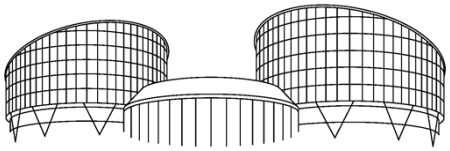

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VIŠNIAKOVAS v. LITHUANIA

(Application no. 25988/16)

JUDGMENT

STRASBOURG

18 December 2018

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

In the case of Višniakovas v. Lithuania,

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

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

Having deliberated in private on 27 November 2018,

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

PROCEDURE

1. The case originated in an application (no. 25988/16) 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 a Lithuanian national, Mr Pavelas Višniakovas ("the applicant"), on 5 May 2016.

2. The applicant was granted leave to represent himself in the proceedings before the Court. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

3. On 18 May 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and has been serving a prison sentence in Lukiškės Remand Prison since 16 January 2002.

5. On 16 May 2014 the applicant lodged a civil claim against the State, alleging that he was being detained in overcrowded and unsanitary cells. He also complained that toilets were not properly partitioned from the rest of the cells and thus the prison staff could see him use the toilet. He submitted that his health had deteriorated as a result of the inappropriate conditions of his detention and claimed 450,000 Lithuanian litai (LTL, approximately 130,300 euros (EUR)) in respect of non-pecuniary damage.

6. On 19 January 2015 the Vilnius Regional Administrative Court allowed the applicant's claim in part. 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

16 May 2011 as time-barred. On the basis of documents provided by the prison administration, the court found that from 16 May 2011 to 15 May 2014 the applicant had spent 1,082 days in Lukiškės Remand Prison. During that period, for thirteen days and one afternoon he had had 3.24 sq. m of personal space and on one afternoon he had had 2.65 sq. m of personal space, in breach of the domestic standard of 3.6 sq. m. For the remaining time the personal space available to him was found to be in compliance with the requirement of 3.6 sq. m.

7. The court also quoted the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") on its visit to Lithuania in 2012. According to that report, nearly all the inmates in Lukiškės Remand Prison were confined to their cells for twenty-three hours per day, with no out-of-cell activities other than outdoor exercise lasting one hour in small and dilapidated yards (see paragraph 13 below). The court noted that the prison administration had not provided any evidence that the situation in the prison had changed.

8. Furthermore, the court ruled that toilets had not been partitioned from the rest of the cells in the manner required by relevant domestic regulations. It stated that, in accordance with accepted social norms, inability to use the toilet in private was degrading and humiliating to the individual.

9. The court considered that the applicant had not proved that his health had deteriorated as a result of the conditions of his detention. It awarded the applicant EUR 80 in respect of non-pecuniary damage, taking into account the "scope, intensity and duration" of the violation of his rights and the economic conditions in the country.

10. The applicant lodged an appeal against that decision, arguing that the first-instance court had erred by dismissing part of his claim as time-barred, that the conditions in Lukiškės Remand Prison had not improved and that his health had deteriorated because of them. On 10 November 2015 the Supreme Administrative Court dismissed the applicant's appeal and upheld the first-instance court's decision in its entirety.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

12. The rules on equipment and maintenance of correctional facilities (*Dėl pataisos įstaigų įrengimo ir eksploatavimo taisyklių patvirtinimo*), approved by Order no. V-82 of 3 March 2011 of the Director of the Prison Department, provide that if it is not possible to equip a cell with a separate sanitary unit, the existing unit has to be separated from the rest of the cell by a partition of at least 1.5 metres in height and it has to be covered by a

surface that is easily cleaned and protected against humidity and corrosive cleaning products (Point 16.5).

III. RELEVANT INTERNATIONAL MATERIAL

13. For relevant international material concerning conditions of detention, as well as reports of the CPT on its visits to Lukiškės Remand Prison in 2008 and 2012, see *Mironovas and Others*, cited above, §§ 61-69.

14. 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained about the conditions of his detention and the insufficient level of compensation awarded by domestic courts. He 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. Exhaustion of domestic remedies

(a) The parties' submissions

16. The Government submitted that the applicant had not exhausted domestic remedies because he had failed to provide sufficiently specific and well-reasoned arguments in his appeal to the Supreme Administrative Court (see paragraph 10 above).

17. The applicant did not comment on this point.

(b) The Court's assessment

18. The Court, having examined the material in its possession, considers that the applicant in his appeal to the Supreme Administrative Court raised the complaints which he subsequently brought before this Court and provided sufficient detail to enable the domestic court to redress the alleged breach of his rights. Accordingly, it dismisses the Government's objection concerning exhaustion of domestic remedies.

2. Victim status

(a) The parties' submissions

19. The Government submitted that the applicant could no longer be considered a "victim", within the meaning of Article 34 of the Convention, because the domestic courts had acknowledged a violation of his rights and had provided him with monetary compensation. The Government argued that the amount awarded to the applicant had been adequate, taking into account the duration and extent of the violation, the negative consequences suffered by the applicant, and the economic conditions in the country, as well as other relevant criteria.

20. The applicant did not comment on this point.

(b) The Court's assessment

21. 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).

22. In the present case, the applicant was awarded EUR 80 by the domestic courts in respect of non-pecuniary damage (see paragraph 9 above). In the Court's view, that amount was 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). Accordingly, the Court dismisses the Government's objection that the applicant had lost his victim status.

3. Other grounds of inadmissibility

23. The Court further 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

24. The applicant submitted that he had been detained in overcrowded and unsanitary cells and that he had been confined to his cells for twenty-three hours a day.

25. The Government firstly submitted that the personal space available to the applicant had fallen below 3 sq. m for only one afternoon, which was "short, occasional and minor". They provided to the Court a table setting out the exact personal space available to the applicant during the different periods of his detention. According to that table, the personal space available to him during the remaining time of his detention varied between 3.24 sq. m and 7.94 sq. m.

26. The Government further submitted that the domestic courts which had examined the applicant's complaints had merely referred to reports concerning the general conditions in Lukiškės Remand Prison but had not established that those conditions had been present in the applicant's case. The Government stated that the material conditions in the applicant's cells had been found to be adequate by the domestic public health authorities.

27. The Government also provided to the Court the daily schedule of convicted prisoners in Lukiškės Remand Prison. The schedule set the time for getting up, cleaning, taking meals and going to bed; it also scheduled one hour's outdoor exercise, social rehabilitation measures, psychological therapy and free time. The Government submitted that the applicant had not

been locked in his cell for twenty-three hours a day – in addition to the daily outdoor exercise, he had been going to the prison gym, he had had the possibility of watching television, he had taken part in several social rehabilitation programmes, and various cultural and sports activities had been regularly organised by the prison administration.

2. The Court's assessment

(a) General principles

28. The Court refers to the principles summarised in its case-law regarding conditions of detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-59, 10 January 2012; *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, §§ 69-78, 10 March 2015; *Mironovas and Others*, cited above, §§ 115-23; and *Muršić v. Croatia* [GC], no. 7334/13, §§ 136-41, ECHR 2016).

(b) Application of the above principles to the present case

29. The Court notes that the domestic courts which examined the applicant's complaints found that from 16 May 2011 to 15 May 2014 the personal space available to him had fallen below 3 sq. m only on one afternoon (see paragraph 6 above). The applicant did not dispute this. In line with its case-law, the Court finds that the period of one afternoon is undoubtedly short (see, *mutatis mutandis*, *Muršić*, cited above, § 149). It also has no reason to doubt the information provided by the Government that during the remaining time of the applicant's detention the personal space available to him varied between 3.24 sq. m and 7.94 sq. m (see paragraph 25 above).

30. However, the Court reiterates that even in cases where a prison cell – measuring in range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of the conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (ibid., § 139). In cases where a detainee disposed of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the questions of personal space arises, other aspects of physical conditions of detention remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (ibid., § 140).

31. The Court has already noted the inappropriateness of conditions of detention which did not allow the possibility of using the toilet in private (see *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, § 76, 20 October 2011; *Ananyev and Others*, cited above, §§ 149 and 157; *Shkarupa v. Russia*, no. 36461/05, §§ 55-56, 15 January 2015; *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 241, 27 January 2015; and *Muršić*, cited above, § 106). Furthermore, it recently upheld a complaint concerning insufficient partitioning of toilets in Lukiškės Remand Prison (see *Oskirko v. Lithuania* [Committee], no. 14411/16, § 43, 25 September 2018). In the present case, the first-instance court which examined the applicant's complaint found that the toilets had not been partitioned from the rest of his cells in the manner required by relevant domestic regulations, and the appellate court upheld that decision in its entirety (see paragraphs 8 and 10 above). The Government did not provide any information that would enable the Court to reach a different conclusion from that of the domestic courts. It also notes that neither the domestic courts nor the Government contended that the partitioning of the toilets varied in different cells within the prison. Accordingly, the Court accepts that the applicant was unable to use the toilet in private during the entire period of his detention in Lukiškės Remand Prison.

32. Furthermore, the lack of a sufficient partition between the toilets and the rest of the cells was not the only hardship that the applicant had to bear. It does not escape the Court's attention that the CPT, after visiting Lukiškės Remand Prison in 2008 and 2012, found that nearly all detainees were locked up in their cells for twenty-three hours a day, with no out-of-cell activities other than outdoor exercise of one hour in small and dilapidated yards; its findings following a visit in 2016 were similar (see paragraphs 13 and 14 above). While the Government indicated certain activities in which the applicant could participate (see paragraph 27 above), the Court nonetheless observes that the applicant was not able to freely move around the prison during the day and remained confined to his cell most of the time (see *Daktaras v. Lithuania* (dec.) [Committee], no. 78123/13, § 48, 3 July 2018; compare and contrast *Mironovas and Others*, §§ 134 and 139, and *Muršić*, §§ 155-63, both cited above).

33. Having regard to the cumulative effect of the aforementioned factors (see *Canali v. France*, no. 40119/09, §§ 52-53, 25 April 2013), the Court finds that the fact that the applicant, being afforded no privacy and experiencing a lack of out-of-cell activities, was obliged to live, sleep and use the toilet in the cells for 1,082 days must have caused him distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and aroused in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

34. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Lukiškės Remand Prison for 1,082 days from 16 May 2011 until 15 May 2014.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant complained that he had not had an effective remedy for his complaint under Article 3 of the Convention because he continued to be detained in unsuitable conditions and the domestic authorities were not doing anything to end his suffering.

The Court considers that this complaint falls 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

36. 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

37. The Government submitted essentially the same arguments with regard to the complaint under Article 13 of the Convention as they did with regard to the applicant's victim status (see paragraph 19 above).

38. The applicant did not comment on this point.

2. The Court's assessment

39. The Court observes that at the time when the applicant lodged his complaint with the domestic courts, he continued to be detained in Lukiškės Remand Prison about which he was complaining. 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).

40. The Court has found a violation of Article 3 of the Convention on account of the fact that the toilets in the applicant's cells were not properly separated from the rest of those cells and that he had not had adequate out-of-cell activities at his disposal during the entire period of his detention (see

paragraphs 31 and 32 above). The information in the Court's possession does not enable it to conclude that those conditions varied between different cells in Lukiškės Remand Prison. In such circumstances, the Court finds that at the time when the applicant lodged his complaint with the domestic courts the violation of his right not to be subjected to inhuman or degrading treatment had not been brought to an end (compare and contrast *Laniauskas and Januška v. Lithuania* [Committee], nos. 74111/13 and 53460/15, § 46, 25 September 2018).

41. The Court reiterates that monetary compensation could not be considered to constitute an effective remedy for complaints under Article 3 in respect of applicants who remained detained in the same facilities in which the conditions of detention had been found to be inadequate (see *Okolisan v. the Republic of Moldova*, no. 33200/11, § 26-27, 29 March 2016, and *Igbo and Others v. Greece*, no. 60042/13, §§ 28 and 51, 9 February 2017). The Court also reiterates its findings in *Mironovas and Others* (cited above, §§ 101-10), where it examined the preventive remedies available in Lithuania in connection with conditions of detention and found that none of them could be considered effective. It considers that the Government have not provided any information that would allow it to reach a different conclusion in the present case.

42. The foregoing considerations are sufficient for the Court to conclude that the applicant did not have at his disposal an effective domestic remedy capable of bringing to an end the conditions of which he was complaining. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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."

44. The 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention.

Done in English, and notified in writing on 18 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President