Status: Positive or Neutral Judicial Treatment

*105 Sidabras v Lithuania

Application Nos 55480/00; 59330/00

Before the European Court of Human Rights

27 July 2004

(2006) 42 E.H.R.R. 6

(The President , Judge Loucaides ; Judges Costa , Bîrsan , Jungwiert , Butkevych , Thomassen and Mularoni)

July 27, 2004

Ambit test; Discrimination; Employment; Freedom of expression; Human rights; Just satisfaction; Legitimate aim; Proportionality

H1 The applicants had both worked for the Lithuanian branch of the KGB. After Lithuania declared independence, Mr Sidabras found employment as a tax inspector with the Inland Revenue and Mr Dziautas became a prosecutor at the Office of the Prosecutor General of Lithuania. In May 1999, they were declared to be “former KGB officers” and therefore subject to the employment restrictions imposed by an Act adopted in 1998. As a result of those restrictions, they were dismissed from their posts and banned from applying for public-sector and various private-sector posts until 2009. They challenged their dismissals and the restrictions. The Higher Administrative Court held that Mr Sidabras was subject to the Act's restrictions and his subsequent appeal failed. Although the court ordered Mr Dziautas's reinstatement, its judgment was overturned on appeal.

H2 The applicants complained that the ban on finding employment in the private sector on the ground that they were former KGB officers violated Art.8 taken alone and in conjunction with Art.14 . They also complained that their dismissal from their jobs in state institutions and the other restrictions imposed on them infringed Art.10 taken alone and in conjunction with Art.14 . They claimed just satisfaction under Art.41 .

H3 **Held:**

(1) by five votes to two that there had been a violation of Art.14 taken in conjunction with Art.8 ;

(2) by five votes to two that it was unnecessary to consider the complaints under Art.8 alone;

(3) unanimously that there was no violation of Art.10 taken alone or in conjunction with Art.14 ;

(4) by five votes to two that the respondent State was required to pay €7,000 to each applicant in respect of pecuniary and non-pecuniary damage as well as €2,681.37 in relation to the first applicant's costs and expenses and €2,774.05 in relation to the second applicant's costs and expenses, plus any tax payable.

1. Prohibition of discrimination: employment restrictions; ambit test; “private life”; discrimination; justification; legitimate aim; proportionality (Art.14 in conjunction with Art.8).

H4 (a) Since the applicants were complaining about the employment restrictions imposed on them by reference to their former employment with the KGB, alleging discrimination in this respect, their complaints would first be examined under Art.14 taken in conjunction with Art.8 . [37]

H5 (b) Article 14 protected individuals in similar situations from being treated differently without justification in the enjoyment of their Convention rights and freedoms. For Art.14 to apply, the facts of the case had to fall within the ambit of another substantive provision of the Convention or its Protocols. [38]

H6 (c) The applicants were treated differently from other persons in Lithuania who had not

worked for the KGB and who therefore had no restrictions imposed on them in their choice of professional activities. In addition, in view of the Government's argument that the Act's purpose was to regulate employment prospects on the ground of loyalty to the State, there had also been a difference of treatment between the applicants and other persons in this respect. [41]

H7 (d) A far-reaching ban on taking up private sector employment affected “private life”. There was no watertight division separating the sphere of social and economic rights from the field covered by the Convention. [47]

H8 (e) The applicants had been banned from engaging in professional activities in various private sector spheres on account of their status as former KGB officers. This had affected their ability to develop relationships with the outside world to a very significant degree and had created serious difficulties for them as regards the possibility to earn a living, with obvious repercussions for their private life. [48]

H9 (f) The Court also noted the applicants' argument that as a result of the publicity surrounding the Act's adoption and its application to them, they had been subjected to daily embarrassment as a result of their past activities. They continued to labour under the status of “former KGB officers”, which was an impediment to the establishment of contacts with the outside world. This situation affected more than just their reputation; it also affected their enjoyment of their private life. Although Art.8 could not be invoked in order to complain about a loss of reputation which was the result of the foreseeable consequences of one's own actions, it was reasonable to assume that the applicants could not have envisaged the consequences which their former KGB employment would entail. In any event, there was more at stake for them than the defence of their good name. They were marked in the eyes of society on account of their past association with an oppressive regime. Hence, and in view of the wide-ranging employment restrictions, the possible damage to their leading a normal personal life was a relevant factor in determining whether the facts fell within the scope of Art.8 . [49]

H10 (g) The ban affected, to a significant extent, the possibility for the applicants to pursue various professional activities and there were consequences for the ***106*** enjoyment of their right to respect for their “private life”. Accordingly, Art.14 applied in conjunction with Art.8 . [50]

H11 (h) A difference of treatment was discriminatory if it had no objective and reasonable justification; that is, if did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the end pursued. [51]

H12 (i) States had a legitimate interest in regulating employment conditions in the public service as well as in the private sector. The Convention did not guarantee as such the right to have access to a particular profession. [52]

H13 (j) The restriction of the applicants' employment prospects pursued the legitimate aim of the protection of national security, public order, the economic well-being of the country and the rights and freedoms of others. [55]

H14 (k) State-imposed restrictions on the possibility of finding employment with a private company on account of lack of loyalty to the State could not be justified under the Convention in the same manner as restrictions governing access to employment in the public service, regardless of the private company's importance to the State's economic, political or security interests. [58]

H15 (l) As regards the proportionality of the restrictions, the Court could not overlook the ambiguous manner in which the Act dealt with the question of loyalty and the need to apply the restrictions to employment in certain private sector jobs. It was impossible to ascertain any reasonable link between the positions concerned and the legitimate aims pursued by the ban on holding those positions. The legislative scheme lacked the necessary safeguards for avoiding discrimination and guaranteeing appropriate judicial control of the imposition of such restrictions. [59]

H16 (m) The Act had come into force in 1999, almost a decade after Lithuania had declared independence, and the restrictions had been imposed on the applicants many years after their departure from the KGB. While not decisive, this was relevant to the overall assessment of the proportionality of the measures taken. [60]

H17 (n) The ban on seeking employment in various private sector spheres constituted a disproportionate measure. There was therefore a violation of Art.14 taken in conjunction with Art.8 . It was unnecessary to consider the complaints under Art.8 alone. [61]–[63]

2. Freedom of expression: employment restrictions (Art.10 taken alone and in conjunction with Art.14).

H18 (a) Access to the civil service as such could not be a basis for a complaint under the Convention. Although the dismissal of a civil servant on political grounds could give rise to a complaint under Art.10 , the employment restrictions suffered by applicants in previous cases had related to their specific activities as a member of the Communist party in West Germany or as collaborators of the regime in the former GDR. By contrast, the present applicants had suffered employment restrictions not as a result of the outcome of ordinary labour law proceedings but as a result of the application of special domestic legislation imposing screening measures on the basis of their former employment with the KGB. Their dismissals ***107*** and their inability to find employment according to their qualifications did not restrict their ability to express their views or opinions to the same extent as in the previous cases. [67]–[70]

H19 (b) The application of the employment restrictions did not encroach upon the applicants' right to freedom of expression. Accordingly, Art.10 was not applicable and therefore there was no scope for the application of Art.14 . [71]–[72]

3. Just satisfaction: damage; costs and expenses; default interest (Art.41).

H20 (a) The applicants had sustained a certain amount of pecuniary and non-pecuniary damage. Assessment was on an equitable basis. [78]

H21 (b) Costs and expenses would not be awarded unless it was established that they were actually and necessarily incurred and reasonable as to quantum. Furthermore, legal costs were recoverable only in so far as they related to the violation found. Assessment was on an equitable basis. [81]–[83]

H22 (c) Default interest was based on the marginal lending rate of the European Central Bank plus 3 percentage points. [84]

H23 The following cases are referred to in the Court's judgment:

1. *Airey v Ireland (A/32): (1979–80) 2 E.H.R.R. 305*
2. *Glasenapp v Germany (A/104): (1987) 9 E.H.R.R. 25*
3. *Inze v Austria (A/126): (1988) 10 E.H.R.R. 394*
4. *Kosiek v Germany (A/105): (1987) 9 E.H.R.R. 328*
5. *Niemietz v Germany (A/251-B): (1993) 16 E.H.R.R. 97*
6. *Peck v United Kingdom: (2003) 36 E.H.R.R. 41*
7. *Rekvényi v Hungary: (2000) 30 E.H.R.R. 519*
8. *Smirnova v Russia: (2004) 39 E.H.R.R. 22*
9. *The Former King of Greece v Greece: (2001) 33 E.H.R.R. 21*

10. *Thlimmenos v Greece: (2001) 31 E.H.R.R. 15*

11. *Vogt v Germany (A/323): (1996) 21 E.H.R.R. 205*

12. *X and Y v Netherlands (A/91): (1986) 8 E.H.R.R. 235*

13. *Application No.6959/75, Brüggeman v Germany, Comm. Rep. 12.07.1977*

14. Application No.39793/98, Petersen v Germany, November 22, 2001

15. Application No.39799/98, Volkmer v Germany, November 22, 2001

H24 The following additional cases are referred to in the partly dissenting opinion of Judge Loucaides:

16. Fredin v Sweden (No.1) (A/192): (1991) 13 E.H.R.R. 593

17. *Marckx v Belgium (A/31): (1979–80) 2 E.H.R.R. 330*

18. *Stubbings v United Kingdom: (1997) 23 E.H.R.R. 213*

19. *Van der Mussele v Belgium (A/70): (1984) 6 E.H.R.R. 163*

H25 The following additional case is referred to in the partly dissenting opinion of Judge Thomassen:

20. *Pretty v United Kingdom: (2002) 35 E.H.R.R. 1*

H26 **Representation**

Mrs D. Jo#iene (Agent) for the Government.
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Mr E. Morkünas and Mr V. Barkauskas (Counsel) for the applicants.

THE FACTS

I. The circumstances of the case

10 The first applicant, Juozas Sidabras, is a Lithuanian national, who was born in 1951 and lives in #iauliai. The second applicant, Kestutis Dziautas, is a Lithuanian national, who was born in 1962 and lives in Vilnius. The facts of the case, as submitted by the parties, may be summarised

as follows.

A. The first applicant

11 In 1974 the first applicant graduated from the Lithuanian Physical Culture Institute, qualifying as a certified sports instructor.

12 From 1975 to 1986 the first applicant was an employee of the Lithuanian branch of the Soviet Security Service (hereinafter the “KGB”). After Lithuania declared its independence in 1990, the first applicant found employment as a tax inspector at the Inland Revenue.

13 On May 31, 1999 two authorities—the Lithuanian State Security Department and the Centre for the Research of Genocide and Resistance of the Lithuanian People—jointly concluded that the first applicant was subject to the restrictions under Art.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 (hereinafter “the Act”).[1] The conclusion confirmed that the first applicant had the status of a “former KGB officer”. [2] On June 2, 1999 the first applicant was dismissed from the Inland Revenue on the basis of that conclusion.

14 The first applicant brought an administrative action against the security intelligence authorities, claiming that he had only been engaged in counter-intelligence and ideology while working at the KGB, and that he had not been involved in the violation of individual rights by that organisation. He pleaded that his dismissal and the resultant inability to find employment under Art.2 of the Act were therefore unlawful.

15 On September 9, 1999 the Higher Administrative Court found that the conclusion of May 31, 1999 had been substantiated and that the first applicant was subject to the restrictions of Art.2 of the Act. In this respect, the court held that the applicant had the status of a “former KGB officer” within the meaning of the Act since he had occupied one of the positions mentioned in the list of January 26, 1999.

16 On October 19, 1999 the Court of Appeal rejected the first applicant's appeal. It found that the first applicant had not occupied a KGB position dealing only with criminal investigations and he could not therefore benefit from the exceptions under Art.3 of the Act. ***109***

B. The second applicant

17 On an unspecified date in the 1980s the second applicant graduated from Vilnius University as a certified lawyer.

18 From February 11, 1991 the second applicant worked as a prosecutor at the Office of the Prosecutor General of Lithuania, investigating in particular cases of organised crime and corruption.

19 On May 26, 1999 the Lithuanian State Security Department and the Centre for the Research of Genocide and Resistance of the Lithuanian People jointly concluded that from 1985 to 1991 the second applicant had been an employee of the Lithuanian branch of the KGB, that he had the status of a “former KGB officer” and that he was thereby subject to the restrictions under Art.2 of the Act. On May 31, 1999 the second applicant was dismissed from his job at the Office of the Prosecutor General on the basis of that conclusion.

20 The second applicant brought an administrative action against the security intelligence authorities and the Office of the Prosecutor General. He claimed that from 1985 to 1990 he had only studied at a special KGB school in Moscow, that in 1990 to 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 under Art.3 of the Act. He pleaded that his dismissal and the resultant inability to find employment under the Act were unlawful.

21 On August 6, 1999 the Higher Administrative Court accepted the second applicant's claim, quashed the conclusion of May 26, 1999 and ordered the applicant to be reinstated. The court found that the period of the second applicant's studies at the KGB school from 1985 to 1990 was not to be taken into account for the purposes of the Act, that the second applicant had worked in the KGB for a period of five months in 1990 to 1991, that he had not occupied a KGB position dealing with political investigations and that, in any event, he had been a secret informer for the

Lithuanian authorities. The court concluded that the exceptions under Art.3 of the Act applied to the second applicant and that his dismissal had therefore been unlawful.

22 Following an appeal by the security intelligence authorities, on October 25, 1999 the Court of Appeal quashed the judgment of August 6, 1999. The appellate court found that although the first instance court had properly found that the second applicant had worked at the KGB for only five months, it had not been established that he had worked there as a secret informer for the Lithuanian authorities. Accordingly, he could not benefit from the exceptions under Art.3 of the Act.

23 The second applicant filed a cassation appeal. By a decision of January 28, 2000 the President of the Supreme Court allowed the appeal. However, by a final decision of April 20, 2000 the full Supreme Court refused to examine the appeal and discontinued the cassation procedure for want of jurisdiction.

II. Relevant domestic law and practice

24 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 was adopted on July 16, 1998 by the Lithuanian Seimas (Parliament) and promulgated by the President of the Republic. The Act reads as follows: ***110**

"ARTICLE 1 Recognition of the Ussr State Security Committee as a criminal organisation

The USSR State Security Committee (NKVD, NKGB, MGB, KGB — hereinafter SSC) is recognised as a criminal organisation, having committed war crimes, genocide, repression, terror and political persecution on the territory of Lithuania occupied by the USSR.

ARTICLE 2 Restrictions of the present activities of permanent employees of the SSC

Former employees of the SSC, for a period of 10 years from the date of entry into force of this Law, cannot work as public officials or functionaries in government, local or defence authorities, the State Security department, police, prosecution, courts, diplomatic service, customs, State control and other authorities monitoring public institutions, as lawyers and notaries, in banks and other credit institutions, strategic economic projects, security companies (structures), other companies (structures) providing detective services, communications system, educational system as teachers, educators or heads of those institutions[;] nor can they perform a job requiring a weapon.

ARTICLE 3 Cases in which the restrictions shall not be applied

1. The restrictions provided for in Article 2 shall not be applied to former permanent employees of the SSC who, while working at the SSC, only investigated criminal cases and who discontinued their work at the SSC not later than 11 March 1990.

2. The Centre for the Research of Genocide and Resistance of the Lithuanian People and the State Security Department may [recommend by] a reasoned application that no restrictions under this law be applied to former permanent employees of the SSC who, within 3 months from the date of the entry into force of this Law, reported to the State Security Department and disclosed … all their knowledge about their former work at the SSC and their current relations with former SSC employees and agents. A decision in this respect shall be taken by a commission of three persons set up by the President of the Republic. No employees of the Centre for the Research of Genocide and Resistance of the Lithuanian People or the State Security Department can be appointed

to the commission. The rules of the commission shall be confirmed by the President of the Republic.

ARTICLE 4 Procedure for the implementation of the law

The procedure for the implementation of the Law shall be governed by [a special law].

ARTICLE 5 Entry into force of the Law

This Law shall come into effect on 1 January 1999".

25 Following the examination by the Constitutional Court of the compatibility of ***111*** the Act with the Constitution, [3] on May 5, 1999 Art.3 of the Act was amended to the effect that even those individuals who had worked for the KGB after March 11, 1990 could be eligible for exceptions under Art.3 of the Act.

26 On July 16, 1998 a separate law on the implementation of the Act was adopted. According to that law, the Centre for the Research of Genocide and Resistance of the Lithuanian People and the State Security Department were empowered to reach a conclusion on the status of person as a "former permanent employer of the KGB" for the purposes of the Act.

27 On January 26, 1999 the Government adopted a list ("the list") of positions in various branches of the KGB on the territory of Lithuania attesting to a person's status as a "former permanent employer of the KGB" ("former KGB officer") for the purposes of the Act. Three hundred and ninety-five different positions were listed in this respect.

28 On March 4, 1999 the Constitutional Court examined the issue of the compatibility of the Act with the Constitution. The Constitutional Court held in particular that the Act was adopted in order to carry out "security cleansing" measures on former Soviet security officers, who were deemed to be lacking in loyalty to the Lithuanian State. The Constitutional Court decided that the prohibition on former KGB agents' occupying public posts was compatible with the Constitution. It further ruled that the statutory ban on the holding by former KGB employees of jobs in certain private sectors was compatible with the constitutional principle of the free choice of profession in that the state was entitled to lay down specific requirements for persons applying for work in the most important economic sectors in order to ensure the proper functioning of national security and the educational and financial systems. The Constitutional Court held, in addition, that the restrictions under the Act did not amount to a criminal charge against former KGB agents.

29 While the Act does not specifically guarantee a right of access to a court to contest the conclusion of the security intelligence authorities, it was recognised by the domestic courts that, as a matter of practice, a dismissal from employment in the public service on the basis of that conclusion gave rise to an administrative court action (and a further appeal) under the general procedure governing industrial disputes and alleged breaches of personal rights by the public authorities, pursuant to Arts 4, 7, 8, 26, 49, 50, 59, 63 and 64 of the Code of Administrative Procedure , Art.222 of the Civil Code and Art.336 of the Code of Civil Procedure (as effective at the material time).

III. Provisions of international law and certain legal systems relating to employment restrictions on political grounds

30 Restrictions in many post-communist countries have been imposed with a view to screening employment of former security agents or active collaborators of the former regimes. In this respect, international human rights bodies have at times found fault with similar legislation whenever this has lacked precision or proportionality, characterising such rules as discrimination on the basis of political ***112*** opinion in employment or the exercise of a profession. [4] The possibility of appeal to the courts has been considered a significant safeguard, although not sufficient in itself to make good the deficiency in legislation.

31 Article 1(2) of the European Social Charter provides:

> "With a view to ensuring the effective exercise of the right to work, the Parties undertake:
>
> …
>
> 2) to protect effectively the right of the worker to earn his living in an occupation freely entered upon[.]"

This provision, which was retained word for word in the Revised Charter of 1996 (which entered into force with regard to Lithuania on August 1, 2001), has been consistently interpreted by the European Committee of Social Rights (ECSR) as laying down a right not to be discriminated against in employment. The non-discrimination guarantee is stipulated in Art.E of the Revised Charter in the following terms:

> "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status".

In the light of these provisions the question of dismissal of public servants on account of their activities under totalitarian regimes has been addressed, at least as regards Germany. In its most recent examination of Germany's compliance with Art.1(2)[5] the ECSR took note of the provisions of the Reunification Treaty that allow for the dismissal of public servants on the basis of their activities on behalf of the security services of the former German Democratic Republic. It concluded that Germany was not in compliance with its obligations in the following terms:

> "The Committee observes that there is no precise definition of the functions from which individuals can be excluded, either in the form of a refusal to recruit or a dismissal, on the grounds of previous political activities or activities within the former GDR institutions competent in security matters".

The Committee has examined the conformity of these provisions in the light of Art.31 of the Charter. Under this provision, restriction of a right enshrined in the Charter is permitted if it is prescribed by law, is necessary in a democratic society and serves one of the purposes listed in the Article. Whilst recognising that the provisions are prescribed by law within the meaning of Art.31 and serve one of the purposes listed therein, namely the protection of national security, the Committee considered that they were not necessary within the meaning of Art.31 in that they did not apply solely to services which had responsibilities in the field of law and order and national security or to functions involving such responsibilities. ***113**

The ECSR adopted its conclusions in regard to Lithuania's implementation of the revised Charter on May 28, 2004. They will be made public at a later date.

32 The International Labour Organisation (ILO) has also adopted a number of relevant international legal instruments. The most pertinent text is ILO Convention No.111 on Discrimination (Employment and Occupation) of 1958. In its 1996 General Survey, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) restated its interpretation of Convention No.111, drawing upon examples taken from national law. Regarding Germany, the CEACR's position was the following [6] :

> "The Committee does not accept the argument that in cases in which persons had been accused of having carried out political activities in the former German Democratic Republic, the more the person had, by the assumption of certain functions, identified himself or herself with that unjust regime, the more incriminated he or she was, and the less reasonable it was that this person hold a position in the current administration".

More recently, however, the Committee has expressed satisfaction with the German courts' observance of the principle of proportionality in cases where civil servants challenge their

dismissal. [7]

A 1996 survey identifies comparable provisions in the national law of a number of other European states.

In Bulgaria, s.9 of the Preceding and Concluding Provisions of the Banks and Credit Activity Act of 1992 excluded from employment in banks persons who had served in the previous regime in certain capacities. The Bulgarian Constitutional Court ruled in 1992 that this provision was in violation of the Constitution and of ILO Convention No.111.

In the former Czechoslovakia, the so-called Screening Act was adopted in 1991, preventing persons who had served the previous regime in a number of capacities from taking up employment in the civil service or parts of the private sector. This legislation was declared unconstitutional by the Slovak Constitutional Court in 1996, which further found it to be incompatible with Convention No.111. However, it remained in force in the Czech Republic, while the CEACR had urged the Czech authorities to have due regard to the principle of proportionality in the application of the Act.

In Latvia, the State Civil Service Act 2000 and the Police Act 1999 prohibit the employment of persons who worked for or with the Soviet security services. In 2003 the CEACR recently expressed its dissatisfaction with the above texts in the following terms:

> "6. The Committee recalls that requirements of a political nature can be set for a particular job, but to ensure that they are not contrary to the Convention, they should be limited to the characteristics of a particular post and be in proportion to its labour requirements. The Committee notes that the above established exclusions by the provisions under examination apply broadly to the entire civil service and police rather than to specific jobs, functions or ***114*** tasks. The Committee is concerned that these provisions appear to go beyond justifiable exclusions in respect of a particular job based on its inherent requirements as provided for under Article 1 (2) of the Convention. The Committee recalls that for measures not to be deemed discriminatory under Article 4, they must be measures affecting an individual on account of activities he or she is justifiably suspected or proven to be engaged in which are prejudicial to the security of the State. Article 4 of the Convention does not exclude from the definition of discrimination measures taken by reason of membership of a particular group or community. The Committee also notes that in cases where persons are deemed to be justifiably suspected of or engaged in activities prejudicial to the security of the State, the individual concerned shall have the right to appeal to a competent body in accordance with national practice.
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> 7. In the light of the above, the Committee considers the exclusions from being a candidate for any civil service position and from being employed by the police are not sufficiently well defined and delimited to ensure that they do not become discrimination in employment and occupation based on political opinion …".

Partly Concurring Opinion of Judge Mularoni

O-I1 [39] I would have preferred the Court to have examined the applicants' complaints under Art.8 of the Convention taken alone and to have concluded that it was unnecessary for it to rule on their complaint under Art.14 of the Convention taken in conjunction with Art.8 . However, I accepted to vote with the majority as I considered it important to rule that Art.8 has been violated in this case.

O-I2 I fully share the considerations set out in [52]–[61] of the judgment.

O-I3 However, I disagree with those contained in [49].

O-I4 I consider that the applicants' argument that, because of the publicity caused by the adoption of the "KGB Act" on July 16, 1998 and its application to them they have been subjected to daily embarrassment as a result of their past activities, does not deserve the Court's attention. The applicants worked for the KGB and they never contested that the activities of the KGB were

contrary to the principles guaranteed by the Lithuanian Constitution or by the Convention. [40] The Court accepted that the restriction of the applicants' employment prospects under the ***126*** impugned Act 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. [41]

O-I5 Everyone has to accept the consequences of his/her actions in life and the fact that the applicants continue to labour under the status of “former KGB officers” is for me totally irrelevant to the question of the applicability (and the violation) of Art.8 of the Convention. The argument that they are stigmatised by society on account of their past association with an oppressive regime has to my mind nothing to do with the respondent State's responsibility for the violation of Art.8 of the Convention.

O-I6 I also consider that the argument that the applicants could not have envisaged the consequences which their former KGB employment would entail for them is equally irrelevant to the issue of the applicability (and violation) of Art.8 . If such an argument were accepted, any act, even the most reprehensible, committed by a dictator when in power could justify a finding of a violation of the Convention following the establishment of a democratic regime. It should not be overlooked in this connection that Art.17 of the Convention rules that “Nothing in the Convention must be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any rights and freedoms set forth … in the Convention”.

O-I8 For me it is conclusive that the ban on seeking employment affected to an extremely 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 Art.8 . I agree with the majority that the fact that the applicants were prevented from seeking employment in various private sector spheres on account of the statutory ban constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban. That of itself should have been sufficient to have led the Court to a conclusion that Art.8 was violated in the applicants' case.

Partly Dissenting Opinion of Judge Loucaides

O-II1 [42] I do not agree with the majority that Art.14 is applicable in the present case for the following reasons:

O-II2 It is established case law that Art.14 safeguards individuals placed in an “analogous” or “similar” or “relevantly similar” situation. [43] Therefore, as pointed out in the case law:

> “For a claim of a violation of this Article to succeed, it has therefore to be established, *inter alia* , that the situation of the alleged victim can be considered similar to that of persons who have been better treated”. [44]

O-II3 In examining this question account should be taken of the objective and effects of the law or measure in issue. The law under consideration imposed restrictions on ***127*** the professional activities of persons who in the past worked for the KGB, whose activities were contrary to the principles guaranteed by the Lithuanian Constitution and by the Convention. The objective of the law was the protection of national security, public order and the rights and freedoms of others, by avoiding a repetition of the previous experience, through activities similar to those of the KGB, by people who had worked for that organisation. It is therefore evident that the impugned restrictions provided by the law in question were directly connected to the status of former KGB officers like the applicants.

O-II4 The majority found that Art.14 was applicable in this case because the applicants were treated differently from other persons in Lithuania who had not worked for the KGB. [45] However, in the light of the above, I do not see how the people who had not worked for the KGB were in an “analogous”, “similar” or “relevantly similar” situation to those who had.

O-II5 Although I find that Art.14 is not applicable in the present case, I do find that the restrictions imposed on the professional activities of the applicants were, in the circumstances of the case as explained in the judgment, so onerous and disproportionate to the aim pursued that they

amounted to an unjustified interference with the private life of the applicants. Consequently I find that there has been a breach of Art.8 of the Convention.

Partly Dissenting Opinion of Judge Thomassen

O-III1 [46] I voted against the finding of the majority that there has been a violation of Art.14 of the Convention, taken in conjunction with Art.8 .

O-III2 I have some problems in examining the justification of the measures taken in respect of former employees of the KGB in terms of “discrimination”. The principle of non-discrimination, as it is recognised in European Constitutions and in international Treaties, refers above all to a denial of opportunities on grounds of personal choices in so far as these choices should be respected as elements of someone's personality, such as religion, political opinion, sexual orientation and gender identity, or, on the contrary, on grounds of personal features in respect of which no choice at all can be made, such as sex, race, disability and age.

O-III3 Working for the KGB in my opinion does not fall within either of these categories.

O-III4 If it is true that former KGB employees were treated differently from “other persons in Lithuania who had not worked for the KGB”, [47] this difference does not come within the scope of Art.14 in so far as it relates to access to particular professions, the right to a free choice of professions not being guaranteed by the Convention. [48]

O-III5 I do agree, however, that the application of the law, which in itself pursued a legitimate aim, was of such a general character that it affected the applicants' ability to develop relationships with the outside world, as protected by Art.8 , [49] to a significant extent, and therefore interfered with their private life. In view of the ***128** circumstances of the present applications, such as the fact that the law was applied many years after the applicants had left the KGB and many years after the date of Lithuania's independence, without any account being taken of the special features of their individual cases, this interference cannot be considered proportionate. Consequently, Art.8 of the Convention was violated. ***129**

JUDGMENT

I. Alleged violation of Article 8 of the Convention, taken alone and in conjunction with Article 14

33 The applicants stated that the current ban under Art.2 of the Act on their finding employment in various private sector spheres breached Art.8 of the Convention, taken alone and in conjunction with Art.14 thereof.

Article 8 of the Convention reads as follows:

> “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

Article 14 states:

> “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

34 The Government submitted that Art.8 was not applicable in the present case as that provision did not guarantee a right to retain employment or to choose a profession. They further stated that the application of the Act to the applicants in any event served the legitimate purpose of the protection of national security and was necessary in a democratic society. According to the Government, the Act ***115*** constituted no more than a justified security cleansing measure intended to prevent former employees of a foreign secret service from working not only in state institutions but also in other spheres of activity of importance to the national security of the state. The Act itself did not impose a collective responsibility on all former KGB officers without exception. The Act provided for individualised measures of restriction of employment prospects—by way of the adoption of "the list" of positions at the former KGB warranting application of the restrictions under Art.2 of the Act. [8] The fact that the applicants were not entitled to benefit from any of the exceptions provided for in Art.3 of the Act showed that there existed a well-founded suspicion that the applicants lacked loyalty to the Lithuanian State. Given that not all former employees of the KGB were affected by the Act, Art.14 of the Convention was not therefore applicable. Accordingly, there was no violation of Art.8 of the Convention, either taken alone or in conjunction with Art.14 .

35 The applicants contested the Government's submissions. They complained in particular about being deprived of the possibility to seek employment in various private sector fields until 2009 on the ground of their status as former KGB officers. The applicants submitted that they had not been given any possibility under the Act to present their own personal case for evaluating and establishing their loyalty to the State and to avoid the application to them of the employment restrictions under Art.3 of the Act. In particular, the first applicant stressed that he left the KGB in 1986 and the second applicant quit in 1990, 13 and 9 years, respectively, before the entry into force of the Act. Furthermore, the first applicant contended that thereafter he was actively involved in various activities promoting the independence of Lithuania. The second applicant, for his part, submitted that he was decorated as a prosecutor for his work in investigating various offences, including crimes against the state. However, none of those facts was examined by the domestic courts, which imposed restrictions on their future employment solely on the ground of their former employment at the KGB. Finally, the applicants submitted that as a result of the negative publicity caused by the adoption of the "KGB Act" and its application to them, they have been subjected to daily embarrassment on account of their past.

1. The scope of the applicants' complaints in this part of the case

36 The Court notes that the applicants' complaints in this part of the application do not concern their dismissal from their former employment as, respectively, a tax inspector and prosecutor. Furthermore, this part of the application is not directed against their inability to find employment as public servants. The applicants' complaints under Art.8 of the Convention, alone and taken in conjunction with Art.14 , only concern the ban imposed on them until 2009 on applying for jobs in various private sector spheres. This ban, already effective from 1999, relates to the following activities in the private sector pursuant to Art.2 of the Act:

> "lawyers and notaries, in banks and other credit institutions, strategic economic projects, security companies (structures), other companies (structures) ***116*** providing detective services, communications system, educational system as teachers, educators or heads of those institutions, and [also jobs] requiring a weapon".

37 The applicants complain in this part of the application that the employment restrictions have been imposed on them by reference to their former employment with the KGB. They essentially allege discrimination in this respect. Therefore, the Court will first examine their complaints under Art.14 of the Convention, taken in conjunction with Art.8 , and will then examine their complaints taken under Art.8 alone.

2. Applicability of Article 14

38 The Court recalls that Art.14 of the Convention protects individuals in similar situations from being treated differently without justification in the enjoyment of their Convention rights and freedoms. This provision has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Art.14 does not presuppose a breach of one or more of

such provisions and to this extent it is autonomous. For Art.14 to become applicable, it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols. [9]

39 The Court will therefore establish, first, whether there has been a difference of treatment of the applicants, and, if so, whether the facts of the case fall within the ambit of Art.8 of the Convention in order to rule on the applicability of Art.14 .

Whether there has been a difference of treatment

40 According to the Government, the fact of the applicants' KGB history cannot give rise to a complaint under Art.14 because not all former KGB officers suffered restrictions under the Act. The Government stated that the reason for the adoption of the Act and the employment restrictions imposed under the Act was the applicants' lack of loyalty to the State. The Court observes that the Act did not restrict the employment prospects of all former collaborators of the Soviet security service. First, only those persons who had occupied positions mentioned in the list of January 26, 1999 were considered to have the status of “former KGB officers”.[10] Secondly, even those persons deemed to have that status could benefit from the amnesty rule mentioned in Art.3 of the Act if they had only been engaged in criminal, as opposed to political, investigations during their time at the KGB. [11] Thirdly, there was a possibility to request a special presidential commission, within a period of three months following the entry into force of the Act on January 1, 1999, to decide, in the exercise of its discretion, to lift any restrictions which may have been applied. [12] Finally, it also appears from the impugned domestic proceedings in the instant case that the domestic courts took into consideration whether the applicants had been informers for the Lithuanian authorities ***117** immediately following the declaration of independence in 1990 as a possible ground for relieving them of the employment restrictions imposed on them. [13]

41 However, the fact remains that the applicants were treated differently from other persons 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. In addition, in view of the Government's argument that the purpose of the Act was to regulate the employment prospects of persons on the ground of their loyalty or lack of loyalty to the state, there has also been a difference of treatment between the applicants and other persons in this respect. For the Court, this is the appropriate comparison in the instant case for the purposes of Art.14 .

Whether the facts complained of fall within the ambit of Article 8

42 It remains to be examined whether the applicants' inability to apply for various jobs in the private sector pursuant to Art.2 of the Act has impinged on their “private life” as protected by Art.8 of the Convention.

43 The Court has on a number of occasions ruled that “private life” is a broad term not susceptible to exhaustive definition. [14] It has nevertheless also observed that Art.8 protects the moral and physical integrity of the individual, [15] including the right to live privately, away from unwanted attention. It also secures to the individual a sphere within which he or she can freely pursue the development and fulfilment of his or her personality. [16]

44 In *Niemietz v Germany* the Court stated in regard to the notion of “private life” [17] :

> “It would be too restrictive to limit the notion to an ‘inner circle’ in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings. There appears, furthermore, to be no reason of principle why this understanding of the notion of ‘private life’ should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world. This view is supported by the fact that … it is not always possible to distinguish clearly which of an individual's activities form part of his professional or business life and which do not. Thus, especially in the case of a person exercising a liberal profession, his work in that context may form part and parcel of his life to such a degree that it becomes impossible to know in what capacity

he is acting at a given moment of time".

45 In the recent case of *Smirnova v Russia* , the Court examined the effect on an applicant's "private life" of the seizure by the authorities of an official document ***118** (internal passport), even though no specific interference had been alleged by that applicant as a result of the seizure. The Court ruled that the absence of the passport itself caused a number of everyday inconveniences taken in their entirety, as the applicant needed the passport when performing such mundane tasks as exchanging currency or buying train tickets. It was also noted in particular that the passport was required by that applicant for more crucial needs such as finding employment or receiving medical care. The Court concluded that the deprivation of the passport in the *Smirnova* case had represented a continuing interference with that applicant's "private life". [18]

46 The Court has also ruled that access to the civil service as such cannot be basis for a complaint under the Convention [19] ; the above principle was also reiterated in *Vogt v Germany* . [20] In *Thlimmenos v Greece* , [21] where an applicant had been refused listing as a chartered accountant because of a previous conviction, the Court also stated that the right to choose a particular profession was not as such guaranteed by the Convention.

47 Nevertheless, having regard in particular to the notions currently prevailing in democratic states, the Court considers that a far-reaching ban on taking up private-sector employment does affect "private life". It attaches particular weight in this respect to the text of Art.1(2) of the European Social Charter and the interpretation given by the European Committee of Social Rights [22] as well as to the texts adopted by the ILO. [23] It further recalls that there is no watertight division separating the sphere of social and economic rights from the field covered by the Convention. [24]

48 Turning to the facts of the present case, the Court notes that, as a result of the application of Art.2 of the Act to them, from 1999 until 2009 the applicants have been banned from engaging in professional activities in various private sector spheres in view of their status as "former KGB officers".[25] Admittedly, the ban has not affected the possibility for the applicants to pursue certain types of professional activities. The ban has, however, affected the applicants' ability to develop relationships with the outside world to a very significant degree, and has created serious difficulties for them as regards the possibility to earn their living, with obvious repercussions on their enjoyment of their private life.

49 The Court also notes the applicants' argument that as a result of the publicity caused by the adoption of the "KGB Act" and its application to them, they have been subjected to daily embarrassment as a result of their past activities. It accepts that the applicants continue to labour under the status of "former KGB officers" and that fact may of itself be considered an impediment to the establishment of contacts with the outside world—be they employment-related or other—and that this situation undoubtedly affects more than just their reputation; it also affects the enjoyment of their "private life". The Court accepts that Art.8 cannot be invoked in ***119** order to complain about a loss of reputation which is the result of the foreseeable consequences of one's own actions such as, for example, the commission of a criminal offence. Furthermore, during the considerable period which elapsed between the fall of the former Soviet Union (and the ensuing political changes in Lithuania) and the entry into force of the impugned legislation in 1999, it can reasonably be supposed that the applicants could not have envisaged the consequences which their former KGB employment would entail for them. In any event, in the instant case there is more at stake for the applicants than the defence of their good name. They are marked in the eyes of society on account of their past association with an oppressive regime. Hence, and in view of the wide-ranging scope of the employment restrictions which the applicants have to endure, the Court considers that the possible damage to their leading a normal personal life must be taken to be a relevant factor in determining whether the facts complained of fall within the ambit of Art.8 of the Convention.

50 Against the above background, the Court considers 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 Art.8 . It follows that Art.14 of the Convention is applicable in the circumstances of this case taken in conjunction with Art.8 .

3. Compliance with Article 14

51 According to the Court's case law, a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised”.[26]

52 The Court considers that, as a matter of principle, states have a legitimate interest in regulating employment conditions in the public service as well as in the private sector. In this respect it reiterates that the Convention does not guarantee as such the right to have access to a particular profession. [27] In the recent Volkmer and Petersen decisions concerning Germany, the Court also ruled in the context of Art.10 of the Convention that a democratic state had a legitimate interest in requiring civil servants to show loyalty to the constitutional principles on which the society was founded. [28]

53 The Court notes the decision of the Lithuanian Constitutional Court of March 4, 1999 in which it was stated that the Act restricting the employment prospects of former KGB employees was intended to ensure the proper functioning of national security and of the educational and financial systems. [29] In their justification of this ban before the Court, the respondent Government have submitted that the reason for the imposition of employment restrictions under the Act was not the applicants' KGB history as such, but their lack of loyalty to the state as evidenced by their former employment with the KGB. ***120**

54 The Court must have regard in this connection to Lithuania's experience under Soviet rule, which ended with the declaration of independence in 1990. It has not been contested by the applicants that the activities of the KGB were contrary to the principles guaranteed by the Lithuanian Constitution or indeed by the Convention. Lithuania wished to avoid a repetition of its previous experience by founding its state, inter alia, on the belief that it should be a democracy capable of defending itself. It is to be noted also in this context that systems similar to the one under the 1999 Act, restricting the employment prospects of former security agents or active collaborators of the former regime, have been established in a number of Contracting States which have successfully emerged from totalitarian rule. [30]

55 In view of the above considerations, the Court accepts that the restriction of the applicants' employment prospects under the 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. [31]

56 It remains to be established whether the impugned distinction constituted a proportionate measure. The applicants' principal argument before the Court was that neither the Act nor the domestic proceedings in their cases established their actual loyalty to the Lithuanian State. They argued that the impugned restrictions were imposed in the abstract and that they were punished solely on the basis of their status as former KGB officers without any account being taken of the special features of their own cases. However, the Court, for the following reasons, does not consider it necessary to answer the question whether the applicants were given an opportunity to show their loyalty to the state or whether their lack of loyalty was indeed proven.

57 Even assuming that their lack of loyalty had been undisputed, it must be noted that the applicants' employment prospects were restricted not only in the state service but also in various spheres of the private sector. The Court reiterates that the requirement of an employee's loyalty to the State is an inherent condition of employment with state authorities responsible for protecting and securing the general interest. However, such a requirement is not inevitably the case for employment with private companies. Although the economic activities of private sector actors undoubtedly affect and contribute to the functioning of the state, they are not depositaries of the sovereign power vested in the State. Moreover, private companies may legitimately engage in activities, notably financial and economic, which compete with the goals fixed for public authorities or state-run companies.

58 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 cannot 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.

59 Furthermore, in deciding whether the measures complained of were proportionate, the Court cannot overlook the ambiguous manner in which the Act deals with, on the one hand, the question of the applicants' lack of loyalty—be it assumed on ***121** the basis of their KGB past or duly proven on the facts—and, on the other hand, the need to apply the restrictions to employment in certain private sector jobs. In particular, Art.2 of the Act lists very concisely the private-sector activities from which the applicants, as persons deemed to be lacking in loyalty, should be excluded. [32] However, with the exception of references to “lawyers” and “notaries”, the Act contains no definition of the specific jobs, functions or tasks which the applicants are barred from holding. The result is that it is 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 must 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 (see, inter alia, the conclusions pertaining to access to the public service, reached in regard to similar legislation in Latvia by the ILO Committee of Experts on the Application of Conventions and Recommendations). [33]

60 Finally, the Court observes that the Act came into effect in 1999, that is almost a decade after Lithuania had declared its independence on March 11, 1990, as a result of which the restrictions on the applicants' professional activities were imposed on them 13 years and 9 years respectively after their departure from the KGB. The factor of the belated timing of the Act, although not of itself decisive, may nonetheless be considered relevant to the overall assessment of the proportionality of the measures taken.

61 In view of the above considerations, the Court concludes that the ban on the applicants seeking employment in various private sector spheres, in application of Art.2 of the Act, constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban.

62 There has thus been a violation of Art.14 of the Convention taken in conjunction with Art.8 .

4. The applicants' complaint under Article 8 alone

63 The Court considers that since it has found a breach of Art.14 of the Convention taken in conjunction with Art.8 , it is not necessary also to consider whether there has been a violation of Art.8 taken on its own.

II. Alleged violation of Article 10 of the Convention, taken alone and in conjunction with Article 14

64 The applicants complained that their dismissal from their jobs in state institutions as well as the other restrictions imposed on their finding employment were in breach of Art.10 of the Convention, taken together with Art.14 .

Article 10 provides: ***122**

> “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

65 The Government submitted that Art.10 was not applicable in the present case. It further stated that the application of the Act to the applicants in any event served the legitimate purpose of the protection of national security and was necessary in a democratic society in view of the

applicants' lack of loyalty to the state. The applicants had not been punished for their views, be these views which they hold at present or views that they might have held in the past. The Act had not imposed a collective responsibility on all former KGB officers without exception. The fact that the applicants were not entitled to benefit from any of the exceptions provided for in Art.3 of the Act showed that there had been a well-founded suspicion that the applicants had lacked loyalty to the Lithuanian State. Accordingly, there had been no violation of Art.10 of the Convention, either alone or taken in conjunction with Art.14 .

66 The applicants contested the Government's submissions. They stated in particular that they had lost their jobs and had been deprived of any possibility to find proper employment on account of their past views as reflected in their previous employment with the KGB. Their own loyalty to the Lithuanian State had never been questioned during the domestic proceedings; nor had they had the opportunity to submit arguments to the domestic courts in proof of their loyalty. The Act had arbitrarily and collectively punished all former KGB officers regardless of their own personal history. Their dismissal in the circumstances had been disproportionate to the attainment of any public interest aim which might have been pursued by the Act. Throughout their work as, respectively, a tax inspector and a prosecutor, they had been loyal to the idea of Lithuanian independence and to the democratic principles enshrined in the Constitution. The applicants concluded that their dismissal from their jobs and the current ban on their finding employment in various public and private sector activities had violated Arts 10 and 14 of the Convention.

67 The issue of the applicability of Art.10 of the Convention has been contested by the parties. The Court recalls in this respect that access to the civil service as such cannot be basis for a complaint under the Convention. [34] In *Thlimmenos v Greece* , ***123** [35] where an applicant had been refused listing as a chartered accountant because of his previous conviction, the Court also stated that the right to choose a particular profession was not as such guaranteed by the Convention.

68 Admittedly, the Court has also held that the dismissal of a civil servant or a state official on political grounds can give rise to a complaint under Art.10 of the Convention. [36] It notes, however, that the employment restrictions suffered by the applicants in those cases related to their specific activities as a member of the communist party in West Germany (*Vogt*), or as collaborators of the regime in the former German Democratic Republic (Volkmer *and* Petersen).

69 By contrast, in the present case both applicants suffered the employment restrictions not as a result of the outcome of ordinary labour law proceedings, but as a result of the application to them of special domestic legislation imposing screening measures on the basis of their former employment with the KGB. Having regard to the domestic decisions given in their cases, it appears that the national courts were solely concerned with establishing the nature of the applicants' former employment with the KGB, rather than giving specific consideration to the particular circumstances of each of the applicant's cases, for example the views they held or expressed whether during or after their employment with the KGB.

70 In addition, in the aforementioned cases against Germany an interference with the right guaranteed by Art.10 was found as a result of the fact that those applicants had been dismissed from teaching posts, which by their nature involves the imparting of ideas and information on a daily basis. The Court is not convinced that the applicants' dismissal from their positions, respectively, as a tax inspector and a prosecutor, or their alleged inability to find employment according to their academic qualifications, respectively, as a sports instructor and a lawyer, amount to a restriction on their ability to express their views or opinions to the same extent as in the above-mentioned cases against Germany.

71 The Court does not find, therefore, that the application of the employment restrictions to the applicants under the Act encroached upon their right to freedom of expression. It follows that Art.10 is not applicable in the instant case.

72 To the extent that the applicants' complaints in this part of the application relate to Art.14 of the Convention, the Court recalls that Art.14 has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Art.14 does not presuppose a breach of one or more of such provisions and to this extent it is autonomous. For Art.14 to become applicable it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols. [37] Since the Court has found that Art.10 does not

apply in the present case, there can be no scope for the application of Art.14 in conjunction with the applicants' complaints under Art.10 .

73 There has thus been no breach of Art.10 of the Convention, alone or taken in conjunction with Art.14 .

III. Application of Article 41 of the Convention

74 Article 41 of the Convention provides:

> “If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party”.

A. Damage

75 The first applicant claimed 257,154 Lithuanian litai (LTL), about €74,365, for pecuniary damage as a result of being subjected to employment restrictions under the Act. He also claimed LTL 500,000 (€144,592) for non-pecuniary damage.

76 The second applicant claimed LTL 201,508.54 (€58,273) for pecuniary damage and LTL 75,000 (€21,689) for non-pecuniary damage.

77 The Government considered the claims to be exorbitant.

78 The Court recalls that it has found a violation of Art.14 of the Convention taken in conjunction with Art.8 of the Convention as regards the employment restrictions which were imposed on the applicants under the Act. It considers in this respect that they can be taken to have sustained a certain amount of pecuniary and non-pecuniary damage. Making its assessment on an equitable basis, the Court awards each of the applicants €7,000 under this head.

B. Costs and expenses

79 The first applicant claimed LTL 40,000 (€11,567) by way of reimbursement of his costs and expenses in respect of the Convention proceedings. The second applicant claimed LTL 31,860 (€9,213).

80 The Government considered the claims to be exaggerated.

81 According to the Court's established case law, costs and expenses will not be awarded under Art.41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum. In addition, legal costs are only recoverable in so far as they relate to the violation found. [38]

82 The Court notes that the applicants have been granted legal aid under the Court's legal aid scheme, under which the sum of €2,318.63 has been paid to the first applicant's lawyer, and the sum of €2,225.95 has been paid to the second applicant's lawyer, to cover the submission of the applicants' observations and additional comments, the lawyers' appearance at the hearing, and the conduct of the friendly settlement negotiations.

83 Making its assessment on an equitable basis, the Court awards each of the applicants €5,000 for legal costs and expenses, minus the sums already paid under the Court's legal aid scheme (respectively, €2,318.63 and €2,225.95). Consequently, the Court awards the final amount of €2,681.37 in relation to the first applicant's costs and expenses, and €2,774.05 in relation to the second applicant's costs and expenses. ***125**

C. Default interest

84 The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added 3 percentage points.

Order

For these reasons, THE COURT

1. *Holds* , by five votes to two, that there has been a violation of Arts 14 of the Convention taken in conjunction with Art.8 of the Convention;

2. *Holds* , by five votes to two, that it is not required to rule on the applicants' complaints under Art.8 of the Convention taken alone;

3. *Holds* , unanimously, that there has been no violation of Art.10 of the Convention taken alone or in conjunction with Art.14 of the Convention;

4. *Holds* , by five votes to two,

(a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final according to Art.44(2) of the Convention, €7,000 in respect of pecuniary and non-pecuniary damage, as well as €2,681.37 in relation to the first applicant's costs and expenses and €2,774.05 in relation to the second applicant's costs and expenses, plus any tax that may be chargeable, these amounts to be converted into the currency of the respondent state at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus 3 percentage points;

5. *Dismisses* unanimously the remainder of the applicants' claims for just satisfaction.

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1. See the Relevant domestic law and practice section below.

2. See [27] below.

3. See below.

4. See below.

5. Published in November 2002.

6. para.196.

7. See para.3 of the Individual Observation to Germany under Convention No.111 in 2000.

8. See [27] above.

9. See, *mutatis mutandis* , *Inze v Austria (A/126): (1988) 10 E.H.R.R. 394* at [36].

10. See [27] above.

11. See [24] above.

12. See [24] above.

13. See [22] above.

14. See, as a recent authority, *Peck v United Kingdom: (2003) 36 E.H.R.R. 41* at [57].

15. See *X and Y v Netherlands (A/91): (1986) 8 E.H.R.R. 235* at [22]–[27].

16. See *App. No.6959/75, Brüggeman v Germany, Comm. Rep. 12.07.1977* at [55].

17. *Niemietz v Germany (A/251-B): (1993) 16 E.H.R.R. 97* at [29].

18. *Smirnova v Russia: (2004) 39 E.H.R.R. 22* at [96]–[97].

19. See *Glasenapp v Germany (A/104): (1987) 9 E.H.R.R. 25* at [49] and *Kosiek v Germany (A/105): (1987) 9 E.H.R.R. 328* at [35].

20. *Vogt v Germany (A/323): (1996) 21 E.H.R.R. 205* at [43]–[44].

21. *Thlimmenos v Greece: (2001) 31 E.H.R.R. 15* .

22. See [31] above.

23. See [32] above.

24. See, *Airey v Ireland (A/32): (1979–80) 2 E.H.R.R. 305* at [26].

25. See [27] above.

26. See the above-mentioned *Inze* judgment at [41].

27. See, *mutatis mutandis* , *Vogt v Germany* , cited above at [43]; see also *Thlimmenos* , cited above.

28. App. No.39799/98, Volkmer v Germany, November 22, 2001 ; and App. No.39793/98, Petersen v Germany, November 22, 2001 .

29. See [28] above.

30. See [30]–[32] above.

31. See, *mutatis mutandis* , *Rekvényi v Hungary: (2000) 30 E.H.R.R. 519* at [41].

32. See [24] and [40] above.

33. [32] above.

34. See the Glasenapp and Kosiek v Germany judgments cited above at [49] and [35]; the above principle was also reiterated in the above-mentioned *Vogt v Germany* judgment at [43]–[44].

35. Cited above at [41].

36. See the above mentioned *Vogt* judgment; also see the aforementioned Volkmer and Petersen decisions, *ibid.*

37. See *Thlimmenos* , cited above.

38. See *The Former King of Greece v Greece: (2001) 33 E.H.R.R. 21* at [105].

39. Paragraph numbering added by the publisher.

40. See [54].

41. See [55] above.

42. Paragraph numbering added by the publisher.

43. See *Marckx v Belgium (A/31): (1979–80) 2 E.H.R.R. 330* at [32]; *Van der Mussele v Belgium (A/70): (1984) 6 E.H.R.R. 163* at [46]; Fredin v Sweden (No.1) (A/192): (1991) 13 E.H.R.R. 593 at [60]; *Stubbings v United Kingdom: (1997) 23 E.H.R.R. 213* at [72].

44. See, Fredin and *Stubbings* , cited above.

45. See [41] above.

46. Paragraph numbering added by the publisher.

47. [41] above.

48. *mutatis mutandis* , the aforementioned *Thlimmenos* judgment at [41].

49. See *Pretty v United Kingdom: (2002) 35 E.H.R.R. 1* at [61].