint him. The domestic courts refused to accept for examination claims brought by the applicant, holding, in particular, that it was within the powers of the President to decide on judicial appointments, and that they had no jurisdiction to hear his case.

The Court found that the domestic courts had failed to provide an effective legal remedy capable of addressing the substance of the applicant's complaint, despite him having a legitimate and reasonable expectation that his application for re-entry into the judicial profession would be given proper consideration. There had been no exceptional or compelling reasons to justify the lack of judicial review of the President's decision.

Principal facts

The applicant, Eimutis Misiūnas, is a Lithuanian national who was born in 1973 and lives in Vilnius.

In 2015 the applicant was appointed as a judge of the Vilnius City District Court. In 2016 he was dismissed from that post, at his own request, to take up a job in the Government. He served as Minister of the Interior and then as the Vice-Minister of the Ministry of Defence. When his term as Vice-Minister came to an end in December 2020, the applicant asked to be re-appointed as a judge. In accordance with the Constitution and the Law on Courts, decisions on the appointment of judges are made by the President of the Republic. The Law on Courts provides for the possibility for a former judge who has discontinued her or his career as a judge to apply, within a certain period, to be reappointed without having to undergo a competitive exam or selection proceedings.

In January 2021 state officials, including the President of the Republic, made public statements expressing the view that the applicant would not be reappointed for reasons including concerns about his impartiality and the idea that a "cooling off" period was necessary after a political post. No formal decision on reappointment was taken.

The applicant instituted administrative proceedings. The Vilnius Regional Administrative Court refused to accept the claim for examination, considering that the activities of the President of the Republic could not be the subject of an administrative dispute. The applicant subsequently instituted civil proceedings. Those proceedings were ultimately unsuccessful, with the Lithuanian courts holding that it was within the powers of the President of the Republic to decide on judicial appointments and so the courts had no jurisdiction to hear the applicant's claims.

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 2022 the applicant submitted a new request to the President of the Republic, asking to be reappointed as a judge. Having been issued security clearance, the applicant was interviewed by the Judicial Council, which subsequently voted in favour of his reappointment. Nonetheless, the President of the Republic declined to reappoint him. No official reasons were given but the applicant was told that there were concerns about his activities while he had been in Government and his future plans to take part in politics. A further set of civil proceedings instituted by the applicant were unsuccessful. The Vilnius Regional Court held that the courts did not have jurisdiction to hear the applicant's claim. The Court of Appeal upheld that finding and the Supreme Court refused to accept for examination an appeal by the applicant on points of law.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 of the Convention, the applicant complained that he had been denied an effective right of access to a court as the Lithuanian courts had refused to hear his case concerning the President of the Republic's decision not to reappoint him as a judge.

The application was lodged with the European Court of Human Rights on 2 August 2022.

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

Arnfinn **Bårdsen** (Norway), *President*,
Saadet **Yüksel** (Türkiye),
Jovan **Ilievski** (North Macedonia),
Peeter **Roosma** (Estonia),
Oddný Mjöll **Arnardóttir** (Iceland),
Stéphane **Pisani** (Luxembourg),
Juha **Lavapuro** (Finland),

and also Hasan **Bakırcı**, *Section Registrar*.

Decision of the Court

The Court concluded that the domestic courts had failed to provide the applicant with an effective legal remedy capable of addressing the substance of his complaints.

The Court accepted that there was arguably a "right" recognised under Lithuanian law to a fair procedure in judicial re-appointment, including the right to be protected against arbitrary and discriminatory rejection and a "right" to a fair procedure in the examination of an application for the return to a judicial post.

The Court emphasised that a clear link existed between the integrity of the judicial appointment process and the requirement of judicial independence. The relevant international standards required that any decision concerning the selection and career of judges, or at least the procedure under which such a decision was made, should be amenable to judicial review. In view of the particular circumstances of the case, the exclusion of the applicant, a judicial candidate who met the statutory eligibility requirements, from a reappointment procedure in the absence of any judicial review of that decision by an ordinary tribunal or other body exercising judicial powers, could not be regarded, in view of the importance of the protection of judicial independence, as being in the interest of a State governed by the rule of law.

The Government essentially argued that the exclusion of judicial review had nevertheless been called for in the circumstances of the applicant's case given the exclusive constitutional prerogatives and the role of the President of the Republic in the appointment of the judiciary.

However, as a former judge who had taken up a post in the Government, the applicant had the right to be considered for the post of judge without undergoing a competitive exam or selection procedure. When seeking reappointment, he had obtained the necessary clearances and had been interviewed by the Judicial Council which, having assessed the applicant's candidacy on the basis of competency and integrity criteria, had advised the President of the Republic to appoint him to the post of district court judge. The applicant could therefore have had a legitimate and reasonable expectation that his application for re-entry to the judicial profession would be given proper consideration, subject to transparent and objective evaluation, devoid of arbitrariness. While it had been implied that statements made by the applicant concerning the possibility of his taking up another position in Government in the future and concerns about his activities when he was minister, might have influenced the decision of the President, no such reasons had been formally communicated to the applicant. There was no basis for finding that the dispute concerned any exceptional or compelling reasons that could justify its exclusion from a judicial review.

The domestic courts had failed to consider the applicant's situation as a whole and had considered his grievances in isolation. The Court concluded that the applicant's attempts to obtain a judicial review by the domestic courts, in order to effectively scrutinise any errors which might have occurred during the reappointment proceedings, had been thwarted by the domestic courts' failure to provide an effective legal remedy capable of addressing the substances of the applicant's complaint.

The Court held that there had been a violation of the applicant's right of access to a court.

Just satisfaction (Article 41)

The Court held that Lithuania was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage.

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.