

## **Resolution CM/ResDH(2010)175<sup>1</sup>**

### **Execution of the judgment of the European Court of Human Rights Gulijev against Lithuania**

(Application No. 10425/03, judgment of 16/12/2008, final on 16/03/2009)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”);

Having regard to the judgment transmitted by the Court to the Committee once it had become final;

Recalling that the violation of the Convention found by the Court in this case concerns the rejection of the applicant’s request to renew his residence permit and subsequent expulsion from Lithuania where his two children and wife live, on the basis of a report by the State Security Department, classified as “secret”. (violation of Article 8) (see details in Appendix);

Having invited the government of the respondent state to inform the Committee of the measures taken to comply with its obligation under Article 46, paragraph 1, of the Convention to abide by the judgment;

Having examined the information provided by the government in accordance with the Committee’s Rules for the application of Article 46, paragraph 2, of the Convention;

Having satisfied itself that, within the time-limit set, the respondent state paid the applicant the just satisfaction provided in the judgment (see details in Appendix),

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded by the Court in its judgments, the adoption by the respondent state, where appropriate:

- of individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- of general measures preventing similar violations;

DECLARES, having examined the measures taken by the respondent state (see Appendix), that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case and

DECIDES to close the examination of this case.

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<sup>1</sup> Adopted by the Committee of Ministers on 2 December 2010 at the 1100th meeting of the Ministers’ Deputies

## Appendix to Resolution CM/ResDH(2010)175

### Information about the measures to comply with the judgment in the case of Gulijev against Lithuania

#### Introductory case summary

This case concerns the unjustified interference with the applicant's right to respect for his private and family life due to the rejection of his request for renewal of his temporary residence permit in 2002 and his subsequent expulsion.

The applicant, a national of Azerbaijan residing at the material time in Lithuania with his wife and two children (Lithuanian citizens), was denied the renewal of his residence permit on account of a report of the State Security Department classified as "secret". This report indicated that the applicant posed a threat to national security and public order.

The European Court observed that the "secret" report of the State Security Department, to which the applicant had no access, was the sole ground for not granting him a temporary residence permit, in spite of Article 57§3 of the Law on Administrative Proceedings, which provides that documents classified as "secret" may not be used as evidence by the courts until declassified.

Moreover, no objective element was presented to the Court to demonstrate that the authorities had had good reason to suspect that the applicant was a threat to national security.

The Court concluded that the expulsion of the applicant and his prohibition from re-entering Lithuania, where his two children and wife live, was disproportionate and could not be regarded as "necessary in a democratic society" (violation of Article 8).

#### I. Payment of just satisfaction and individual measures

##### a) Details of just satisfaction

| Pecuniary damage          | Non-pecuniary damage | Costs and expenses | Total     |
|---------------------------|----------------------|--------------------|-----------|
| -                         | 5 000 EUR            | 700 EUR            | 5 700 EUR |
| <b>Paid on 11/05/2009</b> |                      |                    |           |

##### b) Individual measures

On 22 May 2009 of the Migration Department of Lithuania decided to remove the data concerning the applicant from the national list of aliens prohibited from entering Lithuanian Republic territory. Consequently the applicant may now enter the Republic of Lithuania whenever he wishes and is entitled to apply to the migration department for a temporary residence permit in accordance with the common procedure provided in the Law on the Legal Status of Aliens. According to the information submitted by the Lithuanian authorities the applicant, his wife and their two children are currently residing in Austria.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

## **II. General measures**

The Lithuanian authorities consider that the violation in this case was purely due to a wrongful application and interpretation of domestic law, since despite Article 57 § 3 of the Law on Administrative Proceedings which makes it illegal to take into account as an evidence a document classified as “secret”, the expulsion of the applicant was based on a “secret” document drafted by the State Security Department, to which the applicant had no access during the expulsion proceedings. In addition, in a decision of 15/05/2007, the Constitutional Court, when interpreting Article 57 § 3 of the Law on Administrative Proceedings, considered clearly that “no court decision can be based entirely on information classified as secret and which is unknown to the parties in the case”. The authorities are of the opinion in this respect that the violation found in this case is isolated and does not require the national law to be amended.

The European Court’s judgment has been translated into Lithuanian and placed on the official internet site of the Ministry of Justice. The Government Agent has informed all relevant institutions and domestic courts about the judgment in writing.

## **III. Conclusions of the respondent state**

The government considers that the measures adopted have fully remedied the consequences for the applicant of the violation of the Convention found by the European Court in this case, that these measures will prevent similar violations and that Lithuania have thus complied with their obligations under Article 46, paragraph 1, of the Convention.