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

FOURTH SECTION

DECISION

Application no. 62564/13
Rolandas ČIAPAS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 4 July 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 27 September 2013,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Rolandas Čiapas, is a Lithuanian national, who was born in 1966 and is currently detained in Vilnius Correctional Facility.

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

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant was detained on remand in Šiauliai Remand Prison periodically on an unspecified date in August 2013, from 18 October 2013

to 21 October 2013, from 25 October 2013 to 17 December 2013, from 19 December 2013 to 7 May 2014, from 8 September 2014 to 11 September 2014, from 3 November 2014 to 10 November 2014, and from 14 November 2014 to 18 November 2014. He was transferred to Vilnius Correctional Facility on 20 June 2014 after his conviction.

5. The applicant was married to E.Č. but got divorced on 4 June 2013. On 18 December 2014 he married V.A.

6. On 1 August 2013, 7 August 2013, 14 February 2014 and 17 February2014 he wrote to Šiauliai Remand Prison administration to request conjugal visits from his former spouse but was informed that under domestic law pre-trial detainees had no right to such visits.

7. The applicant wrote to the Ministry of Justice on 30 July 2013, the Prison Department under the Ministry of Justice on 20 August 2013, 30 September 2013 and 15 February 2014 and to the Parliamentary Committee on Human Rights on 16 February 2014, complaining about his inability to receive conjugal visits from his former spouse. He received similar responses, namely that the provisions of domestic law did not guarantee pre-trial detainees a right to conjugal visits. On 10 September 2013 he also complained to the Chief Administrative Disputes Commission ("the Commission") about the Ministry of Justice's refusal to grant him conjugal visits. His complaint was dismissed on 23 September 2013.

8. It appears that the applicant called E.Č. at least eighty times from 30 May 2013 to 3 December 2013. It also appears that when the applicant was detained in Panevėžys police station, E.Č. visited him on 22 May 2013, 5 June 2013, 5 July 2013, 17 July 2013, 29 July 2013 and 30 September 2013.

B. Relevant domestic law and practice

9. At the material time, Article 18 § 2 of the Law on Administrative Disputes Commissions provided that parties to proceedings could appeal against Commission decisions to the Vilnius Regional Administrative Court within twenty days of their receipt. A similar provision was set down in Article 32 § 1 of the Law on Administrative Proceedings.

10. At the material time, Article 22 of the Law on Pre-trial Detention (*Kardomojo kalinimo įstatymas*) provided that remand detainees could have an unlimited number of visits from relatives and other people. Visits could not exceed two hours.

11. As of 1 January 2017, Article 22 of the Law on Pre-trial Detention provides that visits to remand detainees by spouses, cohabitants or the other parent of a mutual child can take place without the presence of a representative of the remand prison. Such visits can take place once a month, in specially equipped premises and can last up to one day. An explanatory report of 22 April 2015, attached to the draft amendments of the

Law on Pre-Trial Detention, stated that the *Varnas v. Lithuania* (no. 42615/06, 9 July 2013) judgment had obliged Lithuania to make sure it did not discriminate against remand detainees (as compared with convicted inmates) and to provide them with the possibility to receive conjugal visits from spouses (partners).

12. At the material time, Point 65 of the Internal Regulations of Remand Prisons (*Tardymo izoliatorių vidaus tvarkos taisyklės*) provided that physical contact was not allowed during visits to remand detainees.

13. At the material time, Articles 73-75, 79-80 and Article 94 of the Code for the Execution of Sentences (*Bausmių vykdymo kodeksas*) provided that a convicted person being held under the standard prison regime had the right to short-term visits of up to four hours and long-term visits of up to forty-eight hours, including conjugal visits, every three months. Those being held under a light regime had the right to short-term visits of up to four hours and long-term visits of up to forty-eight hours, including conjugal visits, every two months, while convicted inmates being held under a disciplinary regime were not allowed any visits. Similarly, convicted inmates aged under 18 in the ordinary regime had the right to short-term visits of up to four hours and long-term visits of up to forty-eight hours, including conjugal visits, every two months. Convicted inmates under 18 being held under a light regime had the right to short-term visits of up to four hours and long-term visits of up to forty-eight hours, including conjugal visits, every month.

14. Articles 73-75 and 79-80 of the Code for the Execution of Sentences were amended on 1 April 2016 while Article 94 was amended on 1 January 2017. They now provide that convicted inmates being held under the standard regime can have short-term visits of up to three hours and long-term visits of up to one day, including conjugal visits, every two months. Light regime convicted inmates have the right to two short-term visits of up to three hours and two long-term visits of up to one day, including conjugal visits, every two months. Convicted inmates assigned to a disciplinary regime have the right to a short-term visit of up to three hours every four months. Similarly, convicted inmates under 18 being held under the standard regime can have two short-term visits of up to three hours and one long-term visit of up to one day, including conjugal visits, every month. Under-eighteens under a light regime have the right to four short-term visits of up to three hours and one long-term visit of up to one day, including conjugal visits, every month.

15. Article 3.66 § 1 of the Civil Code provides that a marriage is dissolved from the date of issue of the court decision.

16. In a case unrelated to the applicant, the Supreme Administrative Court relied on the Court's interpretation in the case of *Varnas,* cited above, and acknowledged that the refusal on the basis of domestic law to grant conjugal visits to pre-trial detainees was not objective and reasonable grounds to treat pre-trial detainees and convicted inmates differently. As a

result, the Supreme Administrative Court awarded the applicant in that case compensation of 1,000 euros (EUR) (decision of 8 September 2016, no. A-850-662/2016).

COMPLAINTS

17. The applicant complained under Article 8 of the Convention about the refusal of his request for conjugal visits from his former wife while detained in Šiauliai Remand Prison. He also complained under Article 14 in conjunction with Article 8 that as a detainee he was not afforded that right under domestic law while convicted individuals had such a right.

THE LAW

18. The applicant complained under Article 8 that not being allowed conjugal visits from his former spouse during his pre-trial detention had caused him intolerable mental and physical suffering. He also complained under Article 8 taken in conjunction with Article 14 that his entitlement in that respect had been restricted more than that of a convicted person serving a prison sentence. The relevant parts of Articles 8 and 14 provide as follows:

Article 8

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

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. The parties' submissions

19. The Government submitted that the applicant could not be considered a victim of a Convention violation, given that he had requested conjugal visits on 1 and 7 August 2013 and on 14 and 17 February 2014 (see paragraph 6 above) but had got divorced on 4 June 2013 (see

paragraph 5 above). The Government argued that he had had no spouse during that period and could not have been directly affected by the domestic regulation in question.

20. The Government informed the Court that new provisions of domestic law had come into force on 1 January 2017 in order to prevent fresh violations of the Convention and that it was now possible for pre-trial detainees to receive long-term visits.

21. The Government maintained that the applicant had failed to lodge a complaint with the domestic courts and claim compensation or appeal against the decision of the Chief Administrative Disputes Commission regarding his complaints of alleged discrimination and interference with respect for his family life (see paragraphs 7 and 9 above). They further submitted that after the judgment in *Varnas v. Lithuania* (no. 42615/06, 9 July 2013) the provisions of the Convention and domestic law had conflicted with each other and the applicant had been able to invoke the provisions of the Convention directly before the domestic courts. In support of their submission the Government relied on domestic case-law (see paragraph 16 above).

22. The Government also argued that the domestic courts had established an effective domestic compensatory remedy, namely that the Supreme Administrative Court had taken account of differences in treatment between remand detainees and convicted people when it came to long-term visits, had found violations and awarded compensation (see paragraph 16 above).

23. The applicant disagreed, stating that he had still been in contact with his former wife after their divorce (see paragraph 8 above). He also submitted that his divorce from E.Č. had been fictitious: he had been waiting for the court proceedings and his lawyer had advised him and his wife to divorce in order for their son not to be bullied at school because his father was in prison.

24. The applicant complained that his requests for conjugal visits while in Šiauliai Remand Prison had been refused. He emphasised that the lack of conjugal visits had amounted to torture. Conjugal visits had been indispensable for maintaining a social and physical connection with his former wife. Moreover, he submitted that the lack of conjugal visits had denied him the possibility of having another child.

25. For the applicant, it was striking that domestic law allowed conjugal visits only for people who had already been convicted. In his view, a person in pre-trial detention should be entitled to the presumption of innocence until proved guilty by a court. However, in his case the opposite had been true: his guilt had not yet been established but he had had to face much more serious restrictions than those imposed on people who had already been convicted.

B. The Court's assessment

26. The Court finds that it is not necessary to address all the issues raised by the parties because the application is in any event inadmissible for the following reasons.

27. The Court reiterates that in order 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 applicants 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)).

28. The Court also reiterates that the notion of "family life" in Article 8 is not confined solely to families based on marriage and may encompass other *de facto* relationships. The existence or non-existence of "family life" for the purposes of Article 8 is essentially a question of fact depending on the real existence in practice of close personal ties. Although, as a rule, cohabitation may be a requirement for such a relationship, other factors may exceptionally also serve to demonstrate that a relationship has sufficient constancy to create *de facto* "family ties" (see *Nazarenko v. Russia*, no. 39438/13, § 56, ECHR 2015 (extracts)), including the length of the relationship and whether the couple have demonstrated their commitment to each other (*Z.H. and R.H. v. Switzerland*, no. 60119/12, § 42, 8 December 2015).

29. A divorce creates a strong presumption towards the end of family life (compare *Khoroshenko v. Russia* [GC], no. 41418/04, § 89, ECHR 2015; see also *Berrehab v. the Netherlands*, no. 10730/84, § 21, 21 June 1988). As family life can exist outside marriage (see paragraph 28 above), it is not excluded that it may continue even after divorce. However, it is for applicants to rebut the presumption that their family life had ended with the divorce and to show convincingly that it had continued thereafter.

30. In the present case, although the applicant submitted that the divorce had not ended his family life, the Court cannot accept such arguments at face value. Firstly, he became divorced before being placed in detention on remand and before asking for conjugal visits from his former spouse for the first time (see paragraphs 4-6 above). Their divorce, at least in formal terms, ended their family ties (see paragraph 15 above). Secondly, it was for the applicant to prove that he had continued to have a family life with his former spouse afterwards. The Court is not convinced that the applicant's calls to his former wife and her visits while he was detained in Panevėžys

police station (see paragraph 8 above) provided sufficient proof that they were still committed to each other and that the applicant continued to have a family life with her. Such communication, although intensive, is not sufficient evidence that the calls and visits concerned the continuation of their family relationship, as opposed to other matters that former spouses have to deal with after divorce. The Court's doubts are further strengthened by the fact that the divorce nevertheless later ended his family life with his first wife when he remarried (see paragraph 5 above).

31. Therefore, in the absence of convincing evidence to the contrary, the applicant cannot be said to have had any family life within the meaning of Article 8 of the Convention with his former wife after their divorce in June 2013 and after his placement in Šiauliai Remand Prison in August 2013 (see *Khoroshenko*, cited above, § 89). It follows that the applicant cannot claim to be a victim of the alleged violation of Article 8 of the Convention in so far as he complained about the lack of conjugal visits from his former wife (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008).

32. Having regard to the above, the Court finds this part of the application is 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.

33. The Court lastly notes that the 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 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.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 July 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President