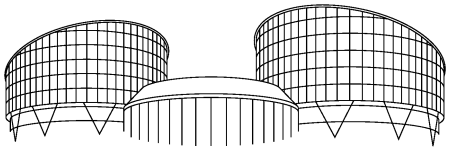

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER SECOND SECTION

CASE OF MATIOŠAITIS AND OTHERS v. LITHUANIA

(Applications nos. 22662/13, 51059/13, 58823/13, 59692/13, 59700/13, 60115/13, 69425/13 and 72824/13)

JUDGMENT

STRASBOURG

23 May 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Matiošaitis and Others v. Lithuania,

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

Işıl Karakaş, *President,*
András Sajó,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 4 April 2017,

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

PROCEDURE

1. The case originated in eight applications 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 Lithuanian nationals, Mr Kęstutis Matiošaitis (application no. 22662/13), on 27 March 2013, Mr Juozas Maksimavičius (application no. 51059/13), on 25 June 2013, Mr Stanislovas Katkus (application no. 58823/13), on 11 September 2013, Mr Vladas Beleckas (application no. 59692/13), on 12 September 2013, Mr Rolandas Lenkaitis (application no. 59700/13), on 11 September 2013, Mr Aidas Kazlauskas (application no. 60115/13), on 10 September 2013, Mr Piort Gervin (application no. 69425/13), on 21 October 2013, and Mr Edmundas Svotas (application no. 72824/13), on 21 October 2013.

2. The applicants K. Matiošaitis, J. Maksimavičius, S. Katkus, V. Beleckas, A. Kazlauskas and V. Gervin, who had been granted legal aid, were represented by Mr V. Rutkauskas, a lawyer practising in Vilnius. R. Lenkaitis and E. Svotas did not have a legal representative. The Lithuanian Government ("the Government") were represented by their Agent, Ms Karolina Bubnytė.

3. The applicants alleged that their life sentences without commutation amounted to inhuman and degrading punishment, in breach of Article 3 of the Convention.

The first applicant, K. Matiošaitis, further complained that he had not been allowed to pursue vocational education while in Lukiškės Prison, in breach of Article 2 of Protocol No. 1.

4. On 12 December 2013 the complaints concerning Article 3 of the Convention and Article 2 of Protocol No. 1 were communicated to the

Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of the Court.

5. On 31 March 2014 the President of the Section granted the Human Rights Monitoring Institute leave, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, to intervene as a third party in the proceedings.

6. On 3 September 2014 the Court sent letters by registered post to the fifth applicant, R. Lenkaitis, at Pravieniškės Correctional Institution, and to the eighth applicant, E. Svotas, at Lukiškės Prison, advising them that the time-limit for submission of their observations had expired on 6 August 2014 and that an extended deadline had not been requested. The Court drew their attention to Article 37 § 1 (a) of the Convention, which provides that it may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. From the relevant delivery receipts it transpires that the letters were received at Pravieniškės Correctional Institution and Lukiškės Prison ("*siunta pristatyta ir įteikta gavėjui, ar pagal įgaliojimą kitam asmeniui*") on 13 and 15 September 2014 respectively. However, the Court has received no response from those two applicants.

7. On 7 July 2015 the Chamber decided, under Rule 54 § 2 (a) of the Rules of the Court, that the parties should be invited to submit further written observations on the admissibility and merits of the applications. On 15 September 2015 the Government sent their observations to the Court. The further observations by six applicants were received on 27 October 2015. By letters of 12 November 2015 the Court again informed the applicants R. Lenkaitis and E. Svotas that they had failed to submit their observations within the time-limit of 15 September 2015, which could lead to striking their cases out of the Court's list of cases under Article 37 § 1 (a) of the Convention. The two applicants have not responded.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

A. Mr K. Matiošaitis (application no. 22662/13)

8. The first applicant, Mr Kęstutis Matiošaitis, was born on 3 February 1961 and is serving a life sentence at Lukiškės Prison (*Lukiškių tardymo izoliatorius – kalėjimas*) in Vilnius.

9. By a Supreme Court judgment of 2 June 1993, K. Matiošaitis was sentenced to the death penalty for aggravated murder of another prisoner, committed in prison and in a particularly cruel manner. By the same judgment

the applicant was also convicted of violence against other prisoners. Under Article 24 of the old Criminal Code, in force at the time, if the death penalty was imposed, the court could change it to life imprisonment (see "Relevant domestic law", paragraph 61 below). The Supreme Court thus changed the applicant's sentence from the death penalty to life imprisonment.

The applicant started serving his life sentence nearly twenty four years ago, in June 1993.

10. In May 2003 a new Criminal Code came into force. Article 3 of the new Code provided for retroactive application of the law commuting a penalty or mitigating the legal circumstances of a convict in other ways (see paragraph 63 below). The applicant asked the court to reclassify his crimes and to commute the sentence imposed on him. In a final decision the Court of Appeal found that there were no grounds for commuting the life sentence imposed.

11. In 2011, whilst serving his life sentence in Lukiškės Prison, K. Matiošaitis obtained a bachelor's degree in social pedagogy from the Vilnius Pedagogical University.

12. In his annual assessment for 2009, the applicant's character was assessed as satisfactory (*patenkinamai*) by Lukiškės Prison administration. They came to the same conclusion in further assessments in 2012 for the purpose of a pardon plea, and in 2014 at the request of the Prisons Department. As from 2007 the applicant had been working in prison, but on 31 March 2009 he refused to work, explaining in writing that he would not work with prisoners belonging to a lower caste. The applicant took part in social rehabilitation programmes aimed at social reintegration of convicted persons, reform of life prisoners and computer literacy, and responded positively. He participated actively in both individual and collective discussions, but remained suspicious and appeared unable to think objectively. The applicant had social contact with his family by means of letters, telephone calls and visits. According to the prison administration, he had fully admitted his guilt but had not made serious resolutions. By 2012 the applicant had committed three disciplinary violations. In particular, in 2010 a knife, sharpened pieces of tin, needles and other prohibited objects were found in his cell. He was then placed in a punishment cell for fifteen days. He was commended for good behaviour ten times. As of 2013 the applicant has taken part in a social skills programme organised by the Prisoners' Care Society (*Kalinių globos draugija*) – he was part of a "knitting group". He has also studied English in courses provided in prison.

13. In 2012 the applicant submitted a pardon[1] plea to the President of the Republic. His plea was rejected by the Pardon Commission at its meeting on 29 January 2013.

1. The Lithuanian President's internet site uses terms "Presidential Clemency" and "Presidential Pardon" interchangeably. Article 84 of the Lithuanian Constitution reads that

14. In May 2012 the applicant lodged a complaint with the Vilnius Regional Administrative Court. As it transpires from the summary of his complaint by that court, K. Matiošaitis argued that Article 158 of the Code for the Execution of Sentences, which prohibits life prisoners' release on parole (see paragraph 69 below), was unconstitutional. By a ruling of 29 May 2012 the administrative court refused to examine the applicant's complaint, underlining that the acts adopted by the President of the Republic or the Seimas could not be challenged in the administrative courts (see paragraph 108 below).

15. In August 2014 the applicant submitted a request to Lukiškės Prison administration, stating that he would like to obtain vocational training (*mokytis profesinėje mokykloje*). The prison administration replied that the conditions in Lukiškės Prison were not appropriate for teaching a profession (see also paragraph 106 below).

B. Mr J. Maksimavičius (application no. 51059/13)

16. The second applicant, Mr Juozas Maksimavičius, was born on 13 December 1963 and is serving a life sentence in Lukiškės Prison. By a judgment of 20 December 1993 the Supreme Court found the applicant guilty of aggravated murder for mercenary reasons, illegal possession of firearms and other crimes. The Supreme Court sentenced him to death.

17. By a decree of 13 April 1995 the President of the Republic granted a pardon to the second applicant and changed his death sentence to life imprisonment. The applicant has served twenty two years of his prison sentence.

18. Following the adoption of the new Criminal Code, the applicant asked the courts to reclassify his crimes and to commute his penalty. In a final decision the Court of Appeal held that there were no grounds for commuting the life sentence imposed, because the crime which the applicant had committed was particularly grave.

19. The applicant's annual character assessment for 2011 by Lukiškės Prison administration stated that he had partly admitted his guilt, but avoided talking about his crime. He worked at a manufacturing facility, took part in the social rehabilitation and recreation (*laisvalaikio užimtumo*) programmes, and devoted much time to computer work. The applicant had incurred no disciplinary penalties and had no civil claims outstanding against him. He had been commended (*skatintas*) for good behaviour thirteen times. His behaviour while in prison had been positive. In the character assessment report for 2012 drafted by the prison administration for the purpose of a pardon, it was further noted that the applicant had fully admitted his guilt and

"The President shall grant pardons…". It this text the term "Presidential Pardon" is used for consistency.

that no civil claims were outstanding against him. He was also a keen participant in individual and theme discussions.

20. In 2012 the applicant asked the President of the Republic for a pardon. His plea was rejected by the Pardon Commission at its meeting on 12 October 2012. The applicant's further pardon plea was rejected 17 October 2014.

C. Mr S. Katkus (application no. 58823/13)

21. The third applicant, Mr Stanislovas Katkus, was born on 26 October 1956 and is currently serving a life sentence in Lukiškės Prison. On 17 August 2001 the Klaipėda Regional Court found him guilty of aggravated murder and illegal possession of firearms. He was sentenced to life imprisonment and all his property was confiscated.

22. According to the Government, the conviction was upheld by the higher courts. The applicant started serving his life sentence more than sixteen years ago, in October 2000.

23. Following the adoption of the new Criminal Code, the applicant asked the courts to reclassify his crimes and to commute his sentence. In a final decision of 5 December 2003, the Court of Appeal took into account the fact that, as noted in the court decision convicting the applicant, he had committed the crimes in cold blood (*šaltakraujiškai*), those crimes had had particularly grave consequences for society, and the applicant had two prior convictions. Accordingly, there were no grounds for commuting the life sentence.

24. According to the applicant's annual character assessment by Lukiškės Prison administration for 2011, he had partly admitted his guilt but avoided talking about his crimes. The applicant had been an active participant in individual and theme discussions and had shown an interest in his future. He had also participated in social rehabilitation and recreation programmes, and had reacted to the former programme positively. His behaviour was satisfactory. In 2011 the applicant had been found slightly inebriated and had been placed in a punishment cell for fifteen days for that disciplinary violation.

25. The applicant admitted that he had not yet applied for presidential pardon.

D. Mr V. Beleckas (application no. 59692/13)

26. The fourth applicant, Mr Vladas Beleckas, was born on 6 February 1954 and is currently serving a life sentence in Pravieniškės Correctional Institution. On 11 September 2000 the Vilnius Regional Court found him guilty of theft, robbery, destruction of property of historical and cultural value, and aggravated murder. By another judgment, the applicant was also convicted of absconding from justice. For all the crimes committed a final combined sentence of life imprisonment together with confiscation of all his

property was imposed. The applicant has been serving his sentence for eighteen years, since March 1999.

27. Following the adoption of the new Criminal Code, the applicant asked the courts to reclassify his crimes and to commute his sentence. However, on 4 February 2004 the Court of Appeal refused to change the sentence of life imprisonment.

28. Between September 2010 and December 2013 the courts refused a number of requests (*teikimas*) by Lukiškės Prison administration to transfer the applicant to a correctional home[2]. The applicant participated in at least two of those court hearings, and testified about his reformed personality. On other occasions he was represented by different lawyers.

29. In his written pleadings for transfer, the applicant stated that in Lukiškės Prison he had attended computer literacy courses, taken part in sports and in a group for psychological rehabilitation, and had been part of a Bible reading group. He had also communicated with the prison psychologist. The courts evaluated those factors positively. That being so, on the basis of the applicant's character reports which Lukiškės Prison administration had drawn up for the purpose of possible transfer, the courts observed that in 2003 and 2008 he had received disciplinary punishments and had been placed for ten and fifteen days in a punishment cell, having been found in possession of a mobile phone, which was forbidden under the prison regulations. Although from 2003 until 2008 the applicant had received positive assessments and his behaviour was not conflictual, it was only in 2009, one month before he had asked the prison administration to intervene on his behalf so that he could be transferred to a correctional home, that he had fully admitted his guilt for the crimes committed. Even in his character report for 2008 the applicant was described as having no remorse about the crimes he had committed and had not made any serious resolutions. That led the courts to doubt the sincerity of his repentance. Moreover, as was apparent from his file, he had also committed a number of other small violations of the prison rules for which he had received a warning from Lukiškės Prison authorities without any disciplinary sanctions. It was also relevant that until March 2011 the applicant had remained on a list of persons likely to attempt to escape (*linkusių pabėgti asmenų įskaita*). Lastly, it was also pertinent that throughout his imprisonment the prison administration had assessed the applicant's behaviour only as "satisfactory" (*patenkinamai*); he had not been assessed

2. Under Lithuanian law, after ten years in Lukiškės Prison a life prisoner may be transferred to a "correctional home (*pataisos namai*)", where the regime is milder than that in Lukiškės Prison. On the facts of the case it transpires that even though there is more than one "correctional home" in Lithuania (there are ones in Vilnius, Alytus, Kybartai, Marijampolė and Pravieniškės), life prisoners are transferred to only one correctional home - Pravieniškės Correctional Institution. In the domestic court decisions on transfer the term "correctional home" is used mostly, without specifying that that is Pravieniškės Correctional Institution. Therefore, in the Court's judgment the terms "correctional home" and "Pravieniškės Correctional Institution" are used interchangably.

positively (*teigiamai*) until 2011. The courts thus held that it was not yet possible to conclude that the applicant had really changed and that therefore it was safe to make the conditions of serving his sentence less strict by transferring him to a correctional home. Only after further observation of the applicant's behaviour would it be possible to reliably state that his personality changes were long term.

30. The applicant's character assessment by Lukiškės Prison administration, drawn up for the purpose of his pardon plea on 30 April 2012, stated that he had taken part in a number of social rehabilitation programmes, as well as individual and theme discussions. As of August 2011 he had been working in the prison laundry and had shown a strong motivation to work. He also maintained good social contacts with his family. The report nevertheless stated that the applicant had misbehaved in 2003 and 2008, when prohibited objects had been found in his cell.

The applicant's plea for presidential pardon was rejected by the Pardon Commission at its meeting on 29 January 2013.

31. On 21 December 2015 the Vilnius City District Court rejected the applicant's request for transfer to a correctional home. The court noted that the applicant had good social contacts because he received visits often. In May 2015 he had been commended for having actively participated in social rehabilitation programmes, which showed that his behaviour was improving. However, the district court also noted the earlier breaches of prison rules committed by the applicant (see paragraph 29 above), which showed that it was still too early to transfer him to Pravieniškės.

32. By a ruling of 26 January 2016 the Vilnius Regional Court quashed that decision and granted the transfer request. On the basis of the applicant's character assessments by Lukiškės Prison administration, the court held that the applicant's behaviour had clearly improved as of April 2011, which was also proved by his active participation in the social rehabilitation programmes.

E. Mr R. Lenkaitis (application no. 59700/13)

33. The fifth applicant, Mr Rolandas Lenkaitis, was born on 31 December 1973 and is currently serving a life sentence in Pravieniškės Correctional Institution.

34. On 11 October 2001 the Panevėžys Regional Court found the applicant guilty of aggravated murder and other crimes. For all the crimes committed, a final combined sentence of life imprisonment was imposed together with the confiscation of all his property and a fine. The applicant has been serving his sentence for sixteen years, since March 2001.

35. Following the adoption of the new Criminal Code, the applicant applied to the courts with a request to reclassify his crimes and to commute his sentence. In October 2003, the first-instance court reclassified the crimes

in accordance with the new legislation, which provided for certain mitigation. Following the reclassification, the confiscation of the applicant's property and the fine were lifted. However, with regard to the crime of murder, the court found no reason to change the life imprisonment sentence. In a final decision in that regard, the Court of Appeal upheld the decision of the lower court, holding that the maintenance of the life sentence for aggravated murder was substantiated and corresponded to the basic principles for imposition of a penalty taking into account the established circumstances, the gravity of the offence and the personality of the perpetrator.

36. According to the applicant's character assessment carried out by the prison administration, while serving his sentence in Lukiškės Prison between 2001 and 2005 he had committed four disciplinary violations, including use of physical violence against another inmate and possession of prohibited objects. Between 2010 and 2013 the applicant had been commended four times. The assessment of March 2014 stated that the applicant had not paid compensation to the victims of the crimes he had committed (*turi priteistą civilinį ieškinį, kurio nedengia*) and had only partly acknowledged his guilt.

37. The applicant applied for a presidential pardon in 2013. His plea was rejected on 17 December 2013.

38. In January 2014 the Vilnius Regional Court approved the applicant's transfer to Pravieniškės Correctional Institution (*Pravieniškių pataisos namai – atviroji kolonija*) to continue serving his life sentence. It was important for that court that the applicant had already spent more than twelve years in Lukiškės Prison, where reports about his behaviour had been positive. He had confessed to his crimes, was respectful towards the prison administration, worked as a painter in the prison, and had responded well to social rehabilitation measures. Accordingly, there were grounds for approving the applicant's transfer to a correctional home (see paragraph 104 below).

F. Mr A. Kazlauskas (application no. 60115/13)

39. The sixth applicant, Mr Aidas Kazlauskas, was born on 21 September 1968 and is currently serving a life sentence in Lukiškės Prison. On 14 April 1995 the Šiauliai Regional Court found him guilty of aggravated murder and theft. He was sentenced to the death penalty. On 7 August 1995 the Court of Appeal changed the sentence to life imprisonment, on the basis of Article 24 of the old Criminal Code. The applicant has been serving his sentence for more than twenty-two years, since December 1994.

40. Following the adoption of the new Criminal Code, the applicant asked the court to reclassify his crimes and to commute his sentence. In a final decision of 30 September 2003 the Court of Appeal held that there were no grounds for commuting the life sentence.

41. In January 2005, following a proposal by Lukiškės Prison administration, the court decided to transfer the applicant to Pravieniškės Correctional Institution to serve the remainder of his life imprisonment sentence. The court held that as the applicant had received positive character assessments the transfer could be allowed. However, in April 2005 the applicant attempted to kill another life prisoner by stabbing him with a knife. The other prisoner survived only because he ran away and called for help. The applicant was then convicted of attempted murder and sentenced to twelve years' imprisonment. The sentence was combined with the previous one and a final sentence of life imprisonment, to be served in [Lukiškės] prison (*bausmę paskiriant atlikti kalėjime*), was imposed. In his written appeal the applicant asked to be transferred back to Lukiškės Prison and never to be returned to freedom, because he was afraid of liberty. On 19 January 2007 the Court of Appeal upheld the conviction.

42. The applicant's yearly character assessment for 2012 showed that he had taken part in social rehabilitation and recreation (*užimtumo*) programmes for convicts. He had received no disciplinary punishments, but had been commended twice. The applicant worked in Lukiškės Prison. He had partly acknowledged his guilt but had shown no remorse at all for his crimes (*nejaučia jokio sąžinės graužimo dėl padaryto nusikaltimo*).

43. According to his lawyer, the applicant has never asked to be pardoned by the President of the Republic.

44. In 2015 the applicant asked the Vilnius Regional Administrative Court to refer to the Constitutional Court the question whether Article 158 of the Code for the Execution of Sentences, which prohibits life prisoners' release on parole, was in compliance with Article 29 of the Constitution, which prohibits discrimination, and with Article 14 of the European Convention on Human Rights, as well as Article 1 of its Protocol No 12.

45. By a ruling of 14 May 2015 the Vilnius Regional Administrative Court refused to accept the request for examination. The administrative court noted that under Article 4 § 2 of the Law on Administrative Proceedings it could ask the Constitutional Court for interpretation of a legal norm if it considered, in a particular case, that that norm could be unconstitutional (see paragraph 108 below). Referral of a question to the Constitutional Court was within the discretionary powers of the administrative court, and the parties' wish to have the question referred to the Constitutional Court did not bind the administrative court. In the applicant's case, his request was of a general nature, therefore such a request could not be examined.

G. Mr P. Gervin (application no. 69425/13)

46. The seventh applicant, Mr Piotr Gervin, was born on 20 November 1984 and is currently serving a life sentence in Lukiškės Prison. On 17 March 2010 the Klaipėda Regional Court found the applicant

guilty of aggravated murder and robbery. He started serving his life sentence seven years ago, in March 2010.

47. In the applicant's annual character assessment for 2011, the Lukiškės Prison administration stated that he had taken part in social rehabilitation programmes and had reacted to them satisfactorily. He had not committed any breaches of discipline. He worked in the Lukiškės Prison and had been commended once. He had admitted his guilt. He had taken part in individual and collective discussions, but without showing much interest.

48. The applicant is not yet entitled to apply for a presidential pardon (see paragraph 76 below).

H. Mr E. Svotas (application no. 72824/13)

49. The eighth applicant, Mr Edmundas Svotas, was born on 1 January 1983. He is serving a life sentence at Lukiškės Prison. On 13 April 2010 the Panevėžys Regional Court found the applicant guilty of a number of crimes, including two aggravated murders, six robberies and illegal possession of a firearm. For all the crimes committed a final combined sentence of life imprisonment was imposed. The term of the sentence started nine years ago, in February 2008.

50. The applicant's yearly character assessment for 2011 conducted by Lukiškės Prison administration disclosed that he had taken part in social rehabilitation and recreation programmes and had reacted to them satisfactorily. He was tactful, maintained constant contact with his family, had received no disciplinary penalties and had admitted his guilt.

51. The applicant is not yet entitled to apply for a presidential pardon (see paragraph 76 below).

J. The applicants' petition to the State authorities on the issue of parole for life prisoners

52. The relatives of some of the applicants in this case (K. Matiošaitis, R. Lenkaitis, A. Kazlauskas, S. Katkus and J. Maksimavičius) or of other life prisoners have addressed the State authorities asking for legislative amendments establishing the possibility of parole for life prisoners in Lithuanian law. Their pleas and the authorities' replies may be summarised as follows.

53. By a petition of 19 November 2007, J.B., another person sentenced to life imprisonment, filed a petition with the Seimas (the Lithuanian Parliament). He pointed out that life prisoners were a separate category of convict. After having served ten years in prison, they could ask for a milder detention regime – to be transferred to a correctional home. Nonetheless, the punishment of deprivation of liberty remained for life and they had no right to early release. He also maintained that because the

punishment – deprivation of liberty – remained the same, many persons sentenced to life imprisonment did not ask to be transferred to a correctional home.

54. J.B. also noted that life prisoners were serving sentences for crimes of varying gravity – some had been convicted for one murder, others for multiple murders. He argued that if the possibility of early release were established in Lithuanian law, it would be a motivating factor for prisoners to learn social rehabilitation skills, and thus to reform.

55. On 1 April 2008 the Seimas granted the petition. A working group was created to consider legislative changes concerning the possibility for life prisoners to be released on parole.

56. In January 2009, the Ministry of Justice informed life prisoners' relatives that it was preparing legislative amendments and consulting other institutions and legal scientists.

57. A month later, the Committee on Legal Affairs (*Teisės ir teisėtvarkos komitetas*) of the Seimas wrote to the petitioners stating that while Lithuanian penal legislation was in conformity with the European Convention on Human Rights, the Committee did not disregard the possibility that because society had developed, penal legislation could also evolve.

58. By a letter of 5 July 2013, the Ministry of Justice informed the third applicant, S. Katkus, that on 22 December 2011 the Seimas had amended the Code for the Execution of Sentences, including its provisions on conditional release. Nonetheless, the stipulation that life prisoners would not be released on parole remained intact. A working group had been created within the Ministry to discuss the issue further. The Ministry also observed that once persons sentenced to life imprisonment had served at least ten years of their sentence, they could ask the President of the Republic for a pardon. The President had once already changed life imprisonment to fixed-term imprisonment. Moreover, the Seimas could declare an amnesty. Lastly, a person could be released from prison if he or she fell terminally ill. The Ministry reiterated that Lithuania was not obliged under European Union law or any international treaties to regulate the issue in one way or another, because penal policy was the State's own prerogative.

59. By a letter of 18 July 2013, the Committee on Legal Affairs of the Seimas informed the third applicant, S. Katkus, that the question of release on parole for life prisoners whose behaviour indicated that they were no longer dangerous to others was very complex and had wide social, legal and moral repercussions. Nonetheless, the issue was being discussed at the Ministry of Justice, so that the optimal suggestions for legal reform could be presented. The Committee was confident that the penal system, as established in the new Criminal Code, was in line with international standards.

60. In May 2015 the fourth applicant, V. Beleckas, raised the exclusion of life prisoners' release on parole with the Ministry of Justice. On 26 May 2015 the Vice-Minister of Justice replied that it was desirable to see firstly whether

a life prisoner had reformed, and then to transfer him to a correctional home where the regime was milder. Release on parole was possible only when a life prisoner proved that he or she did not pose a danger to others. Given that the present case was pending before the European Court of Human Rights, it would be useful to consider any new grounds for life prisoners' release only after the Court delivered its judgment. The Vice-Minister lastly mentioned amnesty, pardon and release because of incurable illness as the existing ways of mitigating life sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Death penalty and life imprisonment

61. Under Article 105 of the old Criminal Code of 1961, in force in Lithuania until 30 April 2003, aggravated murder was punishable by eight to fifteen years' imprisonment or by capital punishment. Article 24 of that Code provided that, when a person was sentenced to the death penalty, a court could change that sentence to life imprisonment. The death penalty could also be changed to life imprisonment by way of pardon. Persons sentenced to the death penalty but whose punishment had been changed to life imprisonment had to serve their sentence in prison (*kalėjime*).

62. On 9 December 1998 the Lithuanian Constitutional Court held that the death penalty for murder with aggravating circumstances provided for by Article 105 of the Criminal Code was in breach of Article 21 § 3 of the Constitution, which prohibits cruel punishment:

> "3.4. Following restoration of the independence of Lithuania on 11 March 1990, the Criminal Code, which had been adopted during the occupation and which provided for the death penalty for eighteen crimes against the State and criminal offences and sixteen military crimes, remained in force. It is noteworthy that the Lithuanian State authorities have considered the death penalty issue many times and adopted important decisions on restricting its application.
>
> As early as 3 December 1991 the Law "on Amending and Supplementing the Republic of Lithuania's Criminal Code, Code of Criminal Proceedings and Code of Correctional Labour" reduced the number of crimes punishable by the death penalty to one, intentional murder with aggravating circumstances, which was provided for by Article 105 of the Criminal Code.
>
> The Law of 19 July 1994 "On Amending and Supplementing the Republic of Lithuania's Criminal Code, Code of Correctional Labour, and Code of Criminal Proceedings" provided that ... a court, instead of sentencing a person to death, could replace this punishment by life imprisonment. The death penalty may also be replaced by life imprisonment under the pardon procedure.
>
> The President of the Republic, by his decree of 25 July 1996, submitted to the Seimas for debate a draft law on a moratorium on carrying out the death penalty. In the opinion of the President of the Republic, following the enactment of such a law, temporarily, until a new Republic of Lithuania Criminal Code was approved in which the necessity

of the death penalty might finally be decided, the carrying out of this punishment would be suspended. Although the draft law submitted by the President of the Republic has not been passed, since 1996 the death penalty imposed by courts has not been carried out as the President of the Republic has not considered those persons' appeals for pardon. Without that procedure the death penalty may not by carried out.

In 1996 the Government submitted to the Seimas for debate a new draft Republic of Lithuania Criminal Code in which the death penalty was not provided for.

On 27 April 1997 the death penalty issue was discussed by the Baltic Assembly. It adopted a resolution recommending that the parliaments of the three Baltic states and their governments prepare to ratify Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, the Baltic Assembly recognised that the inevitable preconditions for the adoption of such a decision were: a considerable decline in the crime rate as compared to the present one, especially with respect to grievous crimes against the person; the introduction of life imprisonment into legislation which currently provides for the imposition of the death penalty; essential reorganisation and reform of the prison system by bringing it into line with standards acceptable in Europe; and the creation of possibilities to detain separately persons who have committed criminal offences of different degrees.

On 24 June 1997, the Seimas considered a draft resolution to that effect, and its subsequent adoption is on the agenda of the Seimas. It is noteworthy that Recommendation no. 1339 of the Parliamentary Assembly of the Council of Europe adopted on 22 September 1997 assessed the draft resolution as providing a legal basis for the current moratorium and meeting a pre-condition for ratification of Protocol No. 6 of the European Convention on Human Rights."

63. After the aforementioned Constitutional Court's ruling, on 21 December 1998 the Seimas passed a law changing the death sentence to life imprisonment for persons sentenced to death. The same month the Seimas also amended Article 105 § 2 of the old Criminal Code to the effect that aggravated murder became punishable by ten to twenty years of deprivation of liberty, or by life imprisonment.

64. Article 3 § 2 of the new Criminal Code, which came into force on 1 May 2003, provided that a criminal law nullifying the criminality of an act, commuting a penalty or otherwise mitigating the legal circumstances of the person who has committed a criminal act, could have retroactive effect. That applied to persons who had committed the criminal act prior to the coming into force of such a law, as well as to persons serving a sentence and those with previous convictions.

65. Article 129 § 2 of the new Criminal Code stipulates that aggravated murder is punishable by deprivation of liberty for five to twenty years or by life imprisonment. As that provision stands today, aggravated murder is punishable by eight to twenty years' deprivation of liberty or by life imprisonment.

Apart from aggravated murder, in Lithuania life imprisonment could also be imposed for most serious crimes against humanity and war crimes (for example, genocide), certain crimes against the independence, territorial

integrity and constitutional order of the State (for example, *coup d'état*), and some crimes against public security (for example, acts of terrorism).

B. Amnesty

66. Under Article 78 of the new Criminal Code, a person who commits a crime may be relieved from serving the entire or a part of the sentence by an amnesty passed by the Seimas.

67. Since 1990, the Seimas has declared seven amnesties – on the occasion, *inter alia*, of the re-establishment of Lithuania's independence or to celebrate the adoption of the Lithuanian Constitution. Amnesties were applied to a great variety of criminal acts, most often to non-intentional or less serious crimes. Serious intentional crimes, for example, aggravated murder, were excluded from amnesties. The amnesties of 1998, 2000 and 2002 explicitly did not apply to life prisoners or those initially sentenced to the death penalty but whose sentence had been changed to life imprisonment.

C. Parole

68. Article 77 of the new Criminal Code provided that release on parole and replacement of the undischarged term of a custodial sentence with a more lenient penalty would not apply to a person sentenced to life imprisonment. Article 77 was repealed on 1 July 2012, when the Parole Law (*Probacijos įstatymas*) came into force. That Law establishes the rules on resettling convicted persons in society, aimed at preventing them from reoffending. It does not mention persons serving life sentences.

69. The Code for the Execution of Sentences provides that prisoners who have shown good behaviour and who therefore could improve their conduct under the authorities' supervision but without being isolated from society, may be released on parole, if the court so decides (Article 157). Nonetheless, life prisoners and prisoners in respect of whom an initial death sentence has been changed to life imprisonment may not be released on parole (Article 158 § 1 (3)).

70. Release on parole is initially recommended by the Parole Commission, which exists in each prison and assesses the prisoner's behaviour during his sentence, the social rehabilitation measures applied to him and their results, and the risk of the prisoner reoffending if released.

D. Dispensation from serving a prison sentence for health reasons

71. The new Criminal Code also provides that a convicted person who contracts a terminal illness may be dispensed from serving the undischarged term of the sentence. The court decides the issue taking into consideration the

gravity of the criminal act committed, the personality of the convicted person, his conduct while serving the sentence, the nature of the illness and the period of the sentence already served. Lastly, a person who, following the commission of a criminal act or imposition of a penalty, starts to suffer from a mental disorder rendering him incapable of understanding the nature of his actions or controlling them, must be dispensed from serving the undischarged term of the sentence. When dispensing the person from a penalty, the court has to decide whether to subject him to compulsory medical treatment. In the event of the person's convalescence, he may be ordered to serve the undischarged term of the sentence (Article 76).

E. Presidential pardon

72. Legislation on presidential pardon was established in Lithuania when the Provisional Fundamental Law (*Laikinasis pagrindinis įstatymas*), that is, a Provisional Constitution, of 11 March 1990 was enacted. Under Article 85 (1) § 9 of that Law, a collective organ of the State, the Presidium of the Supreme Council, had the right to examine and grant pardon pleas. Pardon pleas were first assessed by the Pardon Commission, comprising high-ranking State officials.

73. Once the Lithuanian Constitution had been issued on 25 October 1992 (in force on 2 November 1992), the right to grant pardon passed to the President of the Republic[3] (Article 84 (1) § 23 of the Constitution; Article 79 of the Criminal Code).

74. On 11 January 1993 the Acting President of the Republic issued a decree "On the Examination of Pardon Pleas (*Dėl malonės prašymų nagrinėjimo tvarkos*)". The decree stipulated that when examining pardon pleas, the following criteria were relevant: the nature of the crime committed and its danger to society; the personality of the person convicted (*nuteistojo asmenybė*), his behaviour and his attitude towards work; the time that has already been served; the prison authorities' opinion; the opinion of non-governmental organisations and the prisoner's former employer; as well as other circumstances. When a convict asked for pardon, the prison administration had to include in the file the court decisions convicting him or her, extensive details about the prisoner's character (*išsami charakteristika*), including the prison administration's recommendation and documents it found relevant. The decree did not contain any distinct provisions for persons sentenced to life imprisonment. Should a pardon plea be refused, a prisoner could submit a new plea after six months.

On 10 June 1994 the President of the Republic issued a new decree, which stipulated that pardon pleas from persons in respect of whom an initial death

3. Until the President of the Republic was elected, the Speaker of the Seimas was the Acting President.

penalty had been changed to life imprisonment could only be examined if they had served ten years of their prison sentence. The criteria to take into account when examining the pardon plea and the list of documents to be submitted remained identical to those enumerated above. If a pardon plea was refused, a life prisoner could submit a new plea after six months.

On 15 April 1998 the President of the Republic issued another decree on the rules for examining pardon pleas. The criteria to be taken into consideration, the list of documents to be submitted, as well as the requirement that the prisoner had to have served ten years of his or her sentence before being eligible to submit a pardon plea, remained the same.

75. A new decree issued by the President of the Republic on 25 March 2003 stipulated that life prisoners could lodge a pardon plea after having served twenty years of their sentence. The relevant criteria were the same as those enumerated above. The only new criterion was whether the life prisoner had compensated the victim of his crime for the pecuniary damage caused.

76. On 15 February 2007 the President of the Republic issued the decree which is currently in force. One amendment was made to it on 11 November 2011: the term which had to be served before a life prisoner could ask for presidential pardon was reduced from twenty to ten years.

77. Pursuant to the aforementioned presidential decree of 2007, the Pardon Commission (*Malonės komisija*) consists of the President of the Supreme Court, the President of the Court of Appeal, the Minister of Justice, the Prosecutor General, the Chief Adviser to the President on Legal Affairs, the Adviser to the President on Legal Affairs, the Representative of the Lithuanian Lawyers' Association, the Representative of the Lithuanian Prisoners Protection Society and the Representative of the Lithuanian Association for Crime Victims Support.

78. The current criteria pertinent for the examination of pardon pleas read as follows:

> "7. Pleas of convicts sentenced to imprisonment are examined only after the convict has commenced service of the sentence.
>
> 8. Pardon pleas from convicts sentenced to a fixed term or life imprisonment shall be submitted only via the administration of the correctional institution, which provides for examination copies of the judgments and decisions adopted in respect of the plea together with a thorough/detailed assessment (*išsami charakteristika*) of the convicts' work and behaviour, as well as references to the payment of compensation for the pecuniary damage caused by the crime and other documents, which are significant for the consideration of a pardon plea.
>
> 9. Pardon pleas from convicts sentenced to life imprisonment shall be examined only after ten years of the prison sentence have been served.
>
> ...
>
> 12. Pardon is granted after considering the nature and gravity of the crime committed by the convict, the personality and behaviour of the convict, his/her attitude towards work, how much of the sentence has already been served, whether compensation for pecuniary damage caused by the crime has been paid, the opinions of the administration

of the correctional institution, non-governmental organisations and former employers, and other circumstances.

13. If the President of the Republic grants a pardon plea in respect of a convict, he/she may be dispensed from serving his/her entire sentence or part of it.

...

15. The President of the Republic is not bound by the opinion of the Commission as regards granting pardon.

16. Pardon is granted to convicts by decrees of the President of the Republic.

17. If a pardon plea is not granted, a new pardon plea shall be considered only if at least six months have passed after the previous consideration..."

79. As regards pardon, the website of the Lithuanian President states the following:

"Pursuant to Article 84 of the Constitution, the President of the Republic grants pardons to convicted persons. It is an individual act of justice with regard to a specific person, which is based on humanity.

The State leader is approached as the last institution of truth and humanity. Combining mercy and justice, the act of pardon alleviates the fate of convicts. A Presidential pardon is an exclusive State act. The State leader grants freedom, reduces a prison sentence or a punishment imposed by a court. Pardon serves justice in one way or another.

The act of pardon is not a document contesting the validity and lawfulness of a court judgement. It is not a legal act. It is, rather, a moral act of attempting to evaluate the personality of a convicted person. The granting of a pardon features efforts to combine justice with mercy so that laws and the interests of society, third parties and aggrieved parties are not violated.

An appeal for pardon may be examined only after the entry into force of a judgement. Before taking a decision, the State leader consults the Pardon Commission. The President is not bound by the Commission's opinion on granting pardon.

Although murderers and other perpetrators of violent crime can hardly expect to be granted pardon, laws enable all convicts to appeal for it. Even persons imposed a life sentence may appeal for pardon. Such convicts may approach the State leader with an appeal for pardon for the first time no sooner than [ten] years from the commencement of the sentence.

There is no initial selection of appeals for pardon. All appeals received must be examined. Only appeals by third parties are not examined, because convicts must personally approach the President. Appeals that do not meet the requirements for legal documents are not examined either. Prisoners' appeals are sent via the administration of a prison facility, which usually attaches all required documents, such as court judgements, rulings, characteristics, etc.

Letters of intermediaries may be attached to appeals for pardon as well. Members of Parliament, public figures and sometimes even neighbours may act as intermediaries. Intermediation is not a deciding factor when taking a decision whether an appeal should be satisfied, but may influence the decision.

Convicts who do not obey the internal regulations of a prison facility will not be granted pardon. Documents provided by prison facilities show how many penalties or incentives convicts have and how they are characterised.

> The number of previous convictions of persons appealing for pardon is an important circumstance as well. Appeals by a convict who has committed a crime only once and by a persistent offender will be treated differently.
>
> The Presidential decree includes the following condition: if a person is refused pardon, he or she may appeal for pardon again no sooner than in six months.
>
> Pardon is granted by a Presidential decree which enters into force after being published in the official state publication [official gazette]."

80. The Government submitted that between 9 April 1990 and 24 November 1992 there had been thirty-six hearings of the Pardon Commission of the Presidium of the Supreme Council, whereby 580 pardon pleas had been examined and 379 had been granted. The Presidium of the Supreme Council had granted pardon in changing the death sentence to life imprisonment with regard to three convicts. The Government had no information from the archives concerning mitigation of the sentence for life prisoners at that time.

81. In their supplementary observations of 15 September 2015 the Government stated that thirty-five life prisoners had requested presidential pardon, twenty of them had submitted their pardon pleas several times. Those life prisoners included the following applicants in the instant case: J. Maksimavičius (twice), V. Beleckas, K. Matiošaitis and R. Lenkaitis (each once).

82. In addition to the pardon granted to life prisoner J.B. (see paragraphs 84-86 below), the Government noted that the following numbers of persons sentenced to a fixed term of prison for murder or aggravated murder had been granted pardon by the President of the Republic: in 2011 – nine persons; in 2012 – four persons; and in 2013 – nine persons. The President's pardon decrees show that the remaining terms of those prisoners' sentences were reduced to by between one and three years.

F. Factual information on the situation of life prisoners in Lithuania

1. Statistical information

83. In reply to the Court's request, the Government provided information on the situation of life prisoners in Lithuania. They stated that on 15 August 2015 there were 118 life prisoners in Lithuania, of whom twenty-five were serving their sentence in Pravieniškės Correctional Institution.

2. Mr J.B.

84. The Government also referred to the example of J.B., who in 1996 had been sentenced to the death penalty for aggravated murder. The same year the Supreme Court changed his sentence to life imprisonment.

85. By decree no. 1K-1060 of 9 May 2012 the President granted J.B.'s pardon plea, commuting his life sentence to a fixed-term sentence of twenty-

five years. Thereby J.B. also acquired the right to apply for parole. At a certain stage of his sentence, he was transferred to Pravieniškės Correctional Institution to serve his sentence.

86. In 2014 J.B. applied for release on parole. On the basis of an opinion of the Parole Commission (see paragraph 70 above), a report by the prison psychologist, a report on the accomplishment of J.B.'s individual social rehabilitation plan (*pažyma apie nuteistojo individualaus socialinės reabilitacijos plano įvykdymą*) and his personal file, the Kaišiadorys District Court found that it was too early to release him from prison. The court held that while the prisoner had fulfilled the measures described in his individual social rehabilitation plan, he had also committed two violations of the internal prison rules, and his behaviour had not improved until 2013. According to reports by the prison psychologist and a social behaviour report, he did not always act in a responsible manner. The prisoner's way of thinking, his close links with other criminals, financial difficulties (he had not fully paid the civil claim against him), showed that there remained a likelihood that he would reoffend. The court also emphasised that the Parole Commission's conclusions to the same effect had been based on written evidence in J.B.'s file and reports by competent specialists, all of which had been established in accordance with the methodology provided for by the relevant legislation. For the court, given that J.B.'s behaviour in prison had not been beyond reproach, it was not reasonable to expect that he would behave without fault if released on parole. The decision was later upheld by the Kaunas Regional Court.

On 15 September 2015 the Kaunas Regional Court rejected J.B.'s fresh application for release on parole. On the basis of J.B.'s individual social rehabilitation plan results the court considered that J.B. had not yet reformed sufficiently to be ready to reintegrate into society.

3. Mr. I.A.

87. The Government also noted the example of I.A. In 1994 the Supreme Court had sentenced him to death for the murder of a journalist who had written articles disclosing a criminal gang, I.A.'s participation in that criminal gang and his unlawful possession of firearms. When passing sentence, the Supreme Court had changed the punishment to life imprisonment on the basis of Article 24 of the old Criminal Code.

88. Following the entry into force of the new Criminal Code in 2003, I.A. asked the court to reclassify his crimes and to impose a milder punishment. In 2004 the court noted that I.A. had already spent more than ten years in prison. During that time the State's penal policy had changed and the death penalty had been abolished. As to imprisonment, its lower and upper limits had been extended, thus making it easier for the courts to individualise the punishment. Having taken into account the situation of I.A., including his character report drawn up by the prison authorities, the court changed his

sentence to twenty-five years of imprisonment, to be served in a correctional home.

89. In 2012 the court released I.A. on parole, having concluded that his conduct had shown a marked improvement of personality during his sentence, the purpose of the punishment had been achieved, and that it could be further fulfilled by supervising him without isolating him from society ("*asmenybės progresas bausmės atlikimo metu yra akivaizdus, bausmės paskirtis atlikta, ir jos tikslai toliau gali buti užtikrinami prižiūrint nuteistąjį I.A. neizoliuotą nuo visuomenės*").

4. Mr. R.V.

90. Another example given by the Government was that of R.V. In 1993 the Supreme Court found R.V. guilty of murdering two people and sentenced him to death. By the same judgment the sentence was changed to life imprisonment.

91. After the new Criminal Code came into force and at the request of R.V., in 2003 the court reduced his sentence from life to twenty years' imprisonment. The court took into account that R.V. had already served twelve years of his sentence and that the State's penal policy had significantly changed.

92. In 2005 a court released R.V. from prison because he had a mental disorder which became more pronounced in prison, and subjected him to compulsory medical treatment in a psychiatric institution with a strict regime.

5. Mr. R.P.

93. On 30 May 2013 life prisoner R.P. wrote to the Kaišiadorys District Court, asking the latter to refer to the Constitutional Court the question whether Article 158 of the Code for the Execution of Sentences, which prohibits life prisoners' release on parole, was in compliance with the Constitution. R.P. noted that none of the amnesties declared in Lithuania since 1990 applied to life prisoners. Only one life prisoner had been pardoned by the President of the Republic. He also relied on the Committee of Ministers' Recommendation (2003) 22, pursuant to which release on parole should apply to all prisoners, including those sentenced to life imprisonment. This also included the prisoner's right to be heard when the question of parole was being decided, as well as the right to appeal to an independent higher institution. In R.P.'s view, amnesty or pardon were political measures, and therefore did not meet the recommended standards.

94. In his complaint R.P. also relied on Article 110 § 3 of the Rome Statute of the International Criminal Court (see paragraph 119 below). According to R.P., in Lithuania life prisoners were *de facto* condemned to stay in prison until death, whereas in 1998 the Constitutional Court had found the death penalty to be in breach of the Constitution (see paragraph 62 above).

95. By the same request, R.P. also asked the court to annul the prison authorities' decision refusing to collect materials about the applicant for the purpose of submitting those materials to the Parole Commission, so that the latter could examine the applicant's release on parole.

96. By a ruling of 28 January 2014 the Kaišiadorys District Court firstly held that R.P.'s attempt to ask the Parole Commission to consider the question of his release was pointless, because Article 158 of the Code for the Execution of Sentences prohibited life prisoners' release on parole. Secondly, life prisoners' situation could be alleviated by way of amnesty or pardon. For the court of criminal jurisdiction, there was therefore no reason to grant R.P.'s request to refer his complaint to the Constitutional Court.

97. By a ruling of 13 February 2014 the Kaunas Regional Court dismissed R.P.'s appeal, including his request to address the Constitutional Court.

6. Mr. H.D.

98. On 16 June 2016 the Supreme Court's enlarged chamber of seven judges upheld H.D.'s sentence to life imprisonment. H.D. was convicted of a number of crimes, including running a criminal association and murder. H.D. argued that, without possibility of parole, a life sentence was inhuman, and therefore was in breach of the Lithuanian Constitution and of the Convention. The Supreme Court dismissed that argument, stating that the presidential pardon did not make life sentence irreducible. Under the case-law of the Court, in matters of criminal justice and sentencing the States had a margin of appreciation to prescribe the form – executive or judicial – which such review should take.

G. Other relevant domestic legislation and practice

1. As to prisoners' rehabilitation

99. Both the old Criminal Code (Article 21) and the new Criminal Code (Article 41) set out the objectives of criminal punishment as follows: (1) to deter people from committing criminal acts; (2) to punish those who have committed a crime; (3) to deprive convicted persons of the opportunity to commit new crimes or to restrict such a possibility; (4) to exert an influence on those who have served their sentence to ensure that they comply with the law and do not relapse into crime.

In addition, the old Criminal Code stipulated that punishment did not have the goal of degrading a person or causing him physical suffering. The new Criminal Code also provides that punishment serves to implement the principle of justice.

100. The Rules for Correctional Facilities (*Pataisos įstaigų vidaus tvarkos taisyklės*), approved by the Minister of Justice on 2 July 2003 and applicable to prisons, correctional homes and other such facilities, including Lukiškės

Prison and Pravieniškės Correctional Institution, stipulate that prisoners' work in those facilities should be considered as a positive element of their education and development. Inasmuch as possible, work should correspond to and develop the prisoner's abilities so that he is able to make a living when he leaves the prison. Prisoners should be given proper work or other activities, so that they are occupied the entire day (points 129-131).

101. The Rules also stipulate that the prison administration must draw up an individual plan for the prisoner's social rehabilitation, so that he is encouraged to reintegrate into society once he has served his punishment (point 163). When performing social rehabilitation work with a prisoner, the prison administration must evaluate his risk level. In the process of social rehabilitation, prisons are to receive assistance from all State and municipal institutions, and non-governmental and religious organisations. Psychologists working in prisons must assess convicts and provide recommendations to the prison administration in drawing up guidelines for the prisoner's social rehabilitation. In particular, each correctional facility must have the following programmes:

(1) adaptation of new prisoners (following assessment of the prisoner's personality, needs, abilities and family connections);

(2) reform (moral education so that the prisoner behaves in accordance with the rules acceptable to society; teaching of basic legal concepts, so that he aims to achieve his goals with legal means; cultural education; physical education);

(3) prisoners' reintegration in society, to start preparing the prisoner for release as soon as possible ("*nuteistųjų integracijos į visuomenę programa: į pataisos įstaigą priimtus nuteistuosius reikėtų kaip galima greičiau pradėti rengti išėjimui į laisvę*"). When supervising prisoners it should be emphasised that they remain part of society, not separated from it (*nuteistieji tebėra visuomenės dalis*); assistance by social workers is encouraged, as are contacts between the prisoner and his family.

102. As of 1 September 2015, the Code for the Execution of Sentences was supplemented by new Article 137^1 on social rehabilitation planning, in which the convicted person must participate. According to the Government, individual social rehabilitation plans had to be drawn up by 1 December 2015.

103. The Government also noted that a number of social rehabilitation programmes for life prisoners had been organised at Lukiškės Prison. Those included an adaptation programme (an individual programme aimed at integrating convicts in their new social environment and creating preconditions for a successful correction process), life prisoner's personality transformation, social rehabilitation, art, computer literacy, drug and HIV prevention, suicide and criminal subculture prevention, occupational programme (sport activities, religious events, attendance of concerts in prison, subscribing to a library, limited access to internet). They also included

language classes and secondary education; higher education was also possible. In addition, the psychological service of Lukiškės Prison implemented programmes aimed at the development of communication skills, emotion recognition and coping with stressful situations, art therapy, mutual emotional support in a group, and yoga.

104. The Code for the Execution of Sentences states that life prisoners must serve the first ten years of their sentence in prison. Afterwards, if their behaviour and security requirements so allow, and on the recommendation of the prison administration, by court decision they may be transferred to a correctional home to serve the remainder of their sentence. In prison, life prisoners are held in solitary confinement, or, if they agree, with one other inmate. In correctional homes, life prisoners are held separately or isolated from other prisoners (Article 165). Persons sentenced to deprivation of liberty, including life prisoners, must follow the prison regulations and orders by the prison administration (Article 110).

105. The Code for the Execution of Sentences provided that once each two months life prisoners could have a short term visit by family members, lasting up to four hours. Starting from 1 January 2017 the possibility of supplementary short term visits for re-socialisation purpose has been established (Article 94 §§ 1 and 2).

106. As concerns vocational education (*profesinis mokymas*), Article 167 § 2 of the Code for the Execution of Sentences read, until 1 September 2015, that in respect of life prisoners it may be provided for only in a correctional home. Starting from 1 September 2015 the prohibition on providing vocational training in prison has been abolished.

Life prisoners may work (Article 167 § 3). Pursuant to Government Regulation no. 264 of 8 April 2009 "On Organising Vocational Training for Prisoners" (*Dėl suimtųjų ir nuteistųjų, atliekančių laisvės atėmimo bausmes, bendrojo lavinimo ir profesinio mokymo organizavimo*), a life prisoner may receive vocational training if more than three life prisoners have expressed such a wish. Another condition for such education is that the prison facility must be able to provide the necessary conditions so that the life prisoners' vocational training can be organised separately from other prisoners. The Government specified that vocational training at Pravieniškės Correctional Institution, where life prisoners could be transferred to serve the remainder of their life sentence, was provided for the following occupations: woodworker, carpenter, cabinetmaker, and computer operator.

2. As to the constitutional review

107. The Constitution reads as follows:

Article 105

"The Constitutional Court shall consider and adopt decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania.

The Constitutional Court shall also consider whether the following are in conflict with the Constitution and laws:

1) the acts of the President of the Republic;

2) the acts of the Government of the Republic. (...)"

Article 106

"The Government, not less than 1/5 of all the Members of the Seimas, and courts shall have the right to apply to the Constitutional Court concerning the acts specified in the first paragraph of Article 105.

Not less than 1/5 of all the Members of the Seimas and courts shall have the right to apply to the Constitutional Court concerning the conformity of the acts of the President of the Republic with the Constitution and laws.

Not less than 1/5 of all the Members of the Seimas, courts, as well as the President of the Republic, shall have the right to apply to the Constitutional Court concerning the conformity of the acts of the Government with the Constitution and laws. (...)"

108. The Law on Administrative Proceedings states that administrative courts shall not hear cases assigned to the competence of the Constitutional Court, also cases within the competence of the courts of general jurisdiction or other specialised courts. Investigation of the President of the Republic activities is outside the administrative courts' jurisdiction (Article 16 § 2).

The Law also provides:

Article 4. Application of laws when hearing administrative cases

"(...)

2. If there is a reason to believe that a law or other legal act which should be applied in a particular case is in conflict with the Constitution, the court shall suspend the examination of the case and refer to the Constitutional Court a question whether that law or other legal act complies with the Constitution. Having received the Constitutional Court's ruling, the court re-opens the examination of the case. The aforementioned rules are also applicable when the court has doubts whether an act of the President of the Republic or a Government act, which should be applied in a particular case, is not in contradiction with the laws of the Constitution."

109. By a ruling of 13 May 2010 the Constitutional Court reiterated that the President of the Republic was part of the executive. The policy implemented by the President constituted overall activities of that institution of power within the competence defined in the Constitution and laws. Competent decisions and actions of the President formed an integral part of the policy implemented by the President. The Constitutional Court also held:

"13.1. (...)

It has also been mentioned that the peculiarities of the constitutional status of the Seimas, the President of the Republic, the Government, and the Judiciary related with the implementation of state power and separation of state powers *inter alia* imply that these institutions may not take over the constitutional powers of each other, thus, also the courts to which persons concerned apply with petitions requesting to investigate acts adopted by the Seimas, the President of the Republic, or the Government or the activities of these institutions expressed in other ways may not take over the constitutional powers of the Seimas, the President of the Republic, or the Government, that is, adopt corresponding decisions for these institutions of power or oblige the said institutions of power to pass acts related with the implementation of State power.

Thus, the formula 'the activities of the President of the Republic (...)' of Paragraph 2 (...) of Article 16 of the Law on the Administrative Proceedings means such activities whereby State power is implemented. These activities may not be equated with the activities embraced by the notion "public administration" which is employed in the Law on the Proceedings of Administrative Cases.

13.2. In this context the provision 'Investigation of the activities of the President of the Republic <...>, the Government (as a collegial body) <...> shall be outside the jurisdiction of administrative courts' of Paragraph 2 (...) of Article 16 of the Law on the Proceedings of Administrative Cases', which is being disputed in the constitutional justice case at issue, is to be construed as *inter alia* meaning that the subject matter of the administrative dispute under consideration in the administrative court may not be such activities of the President of the Republic or the Government whereby state power is implemented.

(...)

15. It needs to be held that the provision 'Investigation of the activities of the President of the Republic <...>, the Government (as a collegial body) <...> shall be outside the jurisdiction of administrative courts' of Paragraph 2 (...) of Article 16 of the Law on the Proceedings of Administrative Cases does not prevent the person, who believes that his rights and freedoms have been violated because of the activities of the President of the Republic or the Government, from implementing his right to apply to court, which is entrenched in Paragraph 1 of Article 30 of the Constitution.

It also needs to be held that the disputed legal regulation, established in Paragraph 2 (...) of Article 16 of the Law on the Proceedings of Administrative Cases, also does not violate the constitutional imperatives that stem from Paragraph 1 of Article 109 of the Constitution, which provides that, in the Republic of Lithuania, justice shall be administered only by courts, and Paragraph 1 of Article 29 thereof, which provides that all persons shall be equal before the law, the court, and other state institutions and officials."

110. In the conclusion of 24 January 1995, the Constitutional Court held that upon its ratification and enforcement, the Convention will become a constituent part of the legal system of the Republic of Lithuania and will be applied in the same way as laws of the Republic of Lithuania. The Constitutional Court also held that Articles 4, 5, 9, 14 and Article 2 of Protocol No. 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms were in compliance with the Constitution of the Republic of Lithuania.

In a ruling of 16 January 2007 the Constitutional Court reiterated that in Lithuanian legal system the Convention has the force of a law. The decrees

by the President of the Republic may not be in contradiction with the Convention.

III. RELEVANT EUROPEAN, INTERNATIONAL AND COMPARATIVE LAW AND OTHER MATERIALS

A. General principles concerning imposition and review of life sentences

111. The relevant texts of the Council of Europe, the European Union and other international legal texts on the imposition and review of life sentences, including the obligations of Council of Europe member States when extraditing individuals to States where they may face such sentences, are set out in *Kafkaris v. Cyprus* ([GC], no. 21906/04, §§ 68-76, ECHR 2008), and *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09, 130/10 and 3896/10, §§ 60-75, 9 July 2013).

112. The relevant Council of Europe and international instruments on the objectives of a prison sentence, notably as regards the importance to be attached to rehabilitation, are outlined in *Dickson v. the United Kingdom* ([GC], no. 44362/04, §§ 28-36, ECHR 2007-V) and summarised in *Vinter and Others* (cited above, §§ 76-81). They have also been reiterated in *Murray v. the Netherlands* ([GC] no. 10511/10, §§ 70-76, 26 April 2016).

113. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") prepared a report on "Actual/Real Life Sentences" dated 27 June 2007 (CPT (2007) 55). The report's conclusion included recommendations that no category of prisoners should be "stamped" as likely to spend their natural life in prison; no denial of release should ever be final; and not even recalled prisoners should be deprived of hope of release.

114. On 16 April 2016 the CPT made public its 25th General Report, where it noted that in 2014 there was a total of some 27,000 life-sentenced prisoners in Europe. The CPT called upon the 47 Council of Europe member States to review their treatment of life-sentenced prisoners according to the individual risk they present, and to provide for their possible reintegration into society at some stage. The CPT underlined that although the majority of countries imposing life sentences require that a minimum period of between 20 and 30 years be served before a prisoner may benefit from conditional release, a number of others – including Bulgaria, Lithuania, Malta, the Netherlands and, for certain crimes, Hungary, the Slovak Republic and Turkey – do not have a system of conditional release for life-sentenced prisoners. As a result, some prisoners may never be released (except on compassionate grounds or by pardon). The detention regime should keep life-sentenced prisoners in contact with the outside world, offer them the possibility of release into the community under licence and ensure that at

some stage their release can be safely granted, at least in most cases. To this end, these prisoners should be given a precise date for the first review for possible release, based on an individual plan defined at the outset of the sentence, and reviewed regularly. The CPT also noted that the conditions under which life-sentenced prisoners were held varied significantly from one country to another, and often even from one establishment to another. In many countries, life-sentenced prisoners were held together with other prisoners and benefited from the same rights in terms of work, education, recreational activities, and contact with the outside world. However, in a number of countries including Armenia, Azerbaijan, Bulgaria, Georgia, Latvia, the Republic of Moldova, Romania, the Russian Federation and Ukraine, life-sentenced prisoners were as a rule kept separate from other prisoners.

115. In the same report the CPT stated the following:

"Life means life"

"73. As indicated above, in several Council of Europe member states, a person may be sentenced to life imprisonment without any prospect of conditional release. This is known as an "actual or whole life sentence". The CPT has criticised the very principle of such sentences in several visit reports, expressing serious reservations regarding the fact that a person sentenced to life imprisonment is considered once and for all to be dangerous and is deprived of any hope of conditional release (except on compassionate grounds or by pardon). The Committee maintains that to incarcerate a person for life without any real prospect of release is, in its view, inhuman. It is also noteworthy that even persons who are convicted by the International Criminal Court (or special international tribunals) of the most serious crimes such as genocide, war crimes and crimes against humanity may in principle benefit at a certain stage from conditional (early) release. Indeed, the CPT considers that a prison sentence which offers no possibility of release precludes one of the essential justifications of imprisonment itself, the possibility of rehabilitation. While punishment and public protection are important elements of a prison sentence, excluding from the outset any hope of rehabilitation and return to the community effectively dehumanises the prisoner. This is not to say that all life-sentenced prisoners should be released sooner or later; public protection is a crucial issue. However, all such sentences should be subject to a meaningful review at some stage, based on individualised sentence-planning objectives defined at the outset of the sentence, and reviewed regularly thereafter. This would provide not only hope for the prisoner, but also a target to aim for which should motivate positive behaviour. It would thus also assist prison administrations in dealing with individuals who would otherwise have no hope and nothing to lose. The European Court of Human Rights has in recent years examined a number of cases where domestic courts had imposed life sentences on prisoners with no possibility for early or conditional release and where, barring compassionate or highly exceptional circumstances, a whole life sentence meant precisely that. The most authoritative judgment of the Court to date, delivered by the Grand Chamber in *Vinter and Others v. the United Kingdom* states that it was incompatible with human dignity, and therefore contrary to Article 3 of the European Convention on Human Rights, for a state to deprive a person of their freedom without at least giving them a chance one day to regain that freedom. Three main consequences can be drawn from the existing case-law of the Court. The legislation of member states must henceforth provide for a time during the serving of the sentence when there will be a possibility to review that sentence. Furthermore, member states must establish a

procedure whereby the sentence will be reviewed. Finally, detention in prison must be organised in such a way as to enable life-sentenced prisoners to progress towards their rehabilitation.

The basic objectives and principles for the treatment of life sentenced prisoners

74. In the CPT's view, the objectives and principles for the treatment of life-sentenced prisoners enunciated by the Committee of Ministers in Recommendation Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners remains the most pertinent and comprehensive reference document for this group of prisoners. In summary, these principles are:

the individualisation principle: each life sentence must be based on an individual sentence plan, which is tailored to the needs and risks of the prisoner;

the normalisation principle: life-sentenced prisoners should, like all prisoners, be subject only to the restrictions that are necessary for their safe and orderly confinement;

the responsibility principle: life-sentenced prisoners should be given opportunities to exercise personal responsibility in daily prison life, including in sentence planning;

the security and safety principles: a clear distinction should be made between any risks posed by life-sentenced prisoners to the external community and any risks posed by them to other prisoners and persons working in or visiting the prison;

the non-segregation principle: life-sentenced prisoners should not be segregated on the sole ground of their sentence, but be allowed to associate with other prisoners on the basis of risk assessments which take into account all relevant factors;

the progression principle: life-sentenced prisoners should be encouraged and enabled to move through their sentence to improved conditions and regimes on the basis of their individual behaviour and cooperation with programmes, staff and other prisoners."

B. CPT reports as regards life prisoners' situation in Lithuania

116. The CPT delegation visited Lukiškės Prison in 2004. In its follow-up report, published on 23 February 2006, the CPT noted:

"4. Life-sentenced prisoners at Vilnius-Lukiškės Remand Prison

a. material conditions

71. The Unit for life-sentenced prisoners at Vilnius-Lukiškės Remand Prison was located in Building 1, which had recently been renovated. The material conditions of detention in that unit were on the whole satisfactory (although the paint was already peeling off the walls and ceiling in some of the cells). All cells were furnished with one or two beds, chairs, a table and a cupboard and were equipped with a partitioned toilet and a washbasin with hot/cold running water. Moreover, cells were clean, benefited from good access to natural light and ventilation, and were equipped with artificial lighting and heating. However, a typical cell (between 7 and 9 m^2) only offered cramped living space for two prisoners, a shortcoming which was all the more serious bearing in mind that the prisoners concerned would spend many years in such conditions.

b. regime

72. A mere six out of the 79 life-sentenced prisoners were offered work. For the rest, the only daily out-of-cell activity offered was 1½ hours of outdoor exercise, which was taken in cubicles measuring some 20 m². The remaining 22½ hours of the day were usually spent locked up in their cell, reading, and (for prisoners who could afford them) listening to the radio or watching TV. It should be added that life-sentenced prisoners could not associate with any other categories of prisoners, as this was expressly prohibited by the legislation in force (in practice, they could only associate with their cellmate).

That said, the CPT welcomes the initiatives taken at local level to allow inmates access to a computer room (for one hour per week) and to indoor sports/recreation rooms (twice per month for two hours).

73. Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which many of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.

The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Moreover, the provision of such a regime to life-sentenced prisoners enhances the development of constructive staff/inmate relations and hence reinforces the security within the prison.

74. It is clear that the regime applied to life-sentenced prisoners at Vilnius-Lukiškės Remand Prison falls far short of the above criteria. Indeed, the prisoners were subject to a regime of small-group isolation, and certain of them to solitary confinement, for many years. This, combined with the quasi-total absence of a programme of activities (such as work or education) for the vast majority, can easily lead to personal degeneration of the prisoners concerned. Several of the prisoners met by the delegation claimed that they were seriously affected by the lack of human contacts with other inmates and staff. It is noteworthy in this regard that, since August 2000, four life-sentenced prisoners had committed suicide.

As for the rule that life-sentenced prisoners cannot associate with other sentenced prisoners or even other life-sentenced prisoners from other cells, it is totally unjustified. In this connection, the CPT wishes to stress that life-sentenced prisoners are not necessarily more dangerous than other prisoners. Many such prisoners have a long-term interest in a stable and conflict-free environment. Therefore, the approach to the management of life-sentenced prisoners (as indeed to all prisoners) should proceed from an individual risk/needs assessment to allow decisions concerning security, including degree of contact with others, to be made on a case-by-case basis.

The CPT calls upon the Lithuanian authorities to fundamentally revise the regime applicable to life-sentenced prisoners and the relevant legal provisions, in the light of the remarks made in paragraphs 72 to 74.

c. contact with the outside world

75. The negative effects of institutionalisation upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world.

Life-sentenced prisoners benefited, in principle, from the same possibilities to maintain such contacts as other sentenced prisoners. However, they could not benefit from long-term visits with their partner/family (during the initial ten years of imprisonment). The CPT recommends that the Lithuanian authorities extend the possibility of having long-term visits to all sentenced prisoners, including those serving life sentences."

117. The CPT delegation visited Lukiškės Prison in 2008. In its ensuing report, published on 25 June 2009, the CPT noted:

4. Conditions of detention of life-sentenced prisoners

"50. At Lukiškės, the material conditions in the section for life-sentenced prisoners (described in the report on the 2004 visit) were acceptable. It should be recalled that, in principle, the prisoners were accommodated in individual cells. However, two life-sentenced prisoners could ask to share a cell; at the time of the visit, there were 14 such prisoners in two-bed cells.

51. The CPT has taken note of the efforts made by the authorities since 2004 to expand the programme of activities for life-sentenced prisoners. In particular, at the time of the 2008 visit, 26 life prisoners (out of 81) were working outside their cells for 8 hours a day. In addition to the daily outdoor exercise (1½ hours), the prisoners could study, engage in outside sporting activities once a week (1½ hours), take part in sports competitions (in the summer) and attend religious services and, more infrequently, cultural or artistic events (e.g. concerts). The prison also had 16 television sets and 8 radios for prisoners without means of support.

However, there is still progress to be made. Life-sentenced prisoners who did not work – that is to say, the majority – usually spent 22½ hours a day locked up in their cells. Education was generally confined to teachers handing out exercises at the cell doors, sometimes at very spaced-out intervals (e.g. monthly). The indoor sports/recreation rooms (to which life-sentenced prisoners had been allowed access twice a month for two hours in 2004) were no longer in use.

It should be added that, although there were some exceptions in practice, contact with other prisoners, including life-sentenced prisoners, was still prohibited by law (e.g. the inmates of each cell took their daily outdoor exercise separately from the others).

52. The CPT wishes to recall that the rule that life-sentenced prisoners must not associate with other prisoners – even life prisoners from other cells – is totally unjustified and unnecessarily restricts their regime. Life-sentenced prisoners do not necessarily pose a threat to safety and security. The approach to their management (and that of all prisoners) should therefore be based on an individual risk/needs assessment so that decisions concerning security, including contacts with other prisoners, can be taken on a case-by-case basis.

The CPT recommends that the Lithuanian authorities pursue their efforts to develop the regime applicable to life-sentenced prisoners, taking account of Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners. The relevant legislation should be amended accordingly."

118. The CPT delegation visited Lukiškės Prison in 2012 and the relevant part of its report (CPT/Inf (2014) 18) reads as follows:

4. Conditions of detention of life-sentenced prisoners

"57. At Lukiškės Prison, the material conditions in the unit for life-sentenced prisoners remained unchanged since the CPT's visit in 2008 and were acceptable. As a rule, life-sentenced prisoners were held in individual cells but could request to be detained with another life-sentenced inmate. The only life-sentenced woman was held in the corridor reserved for the female prisoners. Her conditions of detention were satisfactory; her relatively large cell had been recently refurbished.

Persons sentenced to life have to spend their first ten years of imprisonment at Lukiškės Prison before having the possibility of being transferred to a Correction Home. In the past, this transfer was only possible after 20 years. Further, they can now apply for clemency after ten rather than 20 years. The CPT notes these developments.

58. Regarding the regime, the CPT acknowledges that a certain number of positive measures have been taken to expand the programme of activities. In addition to the activities described in the report on the 2008 visit (1½ hours of outdoor exercise, some possibility of work outside the cell, education, etc.), life-sentenced prisoners can now use a computer for up to three hours per day, like any other inmate. They can also have access to higher education. The Prison organised every month a conference/debate with a speaker at which all the prisoners, including life-sentenced inmates, were invited to participate. Possibilities of association with other life-sentenced prisoners also existed during religious services, certain sport activities as well as during the "knitting group".

However, the CPT considers that further progress needs to be made. The vast majority of the life-sentenced prisoners were still spending 22½ hours in their cells as they were not enrolled in work activities or education. Little attempt seemed to be made by prison staff to engage them in the few activities available. Further, contacts with other prisoners were in general prohibited.

59. The Committee sees no justification for the systematic segregation of life-sentence prisoners and considers that the Lithuanian authorities should institute a process for integrating persons sentenced to life imprisonment into the general prison population. Particular reference should be made to the Council of Europe's Committee of Ministers' Recommendation (2003) 23, on the 'management by prison administrations of life-sentence and other long-term prisoners' of 9 October 2003. One of the general principles set out in that recommendation is the non-segregation principle, according to which life-sentenced prisoners should not be segregated on the sole ground of their sentence. This principle should be read in conjunction with the security and safety principle, which calls for a careful assessment of whether prisoners pose a risk of harm to themselves, to other prisoners, to those working in the prison or to the external community. The assumption is often wrongly made that the fact of a life-sentence implies a prisoner is dangerous. In this context, the explanatory report to the Recommendation (2003) 23 notes that 'as a general rule, the experience of many prison administrations is that many such prisoners present no risk to themselves or to others' and that 'they exhibit stable and reliable behaviour'. The director of Lukiškės Prison indicated to the delegation that only a small number – less than a handful – of the 88 life-sentenced prisoners in his establishment would be a potential threat to safety and security.

Consequently, the placement of persons sentenced to life imprisonment should be the result of a comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan, and not merely a result of their sentence.

The CPT calls upon the Lithuanian authorities to fundamentally review the regime applicable to life-sentenced prisoners, taking account of the above-mentioned remarks. The relevant legislation should be amended accordingly."

C. The Rome Statute of the International Criminal Court

119. The Rome Statute of the International Criminal Court (1998, "ICC Statute"), in force in respect of Lithuania as of 1 August 2003, reads as follows:

Article 110. Review by the Court concerning reduction of sentence

"1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.

2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.

3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.

4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:

(...)

(b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or

(...)"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

120. The eight applicants complained that their life sentences were incompatible with 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. Admissibility

1. The Government's preliminary objection

121. The Government noted that the applicants R. Lenkaitis and E. Svotas had failed to present their observations in due time, which led to the conclusion that they did not intend to pursue their applications.

2. The Court's assessment

(a) As to the applicants R. Lenkaitis and E. Svotas

122. The Court observes that these two applicants indeed failed to present their observations by 6 August 2014. They also did not submit any further observations by 15 September 2015, although both times they had been informed that this may lead to the striking of their cases from the Court's case list under Article 37 § 1 (a) of the Convention (see paragraph 7 above).

123. In the Court's view, the particular circumstances of the present applications are such that it is no longer justified to continue its examination as these two applicants may be regarded as no longer wishing to pursue their applications, within the meaning of Article 37 § 1 (a) of the Convention.

124. That being so, the Court notes that under Article 37 § 2 of the Convention the striking of the application out of its list of cases does not preclude the subsequent restoration of the application to the list if the Court considers that the circumstances justify such a course (see, *mutatis mutandis*, *Yakubov v. Russia* (dec.), no. 33113/14, 5 January 2016).

125. In view of the above, it is appropriate to strike these two cases out of the list. The Court will however refer to certain facts regarding these applicants' situation in its further assessment of the merits of this case (see paragraph 126 *in limine* below).

(b) As to other six applicants

126. The Court observes that the other six applicants submitted their observations, thus showing that they wished to continue their case. Given that these six applications have a similar factual and legal background concerning life imprisonment, the Court also decides to join them, pursuant to Rule 42 § 1 of the Rules of the Court.

127. The Court also notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Neither it is inadmissible on any other grounds. The complaint must therefore be declared admissible.

B. Merits

1. The parties

(a) The applicants

128. The applicants argued that their life sentences were neither *de jure* nor *de facto* reducible and were thus in breach of Article 3 of the Convention. Firstly, Lithuanian law did not provide for release on parole for life prisoners; such a measure was applicable only to prisoners serving fixed-term sentences. Any attempt to apply to a court, or to request a court of general jurisdiction to refer the matter to the Constitutional Court, was futile. The applicants further maintained that Article 3 of the new Criminal Code, in allowing the retroactive application of the criminal law commuting a penalty or mitigating legal circumstances could not ease their situation either (see paragraph 63 above). Even though all eligible applicants in the present case had attempted to use that remedy, their attempts had been unsuccessful and by final decisions the courts had found no grounds for commuting their life sentences. They had only one chance to request such a review. Accordingly, even if over time the danger the applicants posed to the general public had diminished, they had no opportunity to reapply under that provision.

129. Commuting of a life sentence because of either a terminal illness or as a result of an amnesty could not be regarded as giving life prisoners a "prospect of release". Indeed, none of the seven acts of amnesty passed by the Seimas had included life prisoners. The Government had not provided any information or produced evidence that any new amnesty law would be drafted which would include life prisoners and would give them a "prospect of release" either.

130. The applicants lastly turned to the presidential pardon, which the Government considered as the main and most effective mechanism for reducing *de jure* and *de facto* a life sentence. The applicants asserted that the criteria contained in the Pardon Commission regulations were rather vague. The list of assessment criteria was not exhaustive and was open-ended. Furthermore, when a plea was rejected, a decision by the President of the Republic could not be appealed against to any court. In addition, no reasons for rejection were provided that would enable the prisoner to understand in which area and how he should seek to improve. For example, the pardon plea submitted by the second applicant, J. Maksimavičius, was considered on 12 October 2012. Despite a positive character assessment in 2011 and 2012 by Lukiškės Prison administration (see paragraph 19 above), the plea was denied. Notwithstanding the criteria listed in the Pardon Commission regulations and information provided by Lukiškės Prison administration about his character, the applicant still remained with an open question as to what else he must do, and how and in what manner he should seek to improve in order to demonstrate that he posed no danger to society and was ready to

be re-integrated. That knowledge was crucial if in practice the objective of his prison sentence was not to oblige him to spend the rest of his life in prison and to die there, but essentially to reform and be rehabilitated. The applicant K. Matiošaitis also stated that life prisoners were not shown (*nėra supažindinami*) their character assessments. In his letter of 29 September 2015 to the Court, the applicant V. Beleckas even asserted that during seventeen years of his sentence he had never seen either his character assessment or other documents sent to the court for the purpose of his transfer to Pravieniškės or to the Pardon Commission. Once a pardon plea is rejected, the life prisoner is merely asked to sign the prison journal confirming that he had been informed of the fact. No appeal to the court against the character report was possible.

131. The applicants referred to the Court's case-law to the effect that a life prisoner was entitled to know, at the start of his sentence, what he must do to be considered for release (the applicants referred to *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09, 130/10 and 3896/10, § 122, 9 July 2013). Similarly, the Court has held that while punishment remains one of the aims of imprisonment, the emphasis of European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence (the applicants referred to *Dickson v. the United Kingdom* [GC], no. 44362/04, § 75, ECHR 2007-V, and to *Boulois v. Luxembourg* [GC], no. 37575/04, § 83, ECHR 2012). However, the Government in their observations provided no indication that such a rehabilitation plan had been drawn up for each applicant to provide the necessary guidance for meaningful reform. In the absence of any such tangible plan for release at least at some point in the future and with no clear indications from the rejection of the pardon plea, the applicants had been left in ultimate uncertainty and despair.

132. For the applicants, it was also telling that according to the statistics provided by the Government, the Pardon Commission had considered more than ten thousand pardon pleas by all prisoners (see paragraph 138 below), but only one life prisoner's plea had been granted. In the words of the applicant J. Maksimavičius, the latter fact showed that that life prisoner's pardon was a 'one-time' action. Pardon was therefore effective only *de jure*, but not *de facto*. The reasons why such a low number of pardons were granted to life prisoners could be, as suggested by the Government, the extreme sensitivity surrounding the issues of early release for life prisoners (see paragraph 59 above and paragraph 136 below).

133. The same "extreme sensitivity", giving little hope of pardon for life prisoners, was reflected in the information provided on the website of the Lithuanian President's Office, where it was stated that murderers and other perpetrators of violent crimes could "*hardly* expect to be granted pardon" (emphasis by the applicants, see paragraph 79 above). That information revealed the view of the President herself. However, the overall majority of

Council of Europe States quite successfully dealt with such a "sensitive issue", and had established a dedicated mechanism for reviewing sentences after a prisoner had served a certain minimum period fixed by law and criteria for sentence commutation (they referred to *Vinter and Others*, cited above, § 68).

134. The applicants lastly submitted that serving a life sentence without a real hope for release was further aggravated by the segregation imposed under Lithuanian law as well as by inhuman conditions of detention in Lukiškės Prison. Life prisoners' segregation had also been noted and criticised by the CPT in its reports on Lithuania.

135. Consequently, with no *de facto* opportunity to have the penological grounds for their continued detention assessed, the applicants were in practice deprived of any prospect of release and their continued detention was therefore in breach of Article 3 of the Convention.

(b) The Government

136. The Government maintained that the domestic law did not deprive the applicants of all hope of a reduction in their life sentences. Firstly, a life prisoner could be dispensed from serving his entire sentence or part of it by an amnesty passed by the Seimas. Even though the seven amnesties declared thus far had not included life prisoners, Lithuanian law did not contain any limitations on including such persons in the amnesty act. Secondly, a life prisoner could be dispensed from serving the remainder of his sentence if he contracted a terminal illness. Thirdly, following the entry into force of the new Criminal Code, a life prisoner could ask the court to reclassify his crime and to commute his sentence. On that point, the Government relied on the examples of I.A. and R.V. (see paragraphs 87-92 above). Fourthly, it was true that because of the "extreme sensitivity of the issue", the Committee for the Supervision of the Criminal Code had recently arrived at the conclusion that at this stage there was no need to amend the legislation to include release on parole for life prisoners, although they had not dismissed the possibility of legislative developments in that regard in the future. Even so, life prisoners could still hope for presidential pardon, a measure which the Government considered to be the main and the most effective mechanism for reducing a life sentence *de jure* and *de facto*. Their argument was as follows.

137. The Government noted that the legal mechanism of presidential pardon had long-standing traditions within the Lithuanian legal system. Despite its discretionary nature, it was regulated under clearly defined criteria that had always been known to life prisoners. Contrary to what had been suggested by the applicants, the criteria for pardon were not vague. The decrees on presidential pardon, both at the time when the Convention came into force in respect of Lithuania, and in subsequent amendments, included the main aspects relevant for the consideration of pardon pleas: the nature of the crime committed, the term of the sentence that had already been served,

and the behaviour as well as the personality of the convict. The Government considered that the above-mentioned criteria were reasonable and proportional. Even if some shortcomings could be identified as regards lack of reasons for decisions not to grant presidential pardon, those were remedied by the extraordinary frequency – six months after refusal – with which a pardon plea could be submitted again.

138. Turning to the question whether the mechanism of presidential pardon could also be considered reducible *de facto*, the Government observed that presidential pardon was a well-known remedy and was widely used by prisoners. In their observations of 15 September 2015 they noted that to that date, 12,058 pardon pleas had been considered by the Pardon Commission. Of that number, 2,509 had been granted, which was approximately one fifth of all the pleas. Having regard to those considerable numbers, it could not be said that the President had failed to exercise that prerogative when it had seemed appropriate.

139. As concerns the applicants' reference to the website of the President's Office and their hesitation concerning the possibility of life prisoners convicted for murder being granted presidential pardon, the Government firstly cited the case of life prisoner J.B. Despite having been convicted of aggravated murder, he had subsequently received a presidential pardon (see paragraph 85 above). Until presidential pardon was granted to J.B. in 2012, only five pleas had been submitted by life prisoners. Following J.B.'s pardon, a certain activity among life prisoners could be observed. It might also have been influenced by the mitigation of the conditions, given that in 2011 the term that had to be served before a life prisoner could apply for presidential pardon was reduced from twenty years to ten years. By 15 September 2015, thirty-five life prisoners submitted pardon pleas (twenty of whom had submitted their pleas more than once). That notwithstanding, the fact that a relatively small number of life prisoners had been granted pardon should not be considered sufficient to prove that the penalty was irreducible *de facto* (the Government referred to *Iorgov v. Bulgaria (no. 2)*, no. 36295/02, § 57, 2 September 2010). Lastly, the statistics of the past several years showed that even persons convicted of murder had been pardoned by the President (see paragraph 82 above).

140. Responding to the Court's questions, the Government also stated that upon request a prisoner may be provided with the character report for familiarisation. The character report is not considered as an individual administrative act subject to appeal before the courts. However, nothing forbids the prisoner from asking the prison administration to supplement or rectify the report, and, upon refusal to perform such action, to lodge a complaint with the administrative court. Similarly, prisoners could challenge before the administrative courts the imposition of disciplinary penalties, which sometimes are reflected in the character reports.

141. As to the pardon plea, the recommendation by the Pardon Commission is not binding on the President of the Republic, and thus in itself does not cause any legal consequences. Therefore it cannot be challenged before the courts. That notwithstanding, a prisoner has a right to receive information about the documents received by the Chancellery of the President, and to provide any other information he considers to be relevant. Any failure by the Chancellery of the President to accept such information and to provide the received pardon plea for examination, or failure by the President of the Republic to examine a duly submitted pardon plea could be challenged before the courts. The Government admitted that, having regard to the constitutional principle of separation of powers, the courts could not influence the outcome of the examination of the pardon plea and oblige the President of the Republic to adopt a decree granting pardon. Granting pardon is one of the powers directly vested in the President by the Constitution, which no other institution may take over. Even so, a life prisoner could always request a court to refer to the Constitutional Court the question whether the established procedure and criteria for examination of pardon pleas was in conformity with the guarantees enshrined in the Convention.

142. The Government also asserted that the court of general jurisdiction had not a right but a duty to apply to the Constitutional Court, provided there were grounds to believe that the law or other legal act, such as the President's decree, was in conflict with the Constitution. In this regard they considered the attempt to initiate such referral by the applicant A. Kazlauskas as inappropriate, because his complaint had been filed *in abstracto*, it was not related to the particular situation of that applicant and therefore had been correctly rejected by the administrative court as an *actio popularis* (see paragraphs 44 and 45 above).

143. The Government also underlined the involvement of the judiciary in the assessment of life prisoners' progress towards rehabilitation within the context of examination of their possible transfer to a correctional home. Such transfer was a normal flow in the convict's correction process, showing permanent and lasting positive alteration of the prisoner's behaviour. Even though successful application for the transfer to a correctional home was not a precondition for submission of the pardon plea, refusal to seek the mitigation of the sentence regime could be interpreted as substantiating insufficiency of the alteration of the convict's behaviour and his attitude towards the imposed sentence.

144. The Government further argued that the social rehabilitation programmes provided life prisoners with the assistance and guidance necessary for meaningful reform. Such programmes also served as a tool to provide them with variety in their daily life, with meaningful activities such as work, education, sports and religious activities (see paragraphs 100-103 above). Lukiškės Prison administration sought to ensure that the application of social rehabilitation programmes was as individualised as possible and

directly linked to life prisoners' needs in order to change their behaviour and attitude significantly and permanently. Involvement in social rehabilitation, educational programmes and work was organised having regard to each life prisoner's individual character and also taking into account his or her requests and consent. As of recently, the possibilities for life prisoners to maintain social contacts with their family members had been strengthened, and life prisoners may be provided with additional visits (see paragraph 105 above).

145. The Government claimed that all the applicants in the present case had been involved in programmes of adaptation, social rehabilitation, and personality transformation, as well as in preventive programmes. The first applicant, K. Matiošaitis, had acquired higher education in prison. He had also taken classes in English and in computer literacy. All the applicants had had the opportunity to work. As shown in their character assessments, with a view to ensuring that they spent their free time in a meaningful way, they also engaged in various sports, religious, cultural and self-education activities. Those measures also helped to reduce the isolation of life prisoners.

146. To further improve the situation, as of 1 September 2015 a new provision, Article 137^1 of the Code for the Execution of Sentences, *expressis verbis* established that social rehabilitation of the prisoner shall be conducted under an individual plan. Whilst reiterating their position that the applicants were provided with the necessary social rehabilitation assistance even before adoption of this new provision, the Government saw this amendment as a significant positive development in the life prisoner's situation, making it easier for the institutions concerned to assess the prisoner's social rehabilitation, which, in turn, was directly relevant when examining pardon pleas.

147. The Government underlined that information about prisoners' personality and behaviour, and the results of their social rehabilitation, was kept in their prison file. The main aspects of social rehabilitation were assessed regularly in the prisoner's annual report where aspects relevant to presidential pardon were also noted. In other words, it was reasonable to expect that a convict seeking mitigation of his sentence for particularly cruel crimes would demonstrate sustainable positive changes that could prove that the aims of his punishment had been achieved and that it would be inhuman and disproportionate to keep him in prison. In the instant cases, however, violations of the internal prison rules, repeated commission of crimes, possession of weapons, lack of remorse and other aspects highlighted in the character reports, substantiated the relevance of the penological grounds for their continued imprisonment.

148. In the light of the foregoing, the Government considered that domestic law did not deprive the applicants of all hope of a reduction in their life sentences or possible subsequent release. Presidential pardon afforded life prisoners reasonable prospects of having their sentence reviewed and thus met the requirements of Article 3 of the Convention.

2. The third-party intervener

149. The Human Rights Monitoring Institute (hereinafter – "the HRMI") argued that life imprisonment in Lithuania meant a real full-life sentence. Firstly, Lithuania was one of five Council of Europe States, together with Iceland, Malta, the Netherlands and Ukraine, which made no provision for parole for life prisoners. Nor did the provision under Lithuanian law for release owing to terminal illness render a life sentence reducible under Article 3 standards (they referred to *Vinter and Others*, cited above, §§ 68 and 127).

150. The HRMI further observed that under Lithuanian law amnesties were general acts of pardon intended for broad groups of people defined by certain objective criteria. Those measures did not take the individual personal circumstances of a prisoner into account, including his efforts and progress towards rehabilitation. In other words, amnesties, due to their very nature, were ill-suited to take into account any penological grounds for a prisoner's release or continued detention. Furthermore, prisoners had no means of either requesting an amnesty or knowing in advance when such a measure would be adopted. The amnesties declared by the Seimas could not therefore be considered as constituting a review of a person's sentence in the sense established by the Court.

151. The third-party intervener acknowledged that the legal provisions regulating presidential pardon clarified the question of when a life prisoner could request a commutation of his sentence, as well as the periodicity of such requests in the future. On those two points, it complied with a general trend identified by the Court in *Vinter and Others*. That notwithstanding, the HRMI was of the view that pardon under Lithuanian law fell short of other standards for the review mechanism, as established by the Court, and therefore could not be considered as rendering a life sentence compatible with Article 3 of the Convention.

152. The HRMI considered that it was the rehabilitative aim which lay at the heart of the Court's judgment in *Vinter and Others*. Accordingly, it would be capricious to expect a prisoner to work towards his own rehabilitation without knowing whether and how his progress would be assessed, and without receiving information on the outcome of the assessment. They admitted that, under the Pardon Commission regulations, the determination of progress towards rehabilitation *might* (emphasis by the HRMI) be taken into consideration when considering pardon. However, there was no definite way of knowing whether that was done, since the recommendations of the Pardon Commission were not disclosed to the person requesting pardon.

153. The ineffectiveness of the presidential pardon system was further compounded by the fact that the decisions of the Pardon Commission were of a recommendatory nature, and the ultimate decision rested solely with the President. Like the Pardon Commission, the President was under no obligation to state the reasons for refusing a plea, and indeed in practice did not disclose the reasons for his or her decision to the prisoner requesting

pardon. As a result, a life prisoner whose plea has been refused found himself in a situation where he could never atone for his offence: whatever the prisoner did in prison, however exceptional his progress towards rehabilitation is, he was left without knowing "what he must do to be considered for release and under what conditions" (the HRMI referred to *Vinter and Others*, cited above, § 122).

154. It was also the HRMI's contention that the President's decision whether to grant pardon was therefore likely to be a political one, dictated by the attitudes prevailing in society at the time, as much as – or rather a great deal more than – by the merits of the case. The fact that since 1990 there had been only one case in which the President had granted pardon to a life prisoner was also attributable to the political nature of the decision. In this connection, it was also noteworthy that the information provided on the President's Office website revealed a bias towards certain groups of prisoners by stating that "murderers and perpetrators of other violent crimes can hardly expect to be granted pardon" (see paragraph 79 above). That suggested that the President's ultimate decision whether to grant a pardon would depend not on a thorough review of the legitimate penological grounds, but rather on the prevailing societal attitudes.

155. The HRMI concluded that given the increasingly precise requirements for life sentence review and thus of compatibility with the Convention, as established by the Court in *Vinter and Others*, the review procedures in place under Lithuanian law regarding commuting or remitting a life sentence fell short of the standards under Article 3 of the Convention. Life imprisonment under Lithuanian law thus constituted an irreducible life sentence and amounted to a violation of that provision.

3. The Court's assessment

(a) General principles laid down in the Court's case-law

156. The relevant principles as to imposition of life sentences and rehabilitation and the prospect of release for life prisoners have been summarised in *Murray v. the Netherlands* ([GC] no. 10511/10, §§ 99-104, 26 April 2016; also see the case-law referred therein), and, most recently, in *Hutchinson v. the United Kingdom* ([GC], no. 57592/08, §§ 42-45, 17 January 2017).

(b) Application of the Court's principles in the present case

157. The Court notes at the outset that the applicants in the instant case did not seek to argue that their sentence was, as such, grossly disproportionate to the gravity of their offences, or that there were no longer any legitimate penological grounds for their continued incarceration (see *Vinter and Others*, cited above, § 102). Their grievance was rather directed against the effects of their life sentences.

158. It remains to be considered whether, in the light of the foregoing observations, the applicants' life sentences meet the requirements of Article 3 of the Convention.

159. In Lithuania, the penalty of life imprisonment has existed since 1990, when the old Criminal Code of 1961 continued to be applied. Although life imprisonment for aggravated murder, a criminal offence of which all the applicants in the present case have been found guilty, was not mentioned in Article 105 of that Code, a court could still impose life imprisonment instead of the death penalty, pursuant to Article 24 thereof. Indeed, this was the situation of the first and sixth applicants, K. Matiošaitis and A. Kazlauskas (see paragraphs 9 and 39 above). Life imprisonment was then introduced as the heaviest punishment for aggravated murder in December 1998, following a formal abolition of the death penalty, and remains such according to the new Criminal Code (see paragraphs 62-65 above).

160. In the light of its case-law, the question for the Court is whether the penalty imposed on the applicants in the present case should be classified as irreducible, or whether there is a prospect of release (see *Vinter and Others*, § 110, *Murray*, § 99 and *Hutchinson*, § 44, all cited above).

(i) Parole, terminal illness, amnesty and reclassification of sentence

161. The Court firstly notes that Lithuanian law does not permit life prisoners to be released on parole, a measure that applies only to prisoners serving fixed-term sentences (see paragraph 69 above). In this connection the Court also observes that life prisoners, including some of the applicants in this case, attempted to raise this issue with the domestic courts of administrative and criminal jurisdiction. Although alleged unconstitutionality underpinned their complaints, those courts either did not consider it necessary to refer the matter to the Constitutional Court of their own motion, or denied such explicit requests by life prisoners altogether (see paragraphs 14, 44 and 93-97 above). It can likewise be noted that life prisoner R.P. also relied on the Committee of Ministers' Recommendation Rec(2003)22 on conditional release (parole) of 24 September 2003, paragraph 4.a of which clearly indicates that the law should make conditional release available to all sentenced prisoners, including life-sentenced prisoners (the Recommendation is summarised at length in *Kafkaris v. Cyprus* ([GC], no. 21906/04, § 72, ECHR 2008). Furthermore, and contrary to what has been suggested by the Government (see paragraph 142 above), the Court also considers that the life prisoners' complaints about being discriminated against as well as about being *de facto* condemned to death in prison do not appear to be an *actio popularis* (see paragraph 94 above). Indeed, those requests concerned the very situation they were in. The complaint by life prisoner R.P. was lodged with the criminal courts with a view to annulling the prison authorities' concrete refusal to perform a particular action – to collect materials for R.P.'s parole request (see paragraphs 95 above).

162. The Court has also consistently held that the commutation of life imprisonment because of terminal illness, which only means that a prisoner is allowed to die at home or in a hospice rather than behind prison walls, cannot be considered as a "prospect of release", as the notion is understood by the Court (see *Vinter and Others*, cited above, § 127, and *Öcalan v. Turkey (no. 2)* (nos. 24069/03 and 3 others, § 203, 18 March 2014).

163. The Court further shares the applicants' and the third-party intervener's view that amnesty may not be regarded as a measure giving life prisoners a prospect of mitigation of their sentence or release. The seven amnesties so far declared by the Seimas did not apply to prisoners convicted of the most serious crimes. Moreover, three of those amnesties explicitly excluded life prisoners from the scope of their application, this fact also having been underlined by the life prisoners (see paragraphs 67 and 93 above). The Government have not provided any information or produced evidence showing that any new draft law on amnesty would be drafted which would include life prisoners and would give them a "prospect of release" (see *Öcalan*, cited above, § 204). The Court reiterates that European penal policy currently places emphasis on the rehabilitative aim of imprisonment, even in the case of life prisoners (see *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 245, ECHR 2014 (extracts)). Amnesty, which is an act of general rather than individual application, does not appear to take into account the rehabilitation aspect of each individual prisoner.

164. The Government argued that the courts could reduce a prisoner's life sentence by reclassifying the sentence under Article 3 of the new Criminal Code. The Court acknowledges that that remedy was successfully used by Mr I. A., whose life sentence was firstly commuted to a fixed-term sentence of twenty-five years, and who was subsequently released on parole (see paragraphs 88 and 89 above). Be that as it may, commutation of a life prisoner's sentence under the new Criminal Code is a one-off possibility (see paragraph 63 above). All eligible applicants have asked for it, without success as to the reduction of the duration of their sentence (see paragraphs 9, 18, 23, 27, 35 and 40 above). Accordingly, even if those applicants reformed, Article 3 of the new Criminal Code would not give them any "prospect of release".

(ii) Presidential pardon

165. Having excluded all the other possibilities for mitigating life sentences in Lithuania, the Court finds that a stricter scrutiny of the regulation and practice of presidential pardon, which the Government saw as the most effective measure, is required (see *László Magyar v. Hungary*, no. 73593/10, § 56, 20 May 2014).

166. The Court firstly observes that the present cases are substantially different from that of *Harakchiev and Tolumov* (cited above, § 262), as the legal framework for presidential pardon in Lithuania has remained consistent since it was set up in 1993. The criteria applicable to pardon pleas have

remained identical throughout its operation, with the exception of the term which a life prisoner must have served before he can submit a pardon plea, which was extended in 2003 from ten to twenty years. In 2011, that term was reduced by a presidential decree to ten years (see paragraphs 75 and 76 above). That notwithstanding, even a term of twenty years after the imposition of a sentence 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 *Murray*, cited above, § 99).

167. The Court further notes that the Pardon Commission regulations had been adopted on 11 January 1993, that is, before any of the applicants in the instant case had been sentenced to capital punishment or to life imprisonment and also before the Convention had entered into force in respect of Lithuania in 1995 (see paragraphs 9 and 74 above). Those regulations were and remain publicly accessible, and all life prisoners are able to consult them, thus increasing the transparency of the pardon procedure and constituting a guarantee contributing to consistency in the exercise of the President's powers in that respect.

168. Since the day of their approval in 1993, the Pardon Commission regulations have retained the same list of criteria to be taken into account when exercising presidential pardon: the nature of the crime committed, the danger of that crime to society, the personality of the life prisoner, his behaviour and attitude towards work, the time already served, the prison authorities' opinion, the opinion of non-governmental organisations and the prisoner's former employer, as well as other circumstances. The authorities have a general duty to collect the following information about the prisoner and enclose it with the pardon request: the court decisions convicting the prisoner; a detailed assessment (*išsami charakteristika*) of the prisoner's behaviour, including a recommendation by the prison administration. As of 2003, a new criterion has been added: whether the prisoner has compensated for the pecuniary damage caused by the crime he committed (see paragraph 75 above). That being so, the Court finds that there is nothing ambiguous or misleading in those rules such as to make the applicants' situation uncertain as to the factors that guide the President in the exercise of his or her power of pardon. The above list can be seen as a set of criteria allowing the President to assess whether a life prisoner's continued imprisonment is justified on legitimate penological grounds. The Court cannot criticise the non-exhaustive nature of the list, for it permits the President to evaluate any other relevant factors, which may be to a life prisoner's benefit. Lastly, the President is advised by the Pardon Commission, including persons that represent the interests of justice, those of prisoners' and the crime victims, in order to give a fair recommendation to the President (see paragraph 77 above).

169. The Court next turns to the question whether presidential pardon could be regarded as making life sentences reducible *de facto*.

170. The applicants argued that, in the absence of reasons given to them when their pardon pleas had been refused, they had had no guidance as to how to reform in order to try to persuade the President to pardon them. The Court would emphasise that the opportunity for a prisoner to reform was central to its finding in *Vinter and Others* (cited above). Under Lithuanian law, however, neither the Pardon Commission nor the President of the Republic is bound to give reasons why a life prisoner's pardon plea has been refused (compare and contrast *Hutchinson*, cited above, § 51). Furthermore, and notwithstanding certain hypothetical arguments to the opposite by the Government (see paragraph 141 above), the Court considers it clear that because of the principle of the separation of powers the President's pardon decrees are not subject to judicial review (compare and contrast *Hutchinson*, cited above, § 52). Above all, they cannot be challenged by the prisoners directly (see paragraphs 107-109 above). This state of affairs is confirmed by the administrative court's response to a complaint by the applicant K. Matiošaitis as well as by the criminal court's reply to life prisoner R.P. (see paragraph 14 and 96 above). The Government have not proven the legal regulation to be otherwise.

171. As to the question of transparency of the Pardon Commission's work, the Court recalls that it examined a similar issue in the case of *Harakchiev and Tolumov* (cited above). In that case the Court noted that in Bulgaria in its work the Pardon Commission explicitly must take into account, *inter alia*, relevant case-law of international courts and other bodies on the interpretation and application of international human rights instruments in force in respect of that country, to assess whether the prisoner's continued imprisonment is justified on legitimate penological grounds. To increase the transparency of the pardon procedure, the Commission also publishes comprehensive activity reports where it summarises reasons for its recommendations in individual cases to the authority exercising the power of pardon, as well as relevant statistical information (see *Harakchiev and Tolumov*, cited above, §§ 91-107; also see *Hutchinson*, cited above, § 61). In contrast, no such information is made public in Lithuania, except for the general outline of the criteria relevant for the examination of pardon pleas (see paragraph 78 above), to demonstrate how, if at all, those criteria are practically applied by the President of the Republic. The Court lastly notes that although the latter takes a decision only after the Pardon Commission has provided its recommendations, those recommendations are not legally binding on the President (see paragraphs 78 and 141 above).

172. The applicants gave much weight to the statement on the President's webpage to the effect that "murderers and other perpetrators of violent crime can hardly expect to be granted pardon". Although the Court is ready to concede that the aforementioned statement shows the strict stance of the President, who took office in 2009, towards those convicted of the most heinous crimes, it cannot fail to observe that that phrase has been taken out

of context. The President's policy statement equally stipulates that "even persons on whom a life sentence has been imposed may appeal for pardon" (see paragraph 79 above). More important for the Court is to note that there is an example of one person in the applicants' situation who has already benefited from the President's discretionary power: in May 2012 the incumbent President granted life prisoner J.B.'s plea by commuting his sentence to a fixed term of twenty-five years (see paragraph 85 above). The Court must note, however, that four years have passed since J.B.'s pardon, without one single other life prisoner having been fully or partially pardoned. The Court has already held that in assessing whether the life sentence is reducible *de facto* it may be of relevance to take account of statistical information on prior use of the review mechanism in question, including the number of persons having been granted a pardon (see *Murray*, cited above, § 100, with further references). According to the statistical information provided by the Government, only one out of thirty-five life prisoners who have asked for pardon has received a positive response, whereas in general about one out of five of all pardon pleas are granted (see paragraphs 138 and 139 above). Accordingly, and although the Court is careful not to hold that the President of the Republic should periodically pardon life prisoners, it attaches a certain weight to the applicant's argument that J.B.'s pardon was an isolated exception.

173. In the light of the above, the Court considers that in Lithuania the presidential power of pardon is a modern-day equivalent of the royal prerogative of mercy, based on the principle of humanity (also see *Harakchiev and Tolumov,* cited above, § 76), rather than a mechanism, with adequate procedural safeguards, for review of the prisoners' situation so that the adjustment of their life sentences could be obtained.

174. The Court has constantly held that the prisoner's right to a review entails an actual assessment of the relevant information whether his or her continued imprisonment is justified on legitimate penological grounds (see *László Magyar*, § 57, and *Murray*, § 100, both cited above), and the review must also be surrounded by sufficient procedural guarantees (see *Kafkaris*, § 105; *Harakchiev and Tolumov*, § 262; and *Murray* § 100, all cited above). To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided (see *Murray*, cited above, § 100). The Court further observes the CPT's view to the effect that discretionary release from imprisonment, as with its imposition, was a matter for the courts and not the executive, a view which had led to proposed changes in the procedures for reviewing life imprisonment in Denmark, Finland and Sweden (see *Murray*, cited above, § 61). The Statute of the International Criminal Court also states that that court shall review the life sentence if more than twenty years have passed since the life prisoner's conviction (see paragraph 119 above).

175. In their observations to the Court, the Government suggested that the same criteria as those considered within the pardon proceedings were also relevant when the courts decide the question of life prisoners' transfer to Pravieniškės Correctional Institution. The Court does not dispute this argument. It is ready to accept that during court proceedings for transfer a life prisoner is provided with sufficient procedural guarantees to make his case to prove his repentance and capacity to change (see paragraph 28 above). Even so, a life prisoner's transfer to Pravieniškės Correctional Institution changes nothing as concerns the length of his sentence, which remains for life, without raising his hope of being released from prison (see paragraph 53 above). The Court also observes that in 2013 two of the applicants, V. Beleckas and R. Lenkaitis, used their right to apply for President's pardon, albeit without success (see paragraphs 30 and 37 above). Both of them later asked to be transferred to a correctional home, and the Vilnius Regional Court granted their requests, having concluded that these applicants had indeed repented (see paragraphs 32 and 38 above). At this juncture the Court also notes that the Vilnius Regional Court, on the one hand, and the Pardon Commission and/or the President of the Republic, on the other, came to opposite conclusions as to those applicants' capacity to distance themselves from their criminal past, whilst it was only the court which made its reasoning transparent and thus available to these applicants. In this connection the Court underlines that regard must be had to the need to encourage the rehabilitation of offenders (see *James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09 and 57877/09, § 218, 18 September 2012; *Murray*, cited above, § 102), and that "... a whole-life prisoner is entitled to know ... what he or she must do to be considered for release and under what conditions" (see *Vinter and Others*, cited above, § 122). The Court also observes that the principle of rehabilitation, that is, the reintegration into society of a convicted person, is reflected in international norms (see paragraph 112 above) and has not only been recognised but has over time also gained increasing importance in the Court's case-law under various provisions of the Convention (see *Murray*, cited above, § 102).

176. As the Government acknowledged, the transfer to the Pravieniškės Correctional Home is not a precondition for a pardon plea. Moreover, one cannot disregard the possibility that a life prisoner does not wish to be transferred to a correctional home (see paragraphs 41 and 53 above). In this connection the Court also observes that even in the Pravieniškės Correctional Home life prisoners are held segregated, and separately from other prisoners (see paragraph 104 above; also see point 74 of the CPT report, cited in paragraph 115 above). Accordingly, and even assuming that the President's reasoning to grant a pardon plea could coincide with the court's reasoning to permit a life prisoner's transfer to Pravieniškės on account of that prisoner's reformed personality, which is not always the case (see the preceding paragraph), a life prisoner who chooses to repent in Lukiškės Prison is left

with a conundrum as to what he or she must do to prove to the President his or her rehabilitation.

177. That said, in the present case the applicants also make a complaint that the regime and conditions of their incarceration did not give them a genuine opportunity to reform themselves in order to try to persuade the President to pardon them (see paragraph 134 above). The Court has already held that while Article 3 cannot be construed as imposing on the authorities an absolute duty to provide prisoners with rehabilitation or reintegration programmes and activities, such as courses or counselling, it does require the authorities to give life prisoners a chance, however remote, to some day regain their freedom. The regime and conditions therefore need to be such as to make it possible for the life prisoner to endeavour to reform himself, with a view to being able one day to seek an adjustment of his or her sentence (see *Harakchiev and Tolumov*, cited above, §§ 264-265; also see *Murray*, cited above, § 104).

178. Turning to the situation of life prisoners in Lithuania, the Court observes that at Lukiškės Prison, where life prisoners must first serve ten years of their sentence, a number of social rehabilitation programmes have been set up (see paragraphs 100, 101 and 103 above). Contrary to what has been claimed by the applicants, there is nothing in the file to suggest that the aim of those programmes is to get life prisoners used to spending their entire lives in prison, rather than their social rehabilitation for successful correction and transformation of their personality. Indeed, as the internal prison rules state, the programme of social rehabilitation starts immediately when a convict enters the prison and is aimed at his social rehabilitation with a view to eventual reintegration in society after having served the sentence (see paragraph 101 above). In 2012 the CPT also noted that a certain number of positive measures had been taken to expand the programme of life prisoners' activities, and that material conditions in the unit for life-sentenced prisoners remained unchanged since the CPT's visit in 2008 and were acceptable (see points 57 and 58 of the CPT report, cited in paragraph 118 above).

179. Without undermining these positive aspects, the Court nevertheless observes that since its visit to Lukiškės Prison twelve years ago the CPT has also constantly highlighted shortcomings in life prisoners' regime which stood in the way of their reform. In particular, to this day the vast majority of life-sentenced prisoners still spend 22½ hours in their cells as they are not enrolled in work activities or education, the latter being confined to teachers handing out exercises at the cell doors at very spaced-out intervals (see point 72 of the CPT report, cited in paragraph 116 above; point 51 of the CPT report, cited in paragraph 117 above; point 58 of the CPT report, cited in paragraph 118 above). To make matters worse, life prisoners had always been left to languish in Lukiškės Prison in 'small group isolation', without being able to associate with other prisoners or even with other life prisoners from

other cells (see point 74 of the CPT report, cited in paragraph 116 above, and point 51 of the CPT report, cited in paragraph 117 above). As noted by the CPT after its visit of 2004, several of the life prisoners claimed to be seriously affected by lack of human contact with other inmates and prison staff, and since 2000 four of them had committed suicide (see point 74 of the CPT report, cited in paragraph 116 above). This clearly runs against the CPT's constant criticism of 'totally unjustified' systematic segregation (see point 74 of the CPT report, cited in paragraph 115 above; point 74 of the CPT report, cited in paragraph 116 above; points 51 and 52 of the CPT report, cited in paragraph 117 above; points 58 and 59 of the CPT report cited in paragraph 118 above). As the Court has already noted, life prisoners remain segregated even upon their transfer to Pravieniškės Correctional Institution, once a court has already confirmed that they have at least partially reformed (see paragraph 104 above). In addition, although as early as in 2006 the CPT urged the Lithuanian authorities to 'fundamentally revise' the life prisoners' regime which could lead to life prisoners' 'personal degeneration' (see point 74 of the CPT report, cited in paragraph 116 above), nothing of substance has improved in their situation, except for possibilities of obtaining vocational education in prison, open only as of September 2015 (see paragraph 106 above), as well as the very recently established possibility to have more frequent short-term visits (see paragraph 105 above). Although the CPT had advocated extending the possibilities to have long-term visits to all prisoners, including those serving life sentences, they do not have such a possibility (see point 75 of the CPT report, cited in paragraph 116 above). In the Court's view, the deleterious effects of such life prisoners' regime must have seriously weakened the possibility of the applicants reforming and thus entertaining a real hope that they might one day achieve and demonstrate their progress and obtain a reduction of their sentence.

(c) Conclusion

180. The Court reiterates that the mere fact that a prisoner has already served a long term of imprisonment does not weaken the State's positive obligation to protect the public, and that no Article 3 issue could arise if a life prisoner continues to pose a danger to society. This is particularly so for those convicted of murder or other serious offences against the person (see *Vinter and Others*, § 108; also see *Murray*, § 111, both cited above). However, it equally considers that even those who commit the most abhorrent and egregious of acts, nevertheless retain their essential humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, some day, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and to do that would be degrading.

181. The Court also acknowledges that having regard to the margin of appreciation which must be accorded to Contracting States in matters of criminal justice and sentencing, it is not its task to prescribe the form (executive or judicial) which that review should take (see *Vinter and Others*, cited above, § 120; also see *Hutchinson*, cited above, §§ 46-50). That being so, the Court nevertheless considers that in order to guarantee proper consideration of the changes and the progress towards rehabilitation made by life prisoner, however significant they might be, the review should entail either the executive giving reasons or judicial review, so that even the appearance of arbitrariness is avoided. The Court has also stated that to the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review (see *Murray*, cited above, § 100). The Court has already established that presidential pardon in Lithuania *de facto* does not allow a life prisoner to know what he or she must do to be considered for release and under what conditions. It has also noted the absence of judicial review which could lead to full or partial commutation of a life sentence. Accordingly, the Court finds that, at the present time, the applicants' life sentences cannot be regarded as reducible for the purposes of Article 3 of the Convention (see *László Magyar*, cited above, § 58). Last but not least, it transpires that no reform will take place in Lithuania until the Court has resolved this case (see paragraphs 60 and 98 above).

182. In the present case the Court lastly notes that the applicant P. Gervin has served seven years of his life sentence. Therefore, he does not yet fulfil the legislative requirements for applying for presidential pardon (see paragraph 48 above). Even so, the Court has already held that in the absence of effective review of a life sentence the incompatibility with Article 3 of the Convention already arises at the moment of the imposition of the life sentence and not at a later stage of incarceration (see *Vinter and Others*, cited above, § 122).

183. There has accordingly been a violation of Article 3 of the Convention in respect of each of the six applicants.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

184. The first applicant, K. Matiošaitis, further complained that his inability to obtain vocational training in Lukiškės Prison was in breach of his right to education, protected under Article 2 of Protocol No. 1, of which relevant part reads as follows:

> "No person shall be denied the right to education..."

1. The parties' arguments

(a) The first applicant

185. The first applicant admitted at the outset that he had never applied for transfer to a correctional home from Lukiškės Prison. However, that was because he had only one relative, his eighty-five year-old mother, who visited him in that prison. It would be too difficult for her to travel to a correctional home [outside Vilnius] to see him in another town. Furthermore, even assuming that he was granted a transfer to a correctional home, the authorities had not guaranteed that suitable vocational training could be provided for him there.

186. The first applicant further maintained that the absence of a real chance to receive vocational training was even harder for him than for other prisoners. Notwithstanding the bachelor's degree in educational sciences obtained in 2011 whilst serving his sentence in Lukiškės Prison, he had had no opportunity to develop further and to acquire the necessary practical skills in his chosen professional field. It was also the applicant's view that the social rehabilitation programmes available at Lukiškės Prison were of very limited range and were "far from being as challenging intellectually and professionally as he would desire".

187. The first applicant explained that he had not complained to the domestic authorities that he had been unable to receive vocational training at Lukiškės Prison because under national law, vocational training could be provided only in a correctional home, but not in Lukiškės Prison. Accordingly, he had had no real and effective remedy for that restriction. Moreover, such a long-term restriction of the exercise of the right to education was not proportionate to the aim pursued by the national legislation in place. The applicant acknowledged that the right to education was not an absolute right and that States enjoyed a certain margin of appreciation to choose ways of ensuring access to education for prisoners. However, the rights protected under the Convention should be interpreted widely and the restrictions narrowly.

(b) The Government

188. The Government submitted that the first applicant had never complained before the domestic authorities of a violation of his right to education on account of his inability to receive vocational training in prison. Nor had he requested a transfer to Pravieniškės Correctional Institution, where, according to the Government, he would be entitled to a less severe regime and relatively broader educational programmes.

189. The Government further pointed out that the Convention did not guarantee an absolute right to all forms of education and Article 2 of Protocol No. 1 did not impose on the State an obligation to organise retraining programmes for prisoners (they relied on *Valašinas v. Lithuania* (dec.), no.

44558/98, 14 March 2000). States enjoyed a certain margin of appreciation to choose how to ensure access to education for prisoners. In addition to accommodation and lecturers, the provision of vocational training in high-security prisons sometimes required specific equipment and additional security measures, thereby imposing a heavy burden on the authorities. The fact that vocational training in Lithuania could be received only while serving a life sentence in a correctional home did not impair the essence of the right to education, especially given that life prisoners could enrol in and attend other educational programmes in prison. Lastly, as of 1 September 2015 the prohibition on providing vocational training in prison had been abolished, thus improving the applicant's situation.

190. As to the instant case, in 2011 the first applicant had indeed acquired State-funded education and obtained a bachelor's degree in educational sciences. He had also taken classes in English and computer literacy. Even though certain professional skills could be developed while working at the manufacturing department of Lukiškės Prison, in 2009 the first applicant had refused a job offer (see paragraphs 11 and 12 above).

2. The Court's assessment

(a) General principles

191. The relevant principles as to prisoners' enjoyment of their rights under the Convention and its Protocols are summarised in *Velyo Velev v. Bulgaria* (no. 16032/07, §§ 30-34, ECHR 2014 (extracts)).

(b) Application of the Court's principles to the facts of the present case

192. The Court finds that it is not necessary to examine the Government's objection as to the non-exhaustion of domestic remedies, as the complaint is in any event inadmissible for the following reasons.

193. In Lithuania life prisoners must serve the first ten years of their sentence in Lukiškės Prison, and only after that period of time may they ask to be transferred to Pravieniškės Correctional Institution. Until September 2015, a profession could not be taught in Lukiškės Prison (see paragraphs 104 and 106 above). The Court however is ready to accept that that legal framework was established and functioned with sufficient clarity (see, by converse implication, *Velyo Velev*, cited above, § 36). The Government have suggested that if vocational training were available in Lukiškės Prison, it could impede the security situation there. The Court does not find this ground to be improbable, all the more so taking into account that Lukiškės Prison is the prison where those convicted for the most heinous crimes must initially serve their sentence.

194. Turning to the particular situation of the first applicant, the Court observes that in 2011, whilst in Lukiškės Prison, he obtained a bachelor's degree in social pedagogy. He was allowed to enrol and attend courses in

computer literacy and English, and took part in other purposeful activities in prison, such as the "knitting group" (see paragraph 12 above). Accordingly, it may not be stated that that applicant was deprived of any meaningful education which would be relevant for his reform. Furthermore, even acknowledging that in September 2015 the legislative prohibition on having vocational training available in prison was abolished, this does not change the first applicant's situation so much as to attract the State's responsibility, for it was only in August 2014 that he had asked to obtain vocational training in Lukiškės Prison (see paragraph 15 above). Neither has the first applicant demonstrated having submitted any further vocational training requests to Lukiškės Prison authorities after the legislative ban was lifted. In this context the Court also does not lose sight of the fact that from 2007 the applicant worked in Lukiškės Prison, but in 2009 he refused to continue working because he did not want to work with prisoners he considered as belonging to a lower caste (see paragraph 12 above). The Court finds that such a reason by this applicant is unacceptable, as it was based on him paying heed to the criminal sub-culture within the prison system, which the Court cannot condone. It also considers that such a reason by the first applicant clearly shows his lack of genuine interest in working with others. This leads the Court to seriously doubt the first applicant's argument that the opportunity to follow vocational training was of essential importance for him.

195. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

196. 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

197. Each of the six applicants claimed 100,000 Lithuanian litai (LTL, approximately 29,000 euros (EUR)) in respect of non-pecuniary damage.

198. The Government submitted that the above claims were excessive, because they did not correspond to the Court's case-law in similar cases (the Government relied on *Vinter and Others*, cited above, § 136). The claims also substantially exceeded the compensation awarded in respect of Lithuania with respect to violations of Article 3.

199. The Court considers in the circumstances of the present case that its finding of a violation of Article 3 constitutes sufficient just satisfaction and

accordingly makes no award as regards any non-pecuniary damage that may have been sustained by the six applicants (see, most recently, *Murray*, cited above, § 131).

B. Costs and expenses

200. The six applicants also claimed LTL 200 (approximately EUR 60) for the postal costs.

201. The Government disputed the claim, arguing that any postal costs should be considered as reimbursed under the legal aid scheme.

202. The Court notes that the six applicants had the benefit of legal aid from the Council of Europe for their representation, totaling EUR 850 paid to their representative Mr V. Rutkauskas.

According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claims for costs and expenses for the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the applications by R. Lenkaitis and E. Svotas out of its list of cases;

2. *Decides* to join the applications by the applicants K. Matiošaitis, J. Maksimavičius, S. Katkus, V. Beleckas, A. Kazlauskas and P. Gervin;

3. *Declares* Article 3 complaints by the applicants K. Matiošaitis, J. Maksimavičius, S. Katkus, V. Beleckas, A. Kazlauskas and P. Gervin admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants K. Matiošaitis, J. Maksimavičius, S. Katkus, V. Beleckas, A. Kazlauskas and P. Gervin;

5. *Holds* that the finding of a violation of Article 3 of the Convention in respect of the applicants K. Matiošaitis, J. Maksimavičius, S. Katkus, V. Beleckas, A. Kazlauskas and P. Gervin, resulting from their inability to obtain a reduction of their life sentences from the time when they became final, constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by them on that account;

6. *Declares* the complaint by the applicant K. Matiošaitis that he has been unable to obtain vocational training in Lukiškės Prison inadmissible;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 23 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Işıl Karakaş
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint concurring opinion of Judges Lemmens and Spano;

(b) concurring opinion of Judge Kūris.

A.I.K.
H.B.

JOINT CONCURRING OPINION OF JUDGES LEMMENS AND SPANO

I.

1. We concur in the judgment. However, we consider it necessary to write separately as parts of the reasoning do not, in our opinion, fully reflect the scope and content of the Court's case-law in this area as it has developed since the Grand Chamber delivered its judgment in *Vinter and Others v. the United Kingdom* in 2013 ([GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 (extracts)).

2. The fundamental requirement in the Court's case-law under Article 3 of the Convention is that life sentences be *de facto* and *de jure* reducible. The crucial element in the assessment of reducibility is whether domestic law provides the person serving a life sentence with a prospect of release based on a dedicated mechanism of review. The review mechanism must be formulated in a manner which mandates that the assessor, whether it be an executive or a judicial organ, examines after a certain period of time whether legitimate penological grounds justify continued imprisonment (see *Vinter and Others*, cited above, §§ 119-20). The review mechanism must also take account of the progress towards rehabilitation, as the Court emphasised in *Murray v. the Netherlands* ([GC], no. 10511/10, § 100, ECHR 2016).

3. In the recent Grand Chamber judgment in *Hutchinson v. the United Kingdom* ([GC], no. 57592/08, 17 January 2017), the Court elaborated further on the nature of the review mechanism, its scope and the criteria and conditions for its assessment (§§ 46-65). Firstly, the Court explained that, although the system of review does not necessarily have to be judicial in nature, it has to guarantee the independence and impartiality of the assessor, as well as certain procedural safeguards, and provide protections against arbitrariness. Secondly, the review mechanism must impose a duty on the authority to consider whether legitimate penological grounds justify continued imprisonment, and must not leave the decision fully to that authority's discretion. Thirdly, and in line with the Court's findings in *Murray* (see paragraph 2 above), there needs to be a degree of specificity or precision as to the criteria and conditions attaching to sentence review, in keeping with the requirements of legal certainty. Lastly, to the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may also be required that reasons be provided, and this requirement should be safeguarded by access to judicial review (see *Murray*, cited above, § 100).

II.

4. In two important judgments the Court has applied these fundamental requirements, as regards a Convention-compliant post-conviction review mechanism for those serving life sentences, to presidential pardon or

clemency systems in certain Contracting States. In the case of *László Magyar v. Hungary* (no. 73593/10, 20 May 2014), the Court found a violation of Article 3 of the Convention on the basis that the Hungarian presidential pardon system did not conform to the requirements of post-conviction *Vinter* review for three reasons. Firstly, domestic law did not impose any obligation on the President to perform a *Vinter*-type review of the sentence. Secondly, although there was a duty to collect certain information about the prisoner, no criteria had been published in that regard. Thirdly, domestic law did not impose a duty on the Minister of Justice or the President to give reasons.

5. Subsequently, in the case of *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, ECHR 2014 (extracts)), the Court examined the Bulgarian presidential clemency system under Article 3 of the Convention. In so far as the complaint concerned the period between 2004 and 2012, the Court found firstly that it was not clear whether domestic law provided *de jure* for the reducibility of life sentences. Secondly, the life sentence was not *de facto* reducible as the applicant in question could not have known that a mechanism existed that would actually permit him to be considered for release. The Court noted, however, that in 2012 the incumbent President had set up a Clemency Commission. The rules governing the work of the Commission provided that in its work it had to take account of the relevant case-law of international courts and other bodies on the interpretation and application of the international human rights instruments in force in respect of Bulgaria. The Commission had published the criteria that would guide it in the examination of clemency requests, as well as the reasons for its recommendations to exercise the power of clemency in individual cases. Also, the Court considered it important that the Constitutional Court had in April 2012 given a binding interpretation of the Constitution that defined the scope of the power of clemency and held that it should be exercised in a non-arbitrary way, taking into account equity, humanity, compassion, mercy and the health and family situation of the convicted offender, and any positive changes in his or her personality. The Constitutional Court had gone on to say that while the President or the Vice-President could not be required to give reasons in individual cases, they were expected to make known the general criteria guiding them in the exercise of the power of clemency. Lastly, the Constitutional Court had held that a clemency decree was open to legal challenge before it, albeit subject to some restrictive conditions, in particular relating to standing. That ruling of the Constitutional Court had thus provided weighty guarantees that the presidential power of clemency would be exercised in a consistent and broadly predictable way. The Court concluded that if the President's power of clemency was exercised in line with the practices adopted by the Clemency Commission and the precepts laid down by the Constitutional Court, the whole-life sentences could be regarded as *de facto* reducible.

III.

6. In the light of the fundamental requirements of the *Vinter* post-conviction case-law of the Court, elaborated in paragraphs 2-3 above, and their application to presidential pardon or clemency systems (see paragraphs 4-5 above), we consider that the examination by the Court in this type of case should be limited to an abstract review of the general elements of the domestic system for its conformity with the structural requirements for *de jure* and *de facto* reducibility of life sentences. Therefore, the Court's references in the reasoning to the individual circumstances of the applicants in the present case or other life prisoners in Lithuania should not have formed part of the Court's analysis (see parts of the reasoning in paragraphs 175-79). In other words, in our view, it would have sufficed for the Court to find a violation of Article 3 of the Convention for the following three reasons.

7. Firstly, while we are prepared to accept that the Pardon Commission Regulations from 1993, as subsequently amended, may conform, as such, to the requirements of clarity under the Court's case-law, we note that the Lithuanian system affords the President full and unlimited discretion to grant pardon. His power is not circumscribed by any procedural safeguards nor are the President or the Parole Commission under a duty to give reasons for their decisions. Also, the practice of the Pardon Commission or the President is not publicly accessible as no reports are issued providing insights into the manner in which they perform their functions.

8. Secondly, neither domestic law nor judicial practice imposes a positive duty on the Pardon Commission or the President to examine whether legitimate penological grounds justify continued imprisonment, in conformity with the *Vinter* standards.

9. Thirdly, and importantly, the decisions of the Pardon Commission or the President – the latter enjoying full discretion and neither of these organs providing reasons for its decisions – cannot be subjected to judicial review providing the necessary protection against arbitrariness.

CONCURRING OPINION OF JUDGE KŪRIS

1. Having dissented in a very recent similar case, *T.P. and A.T. v. Hungary* (nos. 37871/14 and 73986/14, 4 October 2016), where the Court found a violation of Article 3 of the Convention on account of the irreducibility of life prison sentences under Hungarian law, I am, however, not able to maintain the same legal position in the instant case, because the present judgment is based on the law of the Convention as it stands today. I am far from being satisfied with that law; to be more precise, I am critical not so much with regard to *what* it says, but more with regard to *how* it has arrived at saying it.

2. Since *T.P. and A.T. v. Hungary* (cited above), the Court adopted the landmark judgment in *Hutchinson v. the United Kingdom* ([GC], no. 57592/08, 17 January 2017), in which (although no violation of Article 3 was found) the Court consolidated its doctrine as to life prisoners' "right to hope" that their life prison sentences will be reviewed and that, as a consequence, they may be released earlier. *Hutchinson*, just like the instant judgment, goes on to refer to and cite not only *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 (extracts)) and one of the most important post-*Vinter* judgments, *Murray v. the Netherlands* ([GC] no. 10511/10, ECHR 2016), but also the earlier judgment in *Kafkaris v. Cyprus* (no. 21906/04, ECHR 2008). Applying *Kafkaris* standards (had these (or at least some of them) not become by now a dead letter, one which nevertheless continues to adorn many judgments pertaining to life imprisonment), the examination of the instant case could – and should – have brought about a different result, namely that no violation of Article 3 was to be found. However, under the Court's case-law as it has been developed to the present day (most recently in *Hutchinson*), such a finding is no longer possible.

3. The Court's case-law pertaining to life imprisonment continues to be developed further. This has been a breathtakingly fast process. One of the elements of this development, albeit not yet an outstanding one (at least to the outside observer), is the slow but steady and purposeful movement from the admission – as in *Vinter and Others* (cited above, § 120), which is, to a much greater extent than the post-*Vinter* case-law, permeated with the spirit of the then still recent judgment in *Kafkaris* (cited above) – that the review of life prison sentences "should entail *either* the executive giving reasons *or* judicial review, so that even the appearance of arbitrariness is avoided" (see paragraph 181 of the judgment, emphasis added) to the effective rejection, whenever possible, of the "executive alternative". This is so despite repeated verbal assurances that the "executive alternative" is not impossible, at least in theory. If one looks more attentively at what arguments, employed in earlier cases pertaining to life imprisonment, are selected for recapitulation in later cases or at how the emphasis at times shifts from some arguments to

others (even without any of them being rephrased), or at how prominence is given to certain provisions of hard or even soft law that are "external" to the Convention (see, for instance, paragraph 174 of the judgment), one could perhaps predict that sooner or later this movement will arrive at its logical destination. As to *when*, at last, this will take place, is a matter for the prophets. It is also true that today this logical destination has not yet been reached. For instance, in *Hutchinson* (cited above) the "executive alternative" was not dismissed, in particular owing to the fact that in the British system the executive *does* provide reasons for not commuting life prison sentences; moreover, these reasons are *amenable to judicial review*. Be that as it may, one cannot but observe how far the case-law has moved away from *Kafkaris* (cited above).

Contrary to the British legal and administrative situation, in a legal setting such as that of Lithuania the possibility of Convention-compatible "executive review" in the (sole) form of presidential pardon no longer seems to be fit for the purposes of compatibility with Article 3, especially given the fact that, as a rule, *no presidential decree* is issued in cases where the life prisoner's plea for pardon is rejected by the President – either following the advice of the Pardon Commission or even in disregard of it. As a former constitutional judge, I am tempted to observe that such a practice of abstention would, to put it mildly, give rise to doubts as to its compatibility with the Lithuanian Constitution, under which "[t]he President of the Republic, implementing the powers vested in him, *shall issue* acts-decrees" (Article 85, emphasis added), but such considerations would be beyond the scope of the instant case. On the other hand, the introduction into the Lithuanian legal system of periodic judicial review of life prison sentences does not appear to be an insurmountable task, albeit one which, for some reasons (to which I shall briefly come back later), the authorities have not yet undertaken. Moreover, introduction of the said judicial review would not require any change to the national Constitution or any fundamental alteration of the institution of presidential pardon, the essence of which, so far, has been clemency or grace. Most importantly, such introduction would be *in conformity with the law of the Convention* as it stands now and even as it will become – if not in theory (the soothing mantra about the possibility of the "executive alternative" will continue to be repeated), then almost inevitably in practice – in the (perhaps foreseeable) future.

4. "It is emphatically the province and duty of the judicial department to say what the law is" (*Marbury v. Madison*, 5 U.S. 1 Cranch 137 (1803)). It is a "dogma or systematized prediction [of what the courts will do] which we call the law" (Oliver Wendell Holmes, Jr., "The Path of the Law", 10 *Harvard Law Review* 457 (1897)). Or, to cite one of the former US Chief Justices (in a speech before he was made a Justice), Charles Evans Hughes, "the Constitution is what the judges say it is" ("Addresses and Papers of Charles Evans Hughes, Governor of New York, 1906-1908" (1908), p. 139).

In the same vein, and whether one likes it or not, *the Convention is what the Strasbourg Court says it is*. The "systematized prediction" (which for O. W. Holmes was the synonym of "dogma") as to how cases pertaining to life prisoners' "right to hope" *will* be decided after *Vinter and Others* and *Hutchinson* (both cited above) is there.

5. Frankly, some ambiguity remains – and is not insignificant. In the science of logic, this ambiguity has a name. It is just one version of what is known as the Cretan (or Epimenides) paradox. *Vinter and Others* and *Kafkaris* (both cited above) – at least those parts of them which deal with the compatibility with Article 3 of an executive pardon as the main instrument for the commutation of life prison sentences (or even the only one, if release on compassionate grounds is not taken into account) – are to some extent at odds with each other and do not cohabit peacefully. They cannot both be relied upon at the same time. To wit, *either* a discretionary executive pardon, which gives no reasons for rejection and is not amenable to judicial review, is sufficient for the purposes of Article 3 (as in *Kafkaris*), *or* it is not (as in *Vinter and Others*). Yet the Court has never acknowledged that *Kafkaris* has been overruled.

But it has.

6. Under the Court's case-law as it stands today, in cases such as the instant one it is the overall "quality" of the domestic law which is decisive for finding a violation of Article 3, and not so much the conduct of a particular applicant. In fact, that conduct is *completely immaterial* to finding the said violation: if no other form of review of a life prison sentence is provided for in the domestic legislation, offering life prisoners "hope" for review of their life prison sentences and, consequently, for earlier release, besides pardon by the Head of State or release on compassionate grounds, Article 3 *will* be found to have been violated *from the very moment of imposition of the sentence* on the applicant, with no regard being had as to *when that sentence was imposed*. Such a violation *will* be found irrespective of whether the applicant made *any progress* towards rehabilitation, whether there was *sufficient time* to make such progress and even when he or she *made no efforts at all* towards his or her own rehabilitation. If this sounds like a drastic exaggeration, see *P. and A.T. v. Hungary* (cited above). Such is the case-law as it has been developed up to the present day.

7. As to the *contradictio in temporis* whereby such violations may be – and actually *are* – found by the Court to have been committed in the pre-*Vinter* era, that is to say, when the *Kafkaris* principles *really* applied, I dealt with this in my dissenting opinion in *T.P. and A.T. v. Hungary* (cited above). With regard to the respondent State in that case, Article 3 was found to have been violated at the time of the imposition of life sentences on the applicants in that case, even in disregard of the Court's own assessment in *Törköly v. Hungary* ((dec.), no. 4413/06, 5 April 2011), in which the Court had found

the relevant domestic legislative framework *to have complied* with the requirements of Article 3.

In the instant case, the applicants were sentenced to life imprisonment (or to death, but their death sentences were changed to life imprisonment) between 1993 and 2010. At that time the prospects for their earlier release, as provided for in the domestic legislation, were no higher than they are now. Perhaps lower. Yet, under the Court's pre-*Vinter* case-law, such a situation *was compatible* then with Article 3. It no longer is.

In my dissenting opinion in *T.P. and A.T. v. Hungary* (cited above), I argued that "the Hungarian courts violated Article 3 *because this Court changed its approach*" and asked whether the domestic courts could and should have foreseen such a development (see paragraph 11 of the dissenting opinion). I doubted it.

The same applies, to a very great extent, to the instant case. Many of my arguments in the said dissenting opinion also apply to the instant judgment, and I shall not repeat them all here.

8. Still, one important aspect distinguishes the instant case from *T.P. and A.T. v. Hungary* (cited above). In that case, the Hungarian authorities could have quite reasonably expected that, in similar subsequent cases against that State, the Court would remain faithful to itself and coherently follow the line of reasoning it had adopted in *Törköly* (cited above) and would not declare that the domestic legislative framework, which was found to be in compliance with the Convention only five years earlier, was no longer in harmony with the latter (this was one of the reasons for my disagreement with the majority in that case). However, the Lithuanian authorities did not have this advantage ("right to hope"?), because the instant case happens to be the first one against Lithuania in which the alleged irreducibility of life imprisonment is challenged.

The Lithuanian authorities clearly had to be aware of the prevailing – and very strong – trend in the post-*Vinter* development of the Court's case-law pertaining to the alleged irreducibility of life imprisonment. They were obliged not to dismiss or disregard this trend, but to take it into account, even if this enters into the domain of pro-active penal policy rather than being strictly confined to the domain of the law of the Convention, as interpreted in the pre-*Vinter* case-law.

After *Vinter and Others* (cited above), the Court adopted a series of judgments which made it glaringly obvious that the Government's case was doomed to failure. To highlight just a few: *Öcalan v. Turkey (no. 2)* (nos. 24069/03, 197/04, 6201/06 and 10464/07, 18 March 2014); *László Magyar v. Hungary* (no. 73593/10, 20 May 2014); *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, ECHR 2014 (extracts)); *Čačko v. Slovakia* (no. 49905/08, 22 July 2014); *Trabelsi v. Belgium* (no. 140/10, ECHR 2014 (extracts)); *Murray* (cited above); *T.P. and A.T. v. Hungary* (cited above); and, finally, *Hutchinson* (cited above).

It is hard to understand therefore why the Lithuanian authorities chose to tarry until the Court delivered its judgment *in the applicants' case*. They explicitly acknowledged the deliberate character of their procrastination in introducing the indispensable legislative changes (see paragraphs 60 and 181 of the judgment). One could surmise that the said procrastination was due to a lack of political will on the part of the legislative authority (and the executive authority, too, because it is the executive branch which initiates most of the bills), as well as to subservience to public opinion which, as publicly available research allows us to conclude, would have been and probably still is very much against the introduction of even a formal possibility of periodic review of life prison sentences. So much against that it could not be comforted by the reminder, as in *Öcalan v. Turkey (no. 2)* (cited above, § 207), that the "finding of a violation [of Article 3] cannot be understood as giving the applicant the prospect of imminent release" and that the "national authorities must review, under a procedure to be established by adopting legislative instruments and in line with the principles laid down by the Court in paragraphs 111-113 of its Grand Chamber judgment in the case of *Vinter and Others* ..., whether the applicant's continued incarceration is still justified after a minimum term of detention, either because the requirements of punishment and deterrence have not yet been entirely fulfilled or because the applicant's continued detention is justified by reason of his dangerousness"?

One can speculate as to which will come first: whether the necessary legislative changes will be introduced into the domestic legal system, which would allow for judicial(!) review of life prison sentences, or whether a new case against Lithuania, pertaining to the alleged irreducibility of life imprisonment, will be decided by the Court, in which a violation of Article 3 is found on the same account as in the instant case. Given that, according to the Government's submissions, there are well over a hundred life prisoners in Lithuania (see paragraph 83 of the judgment), such new cases are not at all unlikely.

9. I have no problem with the Court pointing out to the respondent State in the instant case (as it did with a number of other respondent States in previous cases) that its penal legislation *must* be amended. After all, such amendment would be an important step toward the *humanisation* of the domestic penal law. This is the positive side – undoubtedly so.

10. What raises concerns is that although the judgment describes in detail – and correctly! – the factual situation of each of the applicants (in the "Facts" section of the judgment; in this respect the instant judgment is quite some way ahead of and less openly dogmatic, less blinkered than, say, the judgment adopted in *T.P. and A.T. v. Hungary* (cited above)), that factual situation is *in no way taken into account* in the reasoning and the overall assessment of the applicants' individual situation. The Court follows reasoning which (as I already argued in my dissenting opinion in *T.P. and A.T. v. Hungary*)

migrates from one case to another and "uncritically makes personal self-improvement, in essence a moral phenomenon, virtually a matter of a legal trade-off, devoid of the element of sincere repentance" (see paragraph 15 of my dissenting opinion) by asserting that "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" (see *Vinter and Others*, cited above, § 122; *László Magyar*, cited above, § 53; and *Harakchiev and Tolumov*, cited above, § 246; emphasis added).

The "capriciousness" clause exempts the Court from examining whether an applicant made any progress on "working toward his rehabilitation".

11. In the instant judgment, the Court did not incorporate verbatim the doctrinal statement quoted above (at least it did not use the word "capricious" when speaking on its own behalf; but see the arguments of the third-party intervener in paragraph 152 of the judgment).

Still, that idea is there.

12. The applicants complained that although a "life prisoner was entitled to know, at the start of his sentence, what he must do to be considered for release", the Government "provided no indication that ... a rehabilitation plan had been drawn up for each applicant to provide the necessary guidance for meaningful reform" and that "[i]n the absence of any such tangible plan for release at least at some point in the future and with no clear indications from the rejection of the pardon plea, [they] had been left in ultimate uncertainty and despair" (see paragraph 131 of the judgment).

The Court uncritically agreed, by the way, without even taking a closer look at these rehabilitation plans so that their "tangibility" could be examined. What is more, although the Code for the Execution of Sentences and the Rules for Correctional Facilities explicitly require that such plans *must be* in place, and the Government assert that they *are* in place, and although a number of social rehabilitation programmes providing life prisoners with assistance and guidance for meaningful reform are organised at the prison in which the applicants are being held, and the applicants themselves were involved in various programmes of adaptation, social rehabilitation and personality transformation (see paragraphs 101-03 and 144-46 of the judgment), none of this is taken into consideration. The applicants assert that they do not "know" what they "must do" – and the Court believes them, whatever the Government say. The Government submit that information about prisoners' personality and behaviour, and the results of their social rehabilitation, is kept in their prison file (see paragraph 147 of the judgment), but the applicants (two of them) argue that they were not shown their character assessments (see paragraph 130 of the judgment). But did the applicants ask for this

information? They do not say so. Which means that they did not ask. Still, the Court prefers the applicants' assertion to that of the Government.

As if it were obvious that one can win the lottery without buying a ticket.

The applicants' progress toward rehabilitation, if any, was likewise not looked into by the Court. It was not even considered, even incidentally, whether, objectively, there had been sufficient time for them to make such progress, at least with regard to some of the applicants who, at the time their applications were lodged with the Court, had served only three and a half years of their prison sentence (see paragraph 18 below). The Court merely found it established that "presidential pardon in Lithuania *de facto* does not allow a life prisoner to know what he or she must do to be considered for release and under what conditions" (see paragraph 181 of the judgment).

13. To say that expecting the prisoner to work towards rehabilitation if he is not promised the prospect of release is "capricious" is an *overstatement* (here I repeat what I wrote in my dissenting opinion in *T.P. and A.T.* (paragraph 15)). If it is "capricious" to expect the prisoner to work towards his own rehabilitation without what amounts to a "legislative promise" that he will be "considered for release", and if, moreover, it is "capricious" to expect that a life prisoner himself should know, from 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" (see *Vinter and Others*, cited above, § 122), then really *nothing else matters*. Neither *when* the life prison sentence was imposed, nor *for what* it was imposed, *nor* whether the prisoner made *any progress* towards rehabilitation, nor whether he *made any efforts* towards rehabilitation, nor the *legitimate expectations of society*, whatever they may be. What matters is the "legislative promise" (or the absence thereof) and the predictability of its being kept.

14. Thus, the finding of a violation of Article 3 in this case (as well as in a number of other similar cases) is – and *will* be – based on the fact that the "quality" of the domestic law was insufficient for the purposes of Article 3, as interpreted in the Court's case-law, because the domestic law does not provide for the possibility of review of life imprisonment sentences. *The applicant's conduct does not matter at all, let alone his progress towards rehabilitation.*

15. But that conduct warrants being looked into – both as a matter of principle and in the instant case.

If and when one looks into the *actual* conduct of the applicants, one can hardly continue to believe, let alone aver, that they did not "know what [they must] do to be considered for release and under what conditions" (see paragraphs 12 and 13 above).

Even conceding that some of them might not know everything they *must do*, they definitely knew – or should have known! – what they must *not do*, but nevertheless *did*.

The things that some of the applicants *actually* did would *disqualify* them from being considered for release *in any legislative setting*.

Let us briefly summarise these acts.

16. Mr Matiošaitis: "refused to work, explaining in writing that he would not work with prisoners belonging to a lower caste"; "had not made serious resolutions" as to his guilt; "a knife, sharpened pieces of tin, needles and other prohibited objects were found in his cell" (see paragraph 12 of the judgment).

Mr S. Katkus: admitted his guilt only "partly"; "had been found slightly inebriated" (see paragraph 24 of the judgment).

Mr Beleckas: had "been found in possession of a mobile phone, which was forbidden under the prison regulations"; had "no remorse about the crimes he had committed and had not made any serious resolutions"; "committed a number of other small violations of the prison rules"; was "likely to attempt to escape"; "prohibited objects had been found in his cell" (see paragraphs 29 and 30 of the judgment).

Mr Lenkaitis: "had committed four disciplinary violations, including use of physical violence against another inmate and possession of prohibited objects"; "had only partly acknowledged his guilt" (see paragraph 36 of the judgment).

Mr Kazlauskas: after being transferred to Pravieniškės Correctional Institution "to serve the remainder of his life imprisonment sentence ... the applicant attempted to kill another life prisoner by stabbing him with a knife [and was] convicted of attempted murder"; "partly acknowledged his guilt but had shown no remorse at all for his crimes"; explicitly asked "to be transferred back to Lukiškės Prison [from Pravieniškės Correctional Institution] and never to be returned to freedom, because he was afraid of liberty" (see paragraphs 41 and 42 of the judgment). Of course, as the years went by he might have changed his mind, but this detail is somewhat telling.

17. So if any life prisoner (not necessarily any of the five dealt with in paragraph 15 above) argues that his personality has been transformed for the better to the extent that he is now ready for fully-fledged reintegration into society as a valuable member, but does not know what to do in order to be eligible for earlier release, albeit by way of presidential pardon, here – in a nutshell – are some tips. Begin by erasing the criminal sub-culture from your personality by not regarding other people as belonging to lower castes. Fully admit your guilt for the crimes committed. Feel remorse for you have done. Make serious resolutions about it. Do not commit disciplinary violations. Do not hide prohibited objects in your cell, especially knives or sharpened pieces of tin. Do not consume alcohol in prison – it is illegal. Do not behave in such a way that the authorities have reasonable grounds to believe that you will attempt to escape. And, of course, do not use physical violence against anyone. Trying to kill someone is also a no-no. Is it "capricious" to expect that persons spending their life behind bars ought to know this?

Of course, the list is not exhaustive.

18. I do not want to generalise and to draw the same conclusion as to the disqualifying nature of the applicants' conduct regarding each and every one of them.

In particular, the case file does not contain any prima facie disqualifying information regarding the second applicant, Mr Maksimavičius. Still, having been sentenced to death in 1993 and having had this sentence changed to life imprisonment in 1995 (*a propos*, by way of a presidential pardon(!), see paragraphs 16 and 17 of the judgment), this applicant (the longest-serving of all of them) has not yet completed the period of twenty-five years which, according to the Court's case-law, is the maximum indicative term after which the sentence has to be first reviewed (see *Vinter and Others*, cited above, § 120, and *Murray*, cited above, § 99). This, however, does not mean that the review of his sentence, albeit by way of presidential pardon, could not take place earlier (and, indeed, he could plead for presidential pardon after serving ten years of his sentence, as provided for by the domestic legislation). It is not clear, however, why his pleas for pardon were rejected in 2012 and 2014 (see paragraph 20 of the judgment). This applicant claims that his plea was rejected despite a positive character assessment, and that he was left with an "open question as to *what else* he must do, and *how* and *in what manner* he should *seek to improve in order to demonstrate* that he posed no danger to society and was ready to be re-integrated" (see paragraph 130 of the judgment, emphasis added). This is rather convincing, even very convincing (at least, if the eternal philosophical question as to the goals of punishment is set aside). Here, one might say, a *real* problem exists – and not only that of the particular prisoner's rights, but also of the transparency of executive decisions.

19. As to the other two applicants not yet mentioned, Mr Gervin and Mr Svotas (the seventh and eighth applicants), they were sentenced to life imprisonment in 2010 and are still not entitled to apply for presidential pardon. At the time their applications were lodged with the Court, they had served only three and a half years each (see paragraphs 46, 48, 49 and 51 of the judgment). Could they realistically expect to be released at that stage? Most likely not.

Are the complaints of these two applicants also rooted in the fact that they do not "know what [they must] do to be considered for release and under what conditions" (see paragraphs 12, 13 and 15 above)?

Well, there are two things which they *really* know – or at least *should* know – that they must *do*: (i) serve some considerable period of time in prison (yes, considerable, because, after all, it was not the theft of a bike that they were convicted of) and (ii) do it without breaking prison rules. It is not "capricious" at all to expect them to have *this* knowledge. As it transpires from the case file – and I observe this to the benefit of these two applicants – they have successfully complied, so far, with the second condition. As to the first one, it *must* be met too, and it is not "capricious" at all for the State to

require this, especially bearing in mind that the State – let it not be forgotten – also represents the victims of the crimes of life prisoners, including those whose lives were deprived of *any hope* when their dear ones were murdered by those who claim their "right to hope" (not only the two applicants dealt with here). What about some balancing of these two hopes?

Unfortunately, there is not a trace of such remembrance of the victims in the Court's post-*Vinter* case-law.

20. Also, Mr Katkus (already mentioned in paragraph 11 above), although eligible, did not apply for presidential pardon. Had he applied for it, it is very unlikely that his plea would have been granted, given that he admitted his guilt only "partly" (see paragraph 16 above).

21. How then is it possible *in all seriousness* (?!) to believe and assert that, at least with regard to these three applicants (Mr Gervin, Mr Svotas and Mr Katkus), there were "no clear indications from the *rejection* of the pardon plea" and that it was the absence of these "clear indications" which left the applicants "in ultimate uncertainty and despair" (see paragraph 12 above, emphasis added)? And how is it possible *with no less seriousness* to believe and assert that the other applicants, with the possible exception of Mr Maksimavičius, especially given their disciplinary record while in prison (and in the case of Mr Kazlauskas even his criminal record), did not know what the factual basis was for the rejection of their pleas? Did they not themselves contribute to their alleged "despair"?

22. I do not intend to suggest that all the applicants should necessarily have had their pleas for presidential pardon rejected on certain disqualifying grounds, or that those of the applicants who fully admitted their guilt and showed remorse and whose conduct was not tainted by various disciplinary violations, let alone crimes, should have had to wait for an inordinate number of years to submit such pleas. The Lithuanian legal framework is really in great need of improvement as regards the very restricted possibility for commutation of life prison sentences.

23. My major concern (in addition to the *contradictio in temporis* dealt with in paragraph 7 above, but also – even more extensively – in my dissenting opinion in *T.P. and A.T. v. Hungary* (cited above)) is that the Court's case-law pertaining to the alleged irreducibility of life imprisonment has been developed to the point where the Court confines itself to the examination and assessment *not of the actual infringement* of an applicant's rights under the Convention, but of the "quality" of domestic law alone. Which equates, in Hans Kelsen's words, to be(com)ing not a "court of men" but a "court of norms" – a characteristic which, so far, has been reserved for constitutional courts. Was that the intention of the founders?

24. One does not need to re-read David Hume to appreciate that there is a great difference between "ought" and "is", between *Sollen* and *Sein*, between *devoir-être* and *être*. It goes without saying that the application, to a particular person, of even a "very good" law does not guarantee that that person's right

under the Convention will not *actually* be violated. In the same vein, the application of even a "very bad" law does not automatically mean that the right of a particular person has *actually* been violated. It is by no means impossible that that person himself or herself may have contributed to the fact that the right in question *cannot be enforced* in his or her case, *whatever legislative framework is in place*. Nor is it impossible that the actual conduct of a person and the lack of efforts and progress (which – let it be stressed once again – requires time) towards changing that conduct to make it more socially acceptable may mean that what, in the abstract sense, is the right under the Convention is not the enforceable right which *that* person *actually* enjoys.

25. By construing and applying the Convention, in so far as the latter sets forth requirements pertaining to life imprisonment (but, alas, also in relation to an increasing number of other aspects), in such a manner that *the facts pertaining to the applicants' situation no longer matter* (even if they are absolutely correctly described in the relevant part of the judgment), and confining itself to the examination and assessment – effectively, *in abstracto* – of the domestic legislative setting, the Court resembles – time and again, and more and more – *the supranational constitutional court which it was not meant to be(come)*.