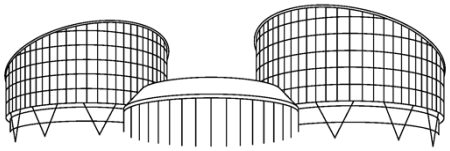

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

# CASE OF KAZLAUSKAS AND NANARTONIS v. LITHUANIA

*(Applications nos. 234/15 and 22357/15)*

JUDGMENT

STRASBOURG

4 December 2018

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

**In the case of Kazlauskas and Nanartonis v. Lithuania,**

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

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

Having deliberated in private on 13 November 2018,

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

# PROCEDURE

1. The case originated in two applications (nos. 234/15 and 22357/15) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Lithuanian nationals, Mr Aidas Kazlauskas ("the first applicant") and Mr Marius Nanartonis ("the second applicant"), on 9 December 2014 and 27 April 2015 respectively.

2. The first applicant, who was granted legal aid, was represented by Ms L. Meškauskaitė, a lawyer practising in Vilnius. The second applicant was granted leave to represent himself in the proceedings before the Court. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

3. The applicants alleged, in particular, that they had been unable to receive portable digital music (MP3) players from persons other than their spouse, partner or a close relative. The second applicant also alleged that his conditions of detention in the Prison Hospital had been inadequate.

4. On 11 October 2017 the above complaints were communicated to the Government; the remaining parts of the applications were declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1968 and is detained in Lukiškės Remand Prison; the second applicant was born in 1975 and is detained in Vilnius Correctional Facility.

### A. The first applicant's attempts to change the legal provisions concerning convicted inmates' right to receive electronic devices

6. In February 2014 the first applicant lodged a petition with the Parliamentary Commission on Petitions ("the Commission"), requesting a change to the wording of the provision of the Code for the Execution of Sentences in order that it would read that electronic items could be given to inmates by their friends and acquaintances as well as by their spouses, partners and close relatives. In March 2014 the Commission decided not to examine the first applicant's petition as it was not clear enough. In March 2014 the first applicant lodged a new petition with the Commission. In April 2014 the Commission informed the first applicant that his petition would be examined. In June 2014 the Commission examined the first applicant's petition and decided to dismiss it. Addressing the first applicant's proposal that Article 96 § 1 of the Code for the Execution of Sentences be amended so that it would permit inmates to receive electronic items from their acquaintances or friends, as well as from their spouses, partners or close relatives, the Commission held that the existing regulation was aimed at preventing inmates from receiving items acquired by criminal means – for example, by their accomplices in crime. In June 2014 the Lithuanian Parliament dismissed the first applicant's proposal that Article 96 § 1 of the Code for the Execution of Sentences be amended.

7. It appears from the information provided by the Government that from 2007 onwards the first applicant had a computer game player, a computer game, and a television set; moreover, in November 2014 he purchased a laptop with his own money. It also appears from the information submitted by the Government that the applicant has a sister, a brother, an aunt, an uncle and a cousin (that is to say close relatives).

### B. Administrative proceedings regarding the conditions of the second applicant's detention in the Prison Hospital

8. On 17 September 2013 the second applicant lodged a complaint with the Vilnius Regional Administrative Court alleging overcrowding and other inadequate sanitary conditions in the Prison Hospital. He alleged that he had been confined to the Prison Hospital from 22 March until 4 April 2010, from 25 February until 4 March 2011, from 21 until 27 September 2011, and from 17 until 24 January 2014. He subsequently provided a specified complaint (*patikslintas skundas* – that is to say a complaint in which he clarified certain issues).

9. On 19 May 2014 the Vilnius Regional Administrative Court ascertained that the second applicant had been confined to the Prison Hospital from 22 March until 13 April 2010, from 25 February until 4 March 2011, from 21 until 27 September 2011 and from 17 until

24 January 2014. The court also applied the three-year statutory time-limit to part of the second applicant's complaint. It held that the second applicant had been placed in overcrowded wards for fifteen days and awarded him 100 Lithuanian litai (LTL – approximately 29 euros (EUR)) in compensation for the fifteen days that he had spent in overcrowded wards during the periods from 21 until 27 September 2011 and from 17 until 24 January 2014. The second applicant's other grievances were dismissed as unsubstantiated.

10. The second applicant appealed, and on 9 December 2014 the Supreme Administrative Court upheld the first-instance decision. However, it held that the first-instance court had erred in determining the relevant amount of personal space. The court held that under domestic regulations, a person confined to the Prison Hospital had to have at least 5.1 square metres of personal space. The court recalculated the number of days and held that between 25 February 2011 and 4 March 2011 the second applicant had had 4.05 square metres of personal space at his disposal, and that between 17 and 24 January 2014 he had had 2.83 square metres of personal space. The court held that it was impossible to determine how much personal space the second applicant had had between 21 and 27 September 2011; accordingly, it calculated in favour of the second applicant the number of days during which he had not had enough personal space (that is to say the court calculated the number of such days and, in the absence of specific data, stated that the applicant had been held in overcrowded cells for more days than he probably had been held there). It then ruled that he had not had enough personal space for twenty days in total. However, he had been able to move around the Prison Hospital from 6 a.m. until 10 p.m., and he had also been able spend time outside.

### C. Administrative proceedings regarding the refusal to allow the second applicant to receive an MP3 player from J.G.

11. On 15 July 2013 the second applicant lodged a request with the administration of Vilnius Correctional Facility to be allowed to receive a portable digital music (MP3) player from J.G., a person who was not his relative. On 17 July 2013 his request was refused.

12. In July 2013, the second applicant lodged a complaint about the above-mentioned refusal with the Prison Department, which replied in August 2013 that the administration of Vilnius Correctional Facility had acted in accordance with domestic law.

13. On 20 August 2013 the second applicant lodged a complaint with the Vilnius Regional Administrative Court regarding the refusal of the administration of Vilnius Correctional Facility to allow him to receive an MP3 player from someone to whom he was not related. He asked the court to oblige the Correctional Facility administration to issue him with

permission to receive equipment and other items from acquaintances in view of the fact that his relatives were not visiting him, and to award him compensation for non-pecuniary damage in the amount of EUR 10,137.

14. On 13 January 2014 the Vilnius Regional Administrative Court ruled that the second applicant could receive an MP3 player from his spouse, partner or a close relative. However, as the person who had offered to bring him the player did not fall within the category of such persons, the refusal of the Vilnius Correctional Facility administration had been lawful. The court had no doubts about the relevant provisions of domestic law and observed that they were designed to motivate inmates to work, to communicate with their relatives and to enhance their social ties. The court furthermore observed that (among other items) MP3 players did not constitute essential items but rather entertainment items. It therefore dismissed the second applicant's complaint.

15. The second applicant appealed, and on 30 October 2014 the Supreme Administrative Court upheld the first-instance decision. The court held that the second applicant had not denied that he had close relatives, but had simply submitted that they were not visiting him. The second applicant found himself in the same position as that of other inmates. His right to have an MP3 player had not been denied, as he could have purchased one. It was not prohibited for persons other than close relatives to give money to convicted inmates; thus, the second applicant could have received money with which to buy an MP3 player.

16. It appears from the information provided by the Government that the second applicant had been working in Vilnius Correctional Facility from 2 July 2012 until 31 March 2014 and had been receiving remuneration for his work.

17. On 8 April 2014 the second applicant asked the administration of Vilnius Correctional Facility to allow him to receive an MP3 player by post from his mother, J.U. On 5 May 2014 his request was refused because domestic law did not provide the possibility to send items to inmates by post.

18. On 24 March 2015 the second applicant lodged a request with the administration of Vilnius Correctional Facility to be allowed to receive certain electronic items (a television monitor and related parts, such as headphones) from his partner, K.J. His request was granted.

19. It appears from the information provided by the Government that the second applicant received a personal computer in January 2011 (which he returned to his relatives in June 2011); another personal computer, a monitor and headphones in June 2011 (which he returned to his relatives in July 2016); and a USB key (which was destroyed at the second applicant's request in December 2016) and a laptop in August 2016.

20. From the information provided by the Government it appears that the applicant was able to watch television as there were specially equipped

rooms which the inmates could use at any time, given that they could freely move around the premises of Vilnius Correctional Facility.

## II. RELEVANT DOMESTIC LAW

21. For the relevant domestic law and practice and international material regarding conditions of detention, see *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 50-69, 8 December 2015).

22. Article 33 of the Constitution provides that citizens shall be guaranteed the right of petition; the procedure for the implementation of this right shall be established by law.

23. Article 1 § 4 of the Law on Petitions provides that petition is a written or electronic application to the Seimas, the Government or municipality with requests or suggestions to deal with certain questions, when it is necessary to adopt a new legal act, to amend, complement or annul an existing legal act and when the commissions on petitions declare such application a petition. The definition of a petition was reiterated in the decision of the Constitutional Court of 26 January 2006.

24. At the material time, Article 96 § 1 of the Code for the Execution of Sentences provided that convicted inmates (except for inmates placed under a disciplinary regime) were allowed to use television sets, computers, video and portable digital music players, radio sets, computer-game devices and other items listed in the Internal Rules of Correctional Facilities. Such items could be purchased with the inmates' own money or could be given to them by their spouses, partners or close relatives.

25. Article 98 § 1 of the Code for the Execution of Sentences, as worded at the time in question, provided that convicted inmates were allowed to receive money transfers from and to transfer money to their spouses, partners and close relatives, or (with the permission of the director of the correctional facility in question or any other officer acting on the director's behalf) from/to other persons.

26. As of 23 June 2015, Article 96 § 1 of the Code for the Execution of Sentences provides that convicted inmates (except for those placed under a disciplinary regime or confined to cells) are allowed to use electronic devices and other items listed in the Internal Rules of Correctional Facilities (*Pataisos įstaigų vidaus tvarkos taisyklės*). Such items can be purchased with the convicted inmates' own money or given to them.

27. At the material time, point 173 of the Internal Rules of Correctional Facilities provided that convicted inmates (except for inmates placed under a disciplinary regime) were allowed to use items they had purchased or received: radios, shavers, video players, computer-game devices, portable digital music players, television sets with screens measuring up to 51 centimetres across (that is to say from corner to corner), computers, water heaters, hair dryers, electric kettles, toasters, sandwich makers,

musical instruments, CDs and other data-storage devices with up to 4 GB of capacity, and lamps, as well as bedding (except for blankets, mattresses and pillows) in the event that the convicted inmate had refused in writing to accept the bedding allotted to him.

28. On 29 March 2016 the Internal Rules of Correctional Facilities were amended and point 173 was removed.

29. Order No. V-124, which was issued on 11 May 2010 by the director of the prisons department of the Ministry of Justice, provided that personal space for inmates held in a remand prison cell or arrest cell could not be less than 3.6 square metres. The same requirement was applicable to the wards of the Prison Hospital.

30. Article 3.135 of the Civil Code defines "close relatives" as persons related by direct consanguinity up to the second degree (that is to say parents and children, grandparents and grandchildren) and persons related by collateral consanguinity to the second degree (*šoninės linijos antrojo laipsnio giminaičiai* – that is to say siblings).

# THE LAW

## I. JOINDER OF THE APPLICATIONS

31. Given the similarities of the present applications, the Court decides to order their joinder pursuant to Article 42 § 1 of the Rules of Court.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The second applicant complained that that the conditions of his detention in the Prison Hospital had been inadequate. He 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."

### Admissibility

#### *1. The parties' submissions*

33. The Government stated that the second applicant's conditions of detention in the Prison Hospital had not attained the minimum level of severity required for them to fall within the scope of Article 3 because the lack of space had been compensated for by freedom of movement and access to fresh air. Moreover, they claimed that the periods during which the

applicant had been held in overcrowded wards had been short – specifically, between six and seven days at a time.

34. The Government also argued that in any event, under Lithuanian law a claim for damages could in principle constitute a remedy in respect of the applicant's allegations that the conditions of his detention had been poor. In deciding on the amount of compensation to be awarded in such cases, the domestic courts assessed a number of criteria, such as the duration, extent of the violation in question and the impact of the violation on the convicted person's health, the actions of the victim of the violation, the economic living conditions in Lithuania, case-law established by similar cases, and the criteria regarding equity, fairness and reasonableness, and the principle of proportionality, as well as other criteria. In that connection, the Government stated that in establishing the violation in the present case, the domestic authorities had taken into account those criteria and had awarded the second applicant compensation of EUR 29 in respect of the three periods of twenty non-consecutive days during which he had been held in overcrowded wards.

35. The second applicant did not comment on that issue.

*2. The Court's assessment*

36. The relevant general principles concerning conditions of detention are summarised in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 136-41, ECHR 2016).

37. From 22 March until 13 April 2010, from 25 February until 4 March 2011, from 21 until 27 September 2011 and from 17 until 24 January 2014 the applicant was confined to the Prison Hospital. The Supreme Administrative Court found that for twenty days in total the second applicant's right to have sufficient personal space at his disposal had been breached (see paragraph 10 above).

38. The Court notes that between 25 February 2011 and 4 March 2011 the second applicant had 4.05 square metres of personal space at his disposal. This period does not raise an issue of overcrowding in itself. Having examined the documents in its possession, the Court is of the view that the conditions of the applicant's detention during that time did not raise an issue under Article 3 of the Convention.

39. For the remaining periods, the Court notes that between 17 and 24 January 2014 the second applicant had 2.83 square metres of personal space. In the absence of detailed information regarding how much personal space he had between 21 and 27 September 2011, the Court will proceed on the assumption that he had less than 3 square metres of personal space during that period. The Court notes that in such circumstances the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises (see *Muršić*, cited above, § 137). This presumption is normally capable of being rebutted if certain factors are cumulatively met (ibid., § 138). In the present case, the Court considers that

the periods during which the second applicant did not have enough personal space were short, occasional and minor, because they lasted for six and seven days at a time (see *Muršić*, cited above, § 130; compare and contrast *Daktaras v. Lithuania* (dec.) [Committee], no. 78123/13, § 48, 3 July 2018). Moreover, the applicant was able to spend time outside and move around the Prison Hospital's premises during the day (see paragraph 10 above, and *Muršić*, cited above, § 138). Finally, the second applicant's other grievances were dismissed by the domestic courts, and it can be concluded that the other material conditions of the applicant's detention were appropriate, and there were no other aggravating aspects of his detention (see paragraph 9 above, and *Muršić*, cited above, § 138).

40. In these circumstances, the Court considers that the presumption of a violation of Article 3, established in *Muršić*, was rebutted by the otherwise appropriate conditions of the second applicant's detention.

41. In view of the above, the Court finds that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

42. The applicants complained of their inability to receive an MP3 player from a person other than a spouse, a partner or a close relative. They relied on Article 8 and Article 14 of the Convention, which read as follows:

**Article 8**

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

**Article 14**

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

## A. Admissibility

### *1. The first applicant*

#### (a) The parties' submissions

43. The Government submitted that the first applicant could not claim to be a victim of a violation of his rights, as set forth in the Convention. In that connection, the Government noted that the first applicant had never submitted any requests to the administration of Lukiškės Remand Prison to allow persons other than his spouse, partner or a close relative to give him electronic items. The Government argued that, according to the first applicant's personal file, he had close relatives and he had various electronic items in his possession (see paragraph 7 above). The first applicant could have purchased electronic items with his own money, he could have worked to earn money, or any person could have transferred money to his bank account (which was administered by the prison administration).

44. The first applicant submitted that the domestic regulations clearly hinged on whether a convicted inmate had a spouse, a partner or a close relative and whether such a person had contact with that inmate. The first applicant submitted that an MP3 player was one of the objects that brightened every convicted inmate's day and he claimed that the domestic legal regulation at issue had directly affected his private life. In that connection, the first applicant had lodged several petitions with the authorities, but to no avail. The first applicant also claimed that he had in fact asked the prison administration to allow him to receive an MP3 player from a person other than his spouse, partner or a close relative but that his request had been refused. The first applicant thus thought that the Government was misleading the Court.

45. In response to the first applicant's submissions, the Government noted that the first applicant's lawyer referred to the facts relevant to the second applicant's petition. The Government had doubts as to whether the first applicant's lawyer had been properly representing his interests.

#### (b) The Court's assessment

46. The Court reiterates that in order to be able to rely on Article 34 of the Convention an applicant must meet two conditions: he or she must fall into one of the categories of petitioners mentioned in Article 34 and must be able to make out a case that he or she is the victim of a violation of the Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by

the alleged violation (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)).

47. In the present case, the Court notes that – contrary to the first applicant's lawyer's allegations – he never explicitly asked to be allowed to receive an electronic item from a person other than his spouse, partner or a close relative and never complained to the national authorities about not being allowed to do so. The first applicant did not claim to have encountered any difficulties in exercising his right to have electronic items, including MP3 players, in his possession and he has never argued that he was refused permission to purchase or be given electronic items. Although the first applicant lodged a petition requesting a change to the Code for the Execution of Sentences, it cannot be considered as a request related to his individual situation (see paragraphs 22 and 23 above).

48. The first applicant therefore cannot be said to have suffered from an inability to receive an MP3 player from a person other than his spouse, partner or a close relative. It follows that the first applicant cannot claim to be the victim of an alleged violation of Article 8 of the Convention (see, *mutatis mutandis*, *Kazlauskas v. Lithuania* (dec.), no. 13394/13, § 34, 11 July 2017).

49. Having regard to the above, the Court finds this complaint to be incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention. It must therefore be rejected, pursuant to Article 35 § 4.

50. The Court lastly notes that the first applicant's complaint about his alleged discrimination is closely linked to his complaint under Article 8 examined above. Consequently, taking into account its findings above, the Court considers that the first applicant cannot claim to be victim, within the meaning of the Convention, of a violation of his rights guaranteed by Article 14. Therefore this part of the application is likewise incompatible *ratione personae* with the provisions of the Convention and must be dismissed pursuant to Article 35 § 4.

*2. The second applicant*

51. The Court notes that the second applicant's complaint regarding the refusal of the authorities to allow him to receive an MP3 player from J.G. is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

52. The second applicant submitted that he had not been able to receive an MP3 player from J.G., who was not his spouse, partner or a close relative.

53. The Government observed that detention entailed inherent limitations on private and family life. They did not contest that the second applicant's inability to receive an MP3 player from J.G. had interfered with his right to respect for private life under Article 8 of the Convention. However, the Government was of the view that that interference had been in accordance with the law (see paragraphs 24 and 27 above) and had pursued the legitimate aim of motivating inmates to work, to communicate with their relatives and to enhance their social ties, as well as the aim of preventing the possession of items acquired by criminal means.

54. The Government also argued that the restriction had been proportionate because the circle of persons allowed to give electronic items to inmates had been quite wide and the inmates had been able to purchase electronic items with their own money, which could be either earned or transferred to them by any person. The Government also submitted that there had been other ways for the second applicant to listen to music because he had had headphones, a USB key and he had been able to watch television in the correctional facility. The Government submitted that unlike television programmes, having an MP3 player did not involve relationships with the outside world because an MP3 player was only an entertainment item. Moreover, on several occasions electronic items had been given to the second applicant by his partner, K.J.

55. Lastly, the Government noted that the legislation in Lithuania had changed and that it currently did not specify those persons who were permitted to bring electronic items to convicted inmates.

### *2. The Court's assessment*

56. The Court reiterates that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty – there is no question that a prisoner forfeits his or her Convention rights merely because of his or her status as a person detained following conviction. For example, prisoners may not be ill-treated, and they continue to enjoy the right, *inter alia*, to respect for family life, the right to freedom of expression, the right to practise their religion, the right to respect for correspondence and the right to marry (see *Dickson v. the United Kingdom* [GC], no. 44362/04, §§ 67-68, ECHR 2007-V, and *Biržietis v. Lithuania*, no. 49304/09, § 45, 14 June 2016). The circumstances of imprisonment, in particular considerations of security and the prevention

of crime and disorder, may justify restrictions on those other rights; nonetheless, any restriction must be justified in each individual case (ibid.).

57. The Court observes that it is not in dispute between the parties that the prohibition on the second applicant receiving an MP3 player from J.G. (who was not his spouse, partner or a close relative) constituted an interference with his right to respect for his private life, as protected by Article 8 of the Convention. It remains to be seen whether that interference was justified under the second paragraph of that provision.

**(a) Lawfulness of the interference**

58. According to the Court's case-law, the expression "in accordance with the law" in Article 8 § 2 requires, firstly, that the impugned measure should have a basis in domestic law. Secondly, it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (see, among many other authorities, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts), and the cases cited therein).

59. In the present case, the prohibition on convicted inmates receiving electronic items from persons other than their spouses, partners or close relatives was established in the Code for the Execution of Sentences (see paragraph 24 above). The second applicant did not claim that the prohibition had not been applicable or foreseeable to him, and the Court sees no reason to hold otherwise.

**(b) Legitimate aim**

60. The Court reiterates that the enumeration of the exceptions to the right to respect for private life, as listed in Article 8 § 2, is exhaustive and that their definition is restrictive. For it to be compatible with the Convention, a limitation of that right must, in particular, pursue an aim that can be linked to one of those listed in that provision (see *S.A.S. v. France* [GC], no. 43835/11, § 113, ECHR 2014 (extracts)).

61. In the present case, the Government submitted that the prohibition on convicted inmates receiving electronic items from persons other than their spouses, partners or close relatives was aimed at motivating inmates to work, to communicate with their relatives and to enhance their social ties. The Court observes that the Government did not explain how it was related to any of the "legitimate aims" expressly mentioned in Article 8 § 2 of the Convention. However, the Court does not find it necessary to assess whether the disputed measure pursued a legitimate aim because it considers that, in any event, it was not necessary in a democratic society, for the reasons set out below.

**(c) Proportionality**

62. The Court reiterates that the notion of "necessity" implies that the interference with an individual's right to respect for his or her private life corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was "necessary in a democratic society", the Court will take account of the fact that the Contracting States have a margin of appreciation. The breadth of that margin varies and depends on a number of factors, including the nature of the activities restricted and the aims pursued by the restrictions. In any event, it remains incumbent on the respondent State to demonstrate the existence of the pressing social need behind the interference (see *Biržietis*, cited above, § 55).

63. In the present case, the domestic law placed an absolute prohibition on prisoners receiving electronic items from their friends or even charity organisations, and did not explicitly provide for any exceptions to that prohibition (see paragraph 24 above).

64. While the Court accepts that the Contracting States are in principle justified in setting certain requirements related to prisoners' possession of certain items, it has expressed its reservations as to the existence of a legitimate aim pursued by the impugned prohibition (see paragraph 61 above).

65. The Court further observes that while the second applicant was not prevented from having or enjoying electronic devices altogether (there is no restriction on anyone sending money to inmates to enable them to purchase electronic devices in the shops of the correctional facility in question; the second applicant received some equipment from his partner; he had several personal computers, headphones, a USB key and a laptop in his possession; he was also able to watch television in the specially equipped rooms in Vilnius Correctional Facility), the restriction imposed depended solely on the circumstance, whether he had a spouse, a partner or a close relative to give him such devices. The Court thus considers that the Government has failed to demonstrate the existence of a pressing social need to justify an absolute prohibition on him receiving electronic items from persons other than a spouse, partner or a close relative.

66. There has accordingly been a violation of Article 8 of the Convention.

67. In view of its finding of a violation of Article 8 of the Convention, the Court considers that it is not necessary to rule on the second applicant's complaints under Article 14 of the Convention taken in conjunction with Article 8.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The second applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

70. The Government submitted that the second applicant's claims were unsubstantiated and excessive.

71. The Court considers that in the circumstances of the case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the second applicant.

### B. Costs and expenses

72. The second applicant did not submit a claim for costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court makes no award under this head.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2 *Declares* the first applicant's complaints inadmissible;

3. *Declares* the second applicant's complaint under Article 8 of the Convention admissible and his complaint under Article 3 of the Convention inadmissible;

4. *Holds* that there has been a violation of Article 8 of the Convention as regards the second applicant;

5. *Holds* that it is not necessary to examine separately the second applicant's complaint under Article 14 of the Convention taken in conjunction with Article 8;

6. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the second applicant;

7. *Dismisses* the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Andrea Tamietti | Paulo Pinto de Albuquerque |
| Deputy Registrar | President |