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Contact: John Darcy
Tel: 03 88 41 31 56

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Meeting: 1318th meeting (June 2018) (DH)

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Communication from Lithuania concerning the cases of Kosteckas, Kraulaidis and Mazukna v. Lithuania (Applications No. 960/13, 76805/11, 72092/12)

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Référence du point : Bilan d'action

Communication de la Lituanie concernant les affaires Kosteckas, Kraulaidis et Mazukna c. Lituanie (requêtes n° 960/13, 76805/11, 72092/12) (**anglais uniquement**)

17 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**AGENT OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA
TO THE EUROPEAN COURT OF HUMAN RIGHTS**

Gedimino ave. 30, LT-01104 Vilnius, tel. +370 5 266 2990,
fax +370 5 266 2863, 262 5940, e-mail: k.bubnyte@tm.lt

M^{me} Geneviève Mayer
Department for the execution
of judgments of the ECHR
Directorate General of Human Rights and Legal Affairs
Council of Europe
F-67075 STRASBOURG CEDEX

Vilnius, 17 April 2018

Cc: Ms Laima Jurevičienė
Ambassador Extraordinary and Plenipotentiary of Lithuania
to the Council of Europe

BY MAIL AND EMAIL TRANSMISSION

**REVISED CONSOLIDATED ACTION REPORT
REGARDING THE EXECUTION OF THE ECHR JUDGMENT IN THE CASE
KRAULAUDIS V. LITHUANIA (LEADING CASE)
AND OTHER CASES ASSIGNED TO THE KRAULAUDIS GROUP:
MAŽUKNA V. LITHUANIA AND KOSTECKAS V. LITHUANIA**

With reference to the email of 11 December 2017 of the Department for the Execution of Judgments of the European Court of Human Rights as regards the grouping of the cases against Lithuania of *Kraulaidis* (as leading), *Mažukna* and *Kosteckas* into the **Kraulaidis group**, the Agent of the Government of the Republic of Lithuania to the European Court of Human Rights (hereafter – the Agent of the Government) submits the action report concerning the execution of the judgments of the European Court of Human Rights (hereafter – the Court or ECtHR) in all the three said cases against Lithuania where the violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention) under its procedural limb has been found:

No.	Case	Judgment day	Became final
1	Kraulaidis (no. 76805/11) (<i>Leading case</i>)	08/11/2016	08/02/2017
2	Mažukna (no. 72092/12)	11/04/2017	11/07/2017
3	Kosteckas (no. 960/13)	13/06/2017	13/03/2018

Description of cases

Kraulaidis v. Lithuania (leading case)

The case concerned the complaint of Mr Kraulaidis about the ineffectiveness of the pre-trial investigation into the circumstances of the road traffic accident in 2006 when the applicant's motorcycle collided with a car driven by M.N., which had left the applicant disabled. The pre-

trial investigation, closed and reopened in total three times on the grounds that not all the essential circumstances of the case had been examined, was discontinued as time-barred. Mr Kraulaidis' civil claim for damages against the driver of the car was dismissed in 2012, based on the forensic reports drawn up during the pre-trial investigation finding that he himself had caused the accident. Relying on Articles 6 § 1 and 13 of the Convention, the applicant complained that the pre-trial investigation had been protracted and failed to provide an effective protection his rights as a victim.

In the judgment of 8 November 2016 in case of *Kraulaidis v. Lithuania* the Court held that there had been a violation of Article 3 of the Convention under its procedural limb because the domestic authorities failed to ensure a proper investigation into the circumstances of the traffic accident. The court concluded that a series of shortcomings in the investigation, committed one after another and not remedied in any way, led to the expiration of the statute of limitations, thus the applicant was prevented from having his complaint concerning the responsibility for the traffic accident to be examined by the court on the merits. Thus, the Court was of the view that the domestic authorities did not display the required level of diligence when investigating the circumstances of the accident as well as that there was a delay in carrying out investigative actions, particularly taking into account the grave and irreparable consequences suffered by the applicant. The judgment in the *Kraulaidis* case became final on 8 February 2017 in accordance with Article 44 § 2 of the Convention.

Mažukna v. Lithuania

The case concerned the complaint of Mr Mažukna of a failure of the domestic authorities to ensure an effective investigation into the circumstances of the accident at work in 2007, in which the applicant got injured. The pre-trial investigation was discontinued three times, the prosecuting authorities concluding that the accident had been caused by the workers' recklessness. However, after these decisions were overruled by the courts because the prosecutor had not examined all of the essential circumstances of the case, the case was then transferred to the first-instance court in 2011, but a year later, it was terminated as time-barred. Relying in particular on Article 3 of the Convention, Mr Mažukna complained that the pre-trial investigation and criminal proceedings concerning his accident at work had been protracted and ineffective.

In the judgment of 11 April 2017 in case *Mažukna v. Lithuania* the Court found a procedural violation of Article 3 of the Convention because the investigation into the circumstances of the accident at work, in which the applicant was injured was ineffective. The Court noted that some of the essential investigative measures were taken inexplicably late and despite senior prosecutors acknowledging that the investigation was not being carried out with sufficient promptness, no effective measures were taken to speed up the investigation. The Court criticized the domestic courts' failure to act diligently and to adopt a judgment on the merits before the prosecution became time-barred. The judgment in the *Mažukna* case became final on 11 July 2017 in accordance with Article 44 § 2 of the Convention.

Kosteckas v. Lithuania

The case concerned the complaint of Mr Kosteckas that a group of men who had attacked him in a petrol station in 2007 were never brought to justice. Criminal proceedings were brought against the alleged perpetrators, they were tried and convicted by the court of first instance, but the judgment was overturned on appeal due to breaches of the criminal code of procedure. The alleged perpetrators were tried and convicted again, but once again their convictions were overturned on appeal. When the case came before the courts for a third time, the proceedings were discontinued in 2012 due to the expiration of the five-year time limit in the statute of

limitations. Relying on Articles 6 § 1 and 13 of the Convention, the applicant complained that the authorities failed to investigate and prosecute the individuals who had assaulted him.

In the judgment of 13 June 2017 in case *Kosteckas v. Lithuania* the Court held that there had been a procedural violation of Article 3 of the Convention due to the fact that the examination of the criminal case against the alleged perpetrators of the assault on the applicant before the domestic courts was not consistent with the State's positive obligations under Article 3. The Court drew attention to the length of the criminal case - more than four years and five months as a result of re-examination of the case on two occasions after it had been remitted by a higher court because the district court had committed grave breaches of the Code of Criminal Procedure (i.e., by not providing sufficient reasons for the conviction and not assessing all the testimony and other evidence in detail). The Court criticized the domestic courts' failure to act diligently in 2011 to adopt a judgment on the merits before the prosecution became time-barred. However, the statute of limitations eventually expired and the criminal proceedings were discontinued, without a final judgment on the merits. The judgment in the *Kosteckas* case became final on 13 March 2018 in accordance with Article 44 § 2 of the Convention.

Regarding individual measures

Payment of just satisfaction

All the sums awarded as just satisfaction have been paid to all the applicants in due time and the Just Satisfaction Forms have been emailed to dgI.execution.just.satisfaction@coe.int (see the Chart on the payments of just satisfactions awarded in the cases of the *Kraulaidis* group enclosed herein).

Other individual measures

As regards the case *Kraulaidis v. Lithuania*

It should be noted that the nature of the violation found by the Court concerning the procedural violation of Article 3 of the Convention in case *Kraulaidis v. Lithuania* would require effective investigation into the circumstances of the traffic accident eliminating procedural flaws in the proceedings and establishing who had been responsible for the accident. It should be observed that the domestic legislation provides for an individual measure of a possibility of reopening the pre-trial investigation under Article 217 of the Code on Criminal Procedure of the Republic of Lithuania, which establishes that prosecutors under the basis of the complaints of the participants to the proceedings or on their own initiative can annul the decision to discontinue the pre-trial investigation and to adopt a new one to reopen the pre-trial investigation, if essential circumstances come to light, which would be of relevance to decide the case correctly.

However, it should be noted that at the time when the Court adopted the judgment in *Kraulaidis* case, the pre-trial investigation into the circumstances of the traffic accident had already been discontinued as time-barred. Thus, it should be pointed out that the provisions of Article 217 of the Code of Criminal Procedure cannot be referred to in cases when the limitation period of the pre-trial investigation has expired as it was in the case of the applicant (i.e., the pre-trial investigation into the circumstances of the traffic accident was discontinued as time-barred on 31 May 2011, see the judgment of 8 November 2016 in the case *Kraulaidis v. Lithuania*, § 42).

As regards the case *Kosteckas v. Lithuania*

In general, the re-opening of the domestic proceedings is possible as the Code of Criminal Procedure provides such possibility to the participants to the proceedings (including the

victim) in cases when new circumstances come to light, however, in the particular circumstances of the present case, the Government refer to § 21 of the Court's judgment in *Kosteckas* case, in which it has been observed that the statute of limitations had already expired and the criminal proceedings were discontinued in 2012, i.e., before the Court adopted a judgment in *Kosteckas* case. Having regard to the above, the Agent of the Government considers that no individual measures other than payment of just satisfaction are deemed necessary in the above case.

As regards the case Mažukna v. Lithuania

In this regard it should be noted that due to the fact that the applicant Mr Mažukna had passed away before the Court adopted its judgment, no further individual measures are possible in this case.

Regarding general measures

It should be noted that in the *Kraulaidis*, *Mažukna* and *Kosteckas* cases the domestic legislation was not called into question and the Court has found the procedural violation of Article 3 of the Convention having regard to the specific circumstances in the above cases, therefore, they should be regarded as representing certain aspects of the different stages of the criminal investigations and in particular concerning the activities of the investigative authorities (namely, the prosecutors) and the domestic courts.

Dissemination as a general measure

It should be observed that under the Constitution of the Republic of Lithuania the Convention upon its ratification became a constituent part of the Lithuanian legal system and pursuant to the well-established case-law of the Constitutional Court, the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania, the Convention and the Court's case-law have direct effect in Lithuania. Thus, the dissemination of the judgment is to be considered as a general measure. Accordingly, explanatory notes regarding the judgments in *Kraulaidis*, *Mažukna* and *Kosteckas* cases and their contents together with their translations into Lithuanian were placed on the official internet website of the Government Agent at the following address <<http://lrv-atstovas-eztt.lt/>>, thus, they are freely accessible to all the relevant institutions, domestic courts and other interested persons. The Government Agent separately informed in writing the Prosecutor General's Office and all the Lithuanian courts (by disseminating a circular letter via the National Courts Administration) about the judgments, together with an explanatory note drawing attention to the problems raised therein.

As to the pre-trial proceedings

It should be noted that having regard to the violations regarding the shortcomings in pre-trial investigation, law was not called into question, meaning which the violation of Article 3 of the Convention in all three cases of the *Kraulaidis* group was established due to the application of law – i.e. the manner in which laws regulating the procedure of the pre-trial investigation had been implemented.

In this regard it should be underlined that under the Lithuanian law, the time-limits of the pre-trial investigation are set forth in the provisions of the Code of the Criminal Procedure of the Republic of Lithuania. The version of Article 176 § 1 of the Code of Criminal Procedure valid at the material time (version in force from 1 May 2003 to 11 October 2010) provided that the pre-trial investigation must be carried out within the shortest time-limits possible. In this context it should be observed that the new version of Article 176 § 1 of the Code of Criminal Procedure, which came into force from 1 October 2010 (by the law adopted on 21 September 2010 No. 113-

5742), specified that the the pre-trial investigation must be carried out within the shortest time-limits possible, but not exceed: 1) 3 months in case of a criminal offense; 2) six months in case of a minor, less serious crimes and crimes committed through negligence; 3) 9 months in case of serious and very serious crimes.

As regards general measures, first, the Agent of the Government would like to note that since the adoption of the Court's judgements in the *Kraulaidis* group of cases, several amendments to the legislation regulating the guidelines/recommendations on the effective and prompt pre-trial investigation into alleged ill-treatment were introduced:

On 6 March 2017 the supplemented provisions of item 13¹ of the Recommendations on Organizing and Leading the Pre-trial Investigation (approved by the order of the Prosecutor General of 25 February 2004 No. I-40), that came into force from 7 March 2017, specified that as regards the materials of the pre-trial investigations, submitted in order to adopt decisions in the proceedings, in order to control the prosecutor or for other procedural, organizational or administrative purposes, the prosecutor must adopt the necessary decisions within a reasonable time, in accordance with the time-limits and the procedure for their extension set forth under the Code of Criminal Procedure, the recommendations approved by the Prosecutor General, other legal acts, and depending on the purposes of the proceedings, the prosecutor must promptly submit the material of the pre-trial investigation in accordance with subordination or to return it to the pre-trial investigation institution. Under the amended provisions of item 63, the senior prosecutor, having established in the course of the pre-trial investigation the prosecution's violations of the procedural laws or the incompleteness of the pre-trial investigation, or seeking to have the pre-trial investigation carried out and the criminal act disclosed within a reasonable time, has a right to perform himself individual pre-trial investigation actions and to adopt decisions in the proceedings.

As from 27 April 2017 under the order of the Prosecutor General No. I-131 "As regards the Control of Refusals to Open the Pre-trial Investigation" the senior prosecutors are obliged to ensure the control of the refusals to open the pre-trial investigation by assigning the subordinate prosecutors to assess the reasonableness and lawfulness of a resolution.

Second, it should be observed that the Prosecutor General's Office has also regularly organised specific training to the prosecutors related to the requirements of Article 3 of the Convention and the issues concerning the effective and timely investigation.

It should be specified that the following training/seminars took place:

1) In 2016 - "Accidents at Work", "The Competence of the Senior Prosecutor. The Limits of the Pre-Trial Investigation Officer and His Responsibility, the Forms of Investigation of Their Activities";

2) In 2017 - "The Admissibility of Evidence Collected by Means of Coercive Measures and Their Use", "The Competence of the Senior Prosecutor. The Limits of the Pre-Trial Investigation Officer and His Responsibility, the Forms of Investigation of Their Activities", "Review of the Case-Law in Cases Concerning Damage Caused by Unlawful Actions of Pre-trial Investigation Officers and Prosecutors", "Actions of the Officers/Prosecutors with Objects of Criminal Acts and Traces During the Accident Scene Inspection", "Effective Implementation of the Victims' Rights;

3) In 2018 - "The Victims' Rights in Lithuania: Changes and Perspectives".

As to the judicial proceedings

As regards the general measures rectifying the shortcomings established by the Court with regard to the judicial proceedings, the Agent of the Government refers to the ruling of the

Constitutional Court of the Republic of Lithuania of 27 June 2016¹, in which the Constitutional Court declared the provisions of Article 235 § 1, Article 254 § 4, and item 1 of Article 327 of the Code of Criminal Procedure, which regulated the dismissal of a case upon the expiry of a statutory limitation period for criminal liability, to be in conflict with the Constitution, insofar as, under these provisions, a case was to be dismissed by the court without assessing charges brought against the accused and without ascertaining whether the accused had reasonably been charged with having committed a crime or whether the acquitted person was reasonably acquitted of a crime with which he/she had been charged.

In this light it should be observed that under the Law on the Constitutional Court, the rulings adopted by the Constitutional Court of the Republic of Lithuania have the power of law and are binding to all state institutions and courts. Thus, it should be highlighted the applicants shall no longer be subject to similar situations to those of the applicants Mr Kosteckas and Mr Mažukna due to the fact that the expiry of the statutory limitations would not preclude the national court from acting in such a way that the truth in the criminal case would be established and the question of the guilt of the person accused of having committed the crime would be fairly resolved.

Further, in explaining general measures, which have been adopted in order to give effect to the judgment at issue and to prevent similar violations in future, the Agent of the Government addresses the case-law of the domestic courts, which has been well-established as regards the compensatory remedies. In the view of the Agent of the Government the said remedy should be considered as a sufficient general measure, as the national courts in compliance with *inter alia* Article 3 of the Convention and referring to the criteria established by the Court in its jurisprudence, oblige the State to pay pecuniary and non-pecuniary damage to the applicants who have been subjected to ill-treatment sustained by the applicants as a result of ineffective investigation.

For instance, *mutatis mutandis*, see the decision of the Supreme Court of Lithuania in a civil case No. 3K-3-528-706/2016 of 20 December 2016², in which the court addressed the State's positive obligations *inter alia* under Article 3 of the Convention with a view of its responsibility to protect a person, whose life is in danger due to criminal acts of other persons, and to ensure an effective investigation in this regard aiming to disclose the essence of the case as well as to thoroughly investigate all the relevant circumstances of the case. Moreover, in a civil case no. 3K-3-313/2010 the claimant lodged a civil complaint against the State as regards the inappropriate investigation (and subsequent termination of the criminal case as time-barred on 24 January 2008) into the circumstances of the deaths of the claimant's son and brother, and by the decision of the Supreme Court of Lithuania of 8 July 2010, was consequently awarded with the compensation from the State for non-pecuniary damage³.

In the light of the foregoing examples of the case-law of the highest national court of Lithuania and taking into consideration the fact that the courts of lower instances when adopting the procedural decisions shall be bound by the rules of interpretation and criteria established and applied under the case-law of the Supreme Court of Lithuania in similar cases, the Agent of the Government considers that above explained case-law should be considered not only compensatory but also capable to prevent similar violations in the future.

Further, the Agent of the Government notes that the National Courts Administration pays great attention to the qualification, training and competence of the domestic judges related to the

¹ See to the ruling of the Constitutional Court of the Republic of Lithuania of 27 June 2016 On dismissing criminal proceedings after the expiry of a statutory limitation period for criminal liability: <http://www.lrkt.lt/en/court-acts/search/170/ta1627/content>

² See the decision of the Supreme Court of Lithuania of 20 December 2016 in a civil case No. 3K-3-528-706/2016, available at: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=90838004-132b-480e-9af1-f864dca6d5b9>.

³ See the decision of the Supreme Court of Lithuania of 8 July 2010 in a civil case no. 3K-3-313/2010, available at: <http://www.eteismai.lt/byla/111503330905466/3K-3-313/2010>.

application of Article 3 of the Convention and their obligations in order to avoid procedural flaws and to examine cases in accordance with the requirement of due diligence.

It should be specified that the following specific training/seminars took place:

1) In 2015 - "The Conditions and Procedures for Applying to the European Court of Human Rights and the Most Recent Judgments", speaker D. Jočienė (39 participants);

2) In 2016 - "The Problematic Issues Concerning Article 3 of the Convention (Key Aspects: State's Positive Obligations, Procedural Limb, Latest Trends, Cases against Lithuania)", "The Problematic Issues Concerning Article 2 of the Convention (Key Aspects: State's Positive Obligations, Procedural Limb, Latest Trends, Cases against Lithuania)", "The Problematic Issues Concerning Article 6 of the Convention (Key Aspects: the Limitation Period, the Court's Impartiality, the Questioning of Vulnerable Witnesses, the Use of Classified Information, Cases against Lithuania), speakers - the judges of the European Court of Human Rights E. Kūris, P. Lemmens and P. Pinto de Albuquerque (107 participants);

3) In 2017 - "Cases Concerning Articles 2, 3 and 8 of the Convention" (89 participants), "Right to be Heard under Article 6 of the Convention", speakers - the judges of the European Court of Human Rights E. Kūris, C. Ranzoni and A. Nußberger (93 participants);

4) In 2018 - "Presumption of Innocence, the Implementation of a Right to Apply to Court, Other Issues Related to a Right to a Fair Trial under Article 6 § 1 and 6 § 2 of the Convention", speaker - the Agent of the Government K. Bubnytė (135 participants).

Thus, the entirety of the general measures described above should be considered as sufficient to execute the three judgments in *Kraulaidis* group of cases and no further general measures are required.

Having regard to the above circumstances the Agent of the Government concludes that the judgments in the *Kraulaidis* group of cases are executed.

Enclosed: Chart on payment of just satisfaction in *Kraulaidis v. Lithuania* group of cases, 1 page.

Respectfully,



Karolina Bubnytė

Agent of the Government of the Republic of Lithuania
to the European Court of Human Rights

Payment of just satisfaction in KRAULAUDIS v. LITHUANIA group of cases						
no.	case	judgment date	became final	awarded compensation (EUR)	payment deadline	payment day
1	Kraulaidis (no. 76805/11)	08/11/2016	08/02/2017	3753	08/05/2017	20/03/2017
2	Mažukna (no. 72092/12)	11/04/2017	11/07/2017	6809	11/10/2017	05/10/2017
3	Kosteckas (no. 960/13)	13/06/2017	13/09/2017	6013	13/12/2017	05/10/2017

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