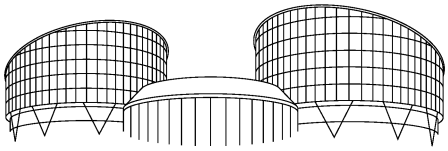

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ALEKSANDRAVIČIUS AND OTHERS v. LITHUANIA

(Applications nos. 32344/13, 43576/13, 49516/13, 65956/13 and 71139/13)

JUDGMENT

STRASBOURG

4 July 2017

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

In the case of Aleksandravičius and Others 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 13 June 2017,

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

PROCEDURE

1. The case originated in five applications (nos. 32344/13, 43576/13, 49516/13, 65956/13 and 71139/13) 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 five Lithuanian nationals, Mr Žanas Aleksandravičius, Mr Andrej Gailiun, Mr Artem Novikov, Mr Gražvydas Dūda and Mr Darius Antonovas ("the applicants"), on 11 May 2013, 10 June 2013, 26 July 2013, 9 October 2013 and 7 November 2013 respectively.

2. Mr Aleksandravičius, Mr Novikov and Mr Antonovas, who had been granted legal aid, were represented by Mr K. Ašmys, a lawyer practising in Vilnius, and Mr S. Tomas. Mr Gailiun was represented by Ms Diana Gumbrevičiūtė-Kuzminskienė, a lawyer practising in Vilnius. Mr Dūda was represented by Mr E. Jonušas, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. On 7 January 2014 the complaints concerning the applicants' conditions of detention were communicated to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1981, 1982, 1986, 1974 and 1971 respectively. Mr Žanas Aleksandravičius, Mr Andrej Gailiun and Mr Artem Novikov are currently detained in Pravieniškės Correctional Facility. Mr Gražvydas Dūda lives in Kupiškis and Mr Darius Antonovas is detained in Alytus Correctional Facility.

A. The first applicant (Mr Žanas Aleksandravičius)

5. The first applicant was detained in Lukiškės Remand Prison from 23 June 2011 to 30 September 2011. The documents submitted to the Court show that he was held in various different remand prison cells where most of the time he had between 1.8 and 2.46 square metres of living space, except for the following periods:

- from the evening of 24 June 2011 to the morning of 27 June 2011 he had 3.69 square metres of personal space;
- on the evening of 23 June 2011, the morning of 24 June 2011 and the morning of 31 August 2011 he had between 7.38 and 7.8 square metres of personal space.

6. In 2012 the applicant instituted proceedings for damages. He argued that the conditions in which he had been held in Lukiškės Remand Prison had been degrading: the cells had been overcrowded and the conditions unsanitary.

7. On 19 April 2012 the Vilnius Regional Administrative Court established that the applicant had been held in overcrowded cells for three months and three days, given that for that duration he had been held in cells where he had had less than 3.6 square metres of personal space. Nonetheless, the court dismissed the applicant's complaint about unsanitary conditions in the prison as not actually proven. It noted that the applicant's complaints had been expressed in abstract terms and that he had not provided accurate information about the conditions in question. The court awarded him 1,000 Lithuanian litai (LTL, approximately 290 euros (EUR)) in compensation for non-pecuniary damage on account of overcrowding.

8. The applicant appealed but on 4 December 2012 the Supreme Administrative Court upheld the first-instance decision.

B. The second applicant (Mr Andrej Gailiun)

9. From 22 October 2008 to 10 November 2010 the second applicant was detained in Lukiškės Remand Prison, except for the following periods when he was moved to Švenčionys police station:

- from 3 December 2008 to 10 December 2008;
- from 23 September 2009 to 29 September 2009;
- from 23 December 2009 to 29 December 2009;
- from 3 February 2010 to 16 February 2010.

The documents submitted to the Court show that he was held in several different remand prison cells where he had between 1.2 and 2.68 square metres of personal space, except for the following days:

- the whole of 29 October 2008, the morning of 31 October 2008, the morning of 3 March 2009, the morning of 15 June 2009, the evening of 20 July 2009, the whole of 21 July 2009, the morning of 22 July 2009, the evening of 21 September 2009, the morning of 22 September 2009, the

morning of 31 December 2009, the evening of 9 March 2010, the morning of 10 March 2010, the morning of 7 April 2010, the morning of 26 April 2010, the morning of 14 June 2010, the evening of 28 June 2010, the morning of 29 June 2010, the evening of 3 November 2010 and the morning of 4 November 2010. During those periods he had between 3.74 and 3.97 square metres of personal space;

- the morning of 23 November 2008, when he had 7.94 square metres of personal space.

10. In 2012 the applicant instituted proceedings for damages. He argued that the conditions in which he had been held in Lukiškės Remand Prison had been degrading: the cells had been overcrowded, had had rats and insects and mould on the walls. They had also been damp and his health had deteriorated.

11. On 7 September 2012 the Vilnius Regional Administrative Court established that the applicant could only request compensation for the period from 3 April 2009 onwards because the applicant had missed the three-year time-limit to lodge a complaint for the preceding period. The court further held that the relevant period was 559 days, and that the applicant had been held in conditions that satisfied the personal space requirement for only 2.5 days. Nonetheless, the applicant's complaint about unsanitary conditions was dismissed as unsubstantiated as he had not complained about them to the prison authorities. The court awarded him LTL 1,000 (approximately EUR 290) in compensation for non-pecuniary damage on account of overcrowding.

12. The applicant and Lukiškės Remand Prison appealed. On 25 February 2013 the Supreme Administrative Court upheld the first-instance decision.

C. The third applicant (Mr Artem Novikov)

13. From 20 July 2009 to 16 June 2010 the third applicant was detained in Lukiškės Remand Prison, except for 9 June 2010 to 11 June 2010. He complained about his conditions of detention from 20 July 2009 to 16 June 2010.

The documents before the Court show that he was held in several different remand prison cells where he had:

- between 1.8 and 2.65 square metres of personal space from 23 July 2009 to the morning of 24 July 2009; from the evening of 27 July 2009 to 25 August 2009; from the evening of 1 September 2009 to 22 September 2009; from the evening of 23 September 2009 to 27 September 2009; from the evening of 28 September 2009 to 4 November 2009; from the evening of 6 November 2009 to 22 December 2009; from the evening of 23 December 2009 to 16 February 2010; on the evening of 17 February 2010 and on 18 February 2010; from the evening of 19 February 2010 to

22 February 2010; from the evening of 23 February 2010 to 2 March 2010; on the evening of 3 March 2010; from the evening of 4 March 2010 to 19 April 2010; from 21 April 2010 to 12 May 2010; from the evening of 13 May 2010 to 23 May 2010; from the evening of 11 June 2010 to the morning of 12 June 2010; on the morning of 14 June 2010;

- between 3.7 and 3.97 square metres of personal space from the evening of 24 July 2009 to the morning of 27 July 2009; from 26 August 2009 to the morning of 1 September 2009; on the morning of 23 September 2009; on the morning of 28 September 2009; on the morning of 5 November 2009; on the morning of 23 December 2009; on the morning of 17 February 2010; on the morning of 19 February 2010; on the morning of 23 February 2010; on the morning of 3 March 2010; on the morning of 4 March 2010; on 20 April 2010; on the morning of 7 May 2010; on the morning of 13 May 2010; on the evening of 12 June 2010;

- between 3.13 and 4.3 square metres of personal space from 24 May 2010 to the morning of 9 June 2010;

- between 7.24 and 7.31 square metres of personal space from 13 June 2010 to the morning of 16 June 2010.

14. In 2012 the applicant instituted proceedings for damages. He argued that the conditions in which he had been held in Lukiškės Remand Prison had been degrading: the cells had been overcrowded, his health had deteriorated and he had become bald.

15. On 23 October 2012 the Vilnius Regional Administrative Court held that until 10 April 2010 the statutory norm for personal space per prisoner per cell had been five square metres and that since 14 May 2010 it had been 3.6 square metres. The court also held that the applicant had been held for only ten days in conditions that had satisfied the statutory personal space requirement and awarded him LTL 800 (approximately EUR 232) in compensation for non-pecuniary damage on account of overcrowding. The applicant's complaints about his health and baldness were dismissed as unsubstantiated as the applicant had not provided any evidence that he had ever complained to doctors or the prison authorities about those issues.

16. The applicant argued in an appeal that the compensation amount was too low and stated that he had asked the prison administration to take him to a doctor. Lukiškės Remand Prison argued that the applicant's complaint was unfounded because the courts imposed sentences on people, it could not refuse to accept prisoners and thus it had no control over their number. On 5 July 2013 the Supreme Administrative Court held that the applicant had not had enough cell space for 319.5 days and increased his compensation to LTL 5,000 (approximately EUR 1,450). The court reiterated that the applicant's complaints about his health were unsubstantiated and that the applicant himself had not been able to prove that his health had deteriorated or that he had complained to a doctor.

D. The fourth applicant (Mr Gražvydas Dūda)

17. The fourth applicant was detained in Lukiškės Remand Prison from 25 February 2011 to 27 August 2012, except for the following periods when he was in a prison hospital:

- from 17 May 2011 to 1 June 2011;
- from 8 September 2011 to 19 September 2011;
- from 21 November 2011 to 24 November 2011;
- from 15 January 2012 to 15 February 2012;
- from 18 June 2012 until 26 June 2012;
- from 5 July 2012 to 19 July 2012;
- from 8 August 2012 to 13 August 2012.

The documents before the Court show that he was held in several different cells in the remand prison where he had:

- between 1.2 and 2.7 square metres of personal space from the evening of 25 February 2011 to the morning of 28 February 2011; from the morning of 3 March 2011 to 15 March 2011; from the evening of 16 March 2011 to 7 April 2011; from 13 May 2011 to the morning of 16 May 2011; on the evening of 1 June 2011; on 27 July 2011; on the evening of 28 July 2011; from 26 August 2011 to 29 August 2011; from 20 September 2011 to the morning of 21 September 2011; on the evening of 24 November 2011; from the evening of 30 November 2011 to 7 December 2011; from the evening of 8 December 2011 to 10 January 2012; from the evening of 11 January 2012 to 21 February 2012; from the evening of 22 February 2012 to the morning of 7 March 2012; from the evening of 8 March 2012 to 14 March 2012; from the evening of 15 March 2012 to 28 March 2012; from the evening of 29 March 2012 to 1 April 2012; from the evening of 2 April 2012 to 3 April 2012; from the evening of 4 April 2012 to 5 June 2012; from the evening of 6 June 2012 to 26 June 2012; on the evening of 26 June 2012; on the evening of 27 June 2012; from the evening of 28 June 2012 to 1 July 2012; from 19 July 2012 to 22 July 2012; from the evening of 23 July 2012 to 7 August 2012; from the evening of 16 August 2012 to the morning of 21 August 2012; from the evening of 23 August 2012 to the morning of 27 August 2012;
- between 3.27 and 4 square metres of personal space from the evening of 28 February 2011 to 2 March 2011; on the morning of 16 March 2011; from 8 April 2011 to 20 April 2011, from the evening of 21 April 2011 to the morning of 12 May 2011; on the evening of 16 May 2011; on the evening of 2 June 2011; on the evening of 3 June 2011; from 4 June 2011 to 16 June 2011; on the evening of 17 June 2011; from 18 June 2011 to 20 June 2011; on the evening of 21 June 2011; on the evening of 22 June 2011; from 23 June 2011 to the morning of 21 July 2011; from the evening of 21 July 2011 to 26 July 2011; on the morning of 28 July 2011; from the evening of 30 August 2011 to 7 September 2011; from the evening of 27 September 2011 to 9 October 2011; from the evening of 10 October

2011 to 12 October 2011; on the evening of 13 October 2011; from the evening of 14 October 2011 to 1 November 2011; from the evening of 5 November 2011 to 17 November 2011; from the evening of 18 November 2011 to 20 November 2011; from 29 November 2011 to the morning of 30 November 2011; on the morning of 11 January 2012; from the evening of 7 March 2012 to the morning of 8 March 2012; on the morning of 15 March 2012; on the morning of 29 March 2012; on the morning of 2 April 2012; on the morning of 4 April 2012; on the morning of 6 June 2012; on the morning of 27 June 2012; on the morning of 28 June 2012; from 2 July 2012 to 4 July 2012; on the morning of 23 July 2012; from the evening of 14 August 2012 to the morning of 16 August 2012; from the evening of 21 August 2012 to the morning of 23 August 2012;

- between 6 and 10.6 square metres of personal space on the morning of 8 April 2011; on the morning of 21 April 2011; on the evening of 12 May 2011; on the morning of 2 June 2011; on the morning of 3 June 2011; on the morning of 17 June 2011; on the morning of 21 June 2011; on the morning of 22 June 2011; from 29 July 2011 to 25 August 2011; on the morning of 30 August 2011; on the evening of 19 September 2011; from the evening of 21 September 2011 to the morning of 27 September 2011; on the morning of 10 October 2011; on the morning of 13 October 2011; on the morning of 14 October 2011; from 2 November 2011 to the morning of 5 November 2011; on the morning of 18 November 2011; from 25 November 2011 to 28 November 2011; on 22 February 2012; from the evening of 13 August 2012 to the morning of 14 August 2012; on the evening of 27 August 2012.

18. On an unspecified date the applicant instituted proceedings for damages. He argued that the conditions in which he had been held in Lukiškės Remand Prison had been degrading: the cells had been overcrowded; he had been held together with prisoners who smoked; the toilets had not been separated from the rest of the cell; and his health had deteriorated.

19. On 2 January 2012 the Vilnius Regional Administrative Court held that the applicant's personal space had not corresponded to the statutory norms and awarded him LTL 1,000 (approximately EUR 290) in compensation for non-pecuniary damage on account of overcrowding. As regards his other complaints, the court held that there was no evidence that his health had deteriorated because of overcrowding and stated that his health condition, according to medical data, was hereditary. The domestic courts also held that the toilets had had a partition of at least 1.5 metres and dismissed the applicant's complaints in this respect as unsubstantiated.

20. The applicant and Lukiškės Remand Prison appealed; however, the Supreme Administrative Court upheld the decision of the court of first instance on 28 May 2012.

E. The fifth applicant (Mr Darius Antonovas)

21. In the application form, the fifth applicant complained about his conditions of detention in Lukiškės Remand Prison from 29 November 2007 until 9 March 2010. However, in his reply to the Government's observations, he claimed that the period to be considered was from 10 June 2009 to 27 September 2011. The applicant was not in prison between 2 July 2009 and the morning of 13 July 2009 as he was in a prison hospital while from 12 January 2010 to the morning of 26 January 2010 he was held in Tauragė police station.

It can be seen from the documents before the Court that he was held in several different remand prison cells where he had:

- between 1.2 and 2.8 square metres of personal space from 17 June 2009 to 1 July 2009; from the evening of 13 July 2009 to 3 November 2009; from the evening of 4 November 2009 to the morning of 2 December 2009; from 3 December 2009 to the morning of 7 January 2010; from the evening of 26 January 2010 to 5 February 2010; from 8 February 2010 to 10 February 2010; from the evening of 27 February 2010 to 28 February 2010; from the evening of 1 March 2010 to the morning of 2 March 2010;
- between 3 and 3.97 square metres of personal space on the morning of 4 November 2009; from the evening of 7 January 2010 to 11 January 2011; from 6 February 2010 to 7 February 2010; from the evening of 11 February 2010 to the morning of 27 February 2010; on the morning of 1 March 2010; from the evening of 2 March 2010 to 8 March 2010;
- 7.45 square metres of personal space on the evening of 2 December 2009;
- 5.3 square metres of personal space on the morning of 11 February 2010.

22. On 11 June 2012 the applicant instituted proceedings for damages for the period from 29 November 2007 until 9 March 2010 when he was in Lukiškės Remand Prison. The applicant later further specified the period for which he was complaining as being from 29 November 2007 to 27 September 2011. He argued that the conditions in which he had been held in the remand prison had been degrading: the cells had been overcrowded; there had been rats and insects; and his sight had deteriorated owing to insufficient lighting. The court applied the three-year period of limitation and found that the relevant period to be considered was from 10 June 2009 to 10 June 2012. The court held that the applicant had been held in overcrowded cells for two years, although the period was non-consecutive, and awarded him LTL 300 (approximately EUR 87) in compensation for non-pecuniary damage. The court held that the applicant had failed to substantiate his other complaints with evidence.

23. In an appeal, the applicant also stated that the cells had been damp and the beds uncomfortable. Lukiškės Remand Prison and the Prisons

Department argued that the applicant had failed to substantiate his complaints. On 20 May 2013 the Supreme Administrative Court, without examining the additional complaints, held that the applicant had been held in overcrowded cells for a non-consecutive period of ten months and nine days. It increased the award for non-pecuniary damage to LTL 3,000 (approximately EUR 870).

II. RELEVANT DOMESTIC LAW AND PRACTICE AND RELEVANT INTERNATIONAL MATERIALS

24. For relevant domestic law and practice and international materials see *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 50-69, 8 December 2015).

THE LAW

I. JOINDER OF THE APPLICATIONS

25. 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

26. The applicants complained of inadequate conditions of detention. They relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The applicants' victim status

(a) The parties' submissions

27. The Government argued that the applicants could no longer be considered victims of alleged violations of Article 3 of the Convention. The cases had been reviewed by the administrative courts and decisions in the applicants' favour had been adopted. The sums awarded to them in compensation for non-pecuniary damage were adequate and sufficient, and had been calculated by taking the entirety of the criteria into account, including each person's specific circumstances.

28. The applicants disputed the Government's arguments, submitting that the sums awarded to them were inadequate.

(b) The Court's assessment

29. The Court refers to the general principles stemming from its case-law and to its earlier findings (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, §§ 84-88 and 93-94, 8 December 2015). It notes that in all five cases the Lithuanian courts admitted a violation of domestic legal norms setting out specific aspects pertinent to the conditions of detention. It considers that even though the applicants were awarded EUR 290 (in the cases of Mr Aleksandravičius, Mr Gailiun and Mr Dūda – see paragraphs 7, 11 and 19 above), EUR 1,450 (in the case of Mr Novikov – see paragraph 16 above) and EUR 870 (in the case of Mr Antonovas – see paragraph 23 above) respectively, those sums, whilst apparently consistent with Lithuanian case-law, are inconsistent with the amounts that the Court awards in similar cases. The Court thus considers that the applicants retain their victim status under Article 34 of the Convention and dismisses the Government's preliminary objection of loss of victim status.

2. Exhaustion of domestic remedies

(a) The parties' submissions

30. The Government submitted that in respect of the second applicant (Mr Gailiun), the domestic courts dismissed his complaint for the period from 22 October 2008 to 2 April 2009 because he had missed the three-year time-limit to lodge a complaint.

31. The Government also submitted that in respect of the fifth applicant (Mr Antonovas), the domestic courts dismissed his complaint for the period from 17 June 2007 to 9 June 2009 because he had missed the three-year time limit to lodge a complaint.

(b) The Court's assessment

32. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, *Akdıvar and Others v. Turkey*, 16 September 1996,

§§ 65-67, *Reports* 1996-IV, and *Radzhab Magomedov v. Russia*, no. 20933/08, § 65, 20 December 2016).

33. Turning to the circumstances of the present case, the Court observes that the second and the fifth applicant' complaints about their conditions of detention from 22 October 2008 to 2 April 2009 and from 17 June 2007 to 9 June 2009 respectively were considered and dismissed by the domestic courts because the three-year time-limit to lodge a complaint had been missed (see paragraphs 11 and 22 above). The Court notes that the second and the fifth applicants never asked for the time-limit to submit their applications to be renewed.

34. In the light of the above considerations, the Court finds that the second and the fifth applicants' complaints about their conditions of detention from 22 October 2008 to 2 April 2009 and from 17 June 2007 to 9 June 2009 respectively must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

3. Other reasons for inadmissibility

35. The Court notes that the remaining part of the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

36. In *Muršić v. Croatia* ([GC], no. 7334/13, §§ 136-141, 20 October 2016) the Court clarified and summarised its principles concerning prison overcrowding, as follows:

(i) the Court confirmed the standard predominant in its case-law of 3 square metres of floor surface per detainee in multi-occupancy accommodation as the relevant minimum standard under Article 3 of the Convention;

(ii) when the personal space available to a detainee falls below 3 square metres of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space;

(iii) the strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

- the reductions in the required minimum personal space of 3 square metres are short, occasional and minor;

- such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities;
- the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention;

(iv) in cases where a prison cell – measuring in the range of 3 to 4 square metres of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of 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;

(v) in cases where a detainee disposed of more than 4 square metres of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention referred to above remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention.

2. Application of the above principles in the present case

(a) General remarks about Lukiškės Remand Prison

37. The Court notes at the outset that according to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"), the material conditions at Lukiškės Remand Prison, where all the applicants were held, varied considerably from one part of the prison to another, which means that overcrowding and other conditions were not the same in every part of the prison. Although the Court cannot apply the presumption of overcrowding automatically, it has, however, already accepted the conclusions of the CPT that overcrowding in Lukiškės Remand Prison was further aggravated by deplorable conditions on account of dilapidated and dirty cells and furnishings, a lack of sufficient heating in winter, and poor ventilation (see *Mironovas and Others*, cited above, §§ 65 and 142). Moreover, it has also already accepted the CPT's findings that inmates in Lukiškės Remand Prison spend about twenty-three hours a day in cells (see *Mironovas and Others,* cited above, § 143). The Court has repeatedly held that a short length of time for outdoor exercise, for instance when it is limited to about one hour per day, may be a factor that exacerbates the situation of a prisoner confined to his or her cell the rest of the time (ibid., § 143; see also *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 151, 10 January 2012; *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 235, 27 January 2015; and contrast *Muršić*, cited above, § 161).

(b) Specific situation of the applicants

(i) The first applicant (Mr Aleksandravičius)

38. The first applicant spent three months and ten days in Lukiškės Remand Prison. During the whole of that period he had personal space which fell below 3 square metres, except for five non-consecutive days when he had between 3.69 and 7.8 square metres at his disposal (see paragraph 5 above).

39. Having regard to its case-law (see paragraph 36 above), the Court finds those facts sufficient to create a strong presumption of violation of Article 3 for the period of three months and five days when the first applicant had between 1.8 and 2.46 square metres of personal space at his disposal .The Government having failed to provide elements capable of rebutting the presumption at issue, Court finds that the first applicant's conditions of detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

(ii) The second applicant (Mr Gailiun)

40. The Court notes that the relevant period to consider in respect of the second applicant is one year, six months and nineteen days. His personal space for that period fell below 3 square metres, except for nine non-consecutive days when he had between 3.77 and 3.97 square metres at his disposal (see paragraph 9 above).

41. Having regard to its case-law (see paragraph 36 above), the Court finds those facts sufficient to create a strong presumption of violation of Article 3 for the period of one year, six months and ten days, although non-consecutive, when the second applicant had between 1.2 and 2.68 square metres of personal space at his disposal. The Government having failed to provide elements capable of rebutting the presumption at issue, the Court finds that his conditions of detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention, thus amounting to degrading treatment prohibited by Article 3 of the Convention.

(iii) The third applicant (Mr Novikov)

42. The relevant period to consider is ten months and twenty-nine days. During most of that period the third applicant had personal space which fell significantly below 3 square metres (see paragraph 13 above). For thirty non-consecutive days he had between 3.1 and 3.97 square metres of personal space at his disposal, out of which the longest consecutive period when he had between 3.1 and 3.8 square metres of personal space was ten days. He had three days with personal space of 4.3 square metres and three days with between 7.25 and 7.31 square metres.

43. Having regard to its case-law (see paragraph 36 above), the Court finds those facts sufficient to create a strong presumption of violation of Article 3 for the period of nine months and twenty-three days, although non-consecutive, when the third applicant had between 1.8 and 2.65 square metres of personal space at his disposal. The Government having failed to provide elements capable of rebutting the presumption at issue, the Court finds that his conditions of detention in that period subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

44. As regards the thirty non-consecutive days when the third applicant had between 3.1 and 3.97 square metres of personal space at his disposal, when the longest consecutive period was ten days and in respect of which no strong presumption of violation of Article 3 of the Convention arises, the Court must have regard to other relevant factors. Those are the possibility of sufficient freedom of movement and out-of-cell activities and the general conditions of the applicant's detention. The Court notes its findings as regards Lukiškės Remand Prison (see paragraph 37 above) and considers that the fact that the applicant had between 3 and 4 square metres of personal space was coupled with other aspects of inappropriate physical conditions of detention. The Court therefore finds that the third applicant's conditions of detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention for additional thirty days and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

(iv) The fourth applicant (Mr Dūda)

45. The fourth applicant spent one year, three months and nine days in Lukiškės Remand Prison. The amount of personal space varied greatly during that time. The longest consecutive period when he had personal space below 3 square metres was five months and three and a half days in total (see paragraph 17 above). However, the Court reiterates its findings on Lukiškės Remand Prison (see paragraph 37 above), namely the lack of out-of-cell activities and almost no freedom of movement as the prisoners spend twenty-three hours a day in their cells. Having regard to that, the Court will also take into consideration the total number of consecutive periods when the applicant had personal space which fell below 4 square metres. Those periods were: from 3 March 2011 to 7 April 2011 (except for one morning of 16 March 2011, when the applicant had 4 square metres of personal space at his disposal); from 8 April 2011 to 16 May 2011 (except for one morning and one evening with 6.9 square metres of personal space); from 23 June 2011 to 28 July 2011; from 29 November 2011 to 23 January 2012; from 17 February 2012 to 4 July 2012 (except for one morning with 7.94 square metres of personal space).

46. Having regard to its case-law (see paragraph 36 above), the Court finds the foregoing considerations sufficient to conclude that the total period of ten months and four days when the fourth applicant had less than 4 square metres of personal space at his disposal subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

(v) The fifth applicant (Mr Antonovas)

47. In his application form, the fifth applicant complained about his conditions of detention for the period from 17 June 2007 to 9 March 2010. The Court considers that it should take into consideration only the period from 10 June 2009 to 9 March 2010, as the applicant's complaints about other periods of detention have been raised only in his observations in reply (see paragraph 21. above) or have been rejected for non-exhaustion of domestic remedies (see paragraph 34 above).

48. The Court observes that for a period of six months and twenty-five and a half days, the fifth applicant had between 1.22 and 2.8 square metres at his disposal (see paragraph 21 above). This is sufficient to create a strong presumption of violation of Article 3. The Government having failed to provide elements capable of rebutting the presumption at issue, the Court finds that his conditions of detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention, thus amounting to degrading treatment prohibited by Article 3 of the Convention.

49. The Court further observes that the applicant had between 3 and 3.97 square metres of personal space for thirty days (see paragraph 21 above). The Court reiterates its findings as regards Lukiškės Remand Prison (see paragraph 37 above) and considers that the fact that the applicant had between 3 and 4 square metres of personal space was coupled with other aspects of inappropriate physical conditions of detention. The Court therefore finds that the fifth applicant's conditions of detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention for additional thirty days and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

3. The Court's conclusion

50. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach any other conclusion on the applicants' complaints about their conditions of detention in Lukiškės Remand Prison. Having regard to its case-law on the subject, the Court considers that in the instant case the applicants' conditions of detention were inadequate.

51. There has therefore been a breach of Article 3 of the Convention in respect of all five applicants.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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. Damage

53. The applicants claimed between 14,480 euros (EUR) and EUR 80,000 in respect of non-pecuniary damage for the breach of their rights under Article 3 of the Convention (see Appendix).

54. Having regard to the amounts granted at the domestic level and to its practice and deciding on an equitable basis, the Court considers it reasonable to award the following amounts under the head of non-pecuniary damage:

- EUR 2,400 to the first applicant, Mr Mr Aleksandravičius;
- EUR 8,500 to the second applicant, Mr Gailiun;
- EUR 4,600 to the third applicant, Mr Novikov;
- EUR 5,800 to the fourth applicant, Mr Dūda; and
- EUR 3,700 to the fifth applicant, Mr Antonovas.

B. Costs and expenses

55. The first (Mr Aleksandravičius), third (Mr Novikov) and fifth applicant (Mr Antonovas) claimed EUR 5,000 each for legal costs incurred before the Court. They relied on invoices from Mr S. Tomas issued on 25 September 2014.

56. The second (Mr Gailiun) and fourth applicant (Mr Dūda) did not submit any claims for costs and expenses.

57. As to the first, third and fifth applicant, the Government urged the Court to reject their claims for costs and expenses because the invoices they had submitted had not been signed by their lawyer, Mr K. Ašmys, as indicated in the authority form, but by Mr S. Tomas. However, on 8 July 2014 the Court decided that Mr S. Tomas was not qualified as an advocate for the purposes of Rule 36 § 4 (a) of the Rules of Court and could thus no longer represent the applicants before it (see also the Government's pleas in *Mironovas and Others*, cited above, § 161, and *Bagdonavičius v. Lithuania*, no. 41252/12, § 58, 19 April 2016). It was the Government's view that Mr S. Tomas was seeking to mislead the Court by formally using the other

lawyer's name, while *de facto* continuing to represent the applicants. The Government argued that in those exceptional circumstances the applicants, who had been informed about the Court's decision on Mr S. Tomas, should have sought alternative representation under Rule 36 § 4 (b) of the Rules of Court. In the alternative, the Government argued that the sums requested were excessive, ungrounded and unsubstantiated. In addition, as copies of the payment order for those sums had not been included, some doubts could arise as to whether the applicants had in fact paid them.

58. The Court notes that the first, third and fifth applicant were granted legal aid (see paragraph 2 above) and that the total sum of EUR 2,550 has been paid to Mr K. Ašmys to cover the submission of these applicants' observations and additional expenses.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the absence of any specific supporting documents, and regard being had to the information and documents in the Court's possession, including the fact that on 3 May 2016 the Court excluded Mr S. Tomas from representing the applicants before it pursuant to Rule 36 § 4 (b) of the Rules of Court, it decides to make no award under this head (see, *mutatis mutandis*, *Mironovas and Others*, cited above, §§ 163-164).

C. Default interest

60. 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* inadmissible the second and the fifth applicants' complaints about their conditions of detention from, respectively, 22 October 2008 to 2 April 2009 and from 17 June 2007 to 9 June 2009;

3. *Declares* the remainder of the applicants' complaints admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention for the inadequate conditions of the applicants' detention;

5. *Holds*

(a) that the respondent State is to pay, within three months, the following amounts, plus any tax that might be chargeable, in respect of non-pecuniary damage:

(i) EUR 2,400 (two thousand four hundred euros) to the first applicant, Mr Aleksandravičius;

(ii) EUR 8,500 (eight thousand five hundred euros) to the second applicant, Mr Gailiun;

(iii) EUR 4,600 (four thousand six hundred euros) to the third applicant, Mr Novikov;

(iv) EUR 5,800 (five thousand eight hundred euros) to the fourth applicant, Mr Dūda; and

(v) EUR 3,700 (three thousand seven hundred euros) to the fifth applicant, Mr Antonovas;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 4 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President

APPENDIX

List of applications

No.	Application no. Date of introduction	Applicant name Date of birth	Representative	Facility Start and end date Duration	Square metres per inmate	Specific grievances	Domestic award (in euros)	Amount requested by the applicant for non-pecuniary damage (in euros)	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
1.	32344/13 11/05/2013	**Žanas ALEKSANDRAVIČIUS** 11/08/1981	Mr K.Ašmys and Mr S. Tomas, legal aid granted	Lukiškės Remand Prison 23/06/2011-30/09/2011 **3 months and 5 days in unsuitable conditions**	Less than 3 m² for 3 months and 5 days	Overcrowding Other sanitary conditions – dismissed by the domestic courts as unsubstantiated	290	15,000	2,400
2.	43576/13 10/06/2013	**Andrej GAILIUN** 16/06/1982	Ms Diana Gumbrevičiūtė-Kuzminskienė	Lukiškės Remand Prison 22/10/2008-10/11/2010 **1 year 6 months and 19 days in unsuitable conditions**	Less than 3 m² for 1 year 6 months and 10 days, for 9 days had between 3.77 and 3.97 m²	Overcrowding Other sanitary conditions – insects, rats, mould, damp – dismissed by the domestic courts as unsubstantiated	290	14,480	8,500
3.	49516/13 26/07/2013	**Artem NOVIKOV** 15/07/1986	Mr K.Ašmys and Mr S. Tomas, legal aid granted	Lukiškės Remand Prison 23/07/2009-16/06/2010 **10 months and 23 days in unsuitable conditions**	Less than 3 m² for 9 months and 23 days, between 3 and 4 m² for 30 days, above 4 m² for 6 days	Overcrowding Damp	1,450	20,000	4,600

1. Plus any tax that may be chargeable.

No.	Application no. Date of introduction	Applicant name Date of birth	Representative	Facility Start and end date Duration	Square metres per inmate	Specific grievances	Domestic award (in euros)	Amount requested by the applicant for non-pecuniary damage (in euros)	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
4.	65956/13 09/10/2013	**Gražvydas DŪDA** 30/05/1974	Mr E. Jonušas	Lukiškės Remand Prison 25/02/2011-27/08/2012 **10 months and 4 days in unsuitable conditions**	Less than 3 m² for 8 months and 13.5 days, had between 3.27 and 3.45 m² for consecutive periods totalling 1 month and 16.5 days	Overcrowding Toilets in cells Other prisoners smoking	290	14,480	5,800
5.	71139/13 07/11/2013	**Darius ANTONOVAS** 17/12/1971	Mr K.Ašmys and Mr S. Tomas, legal aid granted	Lukiškės Remand Prison 29/11/2007-08/03/2010 **7 months and 25.5 days in unsuitable conditions**	Less than 3 m² for 6 months and 25,5 days, for 30 days had between 3 and 3.97 m²	Overcrowding Insufficient lighting	870	80,000	3,700