

**Resolution ResDH(2004)42**  
**concerning the judgment of the European Court of Human Rights**  
**of 10 October 2000 (final on 10 January 2001)**  
**in the case of Graužinis 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 Graužinis against Lithuania 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 case originated in an application (No. 37975/97) against Lithuania, lodged with the European Commission of Human Rights on 21 July 1997 under former Article 25 of the Convention by Mr Arminas Graužinis, 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 he was not repeatedly brought before a judge during his detention on remand and that he did not benefit from the appropriate guarantees to ensure effective control of the lawfulness of his detention;

Recalling that the case was brought before the Court by the Commission, on 1 November 1998;

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

- held that there had been a violation of Article 5, paragraph 4, of the Convention;
- held that there had been no violation of Article 5, paragraph 3, 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, 5 000 litai (LTL) in respect of non-pecuniary damage; 3 000 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 those sums 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 which had been 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 preventing 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 31 October 2000 and 14 November 2000, within the time-limit set, the government of the respondent state had paid the applicants the sums 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)42**

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

#### Legislative amendments

The legislative provisions in force during the applicant's detention on remand in 1997, which were at the root of the violation found (paragraph 3 of Article 106; paragraph 1 of Article 109 and paragraph 4 of article 372 of the Code of Criminal Procedure) have been modified.

The present paragraph 3 of Article 106 of the Code of Criminal Procedure in force (version of the law No. VIII-1488, 21 December 1999) specifies that participation of the arrested person in the court hearing which decides the question of extending the time limits of the person's detention on remand at the stage of pre-trial investigation, is mandatory.

Furthermore, according to the present Article 109 of the Code of Criminal Procedure in force (version of the law No. VIII-784, 11 June 1998), complaints as to the lawfulness of detention on remand may be filed by the arrested person or his/her defence counsel during both the stage of pre-trial investigation and judicial examination of the case, and for the purposes of examining the complaint as to detention under remand a court hearing has to be held, to which the arrested person and his/her defence counsel, or only his/her defence counsel, have to be summoned. Having regard to the direct effect of the European Convention on Human Rights and of the Court's case-law before the Lithuanian criminal Courts (e.g. in criminal cases: Supreme Court's decisions of 29 April 2003 -case No. 2K-322/2003- or of 16 September 2003 -case No. 2K-504/2003), the Lithuanian Government considers that this Article will be applied in future similar cases in conformity with the Convention and the Court's case-law.

Finally, following the entry into force of the current version of paragraph 4 of Article 372 of the Code of Criminal Procedure (law No. VIII-956, 10 December 1998), this provision no longer contains any prohibition appeals against decisions of first-instance courts on the imposition, modification or revocation of detention on remand.

### Publication

The Court's judgment has moreover 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 Lithuanian Government 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.