

Resolution ResDH(2004)43
concerning the judgment of the European Court of Human Rights
of 10 October 2000 (final on 18 January 2001)
in the case of Daktaras 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 Daktaras against Lithuania case delivered on 10 October 2000 and transmitted to the Committee of Ministers once it had become final under Articles 44 and 46 of the Convention;

Recalling that the judgment of the Court became final on 18 January 2001 since, at this date, the government of the respondent state was informed that the request for a re-hearing before the Grand Chamber had been dismissed;

Recalling that the case originated in an application (No. 42095/98) against Lithuania, lodged with the European Commission of Human Rights on 11 May 1998 under former Article 25 of the Convention by Mr Henrikas Daktaras, a Lithuanian national, and that the Court, seised of the case under Article 5, paragraph 2, of Protocol No. 11, declared admissible the complaints that, first, the Supreme Court, which examined the applicant's criminal case in 1997 as a court of cassation, had not been an impartial tribunal in particular, because it had been instructed to quash the appellate decision and reinstate the first-instance judgment following the cassation petition of the President of the Criminal Division of the Supreme Court; and that, secondly, in the criminal proceedings against him the prosecutor had breached the principle of presumption of innocence;

Whereas in its judgment of 10 October 2000 the Court unanimously:

- held that there had been a violation of Article 6, paragraph 1, of the Convention;
- held that there had been no violation of Article 6, paragraph 2, of the Convention;
- held that the government of the respondent state was to pay the applicant, within three months from the date at which the judgment became final, 10 354,22 litai (LTL) in respect of costs and expenses, plus any value-added tax that may be chargeable, and that simple interest at an annual rate of 9,5% would be payable on this sum from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the applicant's claim for 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 taken in consequence of the judgment of 10 October 2000, 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 to erase fully the consequences of the violation for the applicant and to prevent new violations of the same kind as that found in the present judgment; this information appears in the appendix to this resolution;

Having satisfied itself that on 30 October 2000, within the time-limit set, the government of the respondent state had paid the applicant the sum provided for in the judgment of 10 October 2000 ;

Declares, after having taken note of 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)43

*Information provided by the Government of Lithuania
during the examination of the Daktaras case
by the Committee of Ministers*

In order to erase the consequences of the violation, the domestic proceedings concerning Mr Daktaras were reopened on 29 January 2002 by a decision of the Criminal Chamber of the Supreme Court. This reopening was made possible by the application of the new section of the Code of Criminal Procedure called "Reopening of criminal cases following a judgment of the European Court of Human Rights", introduced in the Code by a law passed on 11 September 2001, which entered into force on 15 October 2001.

Following the reopening of the national proceedings concerning the Daktaras case, on 2 April 2002 a plenary session of the Criminal Chamber of the Supreme Court annulled the cassation judgment which had been adopted by this same Chamber on 2 December 1997. According to the new judgment, the cassation petition submitted by the President of the Criminal Chamber of the Supreme Court was not taken into account. The cassation petition submitted by Mr Daktaras, as well as that of his legal representative, were rejected.

As far as general measures are concerned, the new Lithuanian Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*) was adopted by the *Seimas* (Parliament) on 14 March 2002 and came into force on 1 May 2003. The legislative provision at issue, which provided for the possibility of entitling certain judges including the Presidents of Divisions of the Supreme Court to submit a cassation petition, has been repealed.

Moreover, the text of the judgment of the European Court of Human Rights has been published in Lithuanian in *Europos žmogaus teisių komisijos ir Europos žmogaus teisių*

teismo sprendimai bylose prieš Lietuvos Respubliką (1997.01.01- 2000.01.01) Primas leidimas. In addition, the judgment has been transmitted to the authorities concerned.

The Government of Lithuania considers that in view of these developments there is no longer any risk of any new violation similar to that found by the Court in this case and that Lithuania has thus met its obligations under Article 46, paragraph 1, of the Convention.