EUROPEAN COURT OF HUMAN RIGHTS

382
27.7.2004

Press release issued by the Registrar

CHAMBER JUDGMENT
SIDABRAS AND DZIAUTAS v. LITHUANIA

The European Court of Human Rights has today notified in writing a judgment[1] in the case of ***Sidabras and Džiautas v. Lithuania*** (application nos. 55480/00 and 59330/00).

The Court held:

- by five votes to two, that there had been **a violation of Articles 14** (prohibition of discrimination) of the European Convention on Human Rights **taken in conjunction with Article 8** (right to respect to private life) of the Convention; and,
- unanimously, that there had been **no violation of Article 10** (freedom of expression) taken alone or in conjunction with Article 14.

Under Article 41 (just satisfaction), the Court awarded each of the applicants 7,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, and EUR 2,681.37 and EUR 2,774.05 respectively for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicants, Juozas Sidabras and Kęstutis Džiautas, are both Lithuanian nationals, born in 1951 and 1962 and living in Šiauliai (Lithuania) and Vilnius respectively. They both worked for the Lithuanian branch of the KGB (the Soviet Security Service), Mr Sidabras from 1975 to 1986 and Mr Džiautas, from 1985 to 1991.

After Lithuania declared its independence in 1990, Mr Sidabras worked as a tax inspector with the Inland Revenue. From 1991 Mr Džiautas worked as a prosecutor at the Office of the Prosecutor General of Lithuania, investigating organised crime and corruption cases in particular.

In May 1999, the applicants were found to have the status of "former KGB officers" and to be subject to the employment restrictions imposed by Article 2 of the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Permanent Employees of the Organisation, adopted on 16 July 1998, which entered into force on 1 January 1999 (the 1999 Act). As a result of these restrictions, both applicants were dismissed from their posts and banned from applying for public-sector and various private-sector posts from 1999-2009.

---

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

They both brought an administrative action pleading that their dismissal was unlawful. Mr Sidabras claimed that he had only been engaged in counter-intelligence and ideology while working at the KGB. Mr Džiautas claimed that, from 1985 to 1990, he had only studied at a special KGB school in Moscow and that, in 1990-1991, he had worked at the KGB as an informer for the Lithuanian security intelligence authorities and that he should therefore be entitled to benefit from the exceptions allowed under the 1999 Act.

On 9 September 1999, the Higher Administrative Court held that Mr Sidabras's dismissal had been justified. His appeals against that decision failed. On 6 August 1999, the Higher Administrative Court granted Mr Džiautas's claim and reinstated him. However, on 25 October 1999, on an appeal by the security intelligence authorities, this judgment was quashed by the Court of Appeal. Mr Džiautas appealed unsuccessfully to the Supreme Court.

2. Procedure and composition of the Court

The applications were lodged with the Court on 29 November 1999 and 5 July 2000 respectively. A public hearing on the admissibility and merits was held in the Human Rights Building, Strasbourg, on 1 July 2003. By a decision of 1 July 2003, the Court declared the applications partly admissible.

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

Loukis **Loucaides** (Cypriot), ***President***,
Jean-Paul **Costa** (French),
Corneliu **Bîrsan** (Romanian),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Wilhelmina **Thomassen** (Netherlands),
Antonella **Mularoni** (San Marinese), ***judges***,

and also Sally **Dollé**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

The applicants complained that being banned from finding employment in the private sector from 1999-2009 on the ground that they had been former KGB officers was in breach of Articles 8 and 14. They also complained, under Articles 10 and 14, about the employment restrictions imposed on them and their dismissals.

In particular, the applicants stressed that they left the KGB many years before the entry into force of the 1999 Act. Mr Sidabras contended that he had since been actively involved in various activities promoting the independence of Lithuania and Mr Džiautas, that he was decorated for his work in investigating various offences, including crimes against the State. They further submitted that, as a result of the negative publicity surrounding the adoption of the so-called "KGB Act", and its application to them, they had been subjected to daily embarrassment on account of their past.

[1] This summary by the Registry does not bind the Court.

Decision of the Court

Article 14 taken in conjunction with Article 8

Applicability
The Court observed that the applicants were treated differently from other people in Lithuania who had not worked for the KGB, and who as a result had no restrictions imposed on them in their choice of professional activities or in relation to their employment prospects on the ground of their loyalty or lack of loyalty to the State.

The Court noted that the ban on the applicants' engaging in professional activities in various private-sector spheres until 2009 had affected their ability to develop relationships with the outside world to a very significant degree, which had created serious difficulties for them in relation to earning their living, with obvious repercussions on their enjoyment of their private lives. Following the publicity surrounding the adoption of the Act and its application to them, they had also been subjected to daily embarrassment as a result of their past activities. The Court accepted that the applicants continued to labour under the status of "former KGB officers" and that fact might of itself be considered an impediment to the establishment of contacts with the outside world. That situation undoubtedly affected both their reputation and the enjoyment of their "private life". They were effectively marked in the eyes of society on account of their past association with an oppressive regime.

The Court therefore considered that the impugned ban affected, to a significant degree, the possibility for the applicants to pursue various professional activities and that there were consequential effects on the enjoyment of their right to respect for their "private life" within the meaning of Article 8. It followed that Article 14 was applicable in the circumstances of this case taken in conjunction with Article 8.

Compliance
The Court noted that the Act was intended to ensure the proper functioning of national security and of the educational and financial systems and that the reason for the imposition of employment restrictions was not the applicants' KGB history as such, but their lack of loyalty to the State.

The Court accepted that activities of the KGB were contrary to the principles guaranteed by the Lithuanian Constitution or indeed by the European Convention on Human Rights. Lithuania wished to avoid a repetition of its previous experience by founding its State, among other things, on the belief that it should be a democracy capable of defending itself. It had to be noted also that similar systems had been established in a number of other States which had ratified the Convention, which had successfully emerged from totalitarian rule.

The Court therefore accepted that the restriction of the applicants' employment prospects under the 1999 Act, and hence the difference of treatment applied to them, pursued the legitimate aims of the protection of national security, public order, the economic well-being of the country and the rights and freedoms of others.

However, the Court noted that the applicants' employment prospects were restricted not only in the State sector, but also in various spheres of the private sector. The Court reiterated that the requirement of an employee's loyalty to the State was an inherent condition of employment with State authorities responsible for protecting and securing the general

interest. However, such a requirement was not inevitably the case for employment with private companies. Although the economic activities of private-sector actors undoubtedly affected and contributed to the functioning of the State, they were not depositaries of the sovereign power vested in the State. Moreover, private companies might legitimately engage in activities, notably financial and economic, which competed with the goals fixed for public authorities or State-run companies.

For the Court, State-imposed restrictions on the possibility for a person to find employment with a private company for reasons of lack of loyalty to the State could not be justified from the Convention point of view in the same manner as restrictions governing access to their employment in the public service, regardless of the private company's importance to the State's economic, political or security interests.

Furthermore, the Court could not overlook the ambiguous manner in which the Act dealt with, on the one hand, the question of the applicants' lack of loyalty and, on the other hand, the need to apply the restrictions to employment in certain private-sector jobs. With the exception of references to "lawyers" and "notaries", the Act contained no definition of the specific jobs, functions or tasks which the applicants were barred from holding. The result was that it was impossible to ascertain any reasonable link between the positions concerned and the legitimate aims sought by the ban on holding those positions. In the Court's view, such a legislative scheme had to be considered to lack the necessary safeguards for avoiding discrimination and for guaranteeing an adequate and appropriate judicial control of the imposition of such restrictions.

The Court also considered relevant the fact that the 1999 Act came into effect almost a decade after Lithuania had declared its independence, as a result of which the restrictions on the applicants' professional activities were imposed on them 13 years (***Sidabras***) and 9 years (***Džiautas***) after their departure from the KGB.

The Court concluded that the ban on the applicants seeking employment in various private-sector spheres constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban. The Court therefore held, by five votes to two, that there had been a violation of Article 14 taken in conjunction with Article 8.

Article 8

In view of its finding of a violation of Article 14 taken in conjunction with Article 8, the Court held, by five votes to two, that it was not necessary also to consider whether there had been a violation of Article 8 taken on its own.

Articles 10 and 14

The Court did not find that the application of the employment restrictions to the applicants under the Act encroached upon their right to freedom of expression. It followed that Article 10 was not applicable. Finding, therefore, that there was no scope for the application of Article 14 in conjunction with Article 10, the Court held, unanimously, that there had been no violation of Article 10, taken alone or in conjunction with Article 14.

Judge Mularoni expressed a partly concurring opinion and Judges Loucaides and Thomassen expressed partly dissenting opinions, which are annexed to the judgment.

***

The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex
Press contacts: Roderick Liddell (telephone: +00 33 (0)3 88 41 24 92)
Emma Hellyer (telephone: +00 33 (0)3 90 21 42 15)
Stéphanie Klein (telephone: +00 33 (0)3 88 41 21 54)
Fax: +00 33 (0)3 88 41 27 91

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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.*