

Execution of the ECtHR Judgment in *Beizaras and Levickas v. Lithuania* Case: Effectiveness and Legal Implications

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In *Beizaras and Levickas v. Lithuania* case (Application No. 41288/15), the European Court of Human Rights found violations of the Convention for the Protection of Human Rights and Fundamental Freedoms as the Lithuanian law enforcement authorities had failed to start pre-investigation into allegations of homophobic hate speech directed against the applicants and the applicants thus suffered discrimination on the grounds of their sexual orientation. On 1 December 2021 the Committee of Ministers of the Council of Europe, supervising execution of the final judgment of the Court, welcomed the execution measures taken by the Lithuanian authorities and decided to continue the examination of *Beizaras and Levickas* case under the standard procedure instead of the enhanced one. First, this article recapitulates the individual and general measures taken by the Lithuanian authorities seeking to execute the judgment of the European Court of Human Rights and discerns the factors which led to effective execution of the judgment. Second, the article demonstrates the positive impact of effective execution on any other similar cases pending both at the domestic level and before the ECtHR not only against Lithuania, but also against other Contracting States.

Keywords: execution of the judgment of the European Court of Human Rights, hate speech, private life, discrimination, sexual orientation, crime, pre-trial investigation.

EŽTT sprendimo byloje *Beizaras ir Levickas prieš Lietuvą* vykdymas: veiksmingumas ir teisiniai padariniai

Europos Žmogaus Teisių Teismas byloje *Beizaras ir Levickas prieš Lietuvą* (peticija Nr. 41288/15) nustatė Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos pažeidimų, nes Lietuvos valdžios institucijoms atsisakius pradėti ikiteisminį tyrimą dėl homofobinės neapykantos kalbos prieš pareiškėjus, jie buvo diskriminuojami dėl jų seksualinės orientacijos. 2021 m. gruodžio 1 d. Europos Tarybos Ministrų komitetas, kuris prižiūri galutinio Teismo sprendimo vykdymą, teigiamai įvertino Lietuvos pastangas ir priėmė sprendimą šioje byloje taikyti ne sustiprintą, bet standartinę priežiūros procedūrą. Pirmą, šiame straipsnyje apibendrinamos Lietuvos institucijų individualiosios ir bendrosios priemonės siekiant įgyvendinti Europos Žmogaus Teisių Teismo sprendimą. Straipsnyje išskiriami veiksniai, lėmę veiksmingą EŽTT sprendimo įgyvendinimą. Antra, straipsnyje parodomas teigiamas veiksmingo vykdymo poveikis visoms kitoms panašioms byloms, nagrinėjamos tiek nacionaliniu lygmeniu, tiek Europos Žmogaus Teisių Teisme ne tik prieš Lietuvą, bet ir prieš kitas susitariančias valstybes.

Pagrindiniai žodžiai: Europos Žmogaus Teisių Teismo sprendimo vykdymas, neapykantos kalba, privatus gyvenimas, diskriminacija, seksualinė orientacija, nusikaltimas, ikiteisminis tyrimas.

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Introduction

Pursuant to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), the High Contracting Parties undertake to abide by the final judgment of the European Court of Human Rights (hereinafter – the ECtHR or the Court) in any case to which they are parties. The Committee of Ministers of the Council of Europe (hereinafter – the CM) supervises execution of the final judgments of the ECtHR¹. The CM also supervises the execution of the terms of the friendly settlement as set out in the decision of the ECtHR². In particular, the respondent State party has a legal obligation to take, if needed, individual execution measures “to put an end to the violation found by the Court and to redress, as far as possible, its effects” (e.g. reopen domestic court proceedings). The respondent State party also has a legal obligation to take, if needed, the general execution measures aimed “to put an end to similar violations or prevent them” (e.g. change the practice of domestic authorities in similar cases, enact the legal act) (Recommendation CM/Rec(2008)2...; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [ECHR GC], 2014, § 158 and the case-law cited therein). In ‘action plans’, the respondent State parties provide the CM with information both about the individual and/or general execution measures they have already taken and intend to take. Where the respondent State parties are of the position that no execution measures are needed or all necessary measures have already been taken, they prepare an ‘action report’ and submit it to the CM (Guide for the drafting of action plans and reports, p. 3...). Under the twin-track supervisory system as introduced in 2010, the CM examines cases under standard procedure unless enhanced procedure is needed in the light of the specific nature of the case. E.g. pilot judgments, judgments raising structural and/or complex problems as identified by the ECtHR or by the CM, interstate cases should be examined under the enhanced procedure. The enhanced procedure means more active cooperation and assistance of the Secretariat of the CM with the Contracting State and giving priority to the case. The CM can transfer the case from the standard procedure to the enhanced one and *vice versa* (CM/Inf(2010)28-rev...; CM/Inf/DH(2010)37...). In case the CM finds that no more execution measures are required in the concrete case, the case is closed by a final resolution (The supervision process...).

In general, the CM has noted the positive developments in the execution process in the recent years (15th Annual Report of the Committee of Ministers..., 2021, p. 11–13)³. However, certain challenges are still remaining (15th Annual Report of the Committee of Ministers..., 2021, p. 11–13)⁴. The CM has called upon all Contracting States to abide by the judgments of the ECtHR rendered against them, the CM has stressed the great potential and impact of domestic authorities and the Council of Europe

¹ See Article 46 §§ 1 and 2 of the Convention for the Protection of Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms...).

² See Article 39 § 4 of the Convention for the Protection of Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms...).

³ E.g. the Contracting States amend their domestic Laws, change the domestic case-law and administrative practice. There is a high number of the cases (1,122 cases including 170 cases revealing structural or systemic problems) whose supervision of execution was closed by the CM, Rule 9 communications are submitted to the CM by civil society organisations and national human rights institutions.

⁴ According to the CM, the number of cases where the Contracting States still fail to submit information (action plans, action reports, information on payment of just satisfaction) regarding execution of the ECtHR judgments is increasing. The CM also has noted that the ECtHR’s new case processing strategy of choosing so called ‘impact cases’, since March 2021, which “require significant changes in legislation and practice, touch upon societal issues or deal with emerging or otherwise significant human rights issues,” may mean that there will be more cases wherein complex execution measures will be necessary.

on the effective execution of ECtHR's judgments (Recommendation CM/Rec(2021)1...; the decision of the CM CM/Del/Dec(2020)130/4...; the decision of the CM CM/Del/Dec(2021)131/3...).

In the recent years the issue of effective execution of the ECtHR judgments has been on the agenda not only at the CM, but also the Governments of States, scholars and civil society. The aim of such conferences, workshops and other initiatives is to outline the challenges to effective execution of the ECtHR judgments (e.g. delayed execution, improper execution and resistance to execution) as well as to share the good practices to make the execution of the ECtHR judgments more effective (German Presidency's workshop on the execution of the ECHR judgments...; Workshop: Execution of the Judgments ...; Guidance for NHRIs on implementation of ECHR judgments...; Conference *Systemic Non-Implementation of Judgments of the European Court of Human Rights*...; De Londras, Dzehtsiarou, 2017, p. 467–490; Jaskiernia, 2022, p. 103–131; Küçüküsu, 2022, p. 1–24; Lambert Abdelgawad, 2017, p. 326–340; Seibert-Fohr, Villiger, 2014; Sicilianos, Kostopoulou, 2019). The effective investigation into the allegations of hate crime and hate speech has been discussed both in Lithuania (e.g. see Prokurorai: negalime visko „pakišti po kodeksais“..., 2022; Isokaitė-Valužė, 2022, p. 3–5, Gutauskas, 2022, p. 21–24) and outside (for the Council of Europe's work on hate crime, e.g. see Council of Europe's work on hate crime...). The present article unites these two issues: effective execution of the ECtHR judgments and effective investigation into the allegations of hate crime and hate speech. In this connection it should be explained that hate crimes are all criminal offenses which are hatred, bias and/or prejudice-motivated against a group of persons belonging thereto on the grounds of age, gender, sexual orientation, disability, race, nationality, language, origin, social status, religion, convictions or views. These criminal offenses do not include hate speech. Hate speech covers different forms of expressions (verbally, in writing or otherwise) which advocate, incite, promote or justify hatred, violence and discrimination against a person or group of persons on the grounds of age, gender, sexual orientation, disability, race, nationality, language, origin, social status, religion, convictions or views (for more details, see Methodological recommendations..., §§ 14–18). In particular, the object of this article is the measures taken by the Lithuanian authorities aiming to execute the judgment of the ECtHR in *Beizaras and Levickas* case (*Beizaras and Levickas v. Lithuania* [ECHR], 2020). The case concerns the authorities' discriminatory refusal to start a pre-trial investigation into the applicants' allegations of having been subjected to extreme homophobic online hate speech (in particular, 31 hateful homophobic comments made by the individuals on the first applicant's public Facebook page against the applicants and the homosexual community in general). The ECtHR found a violation of Article 14 taken in conjunction with Article 8 of the Convention as the 'discriminatory state of mind was at the core of the failure on the part of the relevant public authorities to discharge their positive obligation to investigate in an effective manner whether the comments regarding the applicants' sexual orientation constituted incitement to hatred and violence; by downplaying the seriousness of the comments, the authorities at the very least tolerated them'. This case also concerns the lack of an effective domestic remedy in respect of the applicants' complaint concerning a breach of their right to private life, on account of having been discriminated against because of their sexual orientation (violation of Article 13 of the Convention). The case of *Beizaras and Levickas* was not an easy one as it required an array of execution measures in different fields. At the 1383rd meeting, 29 September – 1 October 2020 (DH) the CM thus decided that the supervision of the case of *Beizaras and Levickas* as a case raising a 'complex problem' shall be examined under the enhanced procedure (CM/Del/Dec(2020)1383/B1-add2). The CM debated the said case at the 1419th meeting (DH) of 30 November – 2 December 2021. In its decision (CM/Del/Dec(2021)1419/H46-21) the CM welcomed the individual and general measures taken by the Lithuanian authorities so far. The CM thus decided to continue the examination of *Beizaras and*

Levickas case under the standard procedure instead of the enhanced one. It is the first time when the case against Lithuania was transferred from enhanced to standard supervision by the CM⁵.

The purpose of this article is to outline the factors which led to effective execution of the judgment of the ECtHR in *Beizaras and Levickas* case and demonstrate the positive impact of such effective execution on further cases pending both before the domestic authorities and the ECtHR against Lithuania and other Contracting States.

The study methods are as follows: comparative and systematic. The article compares the domestic legal provisions with the domestic practice. The execution of the *Beizaras and Levickas* case is compared to the execution of the ECtHR judgments in other cases. The effectiveness of the execution and its impact is examined in a systematic way, including the domestic practice, the case-law of the ECtHR, the recommendations and position of the CM regarding execution measures.

As it was mentioned above, the issue of the execution of the ECtHR judgments in general (not focusing on the concrete case) was examined in the doctrine. The legal authors also cited the case of *Beizaras and Levickas* in the context of hate speech or protection of sexual minorities (e.g. see Mchangama, Alkiviadou, 2021, p. 1008–1042; Alkiviadou, Belavusau, 2021, p. 374–400; Lingaas, 2021, p. 88–107; Tryfonidou, 2020a, p. 98–112; Tryfonidou, 2020b, p. 513–521, Milkaite, 2020; Müller, Weiskopf, 2021, p. 1371–1421). However, contrary to the abovementioned scholarly literature, this article focuses namely on the Lithuanian execution measures taken in the concrete case of *Beizaras and Levickas* and examines effectiveness and the impact of such execution measures on the further practice of Lithuania and other Contracting States.

1. Individual execution measures in *Beizaras and Levickas* case

1.1. Just satisfaction payment

According to the Action plan of the Government, the sums (EUR 5,000 in respect of non-pecuniary damage, to each of the applicants, and EUR 5,000 in respect of costs and expenses, to both applicants jointly) awarded by the ECtHR to the applicants were paid in due time – on 15 May 2020 (deadline – 14 August 2020) (Action Plan (31/08/2021)...). Sometimes the Governments face difficulties in fulfilling their obligations due to the applicant's failure to cooperate or refusal to accept compensation awarded by the ECtHR. In such cases the Contracting States have to search for the way how to implement their obligations without participation of the applicants⁶. However, the case of *Beizaras and Levickas* is different. One may see here an example of good faith cooperation between the Government and the applicants from the very beginning of execution process. Namely, the applicants complied with their formal requirements (to submit their request for compensation together with the information on the bank accounts) (Article 2 § 6 of the Law No. IX-895 of the Republic of Lithuania) which enabled Lithuania to pay the sum the next day after the judgment became final.

⁵ It is only two States – Lithuania (*Beizaras and Levickas* case) and Bosnia and Herzegovina (two cases) – whose three leading cases/groups of cases were transferred from enhanced to standard supervision by the CM in 2021 (15th Annual Report of the Committee of Ministers..., 2021, p. 61).

⁶ E.g., in *Bartulienė v. Lithuania* case, the applicant Bartulienė refused to provide the domestic authorities with her bank account details, the Lithuanian authorities were unable to transfer her the sums awarded by the ECtHR. The Ministry of Justice of Lithuania thus transferred the sums awarded by the ECtHR to the deposit account of the notary and the applicant has the right to take that sum at any time if she wishes, see Action report (18/06/2020)

1.2. Launch of a pre-trial investigation in the applicants' case

In the *Beizaras and Levickas* case, it was not the defects of the domestic Criminal Law⁷, but its improper application in the applicants' case why the ECtHR found violations of the Convention⁸. In the applicants' case, the Lithuanian law enforcement authorities failed to investigate in an effective manner into the allegations of hate speech crimes allegedly committed on the basis of the applicants' sexual orientation.

One of individual execution measures aiming to remedy the violation is reopening of the applicant's court proceedings in the applicant's case⁹. As regards criminal cases, Article 456 § 1 of the Code of Criminal Procedure of Lithuania provides that "criminal cases heard by the courts of the Republic of Lithuania can be reopened, when ... the ECtHR holds that the convicting judgment in the case was adopted in breach of the Convention or its Protocols, if the violations according to their gravity and nature raise reasoned doubts as to the person's conviction and the continuing violations can be remedied only after the reopening of the convict's case" (the Code of Criminal Procedure of the Republic of Lithuania, 2002). Therefore, the wording of the Code of Criminal Procedure of Lithuania suggests that the individual remedies are limited to reopening of criminal cases wherein the applicant was convicted in violation of the Convention or Protocol thereto. However, in *Beizaras and Levickas* case the applicants were not convicted, but, on the contrary, they asked to launch a pre-trial investigation with regard to the other persons (comment makers).

The Lithuanian authorities have demonstrated their will to discharge their legal obligation to abide by the final judgment of the ECtHR as far as possible and to remedy the violation. Indeed the Convention has direct effect in Lithuania and prevails over the laws or other legal acts of Lithuania, except for the Constitution (the conclusion of the Constitutional Court of 24 January 1995; the decision of the Constitutional Court of the Republic of Lithuania of 9 May 2016). The contested decision of the prosecutor to refuse to start a pre-trial investigation in the applicants' case was thus annulled and on 14 July 2020, just two months after the judgment of the ECtHR became final on 14 May 2020, on the basis of the judgment of the ECtHR a pre-trial investigation was started under aforementioned Article 170 § 2 of the Criminal Code of Lithuania. The pre-trial investigation was launched with regard to all the comments in issue in the present case.

It should be mentioned here that the case of *Beizaras and Levickas* is not the first one when the domestic authorities invoking the judgment of the ECtHR take procedural steps to remedy the applicant's situation on the basis of the ECtHR judgment even when it is not directly and explicitly provided under the domestic law¹⁰. The domestic authorities apply domestic law systematically in the light of the principles formulated by the ECtHR.

⁷ Article 170 (Incitement against Any National, Racial, Ethnic, Religious or Other Group of People) § 2 of the Criminal Code provides that "2. A person who publicly ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of people or a person belonging thereto on the grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years" (the Criminal Code of the Republic of Lithuania, 2000).

⁸ See *Beizaras and Levickas v. Lithuania* [ECHR], 2020, §§ 151-156.

⁹ For more information regarding reopening of criminal, administrative and civil court proceedings in Lithuania after the final judgment of the ECtHR, see Bruskina, 2019, p. 27-49.

¹⁰ E.g. see Action report (16/11/2020)...; Bruskina, 2019, p. 38-39.

2. General execution measures in *Beizaras and Levickas* case

The Action plan of the Government of Lithuania provides general measures taken in the case of *Beizaras and Levickas* seeking to put an end and prevent similar violations in the future (Action Plan (31/08/2021)...).

As it was noted above, in the *Beizaras and Levickas* case the ECtHR criticized discriminatory state of mind of the Lithuanian law enforcement authorities which failed to start investigation in an effective manner. Therefore, the State authorities together with the civil society have been taking the complex general execution measures to change the attitude of the domestic authorities and the public in general towards the LGBT people and towards the violations done against the LGBT people.

2.1. Changes in the practice of the domestic law enforcement authorities and the courts

First, the Action Plan of the Government of Lithuania states that the domestic practice has changed since the *Beizaras and Levickas* case.

As early as on 30 March 2020 (that is more than a month before the ECtHR judgment in the *Beizaras and Levickas* case became final on 14 May 2020), the Prosecutor General approved a new wording of Methodological recommendations to the heads of regional and district prosecutors' offices and the police "On the specifics of the conduct, organisation, supervision of the pre-trial investigation with regard to the hate crimes and hate speech" (hereinafter – the Methodological recommendations) (Methodological recommendations...) ¹¹. The Methodological recommendations, among other things, cite the case-law of the ECtHR, including the judgment in the case of *Beizaras and Levickas* (which at the time of publishing of the Methodological recommendations was not final yet). According to the Action Plan of the Government of Lithuania, on 19 November 2020 the inter-institutional working group, formed by the order No. 1V-162 of the Minister of the Interior of 24 February 2020 (hereinafter – the inter-institutional working group), discussed the Methodological recommendations. The Agent of the Government of the Republic of Lithuania before the European Court of Human Rights (hereinafter – the Agent of the Government) was invited to participate in the discussion.

Next, the Action plan of the Government states that it was not only the individual case of the applicants that was reviewed. A pre-trial investigation in other similar cases was launched or reopened if it was necessary in the light of explanations given the ECtHR in the *Beizaras and Levickas* case. Therefore, after the judgment in the *Beizaras and Levickas* case became final, the Lithuanian prosecutors, explicitly *inter alia* invoking the judgment of the ECtHR in the *Beizaras and Levickas* case, were reviewing the previous decisions to refuse to start / to suspend / to discontinue a pre-trial investigation into the allegations of hate crimes and hate speech crimes. The domestic prosecutors concluded that the primacy should be given to the principles in the judgment of the ECtHR in the case of *Beizaras and Levickas*.

Therefore, notwithstanding the lack of explicit domestic legal provision of the Code of Criminal Procedure of Lithuania obliging the authorities to start or reopen pre-trial investigation in similar cases after the judgment of the ECtHR, the law enforcement authorities, invoking the judgment of the ECtHR and having regard to direct effect of the Convention and the ECtHR's case-law in Lithuania as well as the legal obligations of Lithuania to abide by the final judgment of the Court in any case to which

¹¹ The Methodological recommendations were prepared under the project of 2014–2020 'Strengthening the response to hate crimes and hate speech in Lithuania', financed by the European Union's Rights, Equality and Citizenship Programme (Išgaliojo rekomendacijos dėl neapykantos nusikaltimų...)

Lithuania is a party (Article 46 of the Convention) as well as regard being had to the aforementioned Methodological recommendations, reviewed their previous decisions not only in the *Beizaras and Levickas* case, but also in other similar cases. To the best of the author's knowledge, the case of *Beizaras and Levickas* is the first case when the Lithuanian authorities took such general execution measures in the pre-trial investigations in similar cases after the final judgment of the ECtHR.

The Action plan of the Government demonstrates that the prosecutors, receiving new complaints, follow the principles formulated in the final judgment of the ECtHR. We can add that domestic authorities (the Office of the Equal Opportunities Ombudsperson and the Office of the Inspector of Journalist Ethics) recommend to follow the case-law of the ECtHR (including the case of *Beizaras and Levickas*) in the investigation of hate speech (Institucinis atsakas į neapykantos kalbos reiškinių Lietuvoje: nepriklausoma apžvalga, 2021..., p. 33). The Action plan provides information about the evolution of the case-law of the domestic courts which found that hate speech based on sexual orientation is not tolerated.

Last, such changed attitude of the State authorities led to tangible results. Namely, according to the Action plan of the Government, there is an increase in the number of the pre-trial investigations started under Article 170 of the Criminal Code of Lithuania (including the pre-trial investigations into the hate speech committed on the ground of sexual orientation).

2.2. Administrative measures

The Action plan of the Government provides detailed information on the comprehensive strategy to prevent hate crimes and hate speech in Lithuania. Namely, the Action plan mentions the inter-institutional working group. We can note that the involvement of all authorities concerned, *inter alia* through joint working groups, in the execution process is also in line with the Guidelines of the CM (Guidelines CM(2022)141-add1final, Guideline 17.1...). We should stress herein that this inter-institutional working group consists not only of the representatives of State institutions, but also the representatives of the non-governmental organizations, associations (e.g. the National Lesbian, Gay, Bisexual and Transgender (LGBT) Rights Association ('the LGL Association')). The group aims *inter alia* to raise awareness of the society about hate crimes and hate speech, to raise effectiveness of dealing with hate crimes and hate speech as well as to prepare the relevant recommendations in this regard. The Action Plan to Promote Non-Discrimination 2021-2023, approved by the order No. A1-1256 of 10 December 2020 of the Minister of Social Security and Labour of the Republic of Lithuania, also aims to prevent hate speech and hate crimes in Lithuania.

The Action plan of the Government informs about cooperation of domestic authorities with the international organizations (e.g. OSCE Office for Democratic Institutions and Human Rights (ODIHR); the European Union, the Council of Europe) and other States (e.g. Norway and the UK) in the field of hate speech prevention and equal opportunities. We may also note that the abovementioned inter-institutional working group also discussed the experience and good practice of Poland in the criminal prosecution of hate crimes (Ataskaita apie neapykantos nusikaltimų ir neapykantos kalbos situaciją Lietuvoje 2020–2021 metais, p. 26).

The Action plan of the Government provides information about specialisation of the prosecutors and their qualification. Seeking to improve qualification to deal with hate crimes and hate speech, meetings, seminars and training sessions are organized for the State officials, in particular, for prosecutors, police officers and judges. As is transpires from the Action plan, upon the initiative of the Prosecutor General's Office, on 18 June 2020 and 6 October 2020 the Agent of the Government presented to the prosecutors and police officers the main aspects of the *Beizaras and Levickas* case.

Projects and campaigns raising public awareness about hate speech and hate crime are described in the Action plan in detail.

Last, the Action plan notes that the Lithuanian authorities were taking technical measures and other measures seeking to guarantee relevant information and effective investigation into the allegations of hate crimes and hate speech crimes (including proper registration and data collection, special online platforms which help the victims to report about the hate speech, police community officers¹² who *inter alia* meet with the minority communities (including the sexual minority) and consult the minority communities on the issues relevant to the communities as well as a virtual patrol unit¹³, launched by the Lithuanian Police Office, having assessed the good practice of foreign States).

2.3. Some factors making the general execution measures in *Beizaras and Levickas* case effective

Having examined the Action plan of the Government of Lithuania, we may discern the following factors which make the general measures taken by the Lithuanian authorities effective.

First, it is the genuine will of the domestic authorities to execute the judgment in the *Beizaras and Levickas* case from the very beginning of the execution process. The domestic authorities were not waiting for the judgment to become final (just to prolong time for execution) and were taking necessary measures as soon as possible. Citing the judgment in the *Beizaras and Levickas* case before it became final in the Methodological Recommendations testifies to that.

Second, the practice of the domestic authorities evolving after the judgment in the *Beizaras and Levickas* case represents an example of a dialogue of the State authorities concerned (authorities directly involved in the execution) with the ECtHR, the CM, the Agent of the Government, the civil society, international organizations and other States.

A dialogue (in the words of Lambert Abdelgawad “exchange of ideas and good practices”) between the Council of Europe institutions (the ECtHR and the CM assisted by the Department for the Execution of Judgments) and the domestic authorities is welcomed. This dialogue involves the responsibility of different actors both at the European and the domestic levels and it can be maintained in different forms: e.g. through the execution measures taken by the domestic authorities in the light of the explanations of the ECtHR and the assessment of these measures by the CM, the round tables and discussions both at the domestic and international levels, the cases debated during the DH meetings under the enhanced procedure (Brighton Declaration, 2012...; Brussels Declaration, 2015...; Lambert Abdelgawad, 2016, p. 340-363). Indeed the “supervision of execution is treated as a co-operative task and not an inquisitorial one” (Council of Europe, “Human rights working methods – Improved effectiveness of the Committee of Ministers’ supervision of execution of judgments,” cited from Lambert Abdelgawad, 2016, p. 343).

Turning to the *Beizaras and Levickas* case, we can see a dialogue between the ECtHR and the domestic authorities, which in their practice adhere to the explanations given the ECtHR. Second, we can also note the dialogue between the CM and the domestic authorities in the present case, namely a positive assessment of the execution measures taken and sharing that good practice of Lithuania with other Contracting States during the DH meeting. Third, in the *Beizaras and Levickas* case, we can also see examples of cooperation between the different domestic authorities concerned and between the

¹² According to the Action plan, 141 police officers hold the posts of police community officers (the data of May 2021). Police community officers aim to prevent the law violations in the territory under the control (1411th meeting (September 2021) (DH) – Action Plan (31/08/2021) – Communication from Lithuania...).

¹³ The virtual patrol monitors the social networks, assesses and collects information, provides information.

domestic authorities with the Agent of the Government (reflecting in their discussions, conferences and inter-institutional working group).

As regards cooperation with the Agent of the Government, it should be added that the CM exhorts a co-ordinator of execution of judgments at the national level, that would have the necessary powers to acquire relevant information, cooperate with the authorities involved in the execution of the ECtHR judgment and take or initiate relevant measures to accelerate the execution process (Recommendation CM/Rec(2008)2..., see also Brussels Declaration, 2015...). In the *Beizaras and Levickas* case, it is the will of the domestic authorities to cooperate with the Agent of the Government. The Agent of the Government is a link between the ECtHR which renders its judgment, the CM which supervises the execution of the judgments of the ECtHR and the domestic authorities which execute the judgments of the ECtHR. The Agent of the Government cooperated with the domestic authorities while drafting Government observations in the pending case before the ECtHR and thus knows the details of the case well. After the ECtHR delivered its judgment, the Agent of the Government is cooperating with the domestic authorities while drafting the Action plan/Action report on the execution of the judgment of the ECtHR. Therefore, during the execution process it is highly important for the Agent of the Government to be in permanent contact with the domestic authorities and the CM so that to provide the domestic authorities with information on the principles relevant for the execution process, including relevant case-law of the ECtHR, to provide the domestic authorities with feedback of the CM regarding execution and to inform the CM about the domestic developments reached so far. As it transpires from the Action Plan, in the *Beizaras and Levickas* case, the Agent of the Government was invited to participate in the discussion of the abovementioned Methodological recommendations, the Agent of the Government was invited to present the main issues of the case of *Beizaras and Levickas* to the law enforcement authorities. Therefore, the domestic authorities, seeking to execute the judgment properly and adhere to the case-law of the ECtHR, demonstrate their genuine will to cooperate with the Agent of the Government as an official who can provide information on the relevant case-law of the ECtHR. The *Beizaras and Levickas* case shows that the initiative to cooperate comes not only from the Agent of the Government, but also from the relevant domestic authorities which directly participate in the execution process in the present case, namely, the Prosecutor's Office, the Ministry of the Interior, the police offices. It is clear that the will of the authorities to cooperate shortens time for convincing or explanations of the Agent of the Government why it is necessary to execute the judgment of the ECtHR. Therefore, given the will of the domestic authorities to execute the judgment, it is possible to move immediately to the constructive dialogue. Such good will cooperation opens the way for further steps that should be taken seeking to execute the judgment of the ECtHR.

The cooperation between the domestic authorities and the civil society is the next noteworthy point. The Contracting States are encouraged to include relevant civil society organisations in consultations related to the execution of judgments of the ECtHR (Guidelines CM(2022)141-add1final, Guideline 17.2...). Cooperation helps the domestic authorities understand the concerns of the victims better and urges the victims trust the authorities and submit their complaints. The domestic practice in the *Beizaras and Levickas* case shows that the initiative for this cooperation comes from both the civil society and the State authorities. We can note the involvement of the civil society (NGOs) into the abovementioned inter-institutional working group to develop a comprehensive strategy to tackle effectively the problem of hate crimes and hate speech in Lithuania. The participation of civil society in that group was positively assessed by the Secretariat of the CM in their Notes (CM/Notes/1419/H46-21...). If we examine the composition of this inter-institutional working group, we will see that the group is composed of 7 representatives of the State authorities and even higher number of the NGOs – 11 NGO representatives

(Ataskaita apie neapykantos nusikaltimų ir neapykantos kalbos situaciją Lietuvoje 2020–2021 metais, p. 26). We cannot but note meetings, consultations and discussions of Lithuanian State authorities with NGOs and representatives of vulnerable societies (for details, see Action Plan (31/08/2021)...). The aim of such meetings is to identify the concerns and expectations of the victims. To add, the Prosecutor General's Office recommends the prosecutors to provide the victims with information about the relevant NGOs (Methodological Recommendations, para. 72.3...). The report on hate crimes and hate speech for 2020–2021 as prepared by the inter-institutional working group stressed the need to strengthen cooperation between civil society organizations and state institutions (Ataskaita apie neapykantos nusikaltimų ir neapykantos kalbos situaciją Lietuvoje 2020–2021 metais, p. 26). The initiatives taken by the civil society address both the victims, society and the law-enforcement authorities (e.g. launch of the alternative e-platform enabling the victims or witnesses to inform the NGO or police office about hate crimes and hate speech, different campaigns raising public awareness, participation of the NGOs in the projects/programmes which aim to raise qualification or organize training sessions for the law enforcement authorities while investigating hate crimes and hate speech. In addition, it is recommended to prosecutor's office to have consultations with the civil society while updating/amending Methodological recommendations (K. Mikša ir Europos žmogaus teisių fondo ekspertė M. Guliakaitė, Neapykantos nusikaltimai ir neapykantos kalba: situacijos Lietuvoje apžvalga, 2021, p. 89). Last, we may see that certain execution measures were welcomed by the civil society (e.g. both the National Lesbian, Gay, Bisexual and Transgender (LGBT) Rights Association (a non-governmental organization which was participating in the *Beizaras and Levickas* case at the domestic level) (Recommendations on Investigation of Hate Crimes and Hate Speech Came into Force, 2020) and ILGA-Europe (the organization that had submitted observations as one of the intervening parties in the case of *Beizaras and Levickas* before the ECtHR) (Action Plan (31/08/2021)).

Last, the domestic authorities seek to take good practice and advice of the international organizations and other States. We have seen that the good practice is indeed taken over in practice (e.g. a virtual patrol unit is the result of following good practice of other States). In this connection we also see that such an attitude of the Lithuanian authorities is also in line with the recommendations of the CM which encourages Member States to cooperate with relevant CoE structures and to take into account the experience of other States in the execution process (Guidelines of the CM (Guidelines CM(2022)141-add1final, Guideline 17.3...).

3. Legal implications of effective execution in *Beizaras and Levickas* case

As it was mentioned above, the judgment of the ECtHR in the *Beizaras and Levickas* case concerns not only the failure of the Lithuanian law enforcement authorities to start a pre-trial investigation (a violation of Article 14, in conjunction with Article 8 of the Convention), but also the lack of an effective domestic remedy in respect of the applicants' complaint concerning a breach of their right to private life, on account of having been discriminated against because of their sexual orientation (violation of Article 13 of the Convention).

In the case of *Beizaras and Levickas v. Lithuania*, the ECtHR did not call into question that Article 170 of the Criminal Code of Lithuania provides for an effective domestic remedy. However, in that case the lack of an effective remedy was found due to the failure of the domestic law enforcement authorities to apply that domestic legal provision properly and their refusal to start a pre-trial investigation into the applicants' allegations of hate speech crimes allegedly committed on the basis of their sexual orientation.

In this article we have already noted the significant shift in the domestic practice of the Lithuanian authorities immediately after the judgment of the Court in the *Beizaras and Levickas* case. The domestic authorities, adhering to the principles formulated by the ECtHR in the *Beizaras and Levickas* case and modifying their practice, have thus created a domestic remedy, which should be held an effective one. The persons should exhaust that domestic remedy before lodging their applications with the ECtHR. Therefore, the applications of other persons finding themselves in a similar situation should be rejected by the ECtHR for non-exhaustion of domestic remedy, pursuant to Article 35 §§ 1 and 4 of the Convention, in case they failed to exhaust it and in case the ECtHR finds that remedy an effective one.

The abovementioned dialogue of the domestic authorities with the ECtHR can result in no violation in the similar pending cases¹⁴. Indeed, it is not the first case when the dialogue between the ECtHR and the Lithuanian authorities was respected. For example, in the case of *Drėlingas v. Lithuania*, the ECtHR analyzed the modified domestic practice of Lithuanian court after the previous judgment of the ECtHR in the *Vasiliauskas* case (*Drėlingas v. Lithuania* [ECHR], 2019, §§ 96–111). In *Drėlingas*, the ECtHR agreed that “the Supreme Court drew the necessary conclusions from the *Vasiliauskas* judgment and ... addressed the cause of the Convention violation.” The ECtHR thus found no violation of the Convention in the *Drėlingas* case. To paraphrase the ECtHR, by properly applying the domestic law in the light of the principles as formulated by the ECtHR in the case of *Beizaras and Levickas* the domestic authorities “addressed the cause of the Convention violation” and we can hope that no violation in a similar case related to hate speech on the ground of sexual orientation would be found by the ECtHR.

Assessing the effectiveness of that dialogue, to be more precise, assessing the effectiveness of the domestic remedy created after *Beizaras and Levickas* case, one may doubt whether the domestic remedy is effective when not all responsible persons are punished for their hate speech. Despite the fact that to date it is impossible to bring to justice all comment makers in the *Beizaras and Levickas* case, the CM expressed no concerns about the course or the outcome of the pre-trial investigation in *Beizaras and Levickas* case. Indeed, as the Action plan of the Government in *Beizaras and Levickas* shows, in some cases it is impossible to punish the individuals due to their age at the time of making the comments or it is impossible to identify certain comment makers or in some cases the investigation depends on the request for legal assistance that has not still been granted by the foreign authorities. In some cases, the persons were exempted from criminal responsibility on bail or became reconciled with the applicants in accordance with the domestic law (Action Plan (31/08/2021)). According to the case-law of the ECtHR, the obligation of the Contracting State to identify and prosecute the perpetrators “must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.” In case the domestic authorities took appropriate investigative actions, albeit unsuccessful, seeking to identify and punish those responsible for the alleged hate speech crimes, the ECtHR accepts that the authorities discharged their positive obligations flowing from Article 8 of the Convention (see, *mutatis mutandis*,

¹⁴ It should be mentioned that two cases related to alleged hate speech are pending before the ECtHR. The applicant Valaitis complains about the failure of the State authorities to take measures to protect him against hate speech linked to his writing about persons of homosexual orientation. The Court will assess whether there has been a violation of the applicant’s right to effective remedy, as required by Article 13 of the Convention. (*Valaitis v. Lithuania* [ECHR, communicated on 3 June 2020]). The applicant Tomaševski complains that the State authorities have not protected him from hate speech directed against him as a politician and as a member of the Polish ethnic minority in Lithuania. The ECtHR will assess whether there has been a violation of Article 14 of the Convention, in conjunction with Article 8 and whether there has been a breach of the applicant’s right under Article 3 of Protocol No. 1 to the Convention to participate in free elections which have ensured the free expression of the opinion of the people in the choice of the legislature (*Tomaševski v. Lithuania* [ECHR, communicated on 22 November 2022]).

Giuliano v. Hungary [ECHR, dec.], 2021, §§ 26-31). Therefore, the failure of the State to punish every comment maker for some reasons does not make the investigation ineffective.

The effectiveness of the investigation and the position of the CM as regards the execution can also be important while assessing the developments in Lithuanian practice and examining similar Lithuanian cases pending before the ECtHR. For example, in the abovementioned case of *Drėlingas*, both the Government of Lithuania and the ECtHR in its judgment referred to the findings of the CM in execution process in the earlier *Vasiliauskas* case (*Drėlingas v. Lithuania* [ECHR], 2019, §§ 93, 108; see, *a contrario*, *Ekimdzhev and Others v. Bulgaria* [ECHR], 2022, §§ 300, 305, 315, 341, 342, 343, 349, 353 wherein the negative assessment of the CM was taken into account by the ECtHR¹⁵).

Last, the positive assessment of the CM in the *Beizaras and Levickas* case can have an impact not only on the similar Lithuanian cases, but also similar cases against other States Parties. In particular, the CM holds ‘the wide-ranging and multifaceted’ execution measures taken by the Lithuanian authorities in the *Beizaras and Levickas* case as an example for the States Parties (15th Annual Report of the Committee of Ministers, 2021, p. 12, 15). Therefore, the individual and general measures in the *Beizaras and Levickas* case might provide some guidance to the domestic authorities addressing the similar issues in their States¹⁶. As it was noted above, pursuant to Article 46 of the Convention, judgments of the ECtHR are binding only on the parties to the case. However, if a violation is found in respect of one Contracting State, it is most probable that the ECtHR will find a violation in a similar case against another State as well. Legal scholars thus admit that the case-law of the ECtHR has *erga omnes* effect as regards the Contracting States other than the respondent States in a concrete case (Nußberger, 2018, p. 45-46). Therefore, it is soft jurisprudence in respect of other Contracting States to which they should adhere to if they seek to prevent similar violations. The execution measures taken by the respondent States is some source of good practice from which other Contracting States could take inspiration. Indeed, in some cases the Contracting States to the Convention have declared that they wish to follow the good practice of other Contracting States in the light of the principles formulated by the ECtHR (*Maria Atanasiu and Others v. Romania* [ECHR], 2010, §§ 204 and 235¹⁷).

Conclusion

1. The Lithuanian authorities aim to execute the judgment of the ECtHR in the *Beizaras and Levickas* case properly and thus do not confine themselves to the explicit procedural grounds for reopening/launch of pre-trial investigation or to the particular applicants’ case. The authorities apply the procedural domestic law in compliance with the requirements of the Convention and thus launch/reopen a pre-trial investigation both in the applicants’ and other similar cases even in the absence of explicit domestic procedural ground if such a launch/reopening is required to execute the judgment of the ECtHR properly.

¹⁵ The *Ekimdzhev and Others v. Bulgaria* case concerns inadequate legal safeguards against arbitrariness and abuse for secret surveillance, retention and access of communications data.

¹⁶ Indeed, other Contracting States have also faced similar issues related to effective investigation into hate speech and hate crimes on the basis of sexual orientation or responsibility for such crimes, for the most recent cases, see *Lil-liendahl v. Iceland* [ECHR dec.] 2020; *Association ACCEPT and Others v. Romania* [ECHR] 2021; *Genderdoc-M and M.D. v. the Republic of Moldova* [ECHR] 2021; *Women’s Initiatives Supporting Group and Others v. Georgia* [ECHR] 2021; *Oganezova v. Armenia* [ECHR] 2022; *Stoyanova v. Bulgaria* [ECHR], 2022.

¹⁷ The *Maria Atanasiu and Others v. Romania* case concerns ineffectiveness of the mechanism set up to afford restitution of or compensation for properties nationalised during the communist period.

2. We may see that the domestic authorities started preparation for execution of the judgment of the ECtHR in the *Beizaras and Levickas* case even before the judgment became final (adoption of the new wording of Methodological recommendations as a ground for further effective execution). Such preparatory work provided the authorities with the possibility to move towards effective execution after the judgment became final as soon as possible.
3. The *Beizaras and Levickas* case is an example of multi-level cooperation: cooperation between the domestic authorities directly involved in the execution process and the Agent of the Government coordinating the execution; the cooperation between the State authorities and civil society; cooperation between the domestic authorities with the international organizations and foreign States. Such cooperation gives the possibility to take inspiration from good practice and leads to trust and dialogue in the execution process.
4. Effective execution in the *Beizaras and Levickas* case can lead not only to the closure of the case by the CM, but also has/can have some other legal implications. First, by modifying their practice the domestic authorities have created a domestic remedy in respect of the complaints regarding hate crime/hate speech that could be considered an effective one and thus shall be exhausted by persons before lodging their applications with the ECtHR. Second, the modification of the practice in the light of the principles formulated by the ECtHR in the *Beizaras and Levickas* case is an example of the dialogue between the Lithuanian authorities and the ECtHR, which can lead to no violation to be found by the ECtHR in further similar cases. Third, the positive assessment of the CM as regards execution measures in the present case can also be taken into account by the ECtHR while examining further similar cases against Lithuania. Fourth, the execution measures in the *Beizaras and Levickas* case can provide some guidance to the other Contracting States facing similar issues.

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Execution of the ECtHR Judgment in *Beizaras and Levickas v. Lithuania* Case: Effectiveness and Legal Implications

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S u m m a r y

In the *Beizaras and Levickas* case (Application No. 41288/15), the European Court of Human Rights found violations of the Convention due to the failure of the Lithuanian law enforcement authorities to start pre-investigation into allegations of hate speech on the grounds of the sexual orientation of the applicants. The article begins with a short overview of the individual and general measures taken by the Lithuanian authorities aiming to execute this judgment of the ECtHR. The article discerns the factors which led to effective execution of the judgment. Namely, despite the absence of explicit domestic procedural ground, the Lithuanian authorities launched/reopened a pre-trial investigation both in the applicants' and other similar cases if such a launch/reopening was needed in the light of explanations given by the ECtHR. Due to the

preparatory work started by the Lithuanian authorities before the judgment became final, the authorities moved towards further effective implementation after the judgment became final as soon as possible. The *Beizaras and Levickas* case is an example of multi-level dialogue that gives the possibility to take inspiration from good practice. Last, the article demonstrates the positive impact of effective execution on any other similar cases pending both at the domestic level and before the ECtHR not only against Lithuania, but also against other Contracting States. In particular, effective execution in the *Beizaras and Levickas* case will lead to the closure of the *Beizaras and Levickas* case by the CM, a domestic remedy should be held effective and thus shall be exhausted before lodging petitions with the ECtHR in similar cases against Lithuania; the dialogue of the Lithuanian authorities with the ECtHR and positive assessment of the CM can also be taken into account by the ECtHR while examining further similar cases against Lithuania; last, other Contracting States facing similar issues could take inspiration from the execution measures in the *Beizaras and Levickas* case.

EŽTT sprendimo byloje *Beizaras ir Levickas prieš Lietuvą* vykdymas: veiksmingumas ir teisiniai padariniai

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S a n t r a u k a

Byloje *Beizaras ir Levickas prieš Lietuvą* (peticija Nr. 41288/15) EŽTT nustatė Konvencijos pažeidimų Lietuvos valdžios institucijoms atsisakius pradėti ikiteisminį tyrimą dėl homofobinės neapykantos kalbos prieš pareiškėjus, jie buvo diskriminuojami dėl seksualinės orientacijos. Straipsnyje apibendrinamos Lietuvos institucijų individualios ir bendros priemonės, kurių imtasi įgyvendinant šį EŽTT sprendimą. Straipsnyje išskiriami veiksniai, lėmę veiksmingą EŽTT sprendimo įgyvendinimą. Lietuvos institucijos pradėjo ar atnaujino ikiteisminį tyrimą tiek pareiškėjų, tiek kitose panašiose bylose, net ir nesant aiškaus vidaus procesinio pagrindo, jei toks ikiteisminis tyrimas buvo būtinas atsižvelgiant į EŽTT suformuluotus principus. Dėl parengiamųjų darbų, kuriuos Lietuvos institucijos pradėjo dar EŽTT sprendimui netapus galutiniam, valdžios institucijos turėjo galimybę kuo skubiau imtis tolesnių įgyvendinimo priemonių įsigaliojus EŽTT sprendimui. Byla *Beizaras ir Levickas prieš Lietuvą* yra dialogo įvairiu lygmeniu pavyzdys, kuris suteikia galimybę taikyti gerąją praktiką. Galiausiai straipsnyje parodomas teigiamas veiksmingo vykdymo poveikis visoms kitoms panašioms byloms, nagrinėjamos tiek nacionaliniu lygmeniu, tiek EŽTT ne tik prieš Lietuvą, bet ir prieš kitas susitariančiąsias valstybes. Konkrečiai, veiksmingai įgyvendinant EŽTT sprendimą byloje *Beizaras ir Levickas prieš Lietuvą* bylos vykdymo priežiūra bus baigta Ministrų komitete, manytina, kad sukurta vidaus teisės gynybos priemonė yra veiksminga ir turi būti panaudota prieš krepiančius į EŽTT panašiose bylose; Lietuvos valdžios institucijų dialogo su EŽTT ir teigiamo Ministrų komiteto įvertinimo poveikis EŽTT nagrinėjant kitas panašias bylas prieš Lietuvą; galiausiai kitos susitariančiosios valstybės, susiduriančios su panašiomis problemomis, galėtų atsižvelgti į *Beizaro ir Levicko prieš Lietuvą* bylos vykdymo priemones.

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