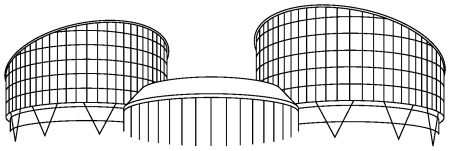

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Applications nos. 42468/16 and 51911/16
Giedrius BUTKUS against Lithuania
and Žilvinas REMEIKIS against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 10 April 2018 as a Committee composed of:

Paulo Pinto de Albuquerque, *President*,
Egidijus Kūris,
Iulia Motoc, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having regard to the above applications lodged on 11 July 2016 and 29 August 2016 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in application no. 42468/16, Mr Giedrius Butkus (hereinafter, "the first applicant"), is a Lithuanian national, who was born in 1981 and is detained in Vilnius. He was granted leave to represent himself in the proceedings before the Court.

2. The applicant in application no. 51911/16, Mr Žilvinas Remeikis (hereinafter, "the second applicant"), is a Lithuanian national, who was born in 1977 and is detained in Vilnius. He was represented by Mr G.A. Perednis, a lawyer practising in Rykantai.

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

A. The circumstances of the cases

1. The first applicant (Mr Butkus)

4. The first applicant served a prison sentence in Vilnius Correctional Facility from 28 September 2012 to 13 October 2014. At the date of the latest information available to the Court (24 October 2017), he was serving another prison sentence in the same facility.

5. In September 2014 the applicant lodged a civil claim against the State, alleging that he had been detained in overcrowded and unsanitary cells. He claimed 32,700 Lithuanian litai (LTL, approximately 9,500 euros (EUR)) in respect of non-pecuniary damage.

6. On 25 March 2015 the Vilnius Regional Administrative Court partly allowed the applicant's claim. It found that from 28 September 2012 to 9 May 2014 the applicant had been kept in dormitory-type room no. 407 which measured 33.72 sq. m. The court noted that it had not been established how many other inmates had been kept in that room – the applicant had argued that the room had accommodated twelve inmates, whereas the administration of the correctional facility had submitted that it had accommodated eleven inmates. Since neither party had provided any evidence in that regard, the court interpreted the doubt in the applicant's favour and ruled that during the entire period of his detention in room no. 407 there had been a total of twelve inmates in that room. As a result, the court considered that during that period the applicant had had 2.81 sq. m of personal space, in breach of the domestic requirement of 3.1 sq. m applicable to dormitory-type rooms.

7. The court also found that from 9 May to 13 October 2014 the applicant had been kept in dormitory-type room no. 4 which measured 13.18 sq. m and accommodated four inmates. Accordingly, the personal space available to the applicant had been approximately 3.3 sq. m, in line with the relevant domestic requirements.

8. The court dismissed the applicant's complaints concerning the sanitary conditions in the correctional facility. It found that the toilets and showers were being regularly cleaned, that they were functioning and properly separated from one another. Moreover, the temperature in the dormitories corresponded to the domestic requirements, the applicant had received adequate food, the courtyards were properly equipped, and no parasites or rodents had been detected in the premises. The court also considered that the applicant had not proved his allegations that he had been subjected to body searches contrary to the domestic law, that his correspondence had been opened by prison staff, or that his personal belongings had been taken from him.

9. The court concluded that even though the applicant had not had sufficient personal space for a certain period of time, that breach had been minor and at least partly compensated by the fact that he had not been

confined to his room and had been allowed to freely move around the correctional facility during the day. It therefore considered that the acknowledgment of a violation constituted sufficient just satisfaction and dismissed the applicant's claim for non-pecuniary damages.

10. On 15 February 2016 the Supreme Administrative Court upheld the lower court's decision in its entirety.

2. The second applicant (Mr Remeikis)

11. The second applicant served a prison sentence in Kybartai Correctional Facility from 19 March 2012 to 30 December 2013. At the date of the latest information available to the Court (5 February 2018), he was serving another prison sentence in Vilnius Correctional Facility.

12. In January 2015 the applicant lodged a civil claim against the State, alleging that he had been detained in overcrowded and unsanitary cells. He claimed EUR 8,000 in respect of non-pecuniary damage.

13. On 5 May 2015 the Kaunas Regional Administrative Court dismissed the applicant's complaint. It found that for certain periods when the applicant had been kept under a stricter disciplinary regime, he had had 3.52 sq. m of personal space, contrary to the domestic requirement of 3.6 sq. m applicable to such cells. However, the court considered that that reduction had been minor and the applicant had not proved that it had caused him any significant negative consequences. It also observed that there had been periods during which the applicant had had more personal space than required by domestic law. Furthermore, the court found that the amount of light and ventilation in the cells had been adequate, that the applicant had been provided with the necessary equipment for cleaning his cell, and that no other violations of domestic hygiene requirements had been detected.

14. The applicant appealed against that decision and on 22 March 2016 the Supreme Administrative Court partly allowed his appeal. It upheld the lower court's findings that the light, ventilation and cleanliness in the cells had been adequate. However, it found that the administration of the correctional facility had not provided any documents refuting the applicant's allegations that paint had been peeling off around the windows of his cell, that there had not been a shelf in the shower for keeping items of personal hygiene, and that the applicant had not been issued with a cloth for cleaning the floor of his cell. Nonetheless, the court considered that those shortcomings had not been sufficient to attain the threshold of severity under Article 3 of the Convention.

15. The Supreme Administrative Court upheld the lower court's findings of fact with regard to the personal space available to the applicant (see paragraph 13 above). However, it considered that even a minor reduction in the required minimum space warranted awarding compensation in respect of non-pecuniary damage. The court awarded the applicant EUR 450.

B. Relevant domestic law and practice and international materials

16. For the 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).

COMPLAINTS

17. The applicants complained under Article 3 of the Convention about the conditions of their detention. The first applicant also complained that the domestic courts had not awarded him any compensation in respect of non-pecuniary damage. The second applicant complained that the compensation awarded to him had been insufficient.

18. The first applicant further complained under Article 13 of the Convention that he had not had an effective remedy for his complaint under Article 3.

THE LAW

A. Joinder of the applications

19. 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).

B. As to the first applicant

1. Complaint under Article 3 of the Convention

20. The first applicant submitted that during his detention in Vilnius Correctional Facility he had been kept in overcrowded and unsanitary rooms, and that domestic courts had not awarded him any compensation in respect of non-pecuniary damage.

He invoked Article 3 of the Convention, which reads as follows:

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

21. The Government argued that during the entire period of his detention the first applicant had had more than 3 sq. m of personal space. They submitted that the domestic courts which had examined the applicant's claim for damages had found a violation with regard to personal space not

on the basis of objective data but only because the administration of the correctional facility had failed to provide evidence refuting the applicant's allegations (see paragraph 6 above). The Government provided the Court with a plan of the relevant part of the correctional facility, according to which room no. 407 measured 33.72 sq. m and had eleven sleeping places. They also submitted that the material conditions of the applicant's detention had been appropriate, that he had not been confined to his room during the day and had been able to freely move around the correctional facility, and that sufficient out-of-cell activities had been available to him. The Government therefore considered the applicant's complaint under Article 3 of the Convention to be manifestly ill-founded.

22. The Court reiterates that where domestic proceedings have taken place, it is not its task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Gäfgen v. Germany* [GC], no. 22978/05, § 93, ECHR 2010, and the cases cited therein).

23. In the present case, the Court considers it established that during the period from 9 May to 13 October 2014 the personal space available to the first applicant was more than 3 sq. m (see paragraph 7 above). As to the period from 28 September 2012 to 9 May 2014, domestic courts ruled that he had had 2.81 sq. m of personal space (see paragraph 6 above). However, the Court observes that that conclusion was based on the applicant's own assessment and the failure of the administration of the correctional facility to provide evidence to the contrary. In the proceedings before this Court, the Government provided a plan of the relevant part of the correctional facility, according to which room no. 407 measured 33.72 sq. m and had eleven sleeping places (see paragraph 21 above). The Court has no reason to doubt the authenticity of the document provided by the Government and the information it contains. It is therefore satisfied that room no. 407 accommodated eleven inmates. It follows that during his detention in that room the applicant had approximately 3.06 sq. m of personal space.

24. The Court reiterates that in cases where a prison cell measuring in the range of 3 to 4 sq. m of personal space per inmate is at issue, the space factor remains a weighty factor in the Court's assessment of the adequacy of 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 hygiene requirements (see *Muršić v. Croatia* [GC], no. 7334/13, § 139, ECHR 2016).

25. Having examined the documents submitted to it by the parties, the Court sees no reason to depart from the findings of the domestic courts that the material conditions of the applicant's detention had been appropriate (see paragraph 8 above). Furthermore, the applicant was not confined to his room during the day and was free to move around the correctional facility (see paragraph 9 above). It also observes that the applicant himself never complained, either before the domestic courts or before this Court, that he had not had sufficient time outdoors or that there had not been adequate out-of-cell activities at his disposal.

26. In such circumstances, the Court concludes that the conditions of the first applicant's detention in Vilnius Correctional Facility from 28 September 2012 to 13 October 2014 do not disclose any appearance of violation of Article 3 of the Convention. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Complaint under Article 13 of the Convention

27. The first applicant also submitted that he had not had an effective remedy for his complaint under Article 3 of the Convention.

He invoked Article 13 of the Convention, which reads as follows:

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

28. The Government submitted that the domestic courts had thoroughly examined the first applicant's case and had acknowledged a violation of his rights, so he had had an effective remedy.

29. Having regard of its findings concerning the first applicant's complaint under Article 3 of the Convention (see paragraph 26 above), the Court considers that this complaint is likewise manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. As to the second applicant

Complaint under Article 3 of the Convention

30. The second applicant submitted that during his detention in Kybartai Correctional Facility he had been kept in overcrowded and unsanitary cells and that the compensation in respect of non-pecuniary damage awarded to him by the domestic courts had been insufficient.

31. The Government submitted that during his entire detention the second applicant had had more than 3 sq. m of personal space – they provided a table indicating the exact personal space available to him during different periods of his detention. They also submitted that the domestic

courts had not found any major violations of the domestic hygiene requirements, and that the shortcomings found – such as peeling paint or lack of a shelf in the shower – had not attained the threshold of severity under Article 3 of the Convention. They lastly submitted that the second applicant had not been confined to his cell during the day and had been able to move freely around the facility, and that sufficient out-of-cell activities had been available to him. The Government therefore considered the applicant's complaint under Article 3 of the Convention to be manifestly ill-founded.

32. The Court observes that it has been established that during the entire period of his detention the second applicant had more than 3 sq. m of personal space (see paragraph 13 above). In such instances a violation of Article 3 of the Convention will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention (see the case-law quoted in paragraph 24 above). Having examined the findings of the domestic courts with regard to the material conditions of the applicant's detention (see paragraphs 13 and 14 above), the Court is satisfied that the amount of light, ventilation and cleanliness of the applicant's cell were appropriate and that basic sanitary and hygiene requirements were complied with. Furthermore, the Court takes note of the Government's submission that the second applicant was not confined to his cell during the day and was free to move around the correctional facility (see paragraph 31 above) and observes that the second applicant himself never complained, either before the domestic courts or before this Court, that he had not had sufficient time outdoors or that there had not been adequate out-of-cell activities at his disposal.

33. In such circumstances, the Court concludes that the conditions of the second applicant's detention in Kybartai Correctional Facility from 19 March 2012 to 30 December 2013 do not disclose any appearance of violation of Article 3 of the Convention. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 3 May 2018.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President