

Resolution CM/ResDH(2017)7
Execution of the judgment of the European Court of Human Rights
Iljina and Sarulienė against Lithuania

*(Adopted by the Committee of Ministers on 18 January 2017
at the 1275th meeting of the Ministers' Deputies)*

Application No.	Case	Judgment of	Final on
32293/05	ILJINA AND SARULIENĖ	15/03/2011	15/06/2011

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 final judgment transmitted by the Court to the Committee in this case and to the violation established;

Recalling the respondent State’s obligation, under Article 46, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party and that this obligation entails, over and above the payment of any sums awarded by the Court, the adoption by the authorities of the respondent State, where required:

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

Having invited the government of the respondent State to inform the Committee of the measures taken to comply with the above-mentioned obligation;

Having examined information provided by the government indicating the measures adopted in order to give effect to the judgment including the information regarding the payment of the just satisfaction awarded by the Court (see details in Appendix);

Having satisfied itself that all the measures required by Article 46, paragraph 1, have been adopted,

DECLARES that it has exercised its functions under Article 46, paragraph 2, of the
Convention in this case and

DECIDES to close the examination thereof.

Appendix to Resolution CM/ResDH(2017)7
Information about the measures taken to comply with the judgment in the case of *Iļjina and Sarulienė* against Lithuania

Introductory case summary

The case concerns the degrading treatment (physical and mental violence) of the applicants (mother and daughter) by the police on the staircase of their apartment block when the police unsuccessfully attempted to carry out a search at their neighbours' flat in 2004 and the lack of effective investigation in this regard (substantive and procedural violation of Article 3).

I. Payment of just satisfaction and individual measures

a) *Details of just satisfaction*

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
<i>First applicant</i>			
-	9 000 EUR	525 EUR	9 525 EUR
Paid on 25/08/2011			
<i>Second applicant</i>			
-	9 000 EUR	525 EUR	9 525 EUR
The sum awarded by the Court to the second applicant was subject to an attachment order by a bailiff for the benefit of a private creditor and paid on 25/08/2011 to the bank account indicated by the bailiff.			

b) *Individual measures*

According to Article 217 of the Code of Criminal Procedure, the pre-trial investigation that was terminated could have been renewed, *inter alia* upon a request of the participants to the proceedings. The authorities indicated that the applicants did not lodge any request for the renewal of the criminal investigation against the police officers involved within the period prescribed by the domestic legislation. In addition, the authorities noted that the limitation period to prosecute the alleged crime had already expired.

II. General measures

Legislative amendments

Article 214 "Procedure of Suspension of Pre-trial Investigations" of the Code of Criminal Procedure was amended in 2007 to provide that a decision of the pre-trial judge to suspend or discontinue a pre-trial investigation can be appealed to a higher court. The case law of the domestic courts confirms that in cases where the pre-trial investigation was not comprehensive and thorough the appellate instance will quash the impugned decisions of both the prosecutor and the pre-trial judge to discontinue the investigation and will remit the case for a fresh investigation.

Development of the domestic case law

The domestic courts' case law has also developed to follow and apply the principles established by the European Court's case law as regards ill-treatment by the police. Thus, in its decision of 23 June 2011 concerning the bodily injuries suffered by an individual on account of the actions of police officers and the State Security Service when suppressing the resistance of demonstrators at the Square of Independence, the Supreme Administrative Court of Lithuania (SAC) formulated the general principles to be followed by the lower courts in similar cases. In particular, the SAC held that:

- the rights to life and human dignity are protected by the Constitution and the European Convention and are in essence of an absolute nature;
- when assessing the lawfulness of the actions of the police and security forces and deciding on the issue of the civil liability of the State, the lawfulness of actions from the perspective of civil law shall be distinguished from the lawfulness within the meaning of criminal and administrative law;

- physical force which may result in bodily injuries may be used by the police in line with Articles 23 and 24 of the Law on Police Activities only to the extent necessary for the fulfilment of official duties and after all the possible measures of persuasion or other measures have been used with no effect. Such force may be used only against a specific individual and the particular features of the individual against whom such force is to be directed must be taken into account;
- it is for the State to prove that the use of force was lawful, reasonable and proportionate;
- convincing arguments must demonstrate that the force used was not excessive;
- a positive obligation arises for the State to conduct an effective official investigation into the circumstances of the case.

In the particular case, the SAC found that the applicant did not appear to have behaved aggressively or posed a threat to the life and health of others but had only refused to obey a lawful order of the police officers to leave the Square of Independence and to keep a certain distance indicated to him. The SAC concluded that the applicant's resistance could not justify the use of such measures of constraint as rubber bullets. It further held that the civil liability of the State was not precluded by the lack of criminal convictions of police officers concerned and awarded the applicant EUR 8,782 in respect of the pecuniary and non-pecuniary damage suffered.

Publication and dissemination

The judgment of the European Court was translated and published on the website of the Ministry of Justice and transmitted to the authorities concerned (the Police Commissioner General, the Prosecutor General's Office and all Lithuanian courts) with an explanatory note drawing their attention to the problems raised.

III. Conclusions of the respondent State

The government considers that no further individual measure is required, that the general measures adopted will prevent similar violations and that Lithuania has thus complied with its obligations under Article 46, paragraph 1, of the Convention in this case.