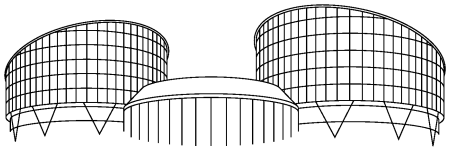

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 13394/13
Aidas KAZLAUSKAS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 11 July 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Marko Bošnjak,
Péter Paczolay, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 4 February 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 Aidas Kazlauskas, is a Lithuanian national who was born in 1968 and is detained in Lukiškės Remand Prison. He was represented before the Court by Ms L. Meškauskaitė, a lawyer practising in Vilnius.

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 has been serving a life sentence since 1994. In 2005 he was transferred to Pravieniškės Correctional Facility. In April 2005 the applicant attempted to murder another convicted inmate and in 2007 he was transferred back to Lukiškės Remand Prison. In his written appeal concerning his conviction for the attempt of murder, the applicant asked to be transferred back to Lukiškės Remand Prison and never to be returned to freedom, because he was afraid of liberty.

5. In 2009 the applicant married. At that time his wife was also serving a sentence in Lukiškės Remand Prison but in 2011 was transferred to Panevėžys Correctional Facility.

6. In June 2011 the applicant wrote to the administration of Lukiškės Remand Prison requesting a visit from his spouse; the duration of the visit was not specified in the applicant's request. His request was granted; however, the director of Panevėžys Correctional Facility refused to allow his wife to attend the visit, referring to the provisions of domestic law (see paragraph 19 below).

7. In July 2011 the applicant complained to the Parliamentary Committee on Human Rights about the refusal of Panevėžys Correctional Facility to bring his wife to the visit. The complaint was forwarded to the Prison Department. In August 2011 it issued a response stating that the applicant did not have a right to long-term conjugal visits because he was serving his sentence in prison. The Prison Department stated that the law did not provide for short–term visits for spouses who were both convicted and serving their imprisonment sentences. In February 2012 he received similar response from the Parliamentary Committee on Human Rights. In the same month the applicant also received a response from the Ministry of Justice stating that long-term conjugal visits were not available to convicted inmates serving their sentences in prison. He was also informed that, in accordance with the provisions of domestic law, he would have been entitled to a long-term conjugal visit if he had been transferred to a correctional facility.

8. In September 2012 the Parliamentary Commission on Petitions examined the applicant's proposal to amend the Code for the Execution of Sentences, so it allowed the spouses who were both serving their imprisonment sentences, and one of them was serving his or her sentence in prison, to have three long-term or short-term visits per year without the guards' supervision. The Parliamentary Commission on Petitions held that the applicant's proposal did not follow the principles of just and progressive execution of sentences and that if the applicant's proposal had been adopted, the convicted spouses, both serving their sentences in correctional facilities,

would have been deprived of visits, and would be discriminated. It was also observed that in a number of European Union Member States long-term conjugal visits were not allowed for convicted prisoners, and that they could communicate with their family members through short-term or home visits, as well as telephone conversations and letters.

9. The applicant brought court proceedings complaining about the refusal of his request to be allowed a short-term visit of up to four hours from his imprisoned spouse without guards' supervision. The representative of Panevėžys Correctional Facility claimed that long-term conjugal visits were not allowed if one of the spouses was serving his or her sentence in prison. Convicted inmates, serving their sentences in prisons, had a right to short-term visits but this right was restricted by the provisions of domestic law (see paragraph 19 below). The Prison Department stated that the contested provision of domestic law was not applicable to convicted inmates, serving their sentences in prisons because such persons had a right only to short-term visits. But because the provisions of domestic law were silent about short-term visits when both spouses were serving their prison sentences, the Prison Department considered that short-term visits were not available to persons in the applicant's situation. On 12 July 2012 the Panevėžys Regional Administrative Court held that the applicant and his wife had a right to a short-term visit of up to four hours and that his wife also had a right to a long-term conjugal visit of up to two days. The court also noted that, under the provisions of domestic law, the applicant could see his spouse at a short-term visit without guards' supervision, in equipped premises, upon the approval of the prison director. The court therefore ordered Panevėžys Correctional Facility to organise a short-term visit of up to four hours for the applicant and his wife.

10. The Prison Department appealed, and on 20 December 2012 the Supreme Administrative Court held that a convicted inmate serving a life sentence in prison and belonging to the "ordinary" group of prisoners had a right to short-term visits of up to four hours every two months. However, the court also held that the court of first instance should not have ordered the Panevėžys Correctional Facility to organise a short-term visit and instead ordered it to reconsider the applicant's request to be allowed a short-term visit.

11. Following the decision of the Supreme Administrative Court (see paragraph 10 above), on 6 February 2013 Panevėžys Correctional Facility decided that the applicant's wife could attend a short-term visit of up to four hours at Lukiškės Remand Prison.

12. On 25 April 2013 the applicant received a response from Panevėžys Correctional Facility stating that it had decided to allow his wife to attend a short-term visit at Lukiškės Remand Prison.

13. The applicant was granted short-term visits of up to four hours with his imprisoned spouse on five occasions in 2013 (14 May, 31 July,

30 September, 8 October and 10 December), six occasions in 2014 (12 February, 15 April, 18 June, 19 August, 22 October and 30 December), five occasions in 2015 (3 March, 5 April, 7 June, 8 September and 10 November) and five occasions in 2016 (12 January, 30 March, 31 May, 9 August and 6 September). The applicant used his right to ask for additional short-term visits and was granted them on 30 September 2013 and 6 September 2016.

14. According to the information available to the Court, the applicant never requested any long-term conjugal visits from his wife; he also never complained that he was not provided with more short-term visits up to four hours.

15. In February and July 2016 the applicant refused to participate in social rehabilitation programmes.

B. Relevant domestic law

1. Code for the Execution of Sentences

16. Article 62 § 1 provides that there are four types of correctional institutions: correctional facilities, juvenile correctional facilities, prisons and open colonies.

17. Article 72 provides that convicted inmates serving their sentences in a correctional facility are divided into ordinary, light and disciplinary groups. At the material time, Article 73 provided that convicted inmates in a correctional facility assigned to the ordinary group of prisoners had a right to receive one long-term and one short-term visit every three months. Since an amendment that came into force on 1 January 2017, convicted inmates in a correctional facility assigned to the ordinary group of prisoners have had the right to two long-term and one short-term visit every two months.

18. Article 84 provides that convicted inmates in prisons are assigned to ordinary and disciplinary groups of prisoners. Article 85 § 1 provides that convicted inmates in prisons assigned to the ordinary group of prisoners have a right to receive one short-term visit every two months. Article 85 § 2 provides that a short-term visit may take place without the supervision of a representative of the correctional facility. In such cases, visits take place in special premises.

19. At the material time, Article 94 § 1 provided that convicted inmates had the right to short-term visits of up to four hours and long-term visits of up to forty-eight hours. The nature and number of visits depended on the group of convicted inmates and the correctional institution. Article 94 § 6 provided that a husband and wife both serving prison sentences were allowed to have two long-term visits a year.

20. Article 165 § 1 provides that life prisoners serve their sentences in prison. Convicted inmates who have served the first ten years of their life

sentence may, taking into account their behaviour in prison and the security risk they pose, at the request of the prison administration or by a decision of the district court be transferred to a correctional facility for the remainder of their sentence.

2. Criminal Code

21. At the material time, Article 51 of the Criminal Code provided that life prisoners served their sentences in prison.

COMPLAINTS

22. The applicant complained under Article 8 about his inability to receive long-term conjugal visits from his imprisoned spouse. He also complained under Article 14 taken in conjunction with Article 8 that he had suffered discrimination as a convict serving a sentence in prison as opposed to a person serving a sentence in a correctional facility because he was not entitled to long-term conjugal visits.

THE LAW

23. The applicant complained about his inability to receive long-term conjugal visits from his imprisoned spouse. He also alleged that he had suffered discrimination as a convict serving a sentence in prison as opposed to a person serving a sentence in a correctional facility because he was not entitled to long-term visits.

The applicant relied on Articles 8 and 14, the relevant parts of which read 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

24. The applicant stated that he had first requested a visit from his spouse in June 2011 and had first been granted a short-term visit on 14 May 2013. He complained that in accordance with domestic law he had a right to short-term visits, but had not been provided with them for almost two years. He also argued that that delay had significantly reduced his chances of having children since he had been 44 and his wife 39 when the first short-term visit had been granted in 2013.

25. The applicant further complained that his right to long-term visits remained non-existent and that that amounted to discrimination.

26. The Government stated that any imprisonment which was lawful for the purposes of Article 5 of the Convention inherently entailed a limitation on private and family life, and that some measure of control over prisoners' contact with the outside world was called for and was not in itself incompatible with the Convention (they referred to *Van der Ven v. the Netherlands*, no. 50901/99, § 68, ECHR 2003-II). The Government also noted that the Court had not so far interpreted the Convention as requiring Contracting States to make provision for conjugal visits (see *Varnas v. Lithuania*, no. 42615/06, § 109, 9 July 2013) or held that the duty to ensure the possibility of arranging conjugal visits followed from the right to private and family life (they referred to *Aliev v. Ukraine*, no. 41220/98, § 188, 29 April 2003 and *Dickson v. the United Kingdom* [GC], no. 44362/04, § 81, ECHR 2007-V).

27. The Government further claimed that the provisions of domestic law stated that convicted spouses could only avail themselves of the possibility of exercising their right to long-term conjugal visits if they were both entitled to that right (see paragraph 19 above). Irrespective of the fact that the applicant's wife had been entitled to both short-term visits of up to four hours and long-term conjugal visits of up to two days, he had only been entitled to receive short-term visits which could, at his request, take place on the premises of the prison without the supervision of a representative of the institution (see paragraph 18 above). The Government stated that the applicant had actively exercised that right (see paragraph 13 above).

28. The Government considered that convicted inmates in prison were serving their sentences for the most serious crimes, and the ban on long-term visits was aimed at ensuring public safety and preventing disorder and crime. The Government also stated that the differentiation between the two types of prisoners helped to maintain public confidence in the penal system.

29. The Government also argued that the applicant was serving a life sentence for very serious crimes and was subject to the most severe restrictions as regards his rights. However, the domestic law did not deprive the convicted inmates of the right to conjugal visits in general. To the

contrary, they were entitled to short-term visits of up to four hours every two months without the prison guards' supervision.

30. The Government finally argued that a punishment had two purposes: to directly punish the individual for an offence, and to rehabilitate him and return him to society. Depending on the convict's behavior, his legal status could become more lenient and additional rights could be granted. It was possible for convicts to be transferred to a correctional facility after ten years in prison, depending on the progress of their rehabilitation (see paragraph 20 above). In fact, the applicant had been transferred to Pravieniškės Correctional Facility in 2005 but, after attempting to murder another prisoner, had been transferred back to Lukiškės Remand Prison in 2007. He had also twice refused to participate in social rehabilitation programmes (see paragraph 15 above), which showed his unwillingness to cooperate with the authorities in the process of his rehabilitation.

B. The Court's assessment

31. 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.

32. 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)).

33. In the present case, the Court notes that the applicant never explicitly requested any long-term conjugal visits from his wife (see paragraph 6 above) and never complained about the lack of long-term conjugal visits before the national authorities. He was granted short-term visits on a number of occasions between 2013 and 2016; and he also was granted two additional short-term visits (see paragraph 13 above). The Court observes that the applicant did not claim to have encountered any difficulties in exercising his right to short-term visits, or apply for long-term conjugal visits while in the prison and he has never argued that he had been refused additional short-term visits (see paragraph 14 above).

34. The applicant therefore cannot be said to have suffered from the lack of long-term conjugal visits. 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 wife (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008).

35. 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.

36. 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 14 September 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President