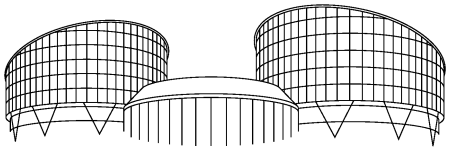

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF LANIAUSKAS AND JANUŠKA v. LITHUANIA

(Applications nos. 74111/13 and 53460/15)

JUDGMENT

STRASBOURG

25 September 2018

This judgment is final but it may be subject to editorial revision.

In the case of Laniauskas and Januška v. Lithuania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 4 September 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 74111/13 and 53460/15) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Lithuanian nationals, Mr Remigijus Laniauskas ("the first applicant") and Mr Mindaugas Januška ("the second applicant"), on 18 November 2013 and 21 October 2015 respectively.

2. The first applicant was represented by Ms G. Cimbolienė, a lawyer practising in Vilnius. The second applicant was granted leave to represent himself in the proceedings before the Court.

3. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

4. On 18 May 2017 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1972 and is detained in Vilnius. The second applicant was born in 1982 and is detained in Pravieniškės.

A. The first applicant (Mr Laniauskas)

6. The first applicant has been detained in Lukiškės Remand Prison since 17 March 2008.

7. On 27 July 2012 he lodged a civil claim against the State, alleging that he was being detained in overcrowded and unsanitary cells. He claimed

74,690 Lithuanian litai (LTL – approximately 21,630 euros (EUR)) in respect of non-pecuniary damage.

8. On 8 November 2012 the Vilnius Regional Administrative Court allowed in part the applicant's claim. It firstly held that the time-limit for claiming damages was three years after the damage arose, and accordingly dismissed the part of the applicant's claim concerning the period before 27 July 2009 as time-barred. The court then examined various documents provided by the prison authorities and found that, during the remaining period, for about one year and seven months the size of the personal space afforded to the applicant had not complied with the domestic requirements (until 11 May 2010 the minimum personal space in prison cells stipulated by domestic law was 5 sq. m, and from 11 May 2010 it was 3.6 sq. m).

9. The court also found, on the basis of reports submitted by domestic public healthcare authorities, that the temperature and the amount of natural light in some of the cells in which the applicant had been detained had not complied with domestic hygiene norms. However, it dismissed as unproved the applicant's allegations that the cells had been dilapidated and that there had been parasites and rodents. Furthermore, the court considered that the applicant had not proved that his health had deteriorated as a result of the conditions of his detention.

10. The applicant was awarded LTL 1,500 (approximately EUR 434) in respect of non-pecuniary damage.

11. The applicant lodged an appeal against that decision, but on 20 May 2013 the Supreme Administrative Court dismissed his appeal and upheld the lower court's decision in its entirety.

B. The second applicant (Mr Januška)

12. The second applicant was detained in Vilnius Correctional Facility from 8 June 2012 to 5 February 2016.

13. On 4 October 2013 he lodged a civil claim against the State, alleging that he was being detained in overcrowded dormitory-type rooms. He claimed LTL 11,000 (approximately EUR 3,200) in respect of non-pecuniary damage.

14. On 12 March 2014 the Vilnius Regional Administrative Court allowed in part the applicant's claim. The court found that for seventy-nine days the applicant had had 2.9 sq. m of personal space, in breach of the domestic requirement of 3.1 sq. m applicable to dormitory-type rooms. It also found that for eighteen days, when the applicant had been kept under stricter disciplinary regime, he had had 3.34 sq. m of personal space, in breach of the domestic requirement of 3.6 sq. m applicable to such cells.

15. However, the court noted that the applicant had been allowed to move freely around the correctional facility during the day, except when he had been serving disciplinary penalties, and that the material conditions of

his detention had been appropriate. It also considered that the applicant had not proved that his health had deteriorated as a result of the conditions of his detention. The court therefore dismissed the applicant's claim for non-pecuniary damages.

16. The applicant lodged an appeal against that decision and on 15 May 2015 the Supreme Administrative Court upheld in part his appeal. It found that, according to the applicant's submissions which the administration of the correctional facility had failed to refute, for 274 days he had had between 2.33 and 3.04 sq. m of personal space, in breach of the relevant domestic requirements. The court considered that, despite the fact that the applicant had been allowed to move freely during the day and that the material conditions of detention had been appropriate, there were grounds to award him non-pecuniary damages. The applicant was awarded EUR 130.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. For the relevant domestic law and practice, see §§ 50-60 of *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, 8 December 2015).

III. RELEVANT INTERNATIONAL MATERIALS

18. For relevant international materials concerning conditions of detention, as well as reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") on its visits to Lukiškės Remand Prison in 2008 and 2012, see ibid, §§ 61-69.

19. During its latest visit to Lithuania from 5 to 15 September 2016, the CPT again visited Lukiškės Remand Prison. The relevant parts of its report, published on 1 February 2018, read:

> "As regards regimes, the Committee once again calls upon the Lithuanian authorities to take decisive steps to develop programmes of activities for both sentenced and remand prisoners. The current situation where more than half of sentenced prisoners have no meaningful activities certainly does not contribute to their social rehabilitation ...
>
> ...
>
> Turning to the regime in remand prisons, it remained impoverished even though remand prisoners were now allowed to attend secondary education. This notwithstanding, remand prisoners continued to be locked up in their cells for up to 22-23 hours per day.
>
> 58. The Committee wishes to reiterate that ensuring that sentenced prisoners are engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association) is not only an essential part of rehabilitation and re-socialisation, but it also contributes to the establishment of a

more secure environment within prisons. Moreover, remand prisoners should also, as far as possible, be offered work and other structured activities.

The CPT once again calls upon the Lithuanian authorities to take decisive steps to develop programmes of activities for both sentenced and remand prisoners. The aim should be to ensure that prisoners are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, education, sport, etc.) tailored to the needs of each category of prisoner (adult remand or sentenced prisoners, inmates serving life sentences, female prisoners, etc.).

59. At Lukiškės Prison, the delegation was informed of plans to adapt parts of the adjoining premises of the former Prison Hospital for organised activities such as work, schooling and sports. The Committee would like to be informed whether these plans have now been implemented and if so, how many remand prisoners participate in the aforementioned activities."

THE LAW

I. JOINDER OF THE APPLICATIONS

20. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicants complained about the conditions of their detention and the insufficient compensation awarded to them by domestic courts. They relied on Article 3 of the Convention, which reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The Government's objection of loss of victim status

(a) The parties' submissions

22. The Government submitted that the applicants could no longer be considered "victims" within the meaning of Article 34 of the Convention because domestic courts had acknowledged violations of their rights and had provided them with redress. The Government argued that the amounts awarded to the applicants had been adequate, taking into account the duration and extent of the violation, the negative consequences suffered by

the applicants, and the economic conditions in the country, as well as other relevant criteria.

23. The first applicant submitted that the amount awarded to him by domestic courts (EUR 434) had been inadequate and did not correspond to the amounts awarded by the Court in similar cases. The second applicant did not comment on this point.

(b) The Court's assessment

24. The general principles relevant for the assessment of an applicant's victim status with respect to complaints of inhuman or degrading conditions of detention are summarised in *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 84-85, 8 December 2015).

25. In the present case, the Court notes that the sums awarded to the first and second applicants by domestic courts amounted to EUR 434 and EUR 130 respectively (see paragraphs 10 and 16 above). In its view, those sums were incommensurably small and did not even approach the awards usually made by the Court in comparable circumstances to provide adequate redress (see, *mutatis mutandis*, ibid., § 99).

26. In such circumstances, the Court dismisses the Government's preliminary objection of loss of victim status.

2. Other grounds of inadmissibility

27. The Court further notes that the applicants' complaints under Article 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

28. The applicants submitted that they had been detained in overcrowded and unsanitary cells. The first applicant also submitted that he had been confined to his cell twenty-three hours a day.

29. As concerns the first applicant, the Government did not dispute that he had been detained in overcrowded cells. However, they submitted that the material conditions of his cells had been in line with Article 3 of the Convention and that sufficient out-of-cell activities had been available to him.

30. As concerns the second applicant, the Government submitted that the Supreme Administrative Court when determining the personal space available to the applicant had relied not on objective data but on the failure by the administration of the correctional facility to provide evidence refuting the applicant's allegations (see paragraph 16 above). The

Government provided to the Court a table setting out the exact personal space available to the second applicant during the different periods of his detention. According to that table, the personal space available to him fell below 3 sq. m for a total of seventy-nine days, consisting of four non-consecutive periods of one, two, thirty-four and forty-two days. During those periods the applicant had had 2.9 sq. m of personal space. The Government submitted that the reductions in the minimum required personal space had been minor and that they had been sufficiently compensated for by the freedom to move around the facility during the day, sufficient out-of-cell activities available to the applicant, and generally appropriate material conditions of his detention.

2. The Court's assessment

(a) General principles

31. The general principles relevant for the assessment of prison overcrowding were summarised in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 136-41, ECHR 2016).

(b) The first applicant

32. The Court notes that the domestic courts which examined the first applicant's claim for damages found that for approximately one year and seven months he had had less personal space than that required by domestic law, but they did not specify the exact amount of personal space that had been available to him (see paragraph 8 above).

33. The documents in the Court's possession indicate that from 27 July 2009 until 27 July 2012 the personal space available to the applicant fell below 3 sq. m during a total of 394 days, comprising thirty-six non-consecutive periods. Those periods lasted between half a day and forty-eight and a half days and the personal space at the applicant's disposal during those periods varied between 1.81 and 2.73 sq. m.

34. In the present case, the Court considers that it is not necessary to assess whether any of the periods during which the applicant had less than 3 sq. m of personal space were short, occasional and minor because, in any event, they were not compensated for by other factors (ibid., §§ 137-38). It firstly notes that the domestic courts established, on the basis of reports submitted by domestic public healthcare authorities, that the temperature and the amount of natural light in some of the cells in which the applicant had been detained had not complied with domestic hygiene norms (see paragraph 9 above). The Court further observes that the CPT in its reports concerning Lithuania repeatedly stated that nearly all detainees in Lukiškės Remand Prison were locked up in their cells for twenty-three hours a day, with no out-of-cell activities other than outdoor exercise lasting one hour in small and dilapidated yards (see paragraphs 18 and 19 above). In such

circumstances, the Court is unable to find that the lack of personal space was compensated for by appropriate material conditions of detention, sufficient freedom of movement outside the cell and adequate out-of-cell activities. It follows that the conditions of the applicant's detention during those periods when he had less than 3 sq. m of personal space at his disposal did not comply with Article 3 of the Convention.

35. As for the remainder of the applicant's detention, when he had more than 3 sq. m of personal space, the Court, having examined all the materials in its possession, is of the view that the conditions of the applicant's detention did not attain the minimum level of severity necessary to fall within the scope of Article 3 of the Convention. There has therefore been no violation of the provision at issue in respect of those periods.

36. Accordingly, the Court concludes that there was a violation of Article 3 of the Convention in respect of the first applicant during the 394 days of his detention in Lukiškės Remand Prison when he had less than 3 sq. m of personal space at his disposal.

(c) The second applicant

37. The Court notes that the Supreme Administrative Court, which examined the second applicant's claim for damages found that for 274 days he had had between 2.33 and 3.04 sq. m of personal space (see paragraph 16 above). However, the Court observes that that conclusion was based on the applicant's own assessment and the failure of the administration of the correctional facility to provide evidence to the contrary. In the proceedings before this Court, the Government provided a table setting out the exact personal space available to the applicant during the different periods of his detention (see paragraph 30 above). The Court has no reason to doubt the accuracy of the information provided by the Government (see, for a similar situation, *Butkus and Remeikis v. Lithuania* (dec.) [Committee], nos. 42468/16 and 51911/16, § 23, 10 April 2018). It is therefore satisfied that for a total of seventy-nine days during his detention the second applicant had 2.9 sq. m of personal space and that during the remaining period the personal space available to him did not fall below 3 sq. m.

38. Having examined the documents submitted to it by the parties, the Court sees no reason to depart from the findings of the domestic courts that the material conditions of the second applicant's detention had been appropriate (see paragraphs 15 and 16 above). Furthermore, the applicant was not confined to his room during the day and was free to move around the correctional facility, except when serving disciplinary penalties for breaching the internal rules of the facility. It also observes that the applicant himself never complained, either before the domestic courts or before this Court, that he had not had sufficient time outdoors or that there had not been adequate out-of-cell activities at his disposal. The Court therefore considers

that the periods of the applicant's detention during which he had more than 3 sq. m of personal space do not raise an issue under the Convention.

39. The applicant had less than 3 sq. m of personal space during four non-consecutive periods, which respectively lasted for one, two, thirty-four and forty-two days (see paragraph 30 above). The Court considers that the periods of one and two days can be considered of short duration (see *Muršić*, cited above, § 130). In the light of its earlier findings concerning the material conditions of the applicant's detention, the freedom of movement outside the cell and out-of-cell activities available to him (see paragraph 38 above), the Court concludes that the lack of personal space during those two periods did not amount to degrading treatment prohibited by Article 3 of the Convention.

40. However, in line with the Court's case-law, the periods of thirty-four and forty-two days cannot be considered as being of short duration (ibid., §§ 151-53). Consequently, the lack of personal space during those periods could not be compensated for by other factors. It follows that the conditions of the applicant's detention during those two periods were contrary to Article 3 of the Convention.

41. Accordingly, the Court concludes that there was a violation of Article 3 of the Convention in respect of the second applicant during the seventy-six days of his detention in Vilnius Correctional Facility (consisting of two separate periods of thirty-four and forty-two days) when he had less than 3 sq. m of personal space at his disposal.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicants complained that they had not had an effective remedy for their complaints under Article 3 of the Convention. The Court considers that those complaints fall to be examined under Article 13 of the Convention, which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

43. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

44. The parties' submitted the same arguments with regard to the complaint under Article 13 of the Convention as they did with regard to the applicants' victim status (see paragraphs 22 and 23 above).

2. The Court's assessment

45. The Court observes that at the time when the applicants lodged their applications, they were still detained in the correctional facilities about which they were complaining (see paragraphs 1, 6 and 12 above). It has previously stated that for a person held in inhuman or degrading conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3 of the Convention (see *Mironovas and Others*, cited above, § 85).

46. In the present case, the Court has found a violation of Article 3 in respect of both applicants on account of the fact that during some periods of their detention they had insufficient personal space, which was not compensated for by other factors (see paragraphs 34 and 40 above). However, it has also found that during other periods the conditions of their detention were in line with Article 3 (see paragraphs 35 and 38-39 above). It therefore observes that even though the applicants remained in the same correctional facilities, the conditions of their detention varied over time. In such circumstances, the Court is unable to conclude that at the time when they lodged their applications, they were still detained in unsuitable conditions. Nor did the applicants provide any information allowing it to reach a different conclusion. Accordingly, in line with the Court's case-law, a claim for monetary compensation constituted an effective remedy for the applicants' complaints (ibid.). Even though the compensation which the applicants were awarded could not be considered sufficient in the light of the Court's standards (see paragraph 25 above), it should be reiterated that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 79, ECHR 2012).

47. It follows that there has been no violation of Article 13 of the Convention in respect of the first and second applicants.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. The first applicant

1. Damage

49. The first applicant claimed 28,403 euros (EUR) in respect of non-pecuniary damage.

50. The Government considered that amount to be excessive.

51. The Court has found a violation of Article 3 of the Convention in respect of the first applicant on account of the conditions of his detention. It considers that the applicant must have experienced suffering and frustration as a result of that violation. Nonetheless, it finds the amount claimed by the applicant to be excessive. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the first applicant EUR 6,400 in respect of non-pecuniary damage.

2. Costs and expenses

52. The first applicant did not submit any claim in respect of costs and expenses. The Court therefore makes no award under this head.

3. Default interest

53. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

B. The second applicant

54. The second applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention for the conditions of detention of the first applicant during 394 days and for

the conditions of detention of the second applicant during seventy-six days;

4. *Holds* that there has been no violation of Article 13 of the Convention in respect of the first and second applicants;

5. *Holds*
(a) that the respondent State is to pay the first applicant, within three months, EUR 6,400 (six thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President