

Resolution ResDH(2004)45
concerning the judgment of the European Court of Human Rights
of 28 March 2002 (final on 28 June 2002)
in the case of Birutis and Others against Lithuania

*(Adopted by the Committee of Ministers on 20 July 2004
at the 891st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the case of Birutis and Others delivered on 28 March 2002 and transmitted to the Committee of Ministers once it had become final under Articles 44 and 46 of the Convention;

Recalling that the case originated in applications (Nos. 47698/99 and 48115/99) against Lithuania, lodged with the European Court of Human Rights on 11 and 15 January 1999 under Article 34 of the Convention by Mr Kęstutis Birutis, Mr Vidmantas Byla, and Mr Laimonas Janutėnas, Lithuanian nationals, and that the Court declared admissible the complaints that they had been deprived of a fair trial and that their defence rights had been breached because they had been convicted on the basis of anonymous evidence;

Whereas in its judgment of 28 March 2002 the Court unanimously:

- held that there had been a violation of Article 6, paragraphs 1 and 3 (d), of the Convention;
- held that the Court had not been required to rule under Article 41 of the Convention since the applicants had submitted no claim with regard to just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 28 March 2002, having regard to Lithuania's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Whereas during the examination of the case by the Committee of Ministers, the government of the respondent state gave the Committee information about the measures taken preventing new violations of the same kind as that found in the present judgment; this information appears in the appendix to this resolution;

Declares, after having examined the information supplied by the Government of Lithuania, that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case.

Appendix to Resolution ResDH(2004)45

*Information provided by the Government of Lithuania
during the examination of the Birutis and Others case
by the Committee of Ministers*

The violation of the European Convention on Human Rights in this case originated in Articles 267, paragraph 5 and 317, paragraph 1 of the Code of Criminal Procedure, which provided that where the identity of a witness is secret, a court could dispense with hearing that person by reading out the anonymous statement at a trial hearing. Following the European Court's judgment finding a violation of Article 6, paragraphs 1 and 3 (d) of the Convention, the Lithuanian authorities undertook a legislative reform of the above-mentioned provisions. On 14 March 2002, the Lithuanian Parliament adopted a new Code of Criminal Procedure which entered into force on 1 May 2003. The procedure for taking evidence from an anonymous witness is laid down in Article 282. An anonymous witness may thus be questioned at a non-public hearing after appropriate acoustic and visual obstacles have been created to prevent the parties from establishing the identity of the secret witness. If such obstacles cannot be created at a court hearing, the witness should be questioned in some other place in the absence of the parties. Before questioning an anonymous witness, the party which intends to put questions to the witness should submit the questions in writing to the presiding judge. The statements made by the witness shall be recorded by the presiding judge or one of the trial judges. The presiding judge or one of the trial judges shall read out these statements at a court hearing. Additional questions may be posed under this procedure after the statements have been read out. If personal appearance in court seriously threatens the life, health or freedom of an anonymous witness or close relatives, the witness should not be summoned to appear in court, but statements made before the investigating judge should be read out at a court hearing. Such a witness may be questioned by audiovisual means after the creation of acoustic and visual obstacles.

In order to ensure that the new legislation is applied in conformity with the Convention particularly as defined in the present judgment, the Court's judgment has been published in Lithuanian in the *Europos žmogaus teisių teismo sprendimai bylose prieš Lietuvos Respubliką* (2002.01.01-2003.01.01). The Lithuanian translation of the Court's judgment has also been transmitted to the Supreme Court of Lithuania and to the Office of the Prosecutor General of Lithuania.

In 2002 the applicants lodged requests with the Supreme Court of Lithuania to reopen the criminal proceedings against them. On 27 June 2002, the Supreme Court quashed the Court of Appeal's judgment of 29 April 1998 and its judgment of 20 October 1998 by which the applicants had been initially convicted and referred the case to the Court of Appeal for re-examination. The proceedings are still pending.

As regards the question of possible liberation of the applicants pending the outcome of the new proceedings the Government notes that the first two applicants, Mr Birutis and Mr Byla, cannot be released as they are presently serving another prison sentence: the Kaunas Regional Court, by a decision of 3 November 1997, convicted them of disorderly conduct and of having obstructed the functioning of the penitentiary and sentenced them to thirteen years' imprisonment. Accordingly, both applicants are currently serving their sentences in the Alytus prison.

As for the third applicant, Mr Janutėnas, on 3 May 2001, he was provisionally released on probation before the expiry of the sentence (under Article 54 of the Criminal Code).

In view of these general and individual measures the Government of Lithuania considers that it has met its obligations under Article 46, paragraph 1, of the European Convention of Human Rights and is of the opinion that there is no longer any risk of repetition of the violation found by the Court in this case.