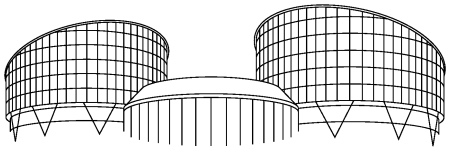

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VITANIS AND ŠUKYS v. LITHUANIA

(Applications nos. 51043/13 and 54553/13)

JUDGMENT

STRASBOURG

26 September 2017

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

In the case of Vitanis and Šukys v. Lithuania,

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

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

Having deliberated in private on 5 September 2017,

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

PROCEDURE

1. The case originated in two applications (nos. 51043/13 and 54553/13) 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 Remigijus Vitanis and Mr Saulius Šukys ("the applicants"), on 29 July 2013 and 20 August 2013 respectively.

2. The applicants, who had been granted legal aid, were represented by Mr K. Ašmys, a lawyer practising in Vilnius, and Mr S. Tomas. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. On 7 January 2014 the complaints concerning the applicants' conditions of detention were communicated to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1976 and 1978 respectively and are detained in Vilnius Correctional Facility and Kybartai Correctional Facility.

A. The first applicant (Mr Remigijus Vitanis)

5. The first applicant was detained in Šiauliai Remand Prison from 11 January 2011 to 3 November 2011. The documents submitted to the Court show that he was held in four different remand prison cells: nos. 9, 104, 29 and 37.

6. In 2012 the applicant instituted proceedings for damages. He argued that the conditions in which he had been held in Šiauliai Remand Prison had been degrading: cell no. 9 had not been renovated, had had almost no natural light and the artificial light provided in the evening had been very poor; the ventilation had been insufficient and the cell was cold; cell no. 104, although renovated, lacked sufficient ventilation and was cold, and there was almost no natural light; cell no. 29 had insufficient light and ventilation; cell no. 37 was dirty, the electrical system was damaged and thus dangerous, the sanitary facilities were not separated from the cell, the cell lacked light, ventilation and the temperature was too low. The applicant also submitted a document from the Šiauliai Health Care Centre from 19 April 2012, which noted violations of hygiene norms in the remand prison's cells.

7. On 21 December 2012 the Šiauliai Regional Administrative Court held that the applicant's right to adequate conditions of detention had been breached but dismissed his claim for compensation. The court held that the applicant had not complained about his conditions of detention while in prison and had only lodged his complaint a year after leaving it. Moreover, it was up to the applicant to prove that he had sustained damage. The court held that there was no information to show that the remand prison had purposely interfered with his right to dignity or treated him inhumanely, that he had not suffered a great enough negative impact from the hygiene violations, and that there were no grounds to award him compensation.

8. The applicant appealed but on 17 July 2013 the Supreme Administrative Court upheld the first-instance decision. The court observed that the document from the Šiauliai Health Care Centre (see paragraph 6 above) had been issued five months after the applicant had left the remand prison and it was not able to determine the negative impact of the unsanitary conditions on the applicant on the basis of such evidence alone.

B. The second applicant (Mr Saulius Šukys)

9. The second applicant was detained in Šiauliai Remand Prison from 15 December 2009 to 8 February 2012. The documents submitted to the Court show that he was held in several different cells: nos. 101, 95, 54, 14 and 49.

10. On 27 December 2011 the applicant instituted proceedings for damages and on 9 January 2012 he submitted a detailed complaint. He argued that the conditions in which he had been held in Šiauliai Remand Prison had been degrading: the cells were damp and dirty, there was insufficient light and ventilation, and the walls had not been painted. As a result, his health had deteriorated: his sight had worsened and he had pain in his joints and his back.

11. On 28 December 2012 the Šiauliai Regional Administrative Court held that the applicant's right to adequate conditions of detention had been breached but dismissed his claim for compensation. The court found that the Šiauliai Health Care Centre had examined cell no. 101 on 7 January 2011, while the applicant had been detained there from 5 January 2011 to 3 February 2011 and from 14 February 2011 to 28 April 2011. The cell had been dirty, the toilet doors broken, and there was mould on the walls and ceiling. The health centre also examined cell no. 101 on 27 April 2011 and established that there was no longer any mould and the temperature was satisfactory, but the lighting was still insufficient. The court thus held that the applicant had proven that the conditions in cell no. 101 had been unsanitary. However, the court noted that the applicant had not proven the existence of unsanitary conditions in the other cells. The court further noted that the inmates were responsible for keeping the cells clean, but that the remand prison had not proven that it had provided the applicant with cleaning materials for at least six months. As regards the applicant's health, the court observed that he had been prescribed several drugs for spinal osteochondrosis, but that there was no relation between his illness and the unsanitary conditions in cell no. 101. The court also noted that during the hearing the applicant had claimed that all the cells had been overcrowded but he had failed to mention this in his written complaint. The court thus held that the case concerned sanitary conditions and not overcrowding.

12. The applicant appealed and on 11 June 2013 the Supreme Administrative Court found that the court of first instance had acted unreasonably in dismissing his compensation claim, and awarded him with 300 Lithuanian litai (LTL, approximately 87 euros (EUR)) for non-pecuniary damage.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND RELEVANT INTERNATIONAL MATERIALS

13. For relevant domestic law and practice and relevant international materials, see *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 50-69, 8 December 2015).

THE LAW

I. JOINDER OF THE APPLICATIONS

14. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicants complained of inadequate conditions of detention. They relied on Article 3 of the Convention, which reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The applicants' victim status

(a) The parties' submissions

16. The Government argued that the applicants could no longer be considered victims of alleged violations of Article 3 of the Convention. Their cases had been reviewed by the administrative courts and decisions had been adopted in their favour. Mr Šukys had received adequate and sufficient compensation while Mr Vitanis had received an acknowledgement from the courts of a violation of domestic regulations.

17. The applicants disputed the Government's arguments. Mr Šukys argued that the sum awarded to him was inadequate while Mr Vitanis complained that he had not been awarded any compensation.

(b) The Court's assessment

18. The Court refers to its general principles and earlier findings (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, §§ 84-88 and §§ 93-94, 8 December 2015). The Court notes that in both these cases the Lithuanian courts admitted a violation of domestic legal norms setting out specific aspects pertinent to the conditions of detention. It considers that even though Mr Šukys was awarded EUR 87, it is the Court's view that that sum, whilst apparently consistent with Lithuanian case-law, is inconsistent with the amounts that the Court awards in similar cases. Moreover, Mr Vitanis did not receive any compensation. The Court thus considers that the applicants retain their victim status under Article 34 of the Convention and dismisses the Government's preliminary objection of loss of victim status.

2. Exhaustion of domestic remedies

(a) The parties' submissions

19. The Government submitted that in respect of the second applicant (Mr Šukys), the first-instance court dismissed his complaint about overcrowding because he had failed to raise it properly.

20. The second applicant considered his claim to be admissible.

(b) The Court's assessment

21. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, *Akdıvar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV, and *Radzhab Magomedov v. Russia*, no. 20933/08, § 65, 20 December 2016).

22. Turning to the circumstances of the present case, the Court observes that the second applicant's complaint about overcrowding was dismissed by the first-instance court because he had failed to properly mention overcrowding in his written complaint (see paragraph 11 *in fine* above).

23. In the light of the above considerations, the Court allows the Government's preliminary objection of non-exhaustion and rejects the second applicant's complaint about overcrowded cells for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

3. Other reasons for inadmissibility

24. The Court notes that the remaining part of the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

25. The Court refers to the principles summarised in its case-law regarding inadequate conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-159, 10 January 2012; *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, §§ 69-78, 10 March 2015; *Mironovas and Others*, cited above, §§ 115-123, and, as recent authority, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016).

2. Application of the above principles in the present case

(a) General remarks about Šiauliai Remand Prison

26. The Court notes that it has already accepted the conclusions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") about the dire situation in Šiauliai Remand Prison (see *Mironovas and Others*, cited above, § 149). The CPT noted that the whole of the Šiauliai facility was old and run down. Prisoners were accommodated in dilapidated and damp cells, and the vast majority of remand prisoners were confined to their cells for up to twenty-three hours per day, the only regular daily out-of-cell activity being one hour of outdoor exercise (ibid.).

27. The Court has repeatedly held that a short amount of time for outdoor exercise, for instance exercise limited to about one hour per day, may be a factor that exacerbates the situation of a prisoner confined to his or her cell the rest of the time (see *Ananyev and Others*, cited above, § 151, and *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 235, 27 January 2015; compare and contrast *Muršić*, cited above, § 161).

(b) Specific situation of the applicants

28. The Court first observes that the Government did not dispute the facts of the actual conditions of the applicants' detention, as examined by the domestic courts. Therefore, the Court will proceed with an assessment of the applicants' detention conditions based on their submissions and on the domestic court's findings, and in the light of all the information in its possession.

(i) The first applicant (Mr Vitanis)

29. According to the Court's calculations, Mr Vitanis spent nine months and twenty-four days in Šiauliai Remand Prison (see paragraph 5 above).

30. As acknowledged by the domestic courts, the applicant's right to adequate conditions of detention was breached by the failure of the prison authorities to respect the requirements of domestic hygiene norms (see paragraphs 7 and 8 above).

31. The Court observes that the Government do not deny that the sanitary conditions were as described by the applicant and that they match the findings of the CPT (see paragraph 26 above) and the Šiauliai Health Care Centre (see paragraph 6 *in fine* above). It is very unlikely that Mr Vitanis, who had to spend nine months and twenty-seven days in Šiauliai Remand Prison, remained unaffected by the poor conditions there.

32. The Court notes that the Government produced no evidence to prove that the applicant's conditions of detention in Šiauliai Remand Prison were adequate. The Government's assertions that the applicant failed to submit any evidence about the alleged breach of hygiene standards when he was in

detention and that the Šiauliai Health Care Centre document was issued in April 2012, while the applicant's detention ended in November 2011 (see paragraph 8 above), do not prove that the conditions of his detention were adequate.

33. The Court cannot overlook the findings of the domestic courts, which are not very extensive and merely state that various domestic hygiene norms were breached, but give no specifics as to which norms and what the breaches were. The statement that the applicant's complaints to the domestic courts were made in abstract terms does not relieve them of their obligation to duly examine the circumstances of the case.

34. Taking into account the fact that the applicant spent almost ten months in poor sanitary conditions, his suffering could not be described as short-term or occasional. The Court notes that the effect of the applicant's detention must have aroused feelings in him of anguish and inferiority capable of humiliating and debasing him. The Court therefore considers that the conditions of the applicant's detention from 11 January 2011 to 3 November 2011 amounted to degrading treatment incompatible with the requirements of Article 3.

(ii) The second applicant (Mr Šukys)

35. According to the Court's calculations, Mr Šukys spent two years, one month and twenty-five days in Šiauliai Remand Prison (see paragraph 9 above). As has been established by the domestic courts, the applicant was held in unsanitary conditions in cell no. 101 for three months and thirteen days and he did not receive cleaning materials for at least six months (see paragraph 11 above). As there is not enough evidence to show that the applicant's conditions in other cells in the remand prison were unhygienic, the Court will only examine the period he spent in cell no. 101.

36. The Court reiterates the CPT's findings (see paragraph 26 above) and notes that the Government have not produced any evidence to prove that the applicant's conditions in cell no. 101 of Šiauliai Remand Prison during the abovementioned period were adequate. On the contrary, the Court takes notice of the extensive analysis of domestic hygiene norms and their application in the present case by the domestic courts. The Court finds it unlikely that Mr Šukys remained unaffected by the poor conditions of the prison in general while being in cell no. 101. Moreover, taking into account the fact that the vast majority of remand prisoners in Šiauliai Remand Prison were confined to their cells for up to twenty-three hours per day (see paragraphs 26-27 above), the Court reiterates that the compensation awarded to Mr Šukys was not sufficient (see paragraph 18 above).

37. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 3 of the Convention on account of the applicant's detention in cell no. 101.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. Mr Vitanis and Mr Šukys claimed 15,000 euros (EUR) and EUR 42,000 respectively in respect of non-pecuniary damage from the breach of their rights under Article 3 of the Convention.

40. Regard being had to the documents in its possession, the Court considers it reasonable to award EUR 5,600 to Mr Vitanis and EUR 5,500 to Mr Šukys under this head.

B. Costs and expenses

41. Mr Vitanis and Mr Šukys claimed EUR 5,000 each for legal costs incurred before the Court. They relied on invoices issued to them by Mr S. Tomas on 25 September 2014.

42. The Government urged the Court to reject their claims for costs and expenses because the invoices enclosed by the applicants' representative had not been signed by the applicants' lawyer, Mr K. Ašmys, as indicated in the authority form, but by Mr S. Tomas. However, on 8 July 2014 the Court decided that Mr S. Tomas was not qualified as an advocate for the purposes of Rule 36 § 4 (a) of the Rules of Court and could thus no longer represent the applicants before it (see also the Government's pleas in *Mironovas and Others*, cited above, § 161, and *Bagdonavičius v. Lithuania*, no. 41252/12, § 58, 19 April 2016). It was the Government's view that Mr S. Tomas was seeking to mislead the Court by formally using the other lawyer's name, while *de facto* continuing to represent the applicants. The Government argued that in those exceptional circumstances the applicants, who had been informed about the Court's decision on Mr S. Tomas, should have sought alternative representation under Rule 36 § 4 (b) of the Rules of Court. In the alternative, the Government argued that the sums requested were excessive, ungrounded and unsubstantiated. In addition, as copies of the payment order for those sums had not been included, some doubts could arise as to whether the applicants had in fact paid them.

43. The Court notes that both applicants were granted legal aid (see paragraph 2 above) and that the total sum of EUR 1,700 has been paid to Mr K. Ašmys to cover the submission of these applicants' observations and additional expenses.

44. 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 absence of any specific supporting documents, and regard being had to the information and documents in the Court's possession, including the fact that on 3 May 2016 the Court excluded Mr S. Tomas from representation of the applicants before it pursuant to Rule 36 § 4 (b) of the Rules of Court, it decides to make no award under this head (see, *mutatis mutandis*, *Mironovas and Others*, cited above, §§ 163-164, and *Aleksandravičius and Others v. Lithuania* [Committee], nos. 32344/13 and 4 others, § 59, 4 July 2017).

C. Default interest

45. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* inadmissible the second applicant's complaint about overcrowding;

3. *Declares* the remainder of the applicants' complaints admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention for the inadequate conditions of the applicants' detention;

5. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, plus any tax that might be chargeable, in respect of non-pecuniary damage:
      (i) EUR 5,600 (five thousand six hundred euros) to the first applicant, Mr Vitanis;
      (ii) EUR 5,500 (five thousand five hundred euros) to the second applicant, Mr Šukys;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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

Done in English, and notified in writing on 26 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President