



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

## SECOND SECTION

### DECISION

Application no. 74452/13  
Romanas DARDANSKIS against Lithuania  
and 15 other applications  
(see list appended)

The European Court of Human Rights (Second Section), sitting on 18 June 2019 as a Chamber composed of:

Robert Spano, *President*,

Marko Bošnjak,

Julia Laffranque,

Valeriu Grițco,

Egidijus Kūris,

Ivana Jelić,

Darian Pavli, *judges*

and Stanley Naismith, *Section Registrar*,

Having regard to the above applications lodged on the various dates indicated in the appended table,

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. A list of the applicants is set out in the appendix.
2. The Lithuanian Government (“the Government”) were represented by their Agent, Ms K. Bubnytė-Širmenė.

#### **A. The circumstances of the case**

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

4. All the applicants have been sentenced to life imprisonment and are serving their sentences either in Lukiškės Prison or in Pravieniškės Correctional Institution (see the appendix).

### **B. Relevant domestic law and practice**

5. The domestic law and practice regarding life prisoners, as it stood until the Court's judgment in *Matiošaitis and Others v. Lithuania* (no. 22662/13 and 7 others, 23 May 2017), is set out in paragraphs 61-106 of that judgment.

6. After that judgment, the Lithuanian authorities took steps to change the law. Various options were discussed.

7. Eventually, according to the explanatory report, presented by the Ministry of Justice to the Seimas on 4 September 2018, legislative changes (see paragraphs 10-12 below) were proposed to rectify the flaws that the Court had identified in the domestic law in the *Matiošaitis and Others* judgment. They established a two-tier approach. Initially, by a court decision, a life sentence could be changed to a fixed-term sentence. Afterwards, the prisoner concerned could be released on parole. The proposed legislation also set out the procedure to be used in order to amend the sentence, as well as the criteria that a life prisoner has to meet in order to qualify.

8. The report noted that, at the time that it was prepared, there were forty-one life prisoners in Lithuania who would be entitled to submit a request for their life sentences to be changed to fixed-term sentences. However, this did not mean that the court would grant all those requests. On the contrary, one had to bear in mind that the criteria to be met were strict, and only the persons who had achieved a "considerable improvement" in respect of all those criteria could have his or her life sentence changed to a fixed-term sentence.

9. The explanatory report also noted that prisoners in respect of whom a life sentence was changed to a fixed-term sentence could be released on parole after having served half of that fixed-term sentence. Such legal regulation would permit the authorities to work particularly intensively with the convicted person in order to promote his or her resocialisation and reintegration into society.

10. On 21 March 2019 the Seimas thus amended the Criminal Code, to read:

#### **Article 51. Life sentence**

"2. After the convicted person has served twenty years of his or her life sentence, the court local to the place of his or her imprisonment shall examine and determine the question of replacing that sentence with a fixed-term sentence, on the basis of a proposal made by the prison administration. If the court decides to change the life sentence to a fixed-term sentence, the duration of that fixed-term sentence may not be shorter than five years nor longer than ten years from the day on which the court ruling comes into force. When deciding whether to change the life sentence to a fixed-term sentence, the court shall take into account the risk of recidivism, the convicted person's behaviour

when serving the sentence, the aims of the sentence and its impact on the convicted person, as well as whether the convicted person has made reparation for the damage caused or part of it and taken on an obligation to make full reparation ...

4. The period of twenty years of life imprisonment, referred to in paragraph 2 of this Article, shall run from the moment of imposition of pre-trial detention or from the moment the person started serving the life sentence. If the person sentenced to life imprisonment commits a new intentional crime while serving that sentence, the twenty year period mentioned in paragraph 2 of this Article stops and shall restart from the day when that intentional crime is committed.”

11. On the same day the Seimas also amended the Code for the Execution of Sentences to read:

**Article 137. The aims, actions and means of social rehabilitation**

“5. In order to achieve more favourable social rehabilitation ... in respect of persons whose life sentences have been changed to fixed-term sentences under Article 51 § 2 of the Criminal Code, but who have not been released from a correctional institution on parole, enhanced social rehabilitation measures must be applied for the duration of the final year of their fixed-term sentence (to provide intensive preparation for their release from the correctional institution, by applying such enhanced social rehabilitation measures).”

**Article 157. Release on parole from correctional institutions**

“1. The convicted persons serving the sentence in a correctional institution, who execute the measures set out in the individual social rehabilitation plan, and have submitted to the Parole Commission requests to be released on parole, and whose risk of recidivism is low and (or) progress made during lowering recidivism allows considering that they will follow the law and will not commit new crimes, may be released from the correctional institutions ...

2. Requests for release on parole ... may be submitted by the convicted persons no earlier than one month before the time when they have *de facto* served the following part of the sentence:

...

2) ... the persons in respect of whom the life sentence was changed to a fixed-term sentence in cases referred to in Article 51 § 2 of the Criminal Code – half of the imposed fixed-term liberty deprivation sentence ...”

In that context, the amendments also provided that those life prisoners whose life sentences had been changed to fixed-term sentences, and who had one year of the fixed-term sentence left to run and thus were under an enhanced social rehabilitation regime, could be transferred to an open colony – a correctional institution operating a milder regime (Article 140 § 3).

**Article 167<sup>1</sup>. Proposal to change life sentence to fixed-term sentence**

“1. A convicted person who has served no less than twenty years of a life sentence may submit a request to the correctional institution where he or she is serving the sentence for that institution to apply to court for the life sentence to be changed to a fixed-term sentence.

2. The correctional institution, upon receipt of a request as mentioned in paragraph 1 of this Article, shall undertake a social inquiry (*socialinis tyrimas*) into the person convicted and in no longer than twenty days from receipt of the request shall apply to the pertinent local court with a proposal that the life sentence be changed to a fixed-term sentence, provided there is a basis for that.

3. The proposal mentioned in paragraph 2 of this Article must contain information about the character of the person convicted and his or her social environment, the level of risk of recidivism, the impact that the served sentence has had on the person convicted (including any improvement in terms of a reduced risk of criminal behaviour, the execution of the measures raised in the social rehabilitation plan, and his or her behaviour when serving the sentence), as well as information about any reparation made for the damage caused by the crime or objective reasons why such damage could not be subject to reparation. If the damage was only subject to partial reparation, the proposal must contain information about the possibility of the convicted person making full reparation. Moreover, the proposal should indicate whether the person convicted acknowledges his or her guilt and repents of having committed the crime. In addition to that information the court should receive the convicted person's personal file.

4. If the court refuses to change the life sentence to a fixed-term sentence, a repeat request, mentioned in paragraph 1 of this Article, may be submitted no earlier than one year after the court ruling to refuse to change the life sentence to a fixed-term sentence comes into force."

12. On the same day the Seimas also supplemented the Code of Criminal Procedure, to read:

**Article 360<sup>1</sup>. The procedure for changing the life sentence to a fixed-term sentence**

"1. In cases referred to in Article 51 § 2 of the Criminal Code the question regarding the change of a life sentence to a fixed-term sentence shall be examined and decided by a chamber of three judges of the court local to the person's place of imprisonment in a reasoned ruling, on the basis of a recommendation by the prison administration. When examining that question the prosecutor and a representative of the correctional institution shall participate. The person convicted and his or her lawyer, as well as the victim of the crime or his or her representative, shall be summoned to these proceedings, but their failure to appear at the hearing shall not stop the question from being examined, unless the court holds otherwise.

...

4. A prosecutor, the person convicted or his lawyer, and the victim or his representative each have a right to appeal against the court ruling ..."

## COMPLAINT

13. All the applicants complained under Article 3 of the Convention that their life sentences were not reducible.

## THE LAW

14. The applicants' complaints were communicated to the Government under 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. The parties' submissions

#### 1. *The Government*

15. In their observations of 19 March 2018 the Government informed the Court that, with a view to making life sentences reducible and having taken into account the Court's judgment in *Matiošaitis and Others* (cited above), the Ministry of Justice had prepared amendments to the Criminal Code, the Code of Criminal Procedure and the Code for the Execution of Sentences. In January 2018 the proposals had been submitted to the Government for consultation. It had then been decided that a wider consultation was necessary, and the drafts had been sent to the Prosecutor General's Office and the Judicial Council. Subsequently, the drafts had been presented to the Seimas.

16. The Government updated that information on 3 September 2018. They noted that the main purpose of the draft legislation was to create legal preconditions for persons sentenced to life imprisonment to replace, following a judicial procedure, that sentence with a fixed-term custodial sentence. This was on condition that the convicted persons had implemented and fulfilled the rehabilitation requirements which would permit a reasonable assumption that the risk of recidivism is extinct or significantly diminished. The draft legislation also established precise conditions and requirements for such a commutation.

17. In their letter of 12 April 2019, the Government noted that the aforementioned legislative amendments had finally been adopted (see paragraphs 10-12 above) and had come into force on 3 April 2019.

18. The Government thus considered that the model for reduction of life sentences as adopted in the aforementioned legislation would ensure an effective judicial review of such sentences. It would allow convicted persons to know in advance the criteria for the reduction of life sentences, thus ensuring proper guarantees under Article 3 of the Convention for the applicants in the instant case as well as preventing similar future applications. After the legislative amendments had come into force, they ensured that the necessary remedial measures as concerns complaints under Article 3 of the Convention about the irreducibility of life sentences were in place.

19. The Government thus considered that the matter had been resolved within the meaning of Article 37 of the Convention.

## 2. *The applicants*

20. In their observations, received by the Court before the legislative changes of March 2019, the applicants complained that the Lithuanian law had not yet been amended to rectify the flaws noted by the Court in the *Matiošaitis and Others* judgment (cited above).

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

21. Having regard to the identical subject matter of the complaints, the Court firstly finds it appropriate to examine these applications jointly in a single decision.

22. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may “at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...” To be able to conclude that this provision applies to the instant case, the Court must answer two questions in turn: firstly, it must ask whether the circumstances complained of directly by the applicants still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002). In the present case, that entails first of all establishing whether the Lithuanian law remains as it was when the Court delivered the *Matiošaitis and Others* judgment (cited above). After that, the Court must consider whether the measures taken by the authorities constitute adequate redress in respect of the applicants' complaint (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I).

23. With reference to the first question, the Court observes that, according to the explanatory report, in response to the Court's findings in the judgment of *Matiošaitis and Others*, the Lithuanian authorities have taken measures to change the domestic legislation to meet the requirements of Article 3 of the Convention (see paragraph 7 above). As a result, on 29 March 2019 the Seimas adopted legislative amendments to improve the situation of life prisoners with a view to granting them the possibility of being released within their lifetimes (see paragraphs 10-12 above).

24. Accordingly, the legal regulation of which the applicants complained has ceased to exist. It therefore remains to be determined whether the aforementioned recent legislative changes are sufficient to provide redress for the possible effects of the situation of which they complained to the Court.

25. As regards life imprisonment, the Court summed up the criteria which a State's legislation must meet in *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts)). They were then recapitulated in *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, § 246, ECHR 2014 (extracts)):

“246. ...

(a) In the context of a life sentence, Article 3 of the Convention must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds (*Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 119, ECHR 2013 (extracts));

(b) Having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing, it is not the Court’s task to prescribe the form – executive or judicial – which that review should take, or to determine when that review should take place. However, the comparative and international-law materials show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter (*ibid.*, § 120);

(c) Where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention (*ibid.*, § 121);

(d) Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 of the Convention in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 of the Convention on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration (*ibid.*, § 122).”

26. Turning to the amendments made to the Lithuanian legislation, the Court firstly observes that commutation of a life sentence is by a court decision (see paragraphs 10-12 above). This the Court finds satisfactory. It has previously held that a State’s choice of criminal-justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision carried out by the Court (see *Harakchiev and Tolumov*, cited above, § 250).

27. Secondly, the Court notes that a life prisoner’s situation may be reviewed at the earliest twenty years after he or she had been detained or started serving the life sentence. This period is shorter than the maximum indicative term of twenty-five years which the Court has found to be acceptable (see *Vinter and Others*, § 120, and *Matiošaitis and Others*, § 166, both cited above).

28. Thirdly, the Court gives weight to the fact that a life prisoner may actively take part in the proceedings for the review of his or her life sentence, in which a court must adopt a reasoned ruling, against which an appeal may subsequently be lodged with a higher court. That review contains sufficient procedural guarantees, since both life prisoner and his or her lawyer have a right to be present in the courtroom to plead that the life prisoner has reformed (see paragraph 12 above; also see *Murray v. the Netherlands* [GC], no. 10511/10, § 100, 26 April 2016, with further references).

29. Fourthly, the Court turns to the criteria which a prisoner must meet in order to have a possibility of commutation of his or her life sentence. The aspects which the courts are to take into account include the risk of recidivism, the aims of the life sentence and the effect of serving part of the life sentence on the convicted person, including the level of progress made in reducing the risk of recidivism, and the level of implementation of correctional measures, as indicated in the convicted person's social rehabilitation plan. The courts are also to take into account whether the convicted person fully admits his or her guilt and repents of the crime, and whether he or she has made reparation for at least half of the damage he or she caused and has undertaken to make full reparation (see paragraphs 10 and 11 above). The Court considers that those criteria are objective to allow an effective assessment of whether the person has reformed so as to deserve commutation. At the same time, these criteria are also meant to ascertain that there are no longer any legitimate penological grounds for continued incarceration. In the *Matiošaitis and Others* judgment (cited above), one particular flaw that the Court noted in the previous regime was precisely that life prisoners were unable to learn the reasons for the refusal of their presidential pardon requests and therefore could not know what they must do to show that they had repented and were capable of rehabilitation (see § 176 *in fine* of that judgment). This has been rectified by the legislative amendments, as the reasons now must be stated in a court ruling.

30. Lastly, the Court notes that the State has not overlooked the need for life prisoners' continuous rehabilitation, including applying to them enhanced social rehabilitation measures, also after the life sentence has been changed to a fixed-term sentence, with the view to possible release on parole and to their eventual reintegration into society (see paragraphs 9 and 11 above; also see *Harakchiev and Tolumov*, cited above, § 245 *in fine*). This, again, the Court finds to be a measure in conformity with the requirements under Article 3 of the Convention. It has already underlined the States' duty to make it possible for life prisoners to rehabilitate themselves (see *Murray*, cited above, § 104).

31. In the light of the foregoing, the Court considers that the life sentence commutation procedure and its requirements, as very recently adopted by the Lithuanian authorities in order to rectify the situation which the Court had criticised in the *Matiošaitis and Others* judgment (cited above), constitute an



adequate and sufficient remedy for the applicants' complaint under Article 3 of the Convention. The Court looks forward to the proper implementation of this remedy in practice.

32. Having regard to all the above considerations, the Court concludes that both conditions for the application of Article 37 § 1 (b) of the Convention have been met in the instant case. The matter giving rise to this complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

Accordingly, the applications should be struck out of the Court's list of cases.

For these reasons, the Court, unanimously,

*Decides* to join the applications;

*Decides* to strike the applications out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

Done in English and notified in writing on 11 July 2019.

Stanley Naismith  
Registrar

Robert Spano  
President

## APPENDIX

N o.	Application no.	Lodged on	Applicant name date of birth place of serving sentence	Represented by
1.	74452/13	22/11/2013	<b>Romanas DARDANSKIS</b> 23/06/1968 Lukiškės Prison, Vilnius	
2.	583/14	25/12/2013	<b>Aleksandr MARKIN</b> 27/07/1980 Lukiškės Prison, Vilnius	
3.	23542/14	17/03/2014	<b>Ričardas BARATINSKAS</b> 23/09/1964 Lukiškės Prison, Vilnius	
4.	24971/14	20/03/2014	<b>Viktor SMIRNOV</b> 13/11/1968 Lukiškės Prison, Vilnius	
5.	32519/14	15/04/2014	<b>Vygantas RAILA</b> 27/02/1968 Lukiškės Prison, Vilnius	
6.	38916/14	19/05/2014	<b>Rolandas PALUKAITIS</b> 13/04/1973 Pravieniškės Correctional Institution, Pravieniškės	Andrejus VAVILOVAS
7.	46591/14	17/06/2014	<b>Gintaras RAILA</b> 22/01/1966 Pravieniškės Correctional Institution, Pravieniškės	Ričardas MIRONOVAS
8.	46640/14	17/06/2014	<b>Audrius SINKEVIČIUS</b> 19/03/1978 Pravieniškės Correctional Institution, Pravieniškės	
9.	49765/14	01/07/2014	<b>Darius AMBRASAS</b> 08/01/1973 Pravieniškės Correctional Institution, Pravieniškės	
10.	60038/14	08/08/2014	<b>Andrej PAVLOV</b> 02/06/1977 Pravieniškės Correctional Institution, Pravieniškės	
11.	14696/15	19/03/2015	<b>Rimas BRAŽINSKAS</b> 23/06/1972 Lukiškės Prison, Vilnius	
12.	16039/15	24/03/2015	<b>Ričardas KARENDA</b> 09/08/1974 Pravieniškės Correctional Institution, Pravieniškės	
13.	19405/15	26/03/2015	<b>Jevgenij PAVLOV</b> 04/05/1974 Pravieniškės Correctional Institution, Pravieniškės	

<b>14.</b>	23905/15	11/05/2015	<b>Rolandas SVIRBUTAVIČIUS</b> 01/02/1971 Lukiškės Prison, Vilnius	
<b>15.</b>	24187/15	06/05/2015	<b>Eugenijus ŠEDYS</b> 29/07/1960 Pravieniškės Correctional Institution, Pravieniškės	
<b>16.</b>	33339/17	24/04/2017	<b>Algimantas VERTELKA</b> 13/02/1961 Lukiškės Prison, Vilnius	