

Resolution CM/ResDH(2011)298¹

Execution of the judgments of the European Court of Human Rights Jasiūnienė and Jurevičius against Lithuania

(Application no. 41510/98, judgment of 06/03/2003, final on 06/06/2003
Application no. 30165/02, judgment of 14/11/2006, final on 14/02/2007)

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 judgments transmitted by the Court to the Committee once they had become final;

Recalling that the violations of the Convention found by the Court in these cases concern the authorities' failure to enforce binding court decisions and interference with the applicants' right to the peaceful enjoyment of their possessions (violations of Article 6, paragraph 1 and Article 1 of Protocol No. 1) (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 judgments;

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 applicants the just satisfaction provided in the judgments (see details in Appendix);

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded in the 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
- 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 these cases and

DECIDES to close the examination of these cases.

¹ Adopted by the Committee of Ministers by tacit procedure in accordance with the decision taken at the 1128th meeting (December 2011) under item F.

Appendix to Resolution CM/ResDH(2011)298

Information on the measures taken to comply with the judgments in the cases of Jasiūnienė and Jurevičius against Lithuania

Introductory case summaries

These cases concern the violations of the applicants' right to a fair trial due to the authorities' failure to take the necessary measures to enforce binding judgments ordering the restitution or compensation in respect of properties nationalised following the Soviet occupation of Lithuania in 1940 (violations of Article 6, paragraph 1).

They also concern the violation of the applicants' right to peaceful enjoyment of their possessions due to the failure to enforce these judgments, depriving the applicants of the possibility to obtain restitution or compensation they might reasonably expect to get (violations of Article 1 of Protocol No. 1).

In the Jasiūnienė case, the Klaipėda Regional Court, in its judgment of 3 April 1996, ordered the authorities to take appropriate measures to choose the form of compensation to be afforded to the applicant in respect of her late mother's nationalised land. The European Court considered that there could have been no justification for the non-execution of that judgment following an amendment of the Restitution of Property Act which entered into force on 2 June 1999. Since that date, the authorities were entitled to choose the form of compensation for nationalised property without the approval of the interested party, subject however to judicial control. The Court also found that, by failing to comply with this judgment, the national authorities had prevented the applicant from obtaining the compensation she could have reasonably expected to receive. When the Court rendered its judgment, the domestic judgment had still not been enforced.

In the Jurevičius case, the Kaunas City District Court, in its decision of 5 February 1999, obliged the authorities to offer the applicant equivalent compensation for Flat No. 1 by way of another apartment and to return Flat No. 2 to him in kind. This decision has not been executed in respect to Flat No. 1, while the decision concerning Flat No. 2 was executed with a delay of more than four years.

I. Payments of just satisfaction and individual measures

a) Details of just satisfaction

Name and application number	Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
Jasiūnienė 41510/98	9 000 EUR		3 365 EUR	12 365 EUR Paid on 10/06/2003
Jurevičius 30165/02	-	6 000 EUR	-	6 000 EUR Paid on 10/05/2007

b) Individual measures

In the Jasiūnienė case, the judgment of 3 April 1996 was enforced. Pursuant to a decision of 15 April 2004, the Governor of Klaipėda allocated a plot of land to the applicant whereby her property rights with respect to her late mother's land were fully restored in kind.

In the Jurevičius case, the judgment of 5 February 1999 was also fully enforced even before the Court's judgment became final. The Municipality of Vilnius reached an agreement with the applicant whereby he was compensated by way of another flat and also received monetary compensation.

In view of these circumstances, no further individual measure was deemed necessary by the Committee of Ministers.

II. General measures

In order to prevent similar violations in the context of restitution of property nationalised following the Soviet occupation of Lithuania in 1940, the domestic authorities, once Lithuania regained independence in 1990, implemented a land reform and took measures to raise awareness of the violations found among the authorities concerned.

The land reform was introduced in 1991 and, according to the Programme of the Government of the Republic of Lithuania for 2008-2012, the restitution of the property is expected to be completed by the end of 2012. In October 2011, 98.25% of the nationalised property subject to restitution had been returned in rural areas and 73.90% in urban areas.

The Lithuanian authorities also indicated that pursuant to Article 138, paragraph 3, of the Lithuanian Constitution and well-established case-law of the Constitutional Court, the Supreme Court and the Supreme Administrative Court, the Convention and the Court's case-law have direct effect in Lithuania and represent a constituent part of the Lithuanian legal system. In this respect, it is noted that the legal principles enunciated in the present judgments are directly binding upon the domestic authorities.

Since the violations in the present cases occurred as a result of the authorities' failure to apply Lithuanian legislation properly, particular attention was paid to the awareness-raising measures. In this regard, the Jasiūnienė judgment was translated into Lithuanian and published on the internet site of the Ministry of Justice (www.tm.lt) and on the internet site of the National Courts' Administration. It was also published in the annual publication *Decisions and Judgments of the European Court of Human Rights and Views of the Human Rights Committee of the United Nations in Cases against Lithuania* in January 2004. The judgment was also included in the training programme *Implementation and Interpretation of the European Convention on Human Rights* aimed in particular at Lithuanian judges and civil servants. Finally, the relevant national authorities, including the Chancellor of the Government, the President of the Parliament and two different Committees of the Parliament as well as the local authorities concerned were informed of the Court's judgment.

Against this background, it is unlikely that similar violations will occur in the future. For an example in which the Court concluded that there had been no violation of Article 6 and of Article 1 of Protocol No. 1, see the judgment in the case of Užkurėlienė and others against Lithuania (application No. 62988/00, judgment of 07/04/2005). In another case, the Court found a similar complaint to be manifestly ill-founded and, consequently, declared the application inadmissible (see the Court's decision of 06/03/2007 in the case of Kalpokas and Kalpokas against Lithuania, application No. 14425/03).

III. Conclusions of the respondent state

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