



## Presence of prosecutor's father on Supreme Court panel infringed the right to a fair and impartial trial

The case of [Dainelienė v. Lithuania](#) (application no. 23532/14) concerned the Lithuanian Supreme Court's alleged failure to carry out a fair and impartial consideration of an appeal on points of law against a ruling of embezzlement of property.

In today's **Committee** judgment the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights.

The Court found in particular that the Supreme Court's impartiality had been compromised because the son of the judge presiding over the panel which had decided not to examine the applicant's appeal on points of law had been the prosecutor in earlier embezzlement proceedings against her.

The Court also reiterated that Contracting States are under an obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, and notably with the requirement of impartiality. With respect to this case and others like it, the Court noted that a system should exist to ensure that a judge does not receive a case in which a close family member is involved and that judges should take steps to check whether such a conflict might exist.

*The judgment is final.*

### Principal facts

The applicant, Dalia Regina Dainelienė, is a Lithuanian national who was born in 1944 and lives in Vilnius (Lithuania).

In May 2009, Ms Dainelienė was charged with the embezzlement of property of high value.

The Vilnius Regional Court held, in July 2011, that the charges against Ms Dainelienė were incorrect—as the value of the property she was accused of embezzling could not be considered high—and discontinued proceedings on the grounds of time passed.

Following a successful appeal against that decision by the prosecutor in October 2011, the Vilnius Regional Court, in June 2013, re-examined the case and found her guilty. She lodged a subsequent appeal in October 2013 which was dismissed by the Court of Appeal.

In February 2014 a three-judge selection panel refused to examine an appeal on points of law to the Supreme Court by Ms Dainelienė. The panel's chair was the father of the prosecutor in the earlier embezzlement proceedings.

### Complaints, procedure and composition of the Court

Relying on Article 6 § 1, the applicant complained that her case before the Lithuanian Supreme Court had not been examined fairly by an impartial tribunal, since the chair of the selection panel was the father of the prosecution official in the case brought against her for embezzlement.

The application was lodged with the European Court of Human Rights on 18 March 2014.

Judgment was given by a Committee of three judges, composed as follows:

Faris **Vehabović** (Bosnia and Herzegovina), *President*,  
Carlo **Ranzoni** (Liechtenstein),  
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Section Registrar*.

## Decision of the Court

The Court rejected the Government's argument that Ms Dainelienė's application was inadmissible for failure to exhaust domestic remedies. In particular, there was no evidence that the resubmission of appeals on points of law, as suggested by the Government, constituted an effective remedy in circumstances similar to those of the applicant. Furthermore, an applicant could not be expected to continually turn to the same body after previous failed applications, and there was no higher court.

On the merits, the Court noted that it had both a subjective and objective test for bias. The first assessed the judge's convictions and behaviour and their possible bearing on a case, while the second concerned the presence of any legitimate reason to fear that a judge lacked impartiality.

The Court concluded that the subjective test had not produced any evidence to substantiate personal bias on the part of the judge chairing the selection panel. However, the fact that the judge deciding whether—at the final stage of criminal proceedings—to accept the applicant's appeal on points of law was the father of the prosecutor during the earlier stages of the applicant's case compromised the Supreme Court's impartiality and laid it open to doubt.

Thus, the composition of the three-judge selection panel of the Supreme Court had failed to meet the Convention standard under the objective test, in violation of Article 6 § 1.

## Just satisfaction (Article 41)

The Court held that Lithuania was to pay the applicant, within three months, 3,500 euros (EUR) in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses.

*The judgment is available only in English.*

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