

Resolution CM/ResDH(2011)230¹

Execution of the judgment of the European Court of Human Rights Juozaitienė and Bikulčius against Lithuania

(Applications nos. 70659/01 and 74371/01, judgment of 24/04/2008, final on 24/07/2008)

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 deaths of the applicants’ sons due to the use of unnecessary force during the arrest of a third person and lack of an effective investigation into their deaths (substantive and procedural violations of Article 2) (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 applicants 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 in the judgment, 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 this case and

DECIDES to close the examination of this case.

¹ Adopted by the Committee of Ministers on 2 December 2011 at the 1128th Meeting of the Ministers’ Deputies

Appendix to Resolution CM/ResDH(2011)230

Information on the measures taken to comply with the judgment in the case of Juozaitienė and Bikulčius against Lithuania

Introductory case summary

This case concerns the deaths of the applicants' sons in Kaunas in July 1998 as a result of excessive use of force exercised by a police officer to effect a lawful arrest following a car-chase in which the applicants' sons were passengers (substantive violation of Article 2). The European Court considered that the action of the police officers implicated in the car-chase, in particular the erratic shooting at the car, indicated a lack of caution in the use of firearms (§ 82 of the judgment).

The case also concerns the authorities' failure to conduct an effective investigation into the deaths of the applicants' sons (procedural violation of Article 2). The European Court identified the following deficiencies in the criminal investigation and during the subsequent judicial proceedings: the investigation was only opened almost 10 months after the incident, a number of key elements of the incident were not subject to adequate assessment, the inquiry only focused on the version presented by the police, and the prosecutor discontinued the investigation against the police officer on several occasions on the ground that no evidence of any crime had been found.

I. Payments of just satisfaction and individual measures

a) Details of just satisfaction

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
30 000 EUR to each applicant		-	60 000 EUR Paid on 06/10/2008

b) Individual measures

Under Lithuanian law, the applicants could have applied for reopening of the investigation (see Article 217 of the Criminal Procedure Code). However, they did not avail themselves of this possibility. In addition, the statute of limitation makes it impossible to prosecute the responsible police officer at this stage. No further individual measure seems necessary in this case.

II. General measures

a) Substantive violation of Article 2:

Article 228 of the new Criminal Code, which punishes acts of abuse of office, entered into force on 01/05/2003 (§ 43 of the judgment).

On 29/12/2006, the Minister of the Interior issued Order No. 1V-500 concerning training requirements for police officers. Officers have a continuing obligation to attend training both to raise their awareness of the legal provisions governing the use of physical coercion and firearms, to improve their practical skills. In addition, the Commissioner General of the

Lithuanian Police issued Orders Nos. 5-V-784 of 22/12/2008 and 5-V-311 of 06/05/2009 on training programmes for general professional skills and professional tactics: officers are required, as part of their training, to analyse typical situations and specific cases in which the police had used coercive actions, including the situation which occurred in the present case.

The police were supplied with special devices to force vehicles to stop, such as electric-shock devices "TASER". In 2000, the cartridges used by the police were changed to a less penetrating, non-ricochet type.

b) Procedural violation of Article 2:

Following the European Court's judgment in the present case, the domestic courts changed their case-law. The Lithuanian authorities provided an example, in which the Klaipėda Regional Court directly referred to this judgment of the European Court. In particular, in its decision of 06/03/2009, the Klaipėda Regional Court concluded that it was necessary to clarify the circumstances of the case, in particular as to whether the danger had been so manifest and imminent as to justify the use of firearms, and whether the officers involved had used all the measures of last resort intended to avert such danger. Since the European Court's case-law is directly applicable in the Lithuanian legal order, the Lithuanian authorities are confident that it will also be applied in future similar situations. In addition, the European Court's judgment was widely disseminated to the prosecution authorities (see below).

c) Publication and dissemination:

The European Court's judgment has been translated into Lithuanian and placed on the official website of the Ministry of Justice (<http://www.tm.lt/>) together with an explanatory note. Translation of the judgment was also placed on the official internet site of the National Courts' Administration. The Government Agent sent an explanatory note on the judgment to all relevant institutions and domestic courts.

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 this case, that these measures will prevent similar violations and that Lithuania has thus complied with its obligations under Article 46, paragraph 1, of the Convention.