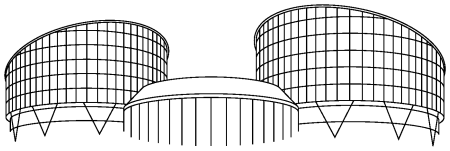

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BAGDONAVIČIUS v. LITHUANIA

(Application no. 41252/12)

JUDGMENT

STRASBOURG

19 April 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bagdonavičius v. Lithuania,

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

András Sajó, *President,*
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 29 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 41252/12) 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 Valdas Bagdonavičius ("the applicant"), on 3 July 2012.

2. The applicant was represented by Mr S. Tomas. The Lithuanian Government ("the Government") were represented by their former Agent, Ms E. Baltutytė.

3. The applicant alleged that that he had been denied adequate medical care during his detention, and that the conditions of his detention had been unsuitable for a person in his state of health.

4. On 7 November 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964. He is currently serving a prison sentence in the Pravieniškės Correctional Home (*Pravieniškių pataisos namai – atviroji kolonija*).

A. The applicant's detention

6. In March 2009 the applicant was arrested and placed in pre-trial detention on suspicion of several instances of trafficking drugs in very large amounts as part of an organised group.

7. Between 30 March 2009 and 14 June 2010 the applicant was held at Lukiškės Remand Prison (*Lukiškių tardymo izoliatorius - kalėjimas*) in cells which measured approximately eight square metres and which housed between two to four detainees.

8. On 14 June 2010 the applicant was transferred to Kaunas Remand Prison (*Kauno tardymo izoliatorius*). According to a document issued by that prison, the average space per prisoner in the cells where the applicant was held varied, but was sometimes less than three square metres per inmate.

9. On 2 September 2011 the applicant complained to the Prisons' Department (*Kalėjimų departamentas*), a body that oversees Lithuanian prisons, about the conditions in which he had been held (*dėl buvusių prastų kalinimo sąlygų*) in Lukiškės Remand Prison. In its reply of 15 September 2011, the department admitted that the applicant's allegations that he had been held in overcrowded cells in Lukiškės had been partly proved.

10. After visiting Kaunas Remand Prison on 28 November 2011, the Public Health Centre (*Visuomenės sveikatos centras*) found that the prison complied with general health and hygiene requirements.

11. On 5 August 2013 the applicant started court proceedings for damages, arguing that the conditions of his detention in Lukiškės Remand Prison had been abysmal.

12. By a decision of 19 November 2013, the Vilnius Regional Administrative Court held that the applicant had missed the three years' statutory deadline to lodge a claim for damages, because he had been released from Lukiškės Remand Prison on 14 June 2010.

13. The applicant appealed, arguing that he had only learned in July 2012 that his rights had been breached, when he had started communicating with his current representative before the Court, Mr S. Tomas.

14. By a final decision of 30 October 2014, the Supreme Administrative Court dismissed the appeal, noting that the applicant could have asked for legal aid to start court proceedings for damages in a timely fashion if he had been without sufficient means to employ a lawyer.

B. The applicant's medical treatment

15. On 22 September 2011, while he was being held at Kaunas Remand Prison, the applicant had his first myocardial infarction. He was taken that day to a public hospital – the cardiology unit of the Hospital of the

Lithuanian University of Health Sciences' Kaunas Clinics (*Lietuvos sveikatos mokslų universiteto ligoninė – Kauno klinikos*, hereinafter – "the Kaunas Clinics"), where he underwent a surgical intervention. The doctors noted in the applicant's medical file that he was a heart attack risk because he had smoked 10-15 cigarettes a day for twenty-five years. Another risk factor was hereditary, because the applicant's father had had myocardial infarction.

16. On 28 October 2011 the Kaunas Clinics' doctors concluded that the applicant's condition had stabilised (*būklė stabilizavosi*). The applicant was prescribed medications for his condition (*medikamentinis gydymas*), explained what kind of diet and health regime to follow and transferred to the Prison Department Hospital (*Laisvės atėmimo vietų ligoninė*).

17. As can be seen in the documents submitted by the parties, and as was later confirmed by the Ombudsperson (see paragraph 30 below), the doctors at the Prison Department Hospital, on the instructions of the doctors at the Kaunas Clinics, performed a number of tests on the applicant (including urine, blood, and an ECG). They also prescribed a diet that was low on salt and fat. Given that the applicant's state of health was stable and improving, on 3 November 2011 the applicant was sent back to Kaunas Remand Prison. The doctors recommended that he continue to take the medications he had been prescribed.

18. On 6 December 2011 the applicant was again placed in the Prison Department Hospital for an earlier scheduled consultation. He had some diagnostic tests and was treated with medications.

19. On 14 December 2011, while at the Prison Department Hospital, the applicant had a second myocardial infarction and was immediately transferred to a public hospital – the Cardiology and Angiology Centre of Vilnius University Hospital's Santariškės Clinics (*Vilniaus Universiteto Ligoninės Santariškių klinikos*, hereinafter – "the Santariškės Clinics"), where he was examined and tests were performed. Two days later, on 16 December 2011, the doctors in Santariškės held that the applicant's state of health was stable, and on that day he was returned to the Prison Department Hospital.

20. While being held at the Prison Department Hospital, on 6 March 2012 the applicant was taken back to the Santariškės Clinics for a consultation. The doctors recommended the applicant be treated with medications and also prescribed a diet which was low on salt and fat. The doctors also recommended that the applicant engage in physical activity for 45 to 50 minutes a day. They also recommended that the applicant be "brought back to the Santariškės Clinics' Cardiology and Angiology Centre after six months (*po 6 mėnesių*) for a consultation, having registered in advance".

21. On 15 March 2012 the Prison Department Hospital released the applicant back to Kaunas Remand Prison. The applicant's medical record indicates that he was released because his state of health "had improved

(*pagerėjo*)". It also states that the applicant "could walk (*gali eiti*)". Among the risk factors, the doctors noted that the applicant smoked. It was recommended that the applicant have further outpatient treatment with medications (*medikamentinis ambulatorinis gydymas*), follow a diet that was low on fat and salt and be physically active by taking exercise (*fizinis aktyvumas*).

22. On 31 December 2011 the applicant was issued with a certificate that he had lost 60% of his capacity for work. The document stated that he could not perform any work where he needed to lift more than 15 kilograms. However, the applicant could do work that involved walking, sitting or bending.

23. In reply to a complaint by the applicant's lawyer, on 14 May 2012 the Prison Department Hospital noted that it had rigorously adhered to the instructions from cardiologists of category III medical care institutions (see paragraph 65 below).

24. The applicant was again admitted to the Prison Department Hospital, staying there from 27 to 29 March 2012 with digestion-related issues (haemorrhoids). The doctors noted that the applicant had got haemorrhoids three years previously. After examining the applicant, they prescribed outpatient treatment with medications, and noted that he was fit enough to be taken to a court hearing.

25. In April 2012 the Kaunas Remand Prison's administration told the applicant in reply to a request that as of that month he would be provided the same menu of food as women (*Jums bus tiekiamas maitinimas pagal moterų valgiaraštį*).

26. After visiting the Prison Department Hospital between 7-22 May 2012, the Public Health Centre concluded that the hospital complied with general health-care and hygiene requirements.

27. The applicant was admitted to the Prison Department Hospital from 21 to 28 June 2012 for a scheduled follow-up (*planine tvarka*) of his heart condition. The applicant's medical record shows that a number of tests had been performed on him, the doctors concluded that his state of health was "unchanged (*be pakitimų*)" and "satisfactory (*patenkinama*)". The medical certificate issued at the time of the applicant's discharge from the hospital on 28 June 2012 also indicated that he smoked, which was a risk factor.

28. In March 2012 the applicant also wrote to the Ombudsperson, complaining that he had been held at Lukiškės Remand Prison, Kaunas Remand Prison and at the Prison Department Hospital, where he had suffered great psychological stress. He argued that in those facilities his health had worsened and as a consequence he had suffered two myocardial infarctions. He also claimed that in Kaunas Remand Prison he had not been provided with the right diet, going against the doctors' recommendations. The applicant was also dissatisfied with the fact that he had not been provided rehabilitation therapy. In April 2012 the applicant withdrew, in

writing, the part of his complaint concerning Kaunas Remand Prison, stating that he had no complaints about that facility.

29. On 6 June 2012 the Ombudsperson accepted the applicant's withdrawal of his complaint as regards Kaunas Remand Prison. The Ombudsperson, however, established that the conditions of the applicant's detention at Lukiškės Remand Prison, where he had been held between March 2009 and June 2010, as well as at the Prison Department Hospital, where he had been held between 16 December 2011 and 15 March 2012, had been in breach of domestic legislation on overcrowding. In particular, the applicant had been held in the Prison Department Hospital in a room where he had had 4.42 square metres of personal space.

30. The Ombudsperson nevertheless dismissed the complaint about a lack of proper medical care. After examining the documents related to the applicant's treatment in hospitals, the Ombudsperson noted that, contrary to the applicant's submissions, neither the Kaunas Clinics nor the Santariškės Clinics had prescribed him a course of rehabilitation therapy after the applicant's first and second heart attacks respectively. On the contrary, both Clinics had made recommendations for further treatment, such as the medications, tests and dietary requirements which were required, and which the Prison Department Hospital had followed.

31. According to three documents provided by the applicant's representative, Mr. S. Tomas, in September and December 2012 and in April 2013 the outpatient polyclinic in Upninkai (*Upninkų ambulatorija*, hereinafter – Upninkai Polyclinic), a village in Jonava district in Lithuania, gave "the applicant's authorised person" three written statements by the polyclinic's head doctor. They noted that the applicant had suffered from myocardial infarction and summarised his medical history. One of those documents also stated that because of his state of health, as seen in the light of certain legal acts issued by the Minister of Health, the applicant should be released from serving his sentence.

32. In November 2012 the applicant was taken to the Prison Department Hospital for a planned consultation with a cardiologist. The applicant spent about a month there. During that time, on 15 November 2012, he was also taken to the Santariškės Clinics, where the doctors performed a cardiopulmonary exercise test (*veloergometrija*) and an ultrasound examination of the heart (*ultragarsinis širdies tyrimas*). The applicant's heart was rhythmical, with no decompensation. The cardiologists prescribed medications to treat the applicant, said he should limit his intake of fat and salt (as concerned his diet) and have 45-50 minutes of physical activity a day. He was to return for a further consultation, although the exact date was not indicated.

The doctors in the Prison Department Hospital also performed a number of tests. When they released the applicant back to Kaunas Remand Prison on 5 December 2012 they concluded that "his illness was without

complications (*ligos eiga: be komplikacijų*)". The applicant's state of health was "satisfactory (*patenkinama*)".

33. As can be seen from the applicant's medical records, on 12 February 2013 Kaunas Remand Prison sent him to the Prison Department Hospital for "a full examination, follow-up and treatment" of his heart condition. The doctor's examined the applicant, including an ECG and blood tests, and concluded that his state of health was "satisfactory". It was noted that the applicant smoked.

C. Proceedings concerning lawfulness of the applicant's detention

34. After the applicant's arrest on 25 March 2009, a court sanctioned his pre-trial detention for an initial duration of three months. The detention was then prolonged a number of times.

35. On 28 November 2011 the Kaunas Regional Court extended the applicant's pre-trial detention for three months on the grounds that the applicant was suspected of being the organiser of a criminal group which committed drug-related crimes, that he had connections abroad, did not work and faced a heavy sentence. Moreover, there was evidence in the file that the applicant had attempted to influence other suspects, thus impeding the criminal investigation.

36. The applicant's lawyer appealed, arguing that her client had suffered a double myocardial infarction, had been operated on and treated at the Prison Department Hospital. In addition, he had another illness, connected to the digestive system. The lawyer argued that her client would not receive proper medical assistance, as regarded his regime and diet, in the Prison Department Hospital. She asked that a milder remand measure than pre-trial detention be ordered.

37. On 29 December 2011 the Court of Appeal dismissed the appeal, finding that milder remand measures would hinder the course of justice. It held that there was no information in the file preventing the holding of the applicant in pre-trial detention because of his state of health. The court noted that the applicant was being held at the time at the Prison Department Hospital and was receiving 24-hour medical assistance.

38. In March 2012 the applicant's lawyer submitted several new requests asking to replace detention with a less severe remand measure owing to the deterioration of the applicant's health while in detention. She also relied on the Santariškės Clinics' record of 6 March 2012, where it was stated that the applicant needed a low-salt diet, a special regime for his meals and physical activity. The lawyer maintained that such assistance could not be provided at Kaunas Remand Prison or at the Prison Department Hospital, thus preventing the applicant from having satisfactory medical care.

39. On the basis of the request by the applicant's lawyer, on 23 March 2012 the Kaunas Regional Court ordered a comprehensive forensic examination to be performed by a doctors' commission, comprising a cardiologist, to answer the question whether the applicant was ill with a serious, incurable illness (*sunki nepagydoma liga*), and, if so, whether for that reason he could be released from serving a sentence. In the meantime, the court extended the applicant's pre-trial detention.

40. On 20 April 2012 the Court of Appeal upheld the decision to extend the applicant's detention. The court observed that although the applicant had serious health problems, he had always been provided with adequate treatment at the Prison Department Hospital or, if necessary, in a public hospital.

41. After examining the applicant's medical records from the Kaunas Clinics and the Santariškės Clinics, as well as from the Prison Department Hospital, on 11 June 2012 experts from the State Forensic Medicine Service (*Valstybinė teismo medicinos tarnyba*) produced report no. EKG 24/12 (02). It read that the applicant had an ischaemic heart illness, having suffered a myocardial infarction; he also had hypertension and ischaemic cardiomyopathy. Those ailments should be classified as serious and incurable illnesses. However, the experts concluded that the applicant's state of health at the time did not meet the criteria which allowed a convicted person to be exempted from serving a sentence, according to the rules set by the Ministry of Health and the Ministry of the Interior (see paragraph 49 below). One of the doctors on the commission was a cardiologist, a professor and habilitated doctor of sciences at the Kaunas Clinics. Another doctor was a surgeon with 35 years of experience.

42. The applicant's pre-trial detention was then prolonged by court rulings on 13 June, 24 July and 25 September 2012.

43. The last pre-trial detention order was upheld on 19 October 2012 by the Court of Appeal. The applicant's lawyer referred to the reports from the Upninkai Polyclinic and claimed that neither Kaunas Remand Prison nor the Prison Department Hospital could guarantee the necessary medical care for the applicant. The Court of Appeal however noted absence of any new documents showing that the applicant's state of health had worsened. The Court of Appeal also had regard to the practice of the Court to the effect that the State should protect inmates' physical health (it relied on *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, ECHR 2001-III). However, in the applicant's case there was no evidence that there would be a lack of medical assistance. Furthermore, the comprehensive medical examination (see paragraph 41 above) had not ruled out keeping the applicant detained, and, in the court's view, its conclusions prevailed over those of the Upninkai Polyclinic. There was no reason to hold that keeping the applicant detained, and, if necessary, treating him at the Prison Department Hospital or in another hospital, could be considered as inhuman or degrading.

D. The applicant's conviction

44. By a judgment of 13 December 2012, the Kaunas Regional Court found the applicant guilty of a number of drug-related crimes and sentenced him to sixteen years and six months imprisonment in a correctional home. The applicant was to remain detained until the judgment became final.

45. The applicant's conviction was upheld by the Court of Appeal on 31 March 2014, but the sentence was changed to fourteen years of deprivation of liberty in a correctional home.

46. By a final judgment of 16 December 2014, the Supreme Court upheld the appellate court's verdict. The Supreme Court also relied on expert report no. EKG 24/12 (02) (see paragraph 41 above), and held that the lower courts had been correct in finding that the applicant's state of health did not prevent him from serving a prison sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. The Law on Execution of Pre-trial Detention (*Suėmimo vykdymo įstatymas*) reads as follows:

> **Article 45. Health care of Detainees**
>
> "1. Health care at remand prisons shall be organised and carried out according to a procedure prescribed by law. Detainees shall be provided with the same quality and level of treatment as people at liberty.
>
> 2. Health-care services shall operate in remand prisons. ...
>
> 4. Any urgent medical assistance which the Prison Department Hospital is unable to provide to a detainee may be provided in a State or municipal health-care institution, while ensuring security related to the detainee. ..."

48. The Criminal Code provides that a person may be released from serving a sentence if by the time of conviction the person has become ill with a serious, incurable disease, making it too hard for him or her to serve a sentence. In such cases, the court adopts a judgment, imposes a sentence, but releases the person from serving it. When deciding such a question, the court takes into account the seriousness of the crime, the character of the person convicted and the seriousness of the illness. Should a person become seriously ill after conviction, he or she may be released from serving the remainder of the sentence (Article 76).

49. On 2 November 1995 the Ministry of Interior and the Ministry of Health Care approved 'The list of illnesses and health conditions which can lead to convicted people being released from serving the remainder of their sentence (*Nepagydomų ligų ir sveikatos būklių, dėl kurių nuteistieji gali būti atleisti nuo tolesnio laisvės atėmimo bausmės atlikimo dėl ligos sąrašas*)'. The act provides that when a person becomes ill in prison before or after sentencing and the illness is potentially so severe as to warrant release from

imprisonment, then that person must be examined by a medical commission. Should the inmate's illness be so severe that it falls within the aforementioned list, the commission may recommend to the court to decide on releasing him or her from prison.

50. The Code of Criminal Procedure sets out that when an appeal has been lodged against a trial court's judgment, the execution of that judgment must be stayed. Execution of the judgment may only be commenced if the convicted person wishes to start serving the sentence while the appeal is pending (Article 315).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complained of the conditions of his detention in Lukiškės Remand Prison and in Kaunas Remand Prison. He also submitted that he had not received adequate medical care during his detention. The applicant 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. Submissions by the parties

52. At the outset, the Government expressed surprise about what they considered to be false, speculative and misleading information in the observations of the applicant's representative. Presumably, the representative had not been aware of the exact situation as concerned the applicant's health and the conditions of his detention for the representative, as could be seen from some of the documents he submitted, practised abroad, rather than in Lithuania, where the applicant was detained. The Government submitted that the applicant's representative had failed to provide documentary evidence in respect of most of his allegations. They therefore held the firm view that the representative's arguments should be dismissed as unfounded, and asked the Court to consider rejecting the application due to abuse of the right of individual application, pursuant to Article 35 § 3 (a) of the Convention.

53. In the alternative, the Government argued that the complaint was inadmissible for failure to exhaust domestic remedies. If the applicant had considered that his detention conditions had been degrading, or that he had not been guaranteed appropriate medical care, then he could and should

have first properly addressed the domestic courts by starting proceedings for damages.

54. The applicant submitted that, as concerned the conditions of his detention in 2009-2010 at Lukiškės Remand Prison, "he did not understand that those conditions were inhuman until summer 2012" (see paragraph 13 above). Up to that time, he had "sincerely believed that those conditions were normal and perfectly in accordance with the law". In his words, "everyone was treated like [that] in prison, and the applicant was not aware [that] it was wrong".

55. The applicant also stated that a compensatory remedy for improper conditions of detention in Lithuanian prisons was not effective, because the sums awarded by the domestic courts were very low. It was for that reason that he had not lodged a civil claim for damages. The applicant, however, maintained that he had exhausted available domestic remedies by asking the courts of criminal jurisdiction to change the remand measure, that is, his pre-trial detention, on account of his frail health.

2. The Court's assessment

56. The Court firstly turns to the applicant's complaint of the general conditions in which he was held in Lithuanian prisons. It has already had occasion to hold that Lithuanian law prohibits inhuman or degrading treatment of prisoners in the sense of Article 3, and that matters concerning conditions of detention in principle fall within the competence of administrative courts (see *Jankauskas v. Lithuania* (dec.), no. 59304/00, 16 December 2003). The Court upheld that conclusion in its recent judgment of *Mironovas and Others v. Lithuania* (nos. 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13, §§ 92-98, 8 December 2015 (not yet final)). In the present case, and in so far as the applicant complains of the conditions of his detention in Lukiškės Remand Prison, the Court notes that he did not take proceedings in the administrative courts in a timely fashion, and for that reason his claim for damages was dismissed by those courts at two instances (see paragraphs 11-14 above). In a similar vein, the Court notes that, with the exception of his allegation of lack of proper medical care in Lithuanian prisons voiced in front of the courts of criminal jurisdiction (see the following paragraph), the applicant also failed to raise before the administrative courts any complaints about having been held in overcrowded cells, or any other misgivings related to the conditions of his detention at Kaunas Remand Prison or at the Prison Department Hospital. It follows, that this part of the complaint must be dismissed for failure to exhaust domestic remedies, in accordance with Article 35 § 1 and 4 of the Convention.

57. As to the quality of the medical care received in detention, the applicant raised that claim before the criminal courts when challenging his detention on remand (see paragraphs 36 and 38 above). The Court also has

regard to the fact that the applicant complained of a lack of appropriate care in detention, not that he could not obtain compensation for such a deficiency. The Court further considers that where the applicant complains about adequacy of medical assistance in prison whilst he or she is still being held in there, a claim for damages is not the remedy to be exhausted (see *Tekin Yıldız v. Turkey*, no. 22913/04, §§ 57-59, 10 November 2005; also see, *mutatis mutandis*, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 97, 10 January 2012). Accordingly, the Court accepts that the applicant has exhausted domestic remedies as regards the complaint of the adequacy of medical assistance received in Lithuanian penal facilities.

58. The Court also considers that the Government's argument about how the applicant's representative presented the facts of the case is intrinsically linked to its merits. Even so, the Court cannot turn a blind eye to the fact that on 8 July 2014 it held 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 the Court (see *Mironovas and Others*, cited above, § 161).

59. Lastly, the Court finds that the applicant's complaint of the adequacy of the medical care provided to him throughout his detention in various Lithuanian prisons is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

60. The applicant firstly noted that his heart illness had started two years into his detention, in September 2011, when he had had the first myocardial infarction. Therefore, it was safe to assume that his ailment had been caused by poor conditions of detention. Even though he had been prescribed a special diet, physical exercise and rehabilitation treatment after the first myocardial infarction, the Lithuanian authorities had failed to provide such assistance. As a result, in December 2011 he had had the second infarction. Afterwards, his state of health had only been deteriorating: he was weak, gasped for breath, and would not go out of his cell because any movement caused him severe pain and high blood pressure. Consequently, he preferred to spend all his time in bed in his cell, even though he was allowed to leave his cell for one hour per day to go outside. To make matters worse, the treatment he had received at the Prison Department Hospital and at Kaunas Remand Prison fell short of what was necessary for a person in his condition. In particular, the Prison Department Hospital had not had a cardiologist among its medical staff. Even though he had been prescribed a

diet which was low on fat and salt, he had been provided instead with a diet that was intended for women prisoners. Although in March 2012 the Santariškės Clinics had ordered a follow-up examination of the applicant in six months, he had only been examined in November 2012. Last but not least, he had been held in cells with smokers in Kaunas Remand Prison, which had further exacerbated his condition.

61. The applicant also asserted that it was general practice in Lithuania to provide better medical care to the general public than to prisoners, because providing poor services to prisoners was usually considered part of the punishment. In that connection, he also relied on the Upninkai Polyclinic's documents as confirming that he should have been released from prison owing to his heart condition. For the applicant, the findings of the Upninkai Polyclinic were more reliable than those relied on by the Government because the polyclinic provided medical assistance to non-detainees.

62. Lastly, the applicant maintained that the conditions of his detention in Kaunas Remand Prison had been much worse than those in Pravieniškės Correctional Home. However, he had not asked for a transfer to Pravieniškės after being convicted by the trial court because that would have been tantamount to admitting his guilt, and an appeal against his conviction would have made no sense. He also asserted that he had withdrawn his complaint to the Ombudsperson of a lack of proper medical care at Kaunas Remand Prison because of alleged blackmail and threats by the authorities at that prison that if he did not withdraw the complaint then the conditions of his detention would worsen.

(b) The Government

63. The Government acknowledged that the applicant was in a serious state of health, based on the myocardial infarctions he had suffered and the treatment he had had afterwards. However, there was nothing to suggest that the course of his illness was caused by the conditions of his detention. At least, there had as yet been no examination of any such link at the level of experts.

64. The Government also underlined that the applicant's health condition had not deteriorated, contrary to the representative's statements. Quite the opposite, medical examinations had shown improvements in his health. The Government submitted that most of the information provided by the applicant's representative was incorrect and did not conform to reality. Furthermore, the applicant had not been so weak as to need to stay in bed for 24 hours a day, contrary to the representative's statements. The Government stated that according to the information given to them by Kaunas Remand Prison, the applicant had gone for walks in the outdoor yard on 32 occasions between 19 March and 15 May 2013 alone. Upon a visual inspection of the cells, the applicant had been seen walking around

his cell a number of times. He had also taken part in investigative actions and been taken to court hearings.

65. As to the medical care provided to the applicant, the Government submitted that all the doctors' orders had been followed and that the applicant had been, and still was being, provided with treatment that fully complied with those orders. Contrary to the applicant's assertion, no rehabilitation had ever been prescribed for him by the cardiologists who had treated him at the Kaunas Clinics or the Santariškės Clinics for his myocardial infarctions. The Government acknowledged that the Prison Department Hospital did not have a cardiologist on its staff. That notwithstanding, the applicant had been provided with appropriate medical care at all times, including medications to control his condition, and had been promptly taken to the Kaunas Clinics or the Santariškės Clinics when necessary. Similarly, taking into account the fact that the applicant's condition had remained stable and that no worsening in his condition had been observed during his visit to the Santariškės Clinics in November 2012, the fact that that visit had taken two months longer to arrange than planned, could not be blamed on the State. Indeed, the waiting list for all patients in Lithuania was the same, and it was customary to wait several months for a visit. The applicant had also had the possibility to have a private doctor visit him in Kaunas Remand Prison, but had never used such an opportunity. The Government also pointed out that the Santariškės Clinics and the Kaunas Clinics were republic-level (category III) medical care institutions, providing health-care services of the highest possible quality to all residents of Lithuania. Conversely, the Upninkai Polyclinic was only a category I medical care institution, and the Prison Department Hospital a category II institution. Above all, it did not appear that the doctors at the Upninkai Polyclinic had seen the applicant, so it was unclear what their conclusions had been based on. In contrast, the doctors at the Prison Department Hospital, the Santariškės Clinics and the Kaunas Clinics had had direct contact with the applicant when treating him ever since his health problems had developed.

66. The Government also stated that, as regards the diet recommendations, namely a diet which was low in salt and fat, the menus in remand prisons provided a balanced diet for a person's physiological needs. There was nothing to suggest that the food provided to the applicant at Kaunas Remand Prison had contained elevated amounts of salt or fat. The Government also considered that a diet low in salt and fat had not been an order from the doctors, but rather a recommendation, like the one about physical activity. Moreover, the applicant had not provided any evidence that the nutrition presently being provided for him at the remand prison had elevated levels of fat or salt. At his own request, the applicant had been provided with the special diet that was provided for women. It was the Government's view that such a diet was lower in calories and had some products that were different from those provided to men.

67. The Government were also indignant about the allegation by the applicant's representative that it was general practice to provide prisoners with worse medical care than to the general public. It appeared that the representative was not entirely aware of the real situation. They also noted that even after two myocardial infarctions, and despite doctors' recommendations, the applicant had not stopped smoking, which was clearly a risk factor for the development of ischaemic heart disease. The applicant's complaint of having been kept with smokers at Kaunas Remand Prison against his will was empty in substance, because he would have been moved to a non-smoking cell if he had requested, but he had never done so. The Government thus asked the Court to assess such statements, as well as the applicant's accusations of blackmail, with due care and diligence.

68. Above all, on 11 June 2012 court-appointed experts had established that the applicant's heart condition had not met the criteria for exempting him from serving his sentence. In their observations of May 2013, the Government also noted that the applicant's representative had not taken any action to request a new medical expert examination, even though a year had passed. Similarly, if he had considered his conditions of detention in Kaunas Remand Prison to be detrimental for his health, the applicant could have asked for a transfer to Pravieniškės Correctional Home after his conviction by the first-instance court, which had been a possibility under Article 315 of the Code of Criminal Procedure. To the Government's knowledge, that possibility had been explained to the applicant, but he had not made use of it.

2. The Court's assessment

(a) General principles

69. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 69, ECHR 1999-IX, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

70. However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, for example, *Arutyunyan v. Russia*, no. 48977/09, § 68, 10 January 2012, and the case-law cited therein).

71. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused

either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, the Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI).

72. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment (see *Kudła*, cited above, § 93), even if his illness is particularly difficult to treat (see *Chartier v. Italy*, no. 9044/80, Commission's report of 8 December 1982, Decisions and Reports (DR) 33, p. 41, and *Nowojski v. Poland*, no. 26756/95, Commission decision of 29 November 1995).

73. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity; that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Rivière v. France*, no. 33834/03, § 62, 11 July 2006).

74. In deciding whether or not the detention of a seriously ill person has raised an issue under Article 3 of the Convention, the Court has taken into account three elements: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel v. France*, no. 67263/01, §§ 40-42, ECHR 2002-IX; *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004; *Sakkopoulos v. Greece*, no. 61828/00, § 39, 15 January 2004; and *Sławomir Musiał v. Poland*, no. 28300/06, § 88, 20 January 2009).

75. The Court has further held that the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must ensure not only that the applicant be attended by a doctor and his complaints be heard, but also that the necessary conditions be created for the prescribed treatment to be actually followed through (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that where necessitated by the nature of a medical condition the diagnoses and treatment are carried out in

a timely fashion and that supervision, where necessary, is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Kulikowski v. Poland (no. 2)*, no. 16831/07, § 65, 9 October 2012 and the case-law cited therein).

(b) Application to the instant case

76. The case raises the issue of the compatibility of the applicant's state of health with his detention, and the quality of the medical care provided to him, with the requirements of Article 3 of the Convention. Accordingly, the Court must examine whether the applicant's situation attained the required minimum level of severity so as to fall within the ambit of Article 3.

77. As regards specific issues arising in connection with the applicant's health, the Court observes that in the cases concerning medical care in prison it was most often faced with situations arising in connection with prisoners affected with severe to very severe ailments, such as to make their normal daily functioning very difficult (see *Kupczak v. Poland*, no. 2627/09, 25 January 2011; *Kaprykowski v. Poland*, no. 23052/05, 3 February 2009; *Arutyunyan v. Russia*, no. 48977/09, 10 January 2012; *Kulikowski*, cited above, § 71; and *Paladi v. Moldova* [GC], no. 39806/05, § 72, 10 March 2009). The present case differs from those cases in that the applicant's heart condition does not affect his everyday functioning in the same way as many serious illnesses do (see paragraph 22 above; also see, *mutatis mutandis*, *Kulikowski*, cited above, § 71). That notwithstanding, the Court is ready to accept that as soon as he had his first myocardial infarction the applicant could have experienced considerable anxiety as to whether the medical care provided to him was adequate and whether it could be properly provided within the prison setting. At the same time, the Court is careful to note that although the applicant's heart illness was detected two years into his detention, nothing in the case file suggests that it came about because of his being imprisoned rather than by natural causes.

(i) Whether the applicant received appropriate medical treatment

78. As to the medical care provided to the applicant, the Court observes that immediately after his first myocardial infarction of September 2011 the applicant was taken to a cardiology unit at a public hospital – the Kaunas Clinics, where he was operated on (see paragraph 15 above). Once his condition became stable, he was prescribed treatment by medications, provided with exercise and dietary guidelines, and then transferred to the Prison Department Hospital. Therein, he had the second myocardial infarction, an event which in the light of the evidence before the Court again does not appear to have resulted from his detention or to have been linked to any discernible shortcomings on the part of the authorities. Indeed, as established by the Ombudsperson, who examined the applicant's medical

records, the Prison Department Hospital had strictly followed the instructions by the doctors of the Kaunas Clinics, which is a public hospital (see paragraphs 16 and 30 above).

79. Once the applicant had his second myocardial infarction, he was again transferred to a public hospital – this time to the cardiology unit at the Santariškės Clinics, where he was examined. As can be seen from that hospital's medical records, the applicant was only returned to the Prison Department Hospital when his state was stable. He stayed there for the following four months (see paragraphs 19 and 21 above). As established by the Ombudsperson, the doctors at the Prison Department Hospital followed the Santariškės cardiologists' instructions (see paragraph 30 above). The Court is therefore unable to conclude that the aggravation of his illness was caused by a lack of proper monitoring, rather than by the natural course of his disease.

80. The Court next turns to the applicant's complaint of a lack of proper medical care at Kaunas Remand Prison, the part of his complaint which he withdrew from the Ombudsperson. As to the qualifications of that prison's medical personnel, the Court is prepared to accept that they may not have the same professional experience as specialist doctors working in the best civilian clinics (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). However, it has not been demonstrated by the applicant that the doctors at Kaunas Remand Prison were not capable of providing appropriate medical assistance to him, including sending him to the Prison Department Hospital and then to civilian hospitals, where he, whenever it was necessary, regularly sought and obtained medical attention. Thus, in March 2012 the applicant underwent a follow-up examination in the Santariškės Clinics, where he was seen by specialist doctors (see paragraph 20 above). Later the same month, the applicant was taken to the Prison Department Hospital, where he was treated for haemorrhoids (see paragraph 24 above). In June 2012 his heart condition was examined at the same hospital (see paragraph 27 above). In the absence of a recommendation that the applicant's condition should be constantly monitored and treated by specialist doctors, and given that the applicant was prescribed outpatient care (see paragraph 21 above), those measures do not appear to be at variance with Article 3 requirements. Similarly, there being no proof of adverse effects on the applicant's state of health (also see paragraphs 81 and 83 below), he may not claim that the absence of any necessary medical equipment at Kaunas Remand Hospital could raise an issue under the aforementioned provision of the Convention (see *Mirilashvili*, cited above).

81. The applicant also complained that he had only been taken to the Santariškės Clinic in November 2012, rather than September 2012. However, having regard to the doctors' recommendation that he be taken there after six months, and in the absence of any negative developments in his health, the Court does not find that delay to be a fault on the part of the State (see paragraphs 20 and 32 above). The Government's argument that

the delay was caused by general queues in public hospitals does not seem to be implausible. In fact, the applicant's own argument before this Court was that he wished to be provided with the same level of health care as the general public (see paragraph 61 above). That, indeed, was the case. The Court has already held that there is no obligation to provide prisoners with better health care than the general population (see *Prestieri v. Italy* (dec.), no. 66640/10, § 70, 29 January 2013; also see *Blokhin v. Russia* [GC], no. 47152/06, § 137 *in fine*, 23 March 2016).

82. The Court also notes that in October 2011 the doctors at the Kaunas Clinics specified what kind of a diet the applicant should follow owing to his heart condition (see paragraph 16 above). After that diet was first recommended, the applicant spent most of his time at the Prison Department Hospital. There, according to the Ombudsperson, such a diet was provided to him (see paragraph 17 above). Thereafter, the doctors at the Santariškės Clinics reiterated the dietary recommendation in March 2012. The following month, Kaunas Remand Prison, where the applicant spent most of his time afterwards, agreed to the applicant's request for a special diet for women (see paragraphs 20 and 25 above). It is not for the Court to conclude whether such a diet was central in the treatment and control of his heart ailment, or to take a position on the Government's explanation that the diet for female prisoners was lower on calories in general and consisted of different products (see paragraph 66 above). Be that as it may, the Court has already noted, referring to the applicant's health records, that the applicant had regular access to various specialists (see paragraphs 78-80 above). The fact remains that the applicant's health never showed any "complications", remained "satisfactory" and that no aggravation of it was observed (see paragraphs 32 and 33 above; see on this issue *Hummatov*, cited above). Accordingly, the Court cannot but find that day-to-day care afforded to the applicant was such as to allow him to monitor his heart condition. Taking into account the applicant's overall health situation, the diet element alone is not sufficient to conclude that the Lithuanian authorities tangibly failed in their obligation to protect the applicant's health, to engage their responsibility under Article 3 of the Convention (see, *mutatis mutandis*, *Prestieri*, cited above, § 76). No arguments have been submitted to the Court to demonstrate that after February 2013 (see paragraph 33 above) the quality of the treatment available to the applicant for his heart condition diminished.

83. Furthermore, regard must be had to the fact that, as certified by the applicant's medical records, the applicant undoubtedly acted himself in a way which contributed to his ailment. As repeatedly noted by the doctors, he had not stopped smoking even after two myocardial infarctions, that being one of the risk factors for heart illnesses (see paragraphs 15, 21, 33 and 67 above). It is therefore safe to assume that from the very beginning of the applicant's illness the doctors made adequate and constant efforts to educate the applicant how to deal with his heart ailment. It is a matter of

regret that, apparently, the applicant did not take those recommendations into account. The Court also observes that the parties disagree on the current state of the applicant's health. Even so, taking into account the cardiologists' recommendations that the applicant be physically active and exercise for 45-50 minutes a day, and that there were no medical risks associated with his being transported to a court hearing, the Court is not convinced by the applicant's argument that his health is so frail that he can only stay in bed (see paragraphs 20-22, 24 and 60 above).

(ii) Whether the applicant should have been released on health grounds

84. The Court next turns to the applicant's argument that his state of health was in principle incompatible with imprisonment, essentially based on such a conclusion by the Upninkai Polyclinic. It is not for the Court to dispute the statement of the Upninkai Polyclinic. Nevertheless, it takes note of the Government's argument that the Upninkai Polyclinic is a medical institution that is in a lower category than either the Kaunas Clinics, the Santariškės Clinics or the Prison Department Hospital, wherein the applicant had actually been admitted and treated, and which suggested him outpatient treatment, and eventually found his health to be satisfactory (see paragraphs 15, 16, 19-21, 27, 32 and 33 above). Lastly, the Court notes the Government's statement, which has not been disputed by the applicant, that the Upninkai Polyclinic doctor did not examine the applicant in person, but simply assessed his health on the basis of his medical records. In those circumstances, the report by that doctor cannot be regarded as conclusive (see *Lebedev v. Russia* (dec.), no. 4493/04, 18 May 2006; *Mirilashvili*, cited above).

85. Above all, the Court observes that during the applicant's detention the Kaunas Regional Court ordered an expert medical opinion in order to assess whether the applicant's illness warranted his release from pre-trial detention (see paragraph 39 above; contrast *Kupczak*, cited above, § 65). The medical board which performed that assessment comprised a surgeon with 35 years' experience and, on the specific instructions of the court, a cardiologist, namely a professor in cardiology from a public hospital, the Kaunas Clinics. Having assessed the level of the applicant's disability, the medical board accepted that his health situation was serious. Nonetheless, the board did not recommend his release from detention on health grounds (see paragraph 41 above). That report was later relied on by the Supreme Court, which found nothing to doubt its validity (see paragraph 46 above). Accordingly, the domestic courts gave serious consideration to the applicant's state of health in connection with his detention. The applicant did not submit that there had been any other medical assessments during his detention, except for the statements of the Upninkai Polyclinic, that would contradict those conclusions. The Court therefore sees no cause to depart

from the domestic courts' findings, which were based on their direct knowledge of the facts of the case.

(iii) Conclusion

86. In view of the foregoing and having regard to the circumstances of the case seen as a whole, the Court considers that the quality of the medical treatment which the applicant received was not such as to put his health in danger and thereby reach the minimum threshold of severity required in order to fall within the scope of Article 3 of the Convention.

87. Accordingly, there has been no violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. Lastly, the applicant complained of the lawfulness of his pre-trial detention. He relied on Article 5 § 1 (c) of the Convention.

89. Having regard to the domestic courts' decisions regarding the reasons for the applicant's detention pending trial (see paragraphs 35 and 42 above), the Court finds that this complaint does not disclose any appearance of a violation of the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning quality of medical care admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 19 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	András Sajó
Registrar	President