

Resolution CM/ResDH(2011)231¹

Execution of the judgments of the European Court of Human Rights Ramanauskas and Malininas against Lithuania

(Applications No. 74420/01, judgment of 5 February 2008 – Grand Chamber
Applications No. 10071/04, judgment of 1 July 2008, final on 1 October 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 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 concerns the unfairness of criminal proceedings as a result of which the applicants were convicted of a crime committed upon active incitement by undercover state agents (violations of Article 6, paragraph 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 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 these cases and

DECIDES to close the examination of these cases.

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)231

Information about the measures to comply with the judgments in the cases of Ramanauskas and Malininas against Lithuania

Introductory case summaries

These cases concern the violation of the applicants' right to a fair hearing in that the applicants were found guilty of bribery and drug dealing in 2000 and 2003 respectively, following active incitement by undercover state agents (violations of Article 6§1).

In the case of Ramanauskas, the domestic courts found that there had been no incitement and that the authorities had not put any active pressure on the applicant to commit the offence. The Supreme Court considered that the evidence corroborated the applicant's guilt, which he himself had acknowledged. Once his guilt had been established, the question of whether there had been any outside influence on his intention to commit the offence had become irrelevant. The Court found that the actions of the state agents had gone beyond the mere passive investigation of existing criminal activity: there was no evidence that the applicant had committed any offences before, in particular corruption-related offences. All the meetings between the applicant and the agents took place at their initiative and the applicant seemed to have been subjected to blatant pressure on their part to commit a criminal act, whereas there was no objective reason to suppose that he intended to do so. The Court further indicated that the domestic authorities and courts should have undertaken a thorough examination of whether or not the prosecuting authorities had incited the commission of a criminal act. They should have established in particular the reasons why the operation had been engaged, the extent of the police's involvement in the offence and the nature of any incitement or pressure. The applicant should have had the opportunity to state his case on each of those points and the courts should have made all necessary efforts to hear the state agents as witnesses. The Court concluded therefore that the agents' actions had had the effect of inciting the applicant to commit the offence concerned and that there was no indication that the applicant would have committed it without their intervention.

In the case of Malininas, the Court, relying on the criteria established in the Ramanauskas case, found that the actions of the state agents had gone beyond the mere passive investigation of existing criminal activity and exercised an influence such as to incite the commission of the offence. There was no evidence that the applicant had committed any drug offences before. It also appeared that the relevant evidence regarding purported suspicions about the applicant's previous conduct was not fully disclosed to him before the trial court and was therefore not tested before it in an adversarial manner. Finally, it was the state agent who took the initiative when he first approached the applicant, asking where he could acquire illegal drugs.

I. Payment of just satisfaction and individual measures

a) Details of just satisfaction

Name and application number	Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
Ramanauskas 74420/01		30 000 EUR		30 000 EUR
				Paid on 15/04/2008
Malininas 10071/04	-	-	1 710 EUR	1 710 EUR EUR
				Paid on 15/12/2008

b) Individual measures

In the case of Ramanauskas, the Court noted that in January 2002, the applicant was released on probation and in July 2002, the decision prohibiting him from working in law enforcement institutions was lifted. Furthermore, his conviction was expunged in January 2003. Following the Court's judgment, the applicant applied for reopening of the criminal proceedings at issue. By decision of 16 December 2008, the Supreme Court quashed the applicant's conviction and discontinued the reopened criminal case.

In the Malininas case, the Court considered that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicant. It further stressed that retrial or reopening of the case, if requested, represent in principle an appropriate way of redressing the violation (§43 of the judgment). Following the Court's judgment, the applicant submitted a request to the Supreme Court to reopen the criminal proceedings against him. In December 2008, the Supreme Court decided to reopen the proceedings and referred the case to the plenary session of its criminal division. On 5 March 2009, the plenary session adopted a decision to remit the case for re-examination to the appellate court and to release the applicant from prison. The case was referred to the Kaunas Regional Court. However, the applicant and the Chief Prosecutor of the Kaunas Regional Prosecutor's Office (Prosecutor) withdrew their appeals. The Lithuanian authorities noted that the punishment of imprisonment imposed on the applicant by the judgment of the appellate court had been more severe than that imposed on the applicant by the court of first instance (which the applicant had already served). As provided in Article 316§5 of the Code of Criminal Procedure, when an appeal is withdrawn, it shall be left unexamined by the court and the proceedings shall be terminated. Consequently, the Kaunas Regional Court granted the requests of the applicant and the Prosecutor, whose appeals were left unexamined and the criminal proceedings were terminated. The applicant thus voluntarily and irreversibly waived his right to a retrial of his case.

II. General measures

In order to prevent similar violations, the Supreme Court set out, in its decision of 16 December 2008 relating to the Ramanauskas case (see above), the general principles with regard to cases where the criminal conduct simulation model is employed.

First, the Supreme Court stressed that the criminal conduct simulation model as an investigative technique may not be employed to incite the commission of an offence but may be applied only if credible and objective information had already been obtained to the effect that the criminal activity had been initiated.

Secondly, state officials may not act as private persons to incite third parties to commit an offence, while the acts of private persons acting to incite third parties to commit an offence under the control and instructions of state officials shall constitute such incitement.

Thirdly, it may be inferred that there is an act of incitement even if state officials do not act in a very intensive and pressing manner, including in situations when contact with third parties is made indirectly through mediators.

Fourthly, the burden of proof in judicial proceedings lies with the state authorities, which have an obligation to refute any argument raised by a defendant in criminal proceedings in respect of the incitement by state agents to commit an offence.

Fifthly, once the act of incitement is established, no evidence obtained through incitement shall be admissible. The confession of an offence as a result of incitement does not eradicate either incitement or its effects.

Sixthly, it is preferred that undercover techniques are supervised by a court although supervision by a prosecutor does not in itself violate the Convention.

This decision of the Supreme Court is binding upon all domestic courts. Thus, it provides a clear and foreseeable procedure in similar cases.

The Court's judgments were translated into Lithuanian and placed together with explanatory notes on the website of the Ministry of Justice (www.tm.lt). Translations of the judgments were also placed on the official internet site of the National Courts' Administration. The Government Agent provided all relevant institutions and domestic courts with the judgments and an explanatory note.

III. Conclusions of the respondent state

The government considers that the measures adopted have fully remedied the consequences for the applicants of the violations 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.