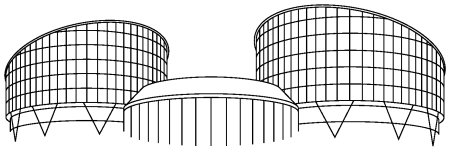

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MIRONOVAS AND OTHERS v. LITHUANIA

(Applications nos. 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13)

JUDGMENT

STRASBOURG

8 December 2015

Request for referral to the Grand Chamber pending

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 Mironovas and Others v. Lithuania,

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

András Sajó, *President,*
Vincent A. de Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 3 November 2015,

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

PROCEDURE

1. The case originated in seven applications (nos. 29292/12, 40828/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13) against 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 Bogdan Petrulevič, Ričardas Mironovas, Roman Ivanenkov, Romualdas Klintovič, Romualdas Gaska, Vidas Traknys and Dainius Zeleniakas ("the applicants"), on 4 May, 18 June and 16 October 2012, and 14 June, 15 October and 4 November 2013 (the last two applicants), respectively.

2. The applicant B. Petrulevič was represented by Mr D. Fomkin, a lawyer practising in Vilnius. The applicant R. Mironovas, who was granted legal aid, was represented by Mr S. Tomas. The applicant R. Ivanenkov was represented by Mr R. Lilas, a lawyer practising in Kaunas. The applicants R. Klintovič, R. Gaška, V. Traknys and D. Zeleniakas, who were also granted legal aid, were represented by Mr K. Ašmys, a lawyer practising in Vilnius.

The Lithuanian Government ("the Government") were represented by their Agent Ms Elvyra Baltutytė, and later by their Agent Ms Karolina Bubnytė.

3. The applicants complained about the conditions of their detention in different Lithuanian prisons. They relied on Article 3 of the Convention.

4. On 18 January 2013 and 7 January 2014 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Mr Bogdan Petrulevič

5. Mr Petrulevič was born in 1986. When he lodged the application with the Court in 2012, he was serving a prison sentence at the Pravieniškės Correctional Home.

6. From 8 April 2005 to 26 October 2006 the applicant was detained at the Lukiškės Remand Prison. It transpires from the documents before the Court that he was held in different remand prison cells where he had between 1.55 and 3.95 square metres of living space.

7. After his conviction and transfer to the Pravieniškės Correctional Home to serve his sentence, on 27 October 2009 the applicant instituted civil proceedings for damages. He argued that the conditions in which he had been held at the Lukiškės Remand Prison had been degrading: the cells were overcrowded, full of rats and worms, appropriate toilet facilities were lacking, the cells were hot in summer and cold in winter, the cell walls were damp, and the roof of the remand prison was covered with asbestos, which put the applicant's health in danger.

8. The Lukiškės Remand Prison administration responded that they attempted to maintain the statutory norm of 5 square metres per remand prisoner held in a cell (see paragraph 54 below), but that had not always been possible. The administration acknowledged that the facility was "constantly overcrowded (*nuolat perpildytas*)", because the institution could not refuse to admit persons brought there. The buildings of the remand prison were very old, they were repaired periodically and it was not possible to repair them entirely.

9. The case was first examined by the Vilnius Regional Administrative Court, which rejected the applicant's claim, *inter alia*, for having missed the statutory time-limit. The Supreme Administrative Court then remitted the case for fresh examination.

On 9 June 2011 the Vilnius Regional Administrative Court noted that the applicant had missed, by one day, the statutory three-year time-limit to lodge a claim for damages. The court nevertheless restored the time-limit of its own motion, having observed that the applicant had lodged his claim belatedly partly because he had not obtained in time information necessary for his civil claim.

10. The Vilnius Regional Administrative Court established that the applicant had been held in overcrowded cells for just under a year and a half, given that for that duration he had been held in cells where he had less than 5 square metres of personal space. On the basis of Article 21 § 2 of the Constitution, Articles 6.250 and 6.271 of the Civil Code and the Strasbourg

Court's judgment in *Savenkovas v. Lithuania* (no. 871/02, 18 November 2008), the first-instance court held that because of the overcrowding the applicant's dignity had suffered. Nonetheless, the court dismissed the applicant's remaining complaints about the detention conditions in the Lukiškės Remand Prison as not actually proven. It also noted that he had not complained to any authority of the unsanitary conditions in Lukiškės while he had been held there. The court also took into account that after having been transferred to the Pravieniškės Correctional Home, the applicant had undergone a medical examination. The doctors had established that he was healthy, which provided evidence that the conditions of his detention in Lukiškės had had no impact on his health.

11. Having taken into account the economic conditions in Lithuania, namely, a minimal monthly salary of 800 Lithuanian litai (LTL, approximately 230 euros (EUR)) and an average monthly salary of LTL 2,151 (EUR 620), as well as the Lithuanian administrative courts' practice in similar cases, the court awarded the applicant LTL 3,000 (EUR 870) in compensation for non-pecuniary damage on account of overcrowding.

12. On 6 February 2012, on appeal, the Supreme Administrative Court underlined that notwithstanding the general rule that a person claiming damage bore the burden of proving it, the lower court had actively used available means for obtaining evidence: on several occasions it had requested the prison in question to provide additional information as to the applicant's detention conditions and his state of health. That information had been provided to the court.

13. The Supreme Administrative Court also established that for 564 days the applicant had been kept at the Lukiškės Remand Prison in inadequate conditions on account of overcrowding, understood by the domestic law requirement to guarantee prisoners 5 square metres of personal space in a remand prison cell. It can be deduced from the Supreme Administrative Court's analysis of the details of the applicant's placement in Lukiškės that for 361 days he was held in cells where he had less than 3 square metres of personal space. The Supreme Administrative Court also noted that for most of his detention, namely for 309 days, the applicant had been held in cells where his personal space had been even less than 2.5 square metres. The court noted that, despite the overcrowding, for 366 days out of 564 the applicant had been held in two cells where heating, ventilation, sanitary and electric systems had been renovated in 2004, thus providing him with somewhat better material conditions (*geresnėmis buitinėmis sąlygomis, nors ir neužtikrinant minimalios gyvenamojo ploto normos*). Nevertheless, he had been held in overcrowded cells for twenty-three hours a day, and the Lukiškės Remand Prison had provided no evidence that the lack of living space had been remedied in any other way. For the court, such conditions went beyond the inevitable element of discomfort connected with detention

(it referred to *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI), degraded the applicant and were in breach of Article 3 of the Convention.

14. The Supreme Administrative Court also noted that the Strasbourg Court would sometimes hold that finding a violation constituted sufficient just satisfaction. In the instant case, however, the Supreme Administrative Court considered that the degree of the applicant's suffering called for pecuniary compensation. Moreover, the sum of LTL 3,000 was not sufficient. Yet, the Supreme Administrative Court took into account that the applicant had not lodged a claim for damages until three years after his detention in such conditions had ended, by which time the court considered that the impact on a person's emotional and physical suffering had decreased (*laiko veiksnys asmens patirtas dvasines ir fizines kančias menkina, jos blėsta*). The fact that the applicant had not instituted court proceedings for damages until three years after his release from the Lukiškės Remand Prison led the court to the conclusion that his mental suffering (*dvasinė skriauda*) was not so significant. Furthermore, when detained, the applicant was nineteen to twenty years old. During the hearing before the first-instance court he had acknowledged that he was in a good state of health. Accordingly, the conditions of his detention in Lukiškės had had no negative effect on his health. On the evidence, no other complaints, except for those concerning overcrowding, were found to be substantiated in his case. Lastly, the court held that the applicant had been partly favoured by the first-instance court's initiative to restore the time-limit for lodging a claim for damages. It was therefore reasonable and just to award LTL 8,000 (approximately EUR 2,300) to compensate him for any non-pecuniary damage.

B. Mr Ričardas Mironovas

15. Mr Mironovas was born in 1978. When he lodged his application with the Court in 2012, he was serving a prison sentence at the Pravieniškės Correctional Home.

16. From 2009 to 2011 the applicant was held at the Prison Department Hospital (*Laisvės atėmimo vietų ligoninė*) in Vilnius in the following conditions:

- twenty-eight days in a room measuring 14.9 square metres, containing four beds (that is, 3.75 square metres per bed), and in a room measuring 12.11 square metres, containing three beds (that is, 4.03 square metres per bed);
- fourteen days in a room measuring 14.9 square metres, containing four beds (that is, 3.73 square metres per bed);
- one month and three days in a room measuring 21.25 square metres, containing five beds (that is, 4.25 square metres per bed);

- six days in a room measuring 19.80 square metres, containing seven beds (that is, 2.83 square metres per bed);
- five days in a room measuring 12.14 square metres, containing three beds (that is, 4.04 square metres per bed);
- five days in a room measuring 22.84 square metres, containing six beds (that is, 3.81 square metres per bed).

17. The applicant later instituted court proceedings for damages, claiming that he had been held in inhuman and degrading conditions at the Prison Department Hospital, because the rooms had been overcrowded, the hospital did not have a hygiene certificate, and the rooms had been dilapidated.

18. On 14 November 2011 the Vilnius Regional Administrative Court partly accepted the complaint. It established that as of 2007, the health-care authorities had six times established breaches of hygiene requirements at the Prison Department Hospital. In particular, the hospital showers, toilets and other premises were not properly cleaned and disinfected, patients who were suffering from an open form of tuberculosis and psychiatric patients took showers together with other patients (without being isolated, against the domestic law requirements), and many parts of the hospital needed renovation. The court also established that the Prison Department Hospital was operating without a hygiene certificate, which was against the domestic law.

19. As to overcrowding, the hospital provided information about the applicant's stay therein, but could not specify how many persons had been held with him in the room. The first-instance court considered the lack of appropriate documentation as a flaw on the part of the hospital. The court then itself counted how many square metres the applicant could have had during each period of his stay at that hospital, dividing the size of each room by the number of beds therein. The court thus established that the applicant had been held in overcrowded rooms, and that the domestic norm had been "seriously breached" (*nustatyta minimali norma pažeista ženkliai*), given that the norm was that hospitals had to provide no less than seven square metres per bed (see paragraph 54 below).

20. The Vilnius Regional Administrative Court concluded that the applicant's right to be treated in appropriate conditions had been breached. It underlined that the flaws could not be justified by a lack of financing for the hospital. The court considered that compensation of LTL 2,000 (EUR 580) would be sufficient for the applicant, taking into account the principles of reasonableness and justice, and the economic situation in Lithuania.

21. On 3 May 2012 the Supreme Administrative Court upheld the above decision. The higher court recognised that the applicant had been held in overcrowded rooms and in improper sanitary conditions. However, patients at the Prison Department Hospital had the opportunity of being in the open air from 6 a.m. to 10 p.m., which eased their situation as regards the

overcrowding and also justified a lower award for non-pecuniary damage. Moreover, the conditions of the applicant's stay in the hospital, whilst unsatisfactory from a hygiene point of view, had not put his health or life at risk. Those conditions had had no lasting effect on the applicant.

C. Mr Roman Ivanenkov

22. Mr Ivanenkov was born in 1980. When he lodged his application with the Court, he was serving a sentence at the Alytus Correctional Home.

23. It transpires from the court decisions that from 2008 to 2010 the applicant spent time in dormitory no. 2 at the Alytus Correctional Home in the following conditions:

- nearly nineteen months in a dormitory-type room measuring 30.28 square metres, which contained sixteen beds (that is, 1.9 square metres of living space per inmate); and
- over four months in a dormitory-type room measuring 24.80 square metres, containing fifteen beds (that is, 1.65 square metres of living space per inmate).

24. The applicant sued the Alytus Correctional Home for damages, claiming that the conditions of his detention had been degrading on account of overcrowding and the lack of suitable sanitary facilities. He relied, *inter alia*, on Council of Europe recommendation No. R(87) and on Article 3 of the Convention. To support his claim, he submitted a report of 2010 drawn up by the Alytus Public Health Centre (*Alytaus visuomenės sveikatos centras*).

25. On 19 December 2011 the Vilnius Regional Administrative Court took note of the Alytus Public Health Centre report of 2010 no. R1-362(2.6), issued in reply to a complaint by the inmates, to the effect that the Alytus correctional facility had a shortage of furniture, dilapidated cells, insufficient lighting, a shortage of cleaning equipment and a shortage of toilets, and that renovation was necessary. The court also took note of another document – a report by the State Health Care Centre (*Valstybinės visuomenės sveikatos centro tarnyba prie Sveikatos apsaugos ministerijos*) – to the effect that complaints made by another inmate in the Alytus facility were warranted and that there had been "gross violations of hygiene norms (*šiurkštūs higienos normų pažeidimai*)".

26. The Vilnius Regional Administrative Court observed that the parties in essence did not dispute that the applicant had been held in premises where he had had between 1.7 and 1.9 square metres of personal space, and that there had been a shortage of toilet facilities and furniture. Such breaches of the domestic norms on hygiene were far from being short term (*ne trumpalaikiai*). Even so, the applicant's claim that his physical health had been damaged was dismissed as not proven. Given that he had had to stay within the dormitory only during the night and had been able to move

about during the day in the prison yard, take exercise outside on basketball, football and volleyball pitches, and that the premises had ventilation and the toilets were in a separate room, the court decided that it was reasonable and just to award the applicant LTL 2,300 (EUR 660).

27. On 26 April 2012 the Supreme Administrative Court agreed with the assessment of the applicant's conditions in the Alytus Correctional Home. It noted that the applicant had never complained about the conditions to the Alytus facility administration. Furthermore, there was no proof that the Alytus administration had deliberately sought to degrade the applicant or to treat him inhumanely. Lastly, the Supreme Administrative Court observed that the Strasbourg Court quite often (*neretai*) held that the finding of a violation was sufficient just satisfaction. It considered that that would be an appropriate solution in the applicant's case, even though his right to be held in conditions as set out by the domestic law had been breached. Accordingly, no pecuniary award was made.

D. Mr Romualdas Klintovič

28. The applicant was born in 1983. When he lodged his application with the Court, he was serving a sentence at the 2nd Correctional Home-Open Colony of the Pravieniškės Correctional Home.

29. It transpires from the documents before the Court that from 2008 to 2012 the applicant spent time in the 2nd Correctional Home-Open Colony in the following conditions:

- one month in a dormitory-type room, where he had 1.96 square metres of personal space;
- over four months in a dormitory-type room, where he had 2.03 square metres of personal space;
- the remaining time, which appears to be a little bit less than four years, in a dormitory-type room, where he had between 2.27 and 2.57 square metres of personal space.

30. In 2012 the applicant instituted court proceedings for damages, claiming that during his entire stay in Pravieniškės the facility was overcrowded. Moreover, the number of inmates held was constantly rising, even though no new premises were built. The Pravieniškės administration stated that there were plans to modernise that facility by 2017.

31. By a decision of 9 July 2012 the Kaunas Regional Administrative Court partly accepted the applicant's complaint, having noted that under the domestic law personal space in dormitory-type rooms had to be no less than 3 or 3.1 square metres (see paragraphs 54 and 55 below). The court awarded the applicant LTL 1,000 (EUR 290) in respect of non-pecuniary damage.

32. On 4 February 2013 the Supreme Administrative Court maintained the award of LTL 1,000 (EUR 290) for non-pecuniary damage, caused by

the State's failure to observe domestic law norms. That being so, the court underlined that overcrowding in the applicant's case was compensated for by free movement during the day. Moreover, the dormitory's rooms in Pravieniškės had natural light and ventilation, and the sanitary facilities (*asmens higienos patalpos*) were separated from the sleeping premises. There was no evidence that overcrowding had had an impact on the applicant's health. The Lithuanian court relied on the Court's findings in *Valašinas v. Lithuania* (no. 44558/98, ECHR 2001-VIII), whereby it held that merely a lack of living space provided for the inmate did not necessarily amount to a violation of Article 3 of the Convention. Last but not least, the applicant's personal living space was close to the required domestic norm. It was also noteworthy that the applicant had complained only about lack of space. Having taken into account the cumulative effect of the conditions the applicant was held in, the Supreme Administrative Court thus rejected his assertion that the conditions of his stay in Pravieniškės had been in breach of Article 3 of the Convention.

E. Mr Romualdas Gaska

33. Mr Gaska was born in 1958. When introducing the application with the Court in 2013, he was serving his sentence at the Alytus Correctional Home.

34. It transpires that after conviction, in May 2010 the applicant was placed in the Vilnius Correctional Home (*Vilniaus pataisos namai*), where he was held until February 2012.

Specifically, from 20 May 2010 to 16 September 2011 the applicant had to stay in dormitory-type room no. 4-414 measuring 14.41 square metres with five other inmates (that is, 2.4 square metres of living space per inmate).

35. In April and June 2012, when he was already in the Alytus Correction Home, the applicant complained to the administration of the Vilnius Correctional Home that he had not had adequate living space in the latter facility and that the lighting in his room had been poor. When the Vilnius Correctional Home denied responsibility, the applicant appealed to the Prison Department, the body that oversees the Lithuanian prisons. The latter replied that, because of the lack of available space, the Vilnius Correctional Home's administration could not always guarantee the minimum personal space of 3.1 square metres to each inmate required under domestic legislation. However, any lack of personal space during the night was compensated for by the inmates' ability to move about within the confines of the Vilnius Correctional Home during the day.

36. The applicant then instituted court proceedings for damages. The Vilnius Correctional Home asked the court to dismiss the claim, admitting that "because of overcrowding in prisons throughout Lithuania at this time,

the Vilnius Correctional Home administration was not always able to provide the inmates with the minimum living space, as provided for by the domestic law (*šiuo metu dėl įkalinimo įstaigų visoje Lietuvoje perpildymo Vilniaus pataisos namų administracija ne visada gali visiems nuteistiesiems suteikti įstatymais nustatytą minimalų gyvenamąjį plotą*)".

37. On 25 April 2013 the Supreme Administrative Court noted that there were no particular data with regard to the exact number of inmates held together with the applicant. That being so, having regard to the material provided, namely photographs of six beds in room no. 4-414, the court interpreted all the uncertainties in the applicant's favour, acknowledging a violation of his rights under the domestic legislation, on account of overcrowding. It established, however, that the applicant had not complained about the conditions of his detention during his stay in the facility at issue. The court held that the applicant's argument that he had not complained because he had feared retribution from the prison administration had no objective grounds (*niekuo nepagrįstas*). Furthermore, there was no proof that the overcrowding had had an effect on the applicant's health. Moreover, any lack of space during the night was compensated for by the applicant being able to move about within the facility during the day. The court acknowledged that, according to the domestic case-law and the case-law of the Court, in the event of inadequate detention conditions a person was considered to have sustained non-pecuniary damage. However, pecuniary compensation was not indispensable in order to protect infringed rights.

38. In parallel court proceedings, the applicant also complained of insufficient lighting in his dormitory. By a final decision of 11 June 2013, the Supreme Administrative Court held that the lighting was very near the requirements as set by the applicable domestic legislation (74 lx, 83 lx and 112 lx, whereas100 lx was required under the legislation).

F. Mr Vidas Traknys

39. Mr Traknys was born in 1966. When he lodged his application with the Court in 2013, he was serving a prison sentence at the Pravieniškės Correctional Home.

40. From 8 December 2009 to 5 October 2011 and from 4 to 20 July 2012 Mr Traknys was held in the Lukiškės Remand Prison.

It can be deduced from the Lithuanian court decisions that during the first period of his detention in Lukiškės he spent 608 days in cells where he had between 1.23 and 2.74 square metres of living space.

During his second stay in Lukiškės, the applicant spent sixteen days in cells where he had between 2.8 and 3.4 square metres of personal space.

41. The applicant later instituted court proceedings for damages, complaining of overcrowding and deplorable conditions on account of the

poor sanitary situation. He alleged that the cells were infested with mice and cockroaches, had insufficient lighting and were damp. He relied on a Vilnius Public Health Centre report to the effect that one of the cells had mould on the ceiling.

42. By a decision of 23 May 2013, the Supreme Administrative Court acknowledged that there had been overcrowding during the first period of the applicant's detention in Lukiškės, on account of the prison authorities' failure to keep up with the domestic law requirement to provide 5 or, later, 3.6 square metres of personal space in the remand prison cells. The court had no doubts that staying in cells that did not meet hygiene standards had caused the applicant mental suffering. Furthermore, even though the applicant had objected to being placed with inmates who smoked, in breach of the domestic legislation, he had been held with smokers for ninety-nine days (the domestic court referred to *Elefteriadis v. Romania*, no. 38427/05, 25 January 2011), and with previously convicted inmates for 201 days, even though it was his first time in prison. On account of those multiple breaches of the applicant's rights, without explicitly acknowledging a violation of Article 3 of the Convention and taking into consideration the economic situation in Lithuania, the court considered it just to award compensation of LTL 2,500 (EUR 725).

43. As to the second period of the applicant's detention, by a decision of 16 July 2013 the Supreme Administrative Court also acknowledged overcrowding. Taking into account the short duration of the violation and the economic situation in Lithuania, an award of LTL 350 (EUR 100) was made.

G. Mr Dainius Zeleniakas

44. Mr Zeleniakas was born in 1973. When he lodged his application with the Court in 2013, he was serving a prison sentence at the Alytus Correctional Home.

45. In 2009 and 2010, Mr Zeleniakas was held at the Šiauliai Remand Prison, where he spent 328 days. During that time, he was held in a cell measuring 22.85 square metres, housing four to eight detainees (that is, between 2.86 and 5.71 square metres of personal space); in a cell measuring 20.13 square metres, housing four to nine detainees (that is, between 2.25 and 5.06 square metres of personal space); and in a cell measuring 16.26 square metres, housing five to eight detainees (that is, between 2.03 and 3.25 square metres of personal space).

46. The applicant instituted court proceedings. His written complaint was sent from the Alytus Correctional Home, claiming that the conditions at the Šiauliai facility had been deplorable: the remand prison was overcrowded, the cells were "unsanitary", and he had been held together with smoking inmates, even though he was a non-smoker. During the

hearings before the Šiauliai Regional Administrative Court the applicant also complained that the cells lacked proper ventilation and that the toilets were not separated from the cells.

47. On 12 November 2012 the Šiauliai Regional Administrative Court acknowledged a breach of the applicant's rights under the domestic law, as regards overcrowding. The court noted his statement during the hearing that he had complained to the Šiauliai Remand Prison about being kept with smokers. Although the applicant had not complained of a violation of Article 3 of the Convention, the first-instance court nevertheless deemed it proper to examine his complaint in the light of the Court's case-law criteria. Having done that, the court considered that the applicant's rights had been violated on account of overcrowding, as it was understood under the domestic law, and that while it was close to a breach of Article 3 of the Convention, it did not pass that threshold. Lastly, the applicant had instituted court proceedings a year and a half after the date on which he had left the Šiauliai Remand Prison, by which time his psychological and physical suffering had diminished. Accordingly, there was no need to award him any pecuniary compensation. The court did not address the applicant's complaint of unsanitary conditions.

48. On 10 May 2013 the Supreme Administrative Court partly granted the applicant's appeal. It considered, however, that in his appeal the applicant had touched upon not only those issues which he had raised in his complaint to the first-instance court, but had also complained about other aspects of his detention. In particular, according to the Supreme Administrative Court, in his appeal the applicant had argued that the cells had lacked an artificial ventilation system, that the natural ventilation system had been insufficient, and that the toilet in the cell was of the type that should only be installed outside (*kameroje esantis tualetas ir pati kamera buvo vienoje patalpoje, o sanitariniam mazgui įrengti panaudotas lauko tualeto principas*). The appellate court considered that the applicant should have raised those issues in his complaint (*skunde*) to the first-instance court. Accordingly, it dismissed the applicant's allegations of lack of ventilation and proper toilet facilities.

49. As to overcrowding, the Supreme Administrative Court noted that the number of inmates at the Šiauliai Remand Prison often changed during the day. On the basis of the documents provided by the Šiauliai Remand Prison, the Supreme Administrative Court established that for seventeen days the applicant had been held in "overcrowded" cells and for twenty-one days he had been held in cells where the minimum personal space was "very close to, but did not meet the [domestic] norms". The Šiauliai facility had thus breached the applicant's statutory right to be held in a cell where he would have 5 or 3.6 square metres of space. Having reviewed the Court's case-law on conditions of detention, the Supreme Administrative Court considered that the inconveniences suffered by the applicant during those thirty-eight days went beyond those inherent in

detention and were intense enough to amount to a violation of Article 3. The court nevertheless noted that there was no evidence in the case that the remand facility had intentionally sought to debase the applicant. The applicant could go out for a stroll for one hour per day, thus spending some time outside his cell. Lastly, the Supreme Administrative Court observed that there was no evidence in the file that the applicant had ever asked the remand prison administration to be held in a non-smoking cell. Nor was there any evidence in the file that he had been held in unsanitary conditions. The appellate court considered that the applicant had lodged his complaint more than one and a half years after his release from the Šiauliai Remand Prison, and thus had had a possibility to gather evidence and to provide it to the court. Having taken into account the economic situation in the country, the Supreme Administrative Court awarded the applicant LTL 200 (EUR 60) for his suffering.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. As to the State's responsibility for the damage caused by inadequate detention conditions

50. Article 30 of the Constitution reads as follows:

"The person whose constitutional rights or freedoms are violated shall have the right to apply to court.

Compensation for material and moral [i.e. non-pecuniary] damage inflicted upon a person shall be established by law."

51. The Civil Code reads as follows:

Article 6.250. Non-pecuniary damage

"1. Non-pecuniary damage shall be deemed to be a person's suffering, emotional experiences, inconveniences, mental shock, emotional depression, humiliation, deterioration of reputation, diminution of possibilities to associate with others, etc., evaluated by a court in terms of money.

2. Non-pecuniary damage shall be compensated only in cases provided for by law. Non-pecuniary damage shall be compensated in all cases where it is incurred due to crime, health impairment or deprivation of life, as well as in other cases provided for by law. The court, in assessing the amount of non-pecuniary damage, shall take into consideration the consequences of such damage sustained, the gravity of the fault of the person by whom the damage is caused, his financial status, the amount of pecuniary damage sustained by the aggrieved person, and any other circumstances of importance for the case, as well as the criteria of good faith, justice and reasonableness."

Article 6.271. Liability to compensation for damage caused by unlawful actions of institutions of public authority

"1. Damage caused by unlawful acts of institutions of public authority must be compensated by the State from the means of the State budget, irrespective of the fault

of a concrete public servant or other employee of public authority institutions. Damage caused by unlawful actions of municipal authority institutions must be redressed by the municipality from its own budget, irrespective of its employee's fault.

2. For the purposes of this Article, the notion 'institution of public authority' means any subject of the public law (state or municipal institution, official, public servant or any other employee of these institutions, etc.), as well as a private person executing functions of public authority.

3. For the purposes of this Article, the notion 'action' means any action (active or passive actions) of an institution of public authority or its employees, that directly affects the rights, liberties and interests of persons (legal acts or individual acts adopted by the institutions of state and municipal authority, administrative acts, physical acts, etc., with the exception of court judgements – verdicts in criminal cases, decisions in civil and administrative cases and orders).

4. Civil liability of the state or municipality, subject to this Article, shall arise where employees of public authority institutions fail to act in the manner prescribed by law for these institutions and their employees."

52. Pursuant to Article 15 § 1 (3) of the Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*), administrative courts decide cases concerning damage caused by unlawful acts of public authorities, as provided for in Article 6.271 of the Civil Code.

53. The relevant part of the Law on Administrative Proceedings reads as follows:

Article 57. Evidence

"1. Evidence in an administrative case is all factual data found admissible by the court hearing the case and based upon which the court finds ... that there are circumstances which justify the claims and rebuttals of the parties to the proceedings and other circumstances which are relevant to the fair disposal of the case, or that there are no such circumstances ...

4. Evidence is provided by the parties and other participants in the proceedings. If necessary, the court may propose to those persons to provide supplementary evidence or, on their request or on its own initiative, to obtain necessary evidence or to obtain explanations from officials."

B. As to the space requirement in Lithuanian prisons

54. In accordance with Hygiene Standard HN 76:1999 (*Laisvės atėmimo ir kardomojo kalinimo įstaigos. Įrengimas, eksploatavimo tvarka, sveikatos priežiūra*), approved by the Minister of Health on 22 October 1999, an inmate held in a remand prison cell (*tardymo izoliatoriaus kamera*) or in a prison cell (*kalėjimo kamera*) must have no less than 5 square metres of personal space.

For persons held at the Prison Department Hospital, the space requirement was established at no less than 7 square metres per bed.

A person held in a dormitory-type room (*pataisos darbų kolonijos bendrabučio gyvenamasis kambarys*) was entitled to at least 3 square metres of personal space.

55. According to the secondary legislation adopted by the Minister of Justice, Minister of Health and the Prison Department, as of 30 April 2010, personal space in a dormitory-type room has to be no less than 3.1 square metres.

As of 11 May 2010, persons held in a remand prison cell or arrest cell (*areštinės kamera*) should have no less than 3.6 square metres of personal space.

C. Other relevant legislation

56. Article 69 of the Code for the Execution of Sentences (*Bausmių vykdymo kodeksas*) provides that a person who has been sentenced to deprivation of liberty is to serve his entire term in the same correctional institution (*vienoje pataisos įstaigoje*). He may be transferred from that institution only because of illness or in exceptional circumstances. The Code refers to the Internal Regulations of Correctional Facilities (*Pataisos įstaigų vidaus tvarkos taisyklės*) for further guidance on the matter of prisoners' transfer.

57. The Internal Regulations of Correctional Facilities provide that a convicted person may be transferred to another institution "on doctor's orders" or "for other exceptional circumstances, which prevent holding the convicted person in the same correctional institution (*dėl kitų išimtinių aplinkybių, kliudančių nuteistąjį toliau laikyti toje pačioje pataisos įstaigoje*)". The Regulations do not specify what "exceptional circumstances" means. If the governor of the correctional facility considers that there are exceptional circumstances preventing from keeping the inmate in that correctional facility, he may submit a reasoned request (*motyvuota išvada*) and the prisoner's character report (*charakteristika*) to the Prisons Department, which decides whether to transfer the prisoner (point 72 of the Regulations).

58. Article 19 of the Law on Tobacco Control (*Tabako kontrolės įstatymas*) provides that smoking is to be prohibited in common living areas and other common areas where non-smokers may be forced to breathe smoke-polluted air.

Article 52 of the Law on Administrative Proceedings at the relevant time provided that the claimant has a right to withdraw the claim or to change or specify the basis for his claim at any stage of the proceedings, but until the moment the court leaves the hearing room to deliberate.

On 1 July 2012 the Law on Probation (*Probacijos įstatymas*) has come into effect. It defines the major re-socialization forms for persons on

probation, and resocialization is set as a fundamental component of probation (also see paragraph 68 below).

D. Case-law submitted by the parties

59. To illustrate the criteria applied by the domestic courts when deciding on conditions of detention cases, the Government referred to a number of the Supreme Administrative Court's judgments. Those principles may be enumerated as follows:

− the repeated nature of the negative consequences on the prisoner; the courts should evaluate whether some of the violations of the detention conditions complained of by the inmate were eliminated in a timely manner;

− when the claim for damages was submitted; on numerous occasions the administrative courts considered that the person's mental and physical suffering was most acute at the time the person was in the inappropriate detention conditions; the person's suffering diminishes over time;

− the intentions of the prison personnel; the courts should determine whether the prison administration deliberately sought to humiliate the prisoner or otherwise treat him inhumanely by worsening his detention conditions; conversely, the courts were also to take into account whether the prison administration had made efforts to improve the situation of the detainee;

− the nature of the detention regime; a minor non-compliance with the minimum space requirement could be partly offset by freedom of movement within the prison;

− the impact, if any, on the inmate's health; and

− whether the inmate had complained about the conditions to the prison administration.

60. As to compensation for non-pecuniary damage, the Supreme Administrative Court has held a number of times that not all violations caused by improper conditions of detention would necessarily lead to a pecuniary award. Acknowledgment of a violation of a person's rights may also constitute a sufficient and adequate redress. Nevertheless, such means of redress should only be applied in exceptional cases, where the damage suffered by the aggrieved person was of minor significance, for example when a non-smoker was held with smokers for one day only. The same means of redress applied when the minimum personal space requirement had not been met: this could be considered as a minor violation. Conversely, where the duration of the violation was sufficiently long, a mere acknowledgment of the violation could not be considered as an adequate form of just satisfaction. Last but not least, the standard of living in

Lithuania was relevant. The sum of compensation should reflect the State's economic and financial situation, as well as the living standard.

III. RELEVANT INTERNATIONAL MATERIALS

A. The CPT general standards

61. The relevant extracts from the 2nd General Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") (CPT/Inf (92) 3) read as follows:

> "46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.
>
> 47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...
>
> 48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...
>
> 49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...
>
> 50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners."

62. The CPT's 7th General Report (CPT/Inf (97) 10) contains the following passage:

> "13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46).
>
> An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ..."

63. The CPT's 11th General Report (CPT/Inf (2001) 16) states:

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large-capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ...

Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions."

B. Other relevant Council of Europe materials as to treatment of persons in detention

64. Other relevant Council of Europe materials on minimum standards for treatment of prisoners have been cited by the Court in *Neshkov and Others v. Bulgaria* (nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, §§ 144 and 148, 27 January 2015), and in *Varga and Others v. Hungary* (nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, §§ 34, 36 and 37, 10 March 2015).

C. CPT Reports on the conditions in Lithuanian prisons

1. Report on the 2008 visit

65. A delegation of the CPT visited Lithuania from 21 to 30 April 2008. In its ensuing report, published on 25 June 2009, the CPT noted:

"**B. Prisons**

1. Preliminary remarks

32. The delegation visited [Pravieniškės] Correction Home No. 3 for the first time. It also carried out follow-up visits to Lukiškės Remand Prison and Prison in Vilnius (hereinafter Lukiškės Remand Prison) and to Kaunas Juvenile Remand Prison and Correction Home, where it paid special attention to the remand prisoners.

33. [*Pravieniškės*] *Correction Home No. 3* is located in a wooded area of the region of Kaišiadorys, some 30 km to the east of Kaunas. Opened in 1968, it comprises several buildings, most of which have since been renovated or completely rebuilt. The

building work included the adaptation of the prisoners' living areas, in particular the conversion of dormitories into cells (at the time of the visit, there were still a few dormitories, containing up to 15 beds). With an official capacity of 567 places (including 67 places in the arrest section), the correction home was accommodating 250 inmates (including 37 in the arrest section) at the time of the visit. The delegation was informed that, following a decision by the Director of the Ministry of Justice Prisons Department in February 2008, the establishment was in the process of being emptied so that, with effect from 1 July 2008, it could take in prisoners sentenced (for the first time) for serious offences, thereby reducing overcrowding in neighbouring Correction Home No. 2.

Lukiškės Remand Prison was described in the reports on the visits made by the CPT in 2000 and 2004. At the time of the 2008 visit, the prison, with an official capacity of 864, was housing 1,002 prisoners, including approximately 750 remand prisoners and 81 life prisoners.

...

34. At the start of the visit, the authorities informed the delegation that the situation regarding overcrowding in prisons in Lithuania had improved somewhat since the 2004 visit. With regard to sentenced prisoners, only one establishment was overcrowded ([Pravieniškės] Correction Home No. 2) and measures had already been decided (and were in the process of being implemented) to reduce the number of inmates being accommodated there (see paragraph 33). Moreover, further improvements in the situation were expected, in that a "plan for release on parole in Lithuania" had been drawn up in 2007. The CPT welcomes these developments.

However, the situation was less favourable regarding remand prisoners. At the time of the visit, all of the remand prisons in the country (except Kaunas Juvenile Remand Prison) were overcrowded.

The CPT recommends that the Lithuanian authorities pursue their efforts to combat overcrowding in remand prisons, drawing on the Recommendations of the Committee of Ministers of the Council of Europe to member States, in particular Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and R (99) 22 concerning prison overcrowding and prison population inflation.

35. Under the legislation in force, the capacity of prisons was calculated on the basis of living space of 3 m² per inmate in the dormitories and 5 m² per inmate in the cells.

In the CPT's view, a standard of 3 m² does not offer a satisfactory amount of living space. For as long as the dormitories remain in use, **the CPT recommends that this standard be raised to at least 4 m² per inmate. The official capacities of the prisons concerned will have to be reviewed accordingly**.

...

3. Conditions of detention of the general prison population

a. material conditions

43. At [*Pravieniškės-2*] *Correction Home No. 3,* over 80% of the detention areas had been renovated since the start of the year 2000. In particular, the material conditions in the arrest section, which was opened in 2003, were good: the cells, which had a maximum capacity of six places, were in a good state of repair and suitably furnished (including fully partitioned toilets), and had adequate access to natural light and appropriate ventilation and artificial lighting.

The ordinary regime and "lenient" regime sections had also been refurbished recently. However, the sanitary facilities – which were not in the cells – left much to be desired. Most of the toilets were only partially partitioned (some were not partitioned at all) and several were not functioning properly (or at all). Furthermore, the building that accommodated the prisoners who worked was not equipped with showers: as a result, these prisoners were only able to have a shower once a week (in another building). The delegation also found that many mattresses were in a very bad state. **The CPT recommends that these shortcomings be remedied rapidly**.

In the strict regime section, the material conditions were mediocre (dilapidated cells, sanitary equipment and facilities in a poor state, etc.). The delegation was, however, informed that this section, which was empty at the time of the visit, would be refurbished by 1 July 2008 at the latest, the date when the new occupants would arrive. **The CPT would like to receive detailed information about the refurbishment work carried out in the strict regime section**.

44. At *Lukiškės Remand Prison*, material conditions varied considerably from one part of the prison to another. The best conditions were to be found in the recently renovated sections (in particular, wing 1 of Building 2, containing approximately 60 cells). However, the cells were still overcrowded, sometimes to an outrageous degree (for example, up to six prisoners in a cell measuring approximately 8 m²). In the sections which had not been renovated (Building 3 and most of wing 2 of Building 2), conditions – which were described as very poor in the report on the 2004 visit – had deteriorated to the extent that they could be described as deplorable (dilapidated cells and furnishings, poor ventilation, etc.). Some of the cells were dirty. Furthermore, several prisoners complained that the buildings were not sufficiently heated in winter.

In the CPT's opinion, the cumulative effect of overcrowding and poor material conditions (to which must be added the lack of a programme of out-of cell activities, see paragraph 48) could be considered to be inhuman and degrading, especially when persons are being held under such conditions for prolonged periods (i.e. up to several months).

The delegation was informed that there were plans to build a new remand prison near Vilnius and to close Lukiškės Remand Prison in 2011 (sentenced prisoners would be transferred to [Pravieniškės] Correction Home No. 1). The CPT welcomes these plans and recommends that the Lithuanian authorities implement them as quickly as possible. **In this regard, the CPT would like to receive a detailed schedule concerning the construction/commissioning of the new Remand Prison in Vilnius**.

45. The CPT is aware that the construction of new buildings inevitably absorbs a significant amount of the financial resources available. However, care should be taken to ensure that this does not lead to unacceptable situations; the decision to deprive a person of his or her liberty entails a correlative duty upon the State to provide decent conditions of detention. Regardless of the timetable for the above-mentioned developments, **the CPT recommends that the necessary steps be taken to ensure that all persons detained in Lukiškės Remand Prison, including remand prisoners, have acceptable conditions of detention as regards cell equipment and furnishings, as well as heating during cold weather. Furthermore, all prisoners should be provided with cleaning products (in sufficient quantity) for their cells**.

46. In the *two establishments* mentioned, the delegation noted that, in spite of the legislation and regulations adopted following the CPT's 2004 visit, many inmates did

not have essential personal hygiene products (soap, toilet paper, sanitary towels, toothpaste, toothbrushes).

The CPT reiterates its recommendation that steps be taken to ensure that all prisoners in Lithuania have adequate quantities of essential personal hygiene products.

...

48. At *Lukiškės*, in spite of the recommendations made by the CPT in its reports on the 2000 and 2004 visits, no progress had been made in terms of offering remand prisoners out-of-cell activities, apart from the daily outdoor exercise (1½ hours). Moreover, the legislation still banned prisoners from associating with prisoners from other cells. They therefore usually spent 22½ hours a day locked up in their cells, their only occupation being reading and listening to the radio or watching television if they could afford sets.

49. **The CPT once again calls upon the Lithuanian authorities to take the necessary steps, without further delay, to ensure that remand prisoners at Lukiškės Remand Prison (and, where appropriate, at other remand prisons in Lithuania) are provided with a programme of out-of-cell activities, including group association activities. The relevant legislation should be amended accordingly**.

Furthermore, **steps should be taken to ensure that all sentenced prisoners in [Pravieniškės] Correction Home No. 3, including those in the arrest section, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; and recreation), including group association activities**."

66. On 15 September 2009 the CPT published the Lithuanian Government's Response to its findings of 2008. The Government mentioned a plan to "build a new remand prison for approximately 2,000 persons on the outskirts of Vilnius by 2015, and transfer the Lukiškės Remand Prison to this establishment as well as building a new remand prison for approximately 300 persons in the vicinity of Klaipėda and a new remand prison for approximately 1,500 persons in Šiauliai, and transferring the Šiauliai Remand Prison and the Panevėžys Correctional Institution to these establishments." As to the CPT's recommendation of raising the standard for prisoners' living space in dormitories from 3 square metres to 4 square metres, the Government responded as follows:

'The minimum standard for living space per inmate has been fixed at 3 m^2 in living rooms in dormitories of correctional establishments. In addition to living rooms, there are toilets, bathrooms, rooms for domestic purpose, clothes and shoe dryers, facilities for storing personal belongings, food storage facilities, relaxation rooms and sports facilities in each dormitory. Furthermore, convicts living in dormitories are free to go outside and spend their time within the territory of a [facility]. Therefore, we believe that the 3 m^2 standard for living space per inmate is satisfactory. This standard is not breached by any correctional establishment, but not all correctional establishments are capable of establishing a higher standard for living space and ensuring it.'

2. Report on the 2012 visit

67. Having visited Lithuanian prisons from 27 November to 4 December 2012, the CPT published a report on 19 July 2013. The report reads as follows:

"**B. Prison establishments**

1. Preliminary remarks

33. The CPT visited, for the first time, Alytus Correction Home. It also carried out follow-up visits to Lukiškės Prison in Vilnius (particularly to assess the situation of remand prisoners and life sentenced prisoners) and Kaunas Juvenile Remand Prison, as well as a targeted visit to Šiauliai Prison focusing on the situation of remand prisoners.

34. Alytus Correction Home (hereafter "Alytus Prison") is located in the outskirts of the city of Alytus. With an official capacity of 1,460 places, the prison was holding 1,426 sentenced prisoners at the time of the visit. There were two main detention blocks, "Dormitories" Nos. 1 and 2.

Renovation work had been carried out in many parts of the establishment during the past few years, including in Dormitory No. 1 which was completed a few days before the CPT's visit.

Lukiškės Remand Prison and Prison (hereafter "Lukiškės Prison") has been visited by the Committee on several occasions and its structure had not changed significantly since the CPT's most recent visits. At the time of the visit, the prison – with an official capacity of 954 places – was holding 1,068 inmates, including 552 remand prisoners and 88 persons sentenced to life imprisonment...

With an official capacity of 435 places, the Šiauliai Prison was accommodating 619 inmates (including six juveniles and 45 women) at the time of the visit. Of them, 354 were sentenced prisoners and 265 were on remand.

35. At the time of the visit, the Lithuanian prison population stood at 9,754, including 1,304 remand prisoners, representing an incarceration rate of some 325 per 100,000 inhabitants, one of the highest among Council of Europe member States. And the total number of prisoners has been rising constantly over the last decade.

The authorities recognised that the size of the prison population and the resulting overcrowding in prisons constituted a major challenge. The delegation was informed that alternative measures to detention, including probation, had recently been introduced. However, it is clear that these measures have had little impact so far. The fact that a State locks up so many persons cannot be convincingly explained away by a high crime rate; the general approach of members of the law enforcement agencies and the judiciary must, in part, be responsible.

The CPT urges the Lithuanian authorities to make vigorous efforts to combat prison overcrowding, by placing further emphasis on non-custodial measures in the period before the imposition of a sentence, increasing the use of alternatives to imprisonment and adopting measures facilitating the reintegration into society of persons deprived of their liberty. In this context, they should be guided by the relevant Recommendations of the Committee of Ministers of the Council of Europe: Recommendation Rec (99) 22 concerning prison overcrowding and prison population inflation, Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec (2003) 22 on conditional release (parole),

Recommendation (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules.

Appropriate action should also be taken vis-à-vis the prosecutorial and judicial authorities with a view to ensuring their full understanding of the policies being pursued, thereby avoiding unnecessary pre-trial custody and sentencing practices.

36. At the time of the visit, the official minimum standard of living space per adult sentenced prisoner was still 3.1 m² for dormitory-type accommodation and 3.6 m² for multi-occupancy cells.

As indicated in previous reports, these standards are too low. Furthermore, the delegation observed that even these standards were often not respected. For example, it found at Alytus Prison that inmates had less than 2 m² of living space per person in certain cells. Subsequently, the authorities informed the CPT of their intention to address this specific deficiency; **the Committee would like to be informed of the precise measures taken in this regard**.

The CPT's delegation was told that the standard of 4 m² per prisoner would be used when designing new prisons. **The CPT reiterates its recommendation that the minimum standard of living space per prisoner be raised to 4 m² in multi-occupancy cells (not counting the area taken up by any in-cell toilet facility) throughout the prison estate. The official capacities of all prisons should be reviewed accordingly**.

...

3. Conditions of detention of the general prison population

a. material conditions

47. At Alytus Prison, in addition to the two main detention blocks, another building accommodated prisoners employed in the workshops and a fourth building accommodated, among others, persons subject to the strict regime. Most of the buildings had been renovated and the material conditions were generally satisfactory, although severe overcrowding was observed in certain areas.

However, Dormitory No. 2 – in which some 700 inmates were accommodated – had not been renovated and was in a very bad state of repair, a fact also observed by the Seimas Ombudsman. The building had dirty and run-down dormitories (with crumbling walls and damaged floors), dilapidated furniture, as well as very old and foul-smelling sanitary installations in the corridor. The equipment consisted essentially of old bunk beds and the state of the bedding left much to be desired. Many inmates also indicated the presence of rats and cockroaches. The Prison Director indicated that the scheduled renovation of this building had been postponed due to financial constraints.

48. The entire premises of Šiauliai Prison were old and run down. Prisoners were accommodated in dilapidated and damp cells, where in-cell toilets were only partially partitioned and often dirty. Further, mattresses and blankets provided to prisoners were soiled and worn out. From the number of sleeping places available, it was also clear that many cells could at times be severely overcrowded (e.g. up to ten persons in a cell measuring between 18 and 22 m²); a fact confirmed both by prison staff and inmates. That said, cells had satisfactory lighting (including access to natural light).

49. **The CPT recommends that the scheduled renovation of Dormitory No. 2 at Alytus Prison be reactivated and that vigorous action be taken to improve the**

material conditions of detention at Šiauliai Prison, in the light of the above remarks. As regards more specifically sanitary facilities in multi-occupancy cells, they should be equipped with a full partition (i.e. from floor to ceiling).

50. At Lukiškės Prison, the material conditions continued to vary considerably. Since the last CPT visit in 2008, some renovation work had been carried out in the second wing and the first wing was in the process of being refurbished. However, conditions of detention remained very poor in many other parts of the prison. As an example, most of the remand adult women were held in deplorable conditions (broken windows, dilapidated furniture, old and dirty mattresses). Shortcomings in cells throughout the establishment included unpartitioned toilet facilities and insufficient heating. Further, some cells had limited access to natural light and a number of them were both very small and overcrowded (e.g. some 5 m² for two inmates).

In 2008, the CPT was informed that the Lithuanian authorities intended to close Lukiškės Prison by 2011. During the 2012 visit, the delegation was informed that the authorities now aimed at transferring the sentenced prisoners to an establishment in Pravieniškės by 2015 and at definitely closing the establishment in 2017.

The CPT would like to receive a detailed schedule regarding the transfer of sentenced prisoners to another establishment by 2015 and the closure of Lukiškės Prison in 2017. Pending the taking out of service of the establishment, the Committee recommends that the Lithuanian authorities take urgent measures in order to ensure that all inmates at Lukiškės Prison have acceptable conditions of detention as regards cell equipment and furnishings, as well as access to natural light and heating, and that toilet facilities are fully partitioned. As regards more specifically cells measuring some 5 m², they should only be used for single occupancy and for short periods of time.

...

55. The regime for remand prisoners at Lukiškės Prison remained impoverished. Nearly all of them were locked up in their cells for 23 hours a day, with no out-of-cell activities other than outdoor exercise of one hour in small and dilapidated yards.

A similar situation was observed at Šiauliai Prison, where the vast majority of remand prisoners were confined to their cells for up to 23 hours per day (watching TV, reading books, playing table games), the only regular daily out-of-cell activity for them also being one hour of outdoor exercise...”

68. On 4 June 2014 the CPT published the Lithuanian Government’s Response to the report on the 2012 visit. The relevant parts of the Response read as follows:

“**MONITORING OF PLACES OF DEPRIVATION OF LIBERTY**

Comments

The Lithuanian authorities are invited to consider acceding to the Optional Protocol to the United Nations Convention against Torture (paragraph 8).

By the Law No. XII-630 of 3 December 2013 the Seimas ratified the Optional Protocol to the Convention against Torture and Inhuman or Degrading Treatment or Punishment. The Law became effective on 1 January 2014.

Besides, by the Law No. XII-629 of 3 December 2013 the Seimas adopted amendments to the Law on the Seimas Ombudsmen by which the Seimas Ombudsmen’s Office undertook the functions of the national preventive institution. In order to prevent torture and inhuman or degrading treatment or punishment, the law,

which became effective on 1 January 2014, shall provide a possibility for the Seimas Ombudsmen to visit the places of deprivation of liberty for preventive purposes on a regular basis.

Pursuant to the Law, a place of deprivation of liberty is any place falling within the jurisdiction or under the control of the Republic of Lithuania, where liberty of persons is or may be restricted on the basis of the decision passed by a state authority or at its demand, or with its consent or permission. The following shall be considered as the places of deprivation of liberty: 1) correctional establishments; 2) remand prisons; 3) arrest houses; 4) psychiatric establishments; 5) infectious disease treatment facilities; 6) care homes; 7) border control checkpoints; 8) Foreigners' Registration Centre; 9) other places of deprivation of liberty.

While implementing the national prevention of torture, the Seimas Ombudsmen have the right: 1) to monitor, on a regular basis, how persons, whose liberty is restricted, are treated in places of deprivation of liberty; 2) to receive all information about treatment of persons whose liberty is restricted, about their treatment conditions, also the information about the number of such persons, the number and location of places of deprivation of liberty; 3) to enter all places of deprivation of liberty and all premises of such places, to inspect their equipment and infrastructure; 4) to interview without the presence of any witnesses, the persons, whose liberty is restricted, also any other persons, who could provide the necessary information; 5) to choose, which places of deprivation of liberty are to be visited and which persons are to be interviewed; 6) to conduct monitoring visits of places of deprivation of liberty together with selected experts; 7) to provide proposals (recommendations) to the relevant state authorities on the improvement of treatment of persons, whose liberty is restricted, and their treatment conditions as well as on the prevention of torture and other cruel, inhuman or degrading treatment or punishment; 8) to draw up conclusions regarding amendment of the existing legislation and draft laws.

The competent authorities must examine the proposals (recommendations) provided by the Seimas Ombudsmen, to consult with the Seimas Ombudsmen on the possible measures of implementation of their proposals (recommendations) and to notify the Seimas Ombudsmen about the results of implementation of their proposals (recommendations).

...

PRISONS

Preliminary remarks

Recommendations

- the Lithuanian authorities have to make every effort to reduce overcrowding in correction houses and remand prisons by placing further emphasis on non-custodial measures before the imposition of a sentence, increasing the use of alternatives to imprisonment and adopting measures facilitating the reintegration into society of persons deprived of their liberty. In this context, they should be guided by the relevant Recommendations of the Committee of Ministers of the Council of Europe: Recommendation Rec (99) 22 concerning prison overcrowding and prison population inflation, Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec (2003) 22 on conditional release (parole), recommendation Rec (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards

against abuse, and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules. Appropriate actions should also be taken vis-à-vis the prosecutorial and judicial authorities with a view to ensuring their full understanding of the policies being pursued, thereby avoiding unnecessary pre-trial custody and sentencing practices (paragraphs 33-35);

The Law on Probation, the Law on Amendments to Code on Enforcement of Penal Sanctions, Criminal Code, and Code of Criminal Procedure which are highly relevant to combat overcrowding in correction houses, have come into effect on 1 July 2012.

The Law on Probation and amended Code of Criminal Procedure provide for the evaluation of the social environment of an accused and criminogenic factors, which can help court to individualise sentences, and, in case when the accused is found guilty and is imposed a non-custodial sentence, to select adequate probation conditions.

The Criminal Code has widened the circle of persons eligible for probation. Presently, the Criminal Code provides for a sentence suspension for persons who are imposed a custodial sentence up to four years (up to three years under the previous regulations) (in the event of juvenile, a five-year custodial sentence limit is set instead of a four-year one).

Also, the Criminal Code provides for persons on probation to be assigned by the court an obligation to participate in re-socialization programs, to do unpaid public works, to reimburse damages incurred by the offence, and other obligations which, in the opinion of the court, may have a positive effect on the person who committed the offence. If it comes out during the probation that the assigned obligation is ineffective, it can be replaced by a more effective one, while the custody sentence would be employed only as *ultima ratio*.

The Law on Probation defines the major re-socialization forms for persons on probation, and resocialization is set as a fundamental component of probation. Re-socialization is performed through an individual motivation development program Behaviour-Interview-Change, through an individual behaviour modification program One-to-One, and through EQUIP, the behaviour modification program for work with juveniles. Also, this law has set forth the grounds – the procedure for drawing an individual supervision plan, supervision measures, and their intensity and periodicity principles – for individual work with inmates based on risk evaluation of inmates and criminogenic factors.

The introduction of intensive supervision (electronic monitoring), a new preventive measure, was one of the most significant measures to solve the problem of overcrowding in remand prisons.

Following the amendments to the Code of Criminal Procedure, amendments to types of preventive measures are to come into effect on 1 January 2015, which provide for the use of intensive supervision – a preventive measure which is expected to cut down the number of detentions, and consequently, to help combat the overcrowding of remand prisons.

On 22 May 2012, a meeting-discussion was held in Kaunas Remand Prison for judges, prosecutors, directors of penitentiary institutions on the application and implementation of probation, and seminars on the application of probation were organised for judges and prosecutors at the Training Centre of the National Court Administration on 11/12 of June 2012.

To your information, the number of inmates in penitentiary institutions decreased by 5% since 2012: there were 8,144 inmates in penitentiary institutions in Lithuania on

1 January 2014 after 8,550 on 1 January 2013, and 8,573 on 1 January 2012. Also, a decrease of 17% was registered in the number of the detainees in the remand prisons: there were 1,118 detainees in remand prisons on 1 January 2012, after 1,179 on 1 January 2013 and 1,347 on 1 January 2012.

After the new probation system was put into place, a decrease is observed in the number of the inmates arriving to serve their sentence in penitentiary institutions, who were put on probation. In 2007/2011, the inmates on probation who arrived to penitentiary institutions (for the evasion of probation or after being imposed a sentence for a new offence) made up on average 35% of all the inmates serving their sentence in penitentiary institutions, an increase from 28.3% in 2012 when the Law on Probation came into force.

- the minimum standard of living space per prisoner to be raised to 4m^2 in multi-occupancy cells (not counting the area taken up by an in-cell toilet facility) throughout correction houses and remand prisons. The official capacities of all penitentiary institutions should be reviewed accordingly (paragraph 36).

Seeking to implement the CPT's recommendation, the number of the inmates should be reduced to 7,500, or at least 1,000 new places for the inmates should be installed.

As mentioned before in the answer regarding paragraphs 33/35 of the CPT's Report, the number of inmates is gradually going down, and is expected to decrease further even more rapidly (especially the number of the detainees) after an intensive supervision, a preventive measure, is to be introduced in 2015. Based on data as of 16 December 2013, the total number of places throughout the prison establishments was 9,399 and the total number of persons kept there was 9,263. Consequently, a standard for living space per one person is 3.1 m^2 in multi-occupancy cell where the inmates have access to premises of collective use (toilets, washrooms, leisure rooms, and premises for sports, library, and a reading room) without any restrictions regarding the outdoor activities, and 3.6 m^2 per person in cell type premises. If the downward trend regarding the number of inmates is to prevail, the standard of living space per person will grow.

In implementing the Strategy for Modernization of Custodial Facilities as approved by the Government of the Republic of Lithuania in 2009, the public procurement procedures are underway over the construction of a 320-place prison by using a private and public sectors co-operation model. The procurement procedures are in line with the approved timing. According to the procurement conditions, the newly built prison is to be put into operation in three years after signing the agreement.

Also, feasibility studies regarding the construction of a 1,620-place remand prison-correction house near Vilnius and remand prison/correction house of 1,180 places close to Šiauliai have been prepared. After the mentioned institutions are built, Lukiškės Remand Prison/Closed Prison and Šiauliai Remand Prison will be closed.

...

Requests for information

- information on the precise measures taken to address the problem of overcrowding at Alytus Correction House (paragraph 37).

As mentioned above in the answer regarding paragraphs 33 to 35 of the CPT's Report, the number of inmates has been gradually decreasing after the Law on Probation of the Republic of Lithuania and amendments to the Code on Enforcement of Penal Sanctions came into effect on 1 July 2012: total number of persons in penitentiary institutions went down from 9,729 on 1 January 2013 to 9,262 on

1 January 2013, a decrease of 5% (414 persons). In Alytus Correction House, the number of the inmates shrank during the same period by 7% – from 1,477 to 1,398 (by 99 persons). At the present time, the number of inmates in Alytus Correction House does not exceed the maximum allowed number for Alytus Correction House, which is 1,460 and which was established by the Rules for the Internal Procedure at Correction Institutions as approved by Order No. 194 of 2 July 2003 of the Interior Minister of the Republic of Lithuania. It should be noted, that the decrease in the number of the prisoners has been a continuous trend.

...

Requests for information

- a detailed schedule regarding the transfer of sentenced inmates at Lukiškės Remand Prison to another establishment by 2015 and the closure of Lukiškės Remand Prison in 2017 (paragraph 50);

To improve the conditions for inmates at Lukiškės Remand Prison, a feasibility study was prepared for the implementation of a project "Construction of Vilnius Remand Prison-Correction House and Provision of Services" through a co-operation between public and private sectors. To implement the project a public tender for selecting a private partner is to be announced, and a competition dialogue is to be used as a procurement method. Procurement procedures are planned to start in early 2014.

The tender preparation and the tender are expected to take about 15 months. The feasibility study provides for the construction works to take three years; this time period is also to be set in the tender documents. Therefore, the new penitentiary institution is expected to start functioning in late 2017 or early 2018.

In implementing the Strategy for the Modernization of Custodial Facilities as approved by the Government of the Republic of Lithuania in 2009, the public procurement procedures are underway over the construction of 320-place prison by using a private and public sectors co-operation model. The procurement procedures are in line with the approved timing. According to the procurement conditions, the newly built prison is to be put into operation in three years after signing the agreement."

69. The Strategy for Modernization of Custodial Facilities for 2009-2017, as approved by the Government of the Republic of Lithuania, provided for the construction of new facilities (to address the issue of overcrowding in the places of deprivation of liberty) following the public-private partnership principle. Due to the reduced funding, the works foreseen under the aforementioned strategy slowed down during the crisis, resulting, in 2014 in the decision on the extension of the time limit for the implementation of the strategy by an additional five years until 2022.

THE LAW

I. JOINDER OF THE APPLICATIONS

70. The Court notes at the outset that all the applicants complained of inhuman conditions of detention in Lithuanian prisons. Having regard to the

similarity of the applicants' grievances, the Court is of the view that, in the interest of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

71. All seven applicants complained that the conditions of their detention in the various correctional facilities in which they had been held had fallen short of standards compatible with Article 3 of the Convention.

Article 3 reads as follows:

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

A. Admissibility

1. The parties' submissions

(a) The Government

72. 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 in the applicants' favour had been adopted.

73. The case-law of the Lithuanian courts as to the right not to be held in improper detention conditions and as to redress for the breach of that right was vast. When deciding on disputes regarding conditions of detention, the administrative courts took into account the same criteria as those developed in the Court's case-law in similar cases. The courts thus duly and thoroughly examined the applicants' complaints to determine whether their detention conditions had attained the minimum level of severity in order to fall under Article 3 of the Convention. In some cases (the Government referred to the case of D. Zeleniakas, paragraph 49 above) they held that although the detention was relatively short, the applicant's suffering was intense enough to amount to a violation of Article 3 of the Convention.

74. Even though in other cases the domestic courts did not *expressis verbis* establish a violation of Article 3 of the Convention, such an acknowledgment could be implied from the courts' reasoning (the Government referred to the case of V. Traknys, paragraph 42 above). Lastly, in some of the cases the domestic courts decided that the conditions had not attained the minimum level of severity to fall under Article 3 of the Convention. Even so, they held that the conditions did not satisfy domestic norms (the Government referred to the case of R. Klintovič, paragraph 32 above).

75. It was also paramount that the Supreme Administrative Court consistently held that persons who were detained in inadequate conditions

had suffered non-pecuniary damage. When deciding on the sum to be awarded in compensation for non-pecuniary damage in cases of inadequate detention conditions, the administrative courts applied the entirety of the criteria, taking into account the specific circumstances of each person (see paragraph 59 above). None of those criteria had a predetermined value. According to the Government, the sums, where appropriate, awarded to the applicants in the present cases were adequate and sufficient.

76. The Government also noted the domestic courts' approach that finding a violation of a person's rights on account of inadequate detention conditions could constitute in itself "just" satisfaction, where all the circumstances so allow. The Court had itself come to a similar conclusion, even in relatively serious circumstances (the Government referred to *Bulea v. Romania*, no. 27804/10, § 68, 3 December 2013). Nevertheless, it was the Supreme Administrative Court's practice that such means of redress should only be applied in exceptional cases (see paragraph 60 above).

77. Regarding the criterion of the economic situation in the country, on which the administrative courts relied when assessing the compensation awards, the Government underlined that since 2008 in Lithuania, just like everywhere else in Europe, there had been an exceptionally serious economic crisis. Salaries remained significantly reduced (in 2009 the average gross monthly salary was LTL 2,056 (EUR 595)), the minimum monthly salary was LTL 800 (EUR 231), and the average old-age pension in February 2013 was LTL 817 (EUR 237). Taking into account the economic reality in the country, awarding large sums would be unreasonable when compared with the main indicators of Lithuania's economy and the income normally received by employed persons. It could also risk encouraging people, to a certain extent, to commit criminal offences and be kept in inadequate conditions just to be awarded compensation that would be higher than the sum they would normally receive as income if they were employed and having to cover their subsistence expenses themselves.

78. As to the preventive remedies to combat overcrowding, the Government firstly submitted that new prisons were planned. It was also expected that amendments to the Criminal Code, the Code for the Execution of Sentences, the Code of Criminal Procedure, and the recently enacted Law on Probation, which entered into force on 1 July 2012, would significantly contribute to solving the problem of overcrowding (see paragraph 68 above).

79. The Government also submitted that the Lithuanian authorities were taking a number of steps to improve detention conditions, which, in their observations to the Court, the Government described in great detail and in respect of each prison. Those measures included work to improve sanitary and living conditions, offering more out-of-cell activities, educational opportunities and social rehabilitation programmes.

(b) The applicants

80. The applicants contested the Government's submissions, arguing in essence that the suggested tort action remedy was not effective, since the sums awarded in compensation for pecuniary damage were derisory. They disagreed with the domestic courts' and the Government's reasoning as to the pertinence of the standard-of-living criterion. To support their assertion, the applicants relied on the Court's judgments in *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, § 172, 10 January 2012) and, *mutatis mutandis*, *Ganea v. Moldova* (no. 2474/06, §§ 19, 22 and 30, 17 May 2011). In those two cases the Court did not refer to the criterion of minimum salaries in, respectively, Russia or Moldova. To illustrate the discrepancy between the sums awarded by the Lithuanian administrative courts and the Court, one of the applicants, Mr Klintovič, further noted that the applicant in *Pop Blaga v. Romania* (no. 37379/02, §§ 14 and 61, 27 November 2012) had spent twenty-nine days in degrading conditions and the Court had awarded him the sum of EUR 3,900. In contrast, his own situation was much more serious, but he was awarded only EUR 290 (see paragraph 32 above). Along the same lines, another applicant, V. Traknys, compared his situation of having been detained in Article 3 non-compliant conditions for more than twenty months and awarded EUR 725 (see paragraphs 40 and 42 above) with that of the applicant in *Canali v. France* (no. 40119/09, §§ 49 and 61, 25 April 2013), whom the Court had awarded EUR 10,000 for six months' detention in improper conditions.

81. Another applicant, Mr Mironovas, stressed that he had suffered poor conditions not in an ordinary correctional institution, but at the Prison Department Hospital. He claimed that he had therefore not received adequate medical assistance, which had caused him unbearable pain and huge mental and psychological hardship. Therefore, partial redress was not adequate, efficient, appropriate or sufficient (he relied on *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006).

82. Lastly, the applicant Mr Gaska observed that although he had complained to the Vilnius Correctional Home administration that he was being held in inappropriate conditions, by a letter of 20 April 2012 the latter had not acknowledged any violations but had denied responsibility. He complained about that response to the Prison Department, but to no avail.

83. In the light of the above, the applicants maintained that their complaints of the inhuman conditions of their detention should be declared admissible, since the remedies in Lithuania were not effective.

2. The Court's assessment

(a) General principles

84. The Court summarised the principles governing the assessment of an applicant's victim status in paragraphs 178-192 of its judgment in the case

of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V). In so far as relevant to the case under consideration, they are:

(a) in accordance with the subsidiarity principle, it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention;

(b) a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention;

(c) the applicant's ability to claim to be a victim will depend on the redress which the domestic remedy will have given him or her;

(d) the principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance. In that connection, it should be reiterated that the Convention is intended to guarantee not theoretical or illusory rights but rights that are practical and effective (see *Shilbergs v. Russia*, no. 20075/03, § 67, 17 December 2009).

85. The Court also recalls that as far as appropriate remedies are concerned, and with respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in those conditions and compensation for any damage sustained as a result of them. For a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because that person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. Such a remedy is particularly important in view of the subsidiarity principle, so that aggrieved persons are not forced to refer to this Court complaints that require the finding of basic facts and the fixing of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic courts. In other words, in this domain preventive and compensatory remedies have to be complementary to be considered effective (see ibid., §§ 96-98, 214 and 221, with further references).

(b) As to whether there has been acknowledgment of Article 3 violation

86. The Court observes that in recent years the Lithuanian administrative courts have started hearing cases and awarding damages to persons claiming to have suffered non-pecuniary damage as a result of poor conditions of detention under the general rule governing the tortious liability of the authorities – Articles 6.250 and 6.272 of the Civil Code. Having been

advised by the Government of this case-law and also having examined the court decisions given in the cases of these seven applicants, the Court would make the following remarks.

87. The Court notes that in all seven cases the Lithuanian courts admitted a violation of the domestic legal norms setting out specific aspects pertinent to the conditions of detention. Whilst in one of these cases (see paragraph 42 above) the domestic court restricted itself to a finding of a breach only of domestic law, that court's finding as to the breach of the right not to be held in inhuman or degrading conditions is, in substance, so close to a finding of an Article 3 violation that the Court is ready to accept it as sufficient (see *Neshkov and Others*, cited above, §§ 185 and 187). It remains mindful, however, that in one of these cases the Lithuanian court ruled out, even explicitly, a breach of Article 3 of the Convention (see paragraph 32 above). In such a situation the Court is not able to hold that the applicant may no longer be considered as a victim of a Convention violation.

88. The Court is satisfied that, at least in more general terms, in most of the instant cases the Lithuanian courts took into account the principles laid down in the Court's case-law under Article 3 of the Convention, which is an important consideration in order for a domestic remedy in respect of detention to be effective (see paragraphs 13 and 42 above, also see *Neshkov and Others*, cited above, § 187). In at least three of the cases at hand, the domestic courts did not apply the rule *affirmanti incumbit probatio* in a very strict way, but ordered the prison authorities to provide supplementary evidence or interpreted the existing evidence in the applicant's favour (see paragraphs 12, 19 and 37 above; also see *Neshkov and Others*, cited above, § 184). Similarly, the administrative courts showed leniency to the situation of one applicant when applying the domestic rules governing statutory limitation (see paragraph 9 above). More often than not the courts also recognised that poor conditions of detention must be presumed to cause non-pecuniary damage to the person concerned, rather than making the award of compensation conditional on the applicant's ability to prove, through extrinsic evidence, the existence of non-pecuniary damage in the form of emotional distress (see paragraphs 14 and 42 above; contrast *Iovchev v. Bulgaria*, no. 41211/98, § 146, 2 February 2006). Above all, the administrative courts also took into account the overall situation of the applicant, focusing on the inmate's right not to be subjected to inhuman and degrading treatment (see paragraph 13 above; also see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 119, ECHR 2006-IX). The Court is thus satisfied that the subject matter of the cases examined by the administrative courts under this provision was corresponded to the issues that arise under Article 3 of the Convention.

89. Nonetheless, the domestic courts' decisions highlight several problems that are characteristic of the manner in which claims about conditions of detention are being dealt with.

90. While it is not this Court's task to verify whether the administrative courts' rulings in the applicants' cases were correct in terms of Lithuanian law, it is competent to examine whether the approach taken by these courts may have infringed rights and freedoms protected by the Convention (see *Neshkov and Others*, cited above, § 199). The Court thus notes that, in at least one case, the administrative court clearly ignored the essence of the applicant's complaint by splitting his claims into the particular aspects of detention affecting him, and particularly by refusing to examine some of those complaints for reasons which appear to be purely formal (see paragraph 48 above). In this way, the courts did not review the acts or omissions alleged to have amounted to a breach of Article 3 of the Convention in line with the principles and standards laid down by this Court in its case-law – which, according to circumstances, may require a cumulative approach. The Court has already cautioned that considering each element of the conditions of detention as a separate issue could easily lead to the conclusion that none of the complaints was, in itself, serious enough to call for compensation, even in cases where the general impact on the particular prisoner, had it been assessed in the light of the Convention case-law, would have been found to reach the threshold under Article 3 of the Convention (see *Shahanov v. Bulgaria*, no. 16391/05, § 40, 10 January 2012).

91. The Court further observes that in two of the instant cases the domestic courts considered that a person's suffering decreased with time (see paragraphs 14 and 47 above). Although it has indeed held that an initial period of adjustment to poor conditions exacts a heavy mental and physical toll on the person concerned (see *Ananyev and Others*, cited above, § 172), the Court is not convinced by this line of argument on the part of the domestic courts. Nor can the Court share the view that the lack of intent to debase a prisoner alleviates the State's responsibility for improper conditions of his or her detention (see paragraphs 27 and 49 above; also see *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, § 80, 20 October 2011, and *Bulea v. Romania*, cited above, § 51). In the latter scenario, the Lithuanian courts' findings were apparently based on the underlying proposition that the prison authorities were only accountable for damage caused by culpable conduct or omission, a suggestion that cannot withstand the Court's scrutiny (see paragraph 27 above; also see *Varga and Others*, cited above, § 56). By a similar token, the Court shares the Vilnius Regional Administrative Court's view, rebutting the prison representatives' contention that a high crime rate and poor financing for the building of new prisons could justify the overcrowding (see paragraphs 8, 20 and 30 above). The Court has repeatedly emphasised that a high crime rate, a lack of resources, or other structural problems are not circumstances that exclude or

attenuate the State's liability for inhuman or degrading conditions of detention. It is incumbent on the State to organise its penitentiary system in a way that does not give rise to such conditions, regardless of financial or logistical difficulties (see, among other authorities, *Nazarenko v. Ukraine*, no. 39483/98, § 144, 29 April 2003; *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 87, 27 January 2011).

92. In the light of these considerations, inasmuch as the Court's principles were applied and in spite of certain limited shortcomings, the Court is ready to accept that under the Lithuanian law, as interpreted and applied by the domestic courts, a claim for damages could in principle secure a remedy in respect of the plaintiff's allegations of poor conditions of past detention, in that it offers a reasonable prospect of success. It remains to be seen, however, whether it also offers adequate redress.

(c) As to the amount of compensation awarded for improper conditions of detention

93. The Court reiterates that, in respect of persons who are no longer incarcerated, the provision of monetary compensation is one of the forms of redress. Moreover, the amount of compensation in respect of non-pecuniary damage that can be obtained must not be unreasonable in comparison with the awards of just satisfaction made by the Court under Article 41 of the Convention in similar cases (see *Neshkov and Others*, cited above, § 288). The amount of time spent by the person concerned in these conditions is the most important factor for assessing the extent of this damage (see *Ananyev and Others*, cited above, § 172, and *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 105, 8 January 2013).

94. It should also be underlined that the right not to be subjected to inhuman or degrading treatment is so fundamental that the domestic authority or court dealing with the matter will have to give exceptionally compelling reasons to justify a decision to award lower or no compensation in respect of non-pecuniary damage (see *Anayev and Others*, cited above, § 228-30).

(i) As to the applicant B. Petrulevič

95. Turning to the seven petitions at hand, the Court observes that the largest award, EUR 2,300, the Lithuanian administrative courts have made was in the case of Mr Petrulevič. Although the Supreme Administrative Court referred to different, more lengthy, periods of the applicant's incarceration at the Lukiškės Remand Prison (see paragraph 13 above), for the Court it is sufficient to note that for 361 days he was held in a cell measuring less than 3 square metres, which the Court has considered as the "bare minimum" to be observed (see *Bygylashvili v. Greece*, no. 58164/10,

§ 58, 25 September 2012, and *Tereshchenko v. Russia*, no. 33761/05, § 84, 5 June 2014, and the case-law referred to therein). Proceeding on this basis for the purpose of its calculation, the Court underlines that such compensation awarded by the Supreme Administrative Court is still lower than that which the Court has awarded in similar cases for improper conditions of detention of such duration, when a violation of Article 3 has been found (also see paragraph 156 below).

96. That being so, and contrary to the applicants' suggestion, the Court has accepted, very recently, that the celerity of the domestic court proceedings and living standard in the country may be relevant criteria when examining whether the award at the domestic level was sufficient (see *Stella and Others v. Italy* (dec.), nos. 49169/09, 54908/09, 55156/09, 61443/09, 61446/09, 61457/09, 7206/10, 15313/10, 37047/10, 56614/10, 58616/10, §§ 58, 61 and 62, 16 September 2014). The Court has regard to the particularly constructive analysis of the applicants' complaints by the Supreme Administrative Court, which examined them in accordance with the standards flowing from the Court's case-law under Article 3, and thus is ready to accept the compensation awarded to the applicant Mr Petrulevič as sufficient (see paragraphs 13 and 14 above). In this connection, the Court also emphasises the importance of such a remedy in view of the subsidiarity principle, so that aggrieved persons are not systematically forced to refer to this Court complaints that require the finding of basic facts and the fixing of monetary compensation – both of which, as a matter of principle and effective practice, are the domain of domestic courts (see *Ananyev and Others*, cited above, § 221, with further references).

97. The Court lastly observes that the complaints of Mr. Petrulevič to the Lithuanian courts as well as to the Court were exclusively limited to the conditions of his detention in the Lukiškės Remand Prison (*sąlygos, kuriomis buvau laikomas Lukiškių tardymo izoliatoriuje*). Currently this applicant is serving a prison sentence in the Pravieniškės Correctional Home in the conditions of which he neither complained of nor gave account of.

98. In the light of the above considerations, the Court holds that the applicant Mr Petrulevič may no longer claim to be a victim of a violation of Article 3.

(ii) As to the other six applicants

99. In the light of the criteria summarised in paragraphs 93 and 94 above, the Court firstly observes that in the cases of Mr Ivanenkov and Mr Gaska the Lithuanian courts made no award (see paragraphs 27 and 37 above), thus not allowing those claimants to recover damages on proof of their allegations of inhuman or degrading conditions of detention for non-pecuniary damage. Secondly, even though in the cases of Mr Mironovas, Mr Klintovič, Mr Traknys and Mr Zeleniakas awards of, respectively, EUR 580, EUR 290, EUR 725 and EUR 60 were made (see, respectively,

paragraphs 20, 32, 42 and 49 above), it is the Court's view that those sums, whilst apparently consistent with Lithuanian case-law, are incommensurably small. Indeed, they do not even approach the awards usually made by the Court in comparable circumstances to provide adequate redress and thus to satisfy the criteria of an effective remedy (see paragraph 156 below).

100. Accordingly, the Court considers that in the case of those six applicants it is not necessary to consider whether a preventive remedy was available to them, because the compensatory remedy for the conditions in which they were held in the past was plainly insufficient. Those six applicants therefore retain their victim status under Article 34 of the Convention.

(d) As to the preventive remedies in connection with conditions of detention

101. In the context of instant application and in reply to the arguments by the Government (see paragraph 78 above), the Court also considers it useful to provide the Lithuanian authorities with certain guidance on preventive remedies.

(i) As to the possibility to be transferred to another correctional facility

102. As regards prison conditions, the Court has had occasion to hold that a complaint lodged with a competent judicial authority or the prison administration could be an effective remedy, where it may lead to an applicant's removal from inadequate prison conditions (see *Štitić v. Croatia* (dec.), no. 29660/03, 9 November 2006).

103. Turning to the present cases and the Lithuanian law, the Court finds that the prison authorities' decisions on the transfer of inmates between prisons appear to be to a great extent discretionary (see paragraph 57 above). Those decisions are based either on the inmate's state of health, or on other "exceptional circumstances", as justified by the inmate's character report. The Court considers it unlikely that either of those criteria would be triggered by issues such as cramped or insalubrious prison conditions that a particular inmate considered inhuman or degrading. Furthermore, inmates do not have a right to be transferred if they so request, which means that that possibility is not a remedy for the purposes of Article 13 of the Convention (see *Mandić and Jović*, cited above, § 110).

104. Furthermore, in none of the cases presented by the Government did the administrative courts as much as hint that an inmate could be removed from inhuman or degrading conditions of detention in order to obtain direct and timely redress, as opposed to merely indirect protection of the rights guaranteed in Article 3 of the Convention (see *Melnik v. Ukraine*, no. 72286/01, § 68, 28 March 2006). In these circumstances, and given the financial difficulties of the prison administration, it cannot be said that any attempt by the applicant to seek an improvement of the conditions of his detention from within the penal system would have sufficient prospects of a

successful outcome. This is well illustrated by the case of Mr Gaska, who received responses from the Prison Department and from the Vilnius Correctional Home officially acknowledging the existence of overcrowding at the relevant time (see paragraphs 35 and 36 above; also see *Norbert Sikorski v. Poland*, no. 17599/05, § 111, 22 October 2009). Lastly, in the Court's view, even if in theory detainees obtained a judicial or administrative decision, whichever the form, requiring the prison authorities to make good a violation of their right to adequate living space and sanitary conditions, their personal situation in an already overcrowded facility could only be improved at the expense and to the detriment of other detainees. Moreover, the prison authorities would not be in a position to grant a large number of simultaneous requests, given the structural nature of the prison overcrowding problem and in the absence of reforms to tackle it (see paragraph 36 above; also see point 34 of the CPT report, cited in paragraph 65 above; point 35 of the CPT report, cited in paragraph 67 above; also see, *mutatis mutandis*, *Ananyev and Others*, § 111; *Varga and Others*, § 63; and *Torreggiani and Others*, § 54; contrast *Stella and Others*, §§ 50-52, all cited above).

(ii) As to passing new laws and building new prisons

105. The CPT has already underlined that the incarceration rate in Lithuania is one of the highest among Council of Europe member States. Even though alternative measures to detention, including probation, have recently been introduced, they have had little effect so far (see point 35 of the CPT report, cited in paragraph 67 above). However, the Court notes that there have been positive developments as regards new legislative measures that have been in force in Lithuania since 1 July 2012 in order to tackle the prison overcrowding issue (see paragraph 68 above). It is nevertheless mindful of the fact that those measures could not have benefited the applicants in the instant case, as their complaints to the Court about the conditions of their detention mostly precede the date of the new legislation, which is yet to bear fruit.

106. As to building new prisons, the Government promised to close the Lukiškės Remand Prison as early as in their response to the CPT in 2009 (see paragraph 66 above). That prison is still operational and, according to the Government's response of last year, the plans to close it are at the "public procurement" stage (see paragraphs 68 and 69 above).

(iii) As to the Parliamentary Ombudsman

107. Lastly, the Court has regard to the Government's response to the CPT, in which they stated that as of 1 January 2014, hence after the applicants in the instant cases lodged their complaints, the Seimas Ombudsman undertook the function of a national preventive institution. In that capacity, the Ombudsman may visit places of deprivation of liberty on a

regular basis. He or she may interview any witness and obtain information in order to oversee compliance with the applicable law concerning deprivation of liberty (see paragraph 68 above).

108. The Court welcomes this initiative. It has already held that remedies in respect of conditions of detention before an administrative authority can satisfy the requirements of Article 13 (see *Orchowski v. Poland*, no. 17885/04, § 107, 22 October 2009; and *Torreggiani and Others*, cited above, § 51). However, the powers and procedural guarantees that an authority possesses are relevant in determining whether the remedy before it is effective (see *Neshkov and Others*, cited above, § 182).

109. With regard to the Seimas Ombudsman, the Court observes that the Ombudsman's powers are restricted solely to making proposals and recommendations, without the possibility of issuing binding orders to the prison authorities to improve a prisoner's situation, should he or she find that the detention conditions fall below the Convention standards. In this connection, the Court has already held that for a preventive remedy with respect to conditions of detention before an administrative authority to be effective, that authority must be capable of rendering binding and enforceable decisions (see *Ananyev and Others*, cited above, §§ 214-16 and 219). Furthermore, it has not been shown to the Court that the Ombudsman's recommendations and proposals are capable of providing relief within reasonably short time-limits, which is another condition for a preventive remedy to be effective (see *Torreggiani and Others*, cited above, § 97).

110. Thus the Court finds that a complaint to the Seimas Ombudsman falls short of the requirements of an effective remedy because its capacity to have a preventive effect in practice has not been convincingly demonstrated.

(e) The Court's conclusion

111. The Court notes that the six applicants' complaints about their conditions of detention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

112. The applicants submitted that the conditions of their detention in different penal facilities had fallen short of standards compatible with Article 3 of the Convention.

113. The Government observed that the applicants' complaints had been duly and thoroughly examined by the domestic courts.

2. The Court's assessment

(a) Assessment of evidence and establishment of facts

114. The following relevant principles have been established in the Court's case-law concerning assessment of evidence under Article 3 (see *Ananyev v. Russia*, cited above, §§ 121-23):

> "121. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII).
>
> 122. The Court is mindful of the objective difficulties experienced by the applicants in collecting evidence to substantiate their claims about the conditions of their detention. Owing to the restrictions imposed by the prison regime, detainees cannot realistically be expected to be able to furnish photographs of their cell or give precise measurements of its dimensions, temperature or luminosity. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government.
>
> 123. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts))."

(b) General principles on compliance with Article 3

115. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

116. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Ananyev and Others*, cited above, § 140, with further references).

117. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła,* cited above, §§ 92-94; and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

118. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant (see *Dougoz*, cited above, § 46; *Ramirez Sanchez*, cited above, § 119). The length of the period during which a person is detained in the particular conditions also has to be considered (see *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005).

119. Extreme lack of space in a prison cell weighs heavily as a 'central factor' to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, §§ 36 and 39, 7 April 2005; and, more recently, *Vladimir Belyayev v. Russia*, no. 9967/06, § 30, 17 October 2013).

120. In a number of cases where the applicants had at their disposal less than 3 square metres of floor surface in a prison cell where they remained locked most of the time, the Court considered the overcrowding to be so severe as to justify of itself a finding of a violation of Article 3 (see, for example, *Melnik*, cited above, §§ 102-03; *Dmitriy Sazonov v. Russia*, no. 30268/03, §§ 31-32, 1 March 2012; *Nieciecki v. Greece*, no. 11677/11, §§ 49-51, 4 December 2012; *Tatishvili v. Greece*, no. 26452/11, § 43, 31 July 2014; and *Tereshchenko*, cited above, §§ 83-84).

121. However, the Court has so far refrained from determining how much space should be allocated to a detainee in terms of the Convention, having considered that a number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise, the physical and mental condition of the detainee and so forth, play an important part in deciding whether the detention conditions complied with the guarantees of Article 3 of the Convention (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007, and *Torreggiani and Others*, cited above, § 69). Furthermore, when assessing the issue of overcrowding in post-trial detention facilities such as correctional colonies, as opposed to pre-trial detention facilities and high-security prisons where inmates are confined to their cell for most of the day, the Court has held that the personal space in the dormitory should be viewed in the context of the applicable regime, as detainees in correctional colonies enjoy a wider freedom of movement during the daytime, which may ensure that they have unobstructed access to natural light and air (see *Insanov v. Azerbaijan*, no. 16133/08, § 120, 14 March 2013).

122. Applying this approach, the Court has found that the strong presumption that the conditions of detention amounted to degrading treatment in breach of Article 3 on account of a lack of personal space were refuted by the cumulative effect of the conditions of detention. These included the brevity of the applicant's incarceration (see, for example, *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 138, 17 January 2012, and *Dmitriy Rozhin v. Russia*, no. 4265/06, § 53, 23 October 2012) or the freedom of movement afforded to inmates and their unobstructed access to natural light and air (see, for example, *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009).

123. On the other hand, even in cases where the inmates appeared to have sufficient personal space at their disposal and where a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – the Court noted other aspects of physical conditions of detention as being relevant for the assessment of compliance with Article 3. It found a violation of that provision since the space factor was coupled with an established lack of ventilation and lighting (see, for example, *Vlasov v. Russia*, no. 78146/01, §§ 81 and 84, 12 June 2008) and a lack of outdoor exercise (see *Longin v. Croatia*, no. 49268/10, §§ 60-61, 6 November 2012).

(c) Application of the above principles to the present cases

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

(i) The case of Mr Mironovas

125. On a number of occasions between 2009 and 2011 Mr Mironovas spent periods of time ranging from five days to one month and three days in the Prison Department Hospital (see paragraph 16 above).

126. From the findings of the Vilnius Regional Administrative Court it can be seen that the applicant was held in overcrowded rooms, since for most of the time there was between 3 and 4 square metres of space per bed, whereas the domestic law requirement was 7 square metres. At one time the applicant spent six days in a room where he had 2.83 square metres of space (see paragraphs 16 and 19 above).

127. It is true that the patients in the Prison Department Hospital had access to natural light and fresh air, for they could stay outdoors during daytime (see *Neshkov and Others*, cited above, §§ 234 and 237). That being so, the Court has serious reservations as to whether conditions in which prisoners are held in a facility, albeit one categorised as a hospital, that operates without a hygiene certificate and where the showers, toilets and other parts of the premises are not properly cleaned and disinfected, where patients are obliged to take showers with other patients suffering from open tuberculosis and psychiatric patients – all of which is against the domestic law (see paragraph 18 above) – are of any benefit to prisoners in terms of healing. On the contrary, for the Court, such conditions are no less than degrading. Equally disturbing is the fact that the health care authorities established breaches of the hygiene requirements under the domestic regulations six times, with no apparent improvement (see paragraph 18 above).

128. Such degrading conditions of detention, especially in the context of the provision of health care, can without doubt be regarded as giving rise to a breach of Article 3 of the Convention.

(ii) The case of Mr Ivanenkov

129. Mr Ivanenkov served his sentence at the Alytus Correctional Home. He spent approximately two years in a dormitory type room where he was afforded between 1.65 and 1.9 square metres of personal space (see paragraph 23 above).

130. The Court has already held, albeit as regards prison cells, that when the space allocated to a detainee is below 3 square metres, it can hardly be compensated by other factors and is in principle considered to be so severe

as to justify of itself a finding a violation of Article 3. Thus, such a scarce allocation of space, if established, creates a strong indication (see *Olszewski v. Poland*, no. 21880/03, § 98, 2 April 2013) or, as noted in *Ananyev and Others*, a strong presumption (see § 148 of that judgment; also see, *a contrario*, *Vladimir Belyayev*, cited above, §§ 33-36) that Article 3 of the Convention has been violated.

131. Even though the Alytus Correctional Home administration argued that the applicant's situation was eased by the fact that he had to stay in such rooms only during the night, the Court has regard to the information from the Lithuanian health care authorities that the Alytus facility had a shortage of furniture, dilapidated cells, insufficient lighting and a shortage of toilets, and that, overall, the facility was marred by gross violations of hygiene standards (see paragraph 25 above; compare and contrast *Shkurenko*, cited above). As noted by the first-instance court, the prison administration in essence did not dispute the limited personal space and the lack of toilet facilities (see paragraph 26 above). The extremely dire situation of dormitory no. 2 at the Alytus Correctional Home has been confirmed by the CPT (see points 36 and 47 of the CPT report, cited in paragraph 67 above), whose findings may therefore inform the Court's assessment (see *Todor Todorov v. Bulgaria*, no. 50765/99, § 47, 5 April 2007). Taking into account that the applicant spent two years in such conditions, his suffering could not be described as short-term or occasional, and thus exceeded the unavoidable level of suffering inherent in detention. The Court lastly notes the Supreme Administrative Court's argument that the prison administration did not intend to debase the applicant. That notwithstanding, the Court has consistently held that the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention (see, among many other authorities, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kehayov v. Bulgaria*, no. 41035/98, § 63, 18 January 2005).

132. There has therefore been a breach of Article 3 of the Convention in relation to the conditions in which Mr Ivanenkov was kept in the Alytus Correctional Home.

(iii) The case of Mr Klintovič

133. Mr Klintovič is serving his sentence in the Pravieniškės 2nd Correctional Home, where he remains to this day. From 2008 to 2010 he was first kept for some five months in two different dormitories, where he had approximately 2 square metres of personal space. Afterwards, he spent just under four years in a dormitory-type room, with between 2.27 and 2.57 square metres of personal space (see paragraph 29 above).

134. Relying on its findings in *Shkurenko* (cited above), the Court nevertheless considers that clear overcrowding in Mr Klintovič's case was compensated by the possibility for him to move about freely within the confines of the correctional home during the day in order to have unobstructed access to natural light and air. As established by the Supreme Administrative Court, on whose findings the Government relied, the dormitory's room in Pravieniškės also had natural light and ventilation (see paragraphs 32 and 113 above). Mr Klintovič did not prove these conclusions to be erroneous.

135. The Court recalls that the Committee for the Prevention of Torture expressed strong concern and objections to the very principle of dormitory-type accommodation arrangements frequently encountered in Central and Eastern European prisons, because the dormitories in question had been found to hold prisoners in extremely cramped and insalubrious conditions. The Committee also noted that such accommodation inevitably implied a lack of privacy for prisoners in their everyday lives (see point 29 of the 11th General Report, cited in paragraph 63 above). In Mr Klintovič case, although premises shared by a large number of inmates undoubtedly restricted their privacy, the Supreme Administrative Court established that the sanitary facilities were separated from the sleeping premises (see *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 137, 17 January 2012; compare and contrast *Vlasov*, cited above, § 84). Lastly, the Court has no indication that, except for the lack of space in the Pravieniškės 2nd Correctional Home, a matter which was being addressed by the Lithuanian authorities (see points 33 and 34 of the CPT report, cited in paragraph 65 above), the conditions of the applicant's detention in Pravieniškės 2nd Correctional Home raised another issue under Article 3 of the Convention.

136. In the light of the above, the Court considers that the distress and hardship endured by Mr Klintovič did not exceed the unavoidable level of suffering inherent in detention such as to amount to degrading treatment within the meaning of Article 3 of the Convention.

(iv) The case of Mr Gaska

137. Mr Gaska served his sentence in the Vilnius Correctional Home, where he spent approximately one year and four months in a dormitory-type room and was afforded 2.4 square metres of personal space (see paragraph 34 above).

138. The Court takes cognisance of the domestic courts' finding that the conditions of the applicant's detention fell short of the statutory requirement as regards the personal space afforded to detainees, contrary to the Government's suggestion that this standard is maintained in all dormitory-type correctional establishments in Lithuania (see paragraph 66 above; also see point 36 of the CPT report, cited in paragraph 67 above).

139. Be that as it may, the Court does not fail to observe that Mr Gaska's situation is distinguishable from those where the applicants were confined in their cells around the clock with the exception of one hour of daily outdoor exercise time, and where the cells afforded less than 3 square metres of available personal space (see, for example, *Orchowski v. Poland*, no. 17885/04, § 131, 22 October 2009; *Tunis v. Estonia*, no. 429/12, § 46, 19 December 2013). Indeed, the Vilnius Correctional Home is not a strict-regime prison in the sense that the inmates could move about within it during the day, thus compensating the lack of personal space during the night, and Mr Gaska did not contest this fact. Furthermore, as established by the domestic courts, on whose findings the Government relied, there was no evidence that the overcrowding had an effect on the applicant's health (see paragraphs 37 and 113 above).

140. Taking into account the cumulative effect of those conditions and, in particular, the regime in the Vilnius Correctional Home, the Court does not consider that the conditions of Mr Gaska's detention, although far from adequate, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention.

(v) The case of Mr Traknys

141. Mr Traknys was held in the Lukiškės Remand Prison. As it transpires from the documents before the Court, he spent 608 days in a cell where he had between 1.23 and 2.74 square metres of personal space (see paragraph 40 above). This, for the Court, constitutes flagrant lack of personal space, capable in itself of leading to a violation of Article 3 (see *Logothetis and Others v. Greece*, no. 740/13, § 41, 25 September 2014).

142. Following its visits in 2008 and 2012, the CPT observed that the material conditions varied considerably from one part of the Lukiškės Remand Prison to another. Even so, the CPT has repeatedly reported severe overcrowding in that institution, sometimes to an "outrageous degree". This was further aggravated by deplorable conditions on account of dilapidated and dirty cells and furnishings, a lack of sufficient heating in winter, and poor ventilation (see point 44 of the CPT report, cited in paragraph 65 above; also see point 50 of the CPT report, cited in paragraph 67 above). Those findings by the CPT appear to support the applicant's complaints of insalubrious conditions to the domestic courts (see paragraph 41 above).

143. On the basis of the domestic courts' findings and the CPT reports, the Court further notes that in the Lukiškės Remand Prison inmates spend about twenty-three hours a day in a cell, their only occupation being reading and listening to the radio or watching television if they can afford sets. Moreover, Lithuanian legislation bans prisoners from associating with prisoners from other cells (see points 44 and 48 of the CPT report, cited in paragraph 65 above; also see point 55 of the CPT report, cited in

paragraph 67 above). The Court has repeatedly held that the short duration of 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*, § 151, and *Neshkov and Others*, § 235, both cited above). It does not escape the Court's attention that the situation in the Lukiškės Remand Prison as regards the lack of out-of-cell activities offered to remand prisoners was criticised by the CPT after its visits of 2000, 2004, 2008 and 2012, apparently without any tangible improvements on the part of the Lithuanian authorities. Therefore the Court cannot but share the CPT's conclusion that the cumulative effect of overcrowding and poor material conditions, including lack of out-of-cell activities, could be considered to be inhuman or degrading, especially when persons are being held in such conditions for prolonged periods, for example lasting for up to several months (see point 44 of the CPT report, cited paragraph 65 above). It suffices to note that in such conditions the applicant in the instant case was held for 608 days.

144. The Court lastly turns to the domestic court's finding that the applicant had to spend 201 days with inmates who had prior convictions and ninety-nine days with inmates who smoked, even though that was against the domestic law (see paragraph 42 above). Whilst observing that as regards the applicant's exposure to passive smoking the domestic courts referred in their analysis to the Court's judgment in *Elefteriadis v. Romania* (cited above), in the light of its findings in the three preceding paragraphs the Court cannot but observe that the situation of Mr Traknys was worse than that of Mr Elefteriadis, who was afforded not only daily walks in the prison yard, but also the opportunity to engage in sports activities three times a week, and, above all, a relatively big and not overcrowded cell which had natural light and ventilation (ibid., § 50).

145. Assessing these conditions as a whole, the Court finds that they were in breach of Article 3 of the Convention.

(vi) The case of Mr Zeleniakas

146. In 2009 and 2010 Mr Zeleniakas was held in the Šiauliai Remand Prison, where he spent 328 days in different cells, with between 2.05 and 5.71 square metres of personal space (see paragraph 45 above).

147. According to the Supreme Administrative Court, of that time, for thirty-eight days the applicant was held in conditions that either did not meet the domestic requirements as to space, 3.6 and 5 square metres per person, or were very close to it (see paragraph 49 above). The Court has already held that while the length of the period spent in inadequate conditions may be a relevant factor in assessing the gravity of the suffering caused to a detainee by those conditions, the relative brevity of that period does not automatically exclude the treatment complained of from the scope

of Article 3 of the Convention if all other elements are sufficient to bring it within the scope of this provision (see *Tadevosyan v. Armenia*, no. 41698/04, § 55, 2 December 2008).

148. The materials in the Court's possession, as provided by the Government, do not allow it to establish how many days of those thirty-eight the applicant had less than 3 square metres of personal space in his cell, which could lead to a violation of Article 3 in itself (see paragraph 141 above). That notwithstanding, the Court has also held that other aspects of detention, while not in themselves capable of justifying the notion of "degrading" treatment, are relevant – in addition to the focal factor of overcrowding – in demonstrating that the conditions of detention went beyond the threshold tolerated by Article 3 (see *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005). Even if overcrowding is not so serious as to amount in itself to a breach of Article 3 of the Convention, it can still give rise to a breach of that provision if, combined with other factors – such as lack of privacy when using the toilet, poor ventilation, lack of access to natural light and fresh air, lack of proper heating or lack of basic hygiene – it results in a level of suffering that exceeds that inherent in detention (see *Torreggiani and Others*, cited above, § 69). Accordingly, even if for the remaining 290 days of the applicant's stay in the Šiauliai Remand Prison he was afforded more space than the domestic requirement of between 3.6 and 5 square metres per person, the Court could still find that the conditions of his entire detention in Šiauliai Remand Prison's cells were so deplorable that they infringed his personality rights, that is, his right to dignity, and thus were in breach of Article 3 requirements.

149. In the applicant's case the Court cannot overlook the dire situation in the Šiauliai Remand Prison, as highlighted by the CPT following its visit in 2012, two years after the applicant's stay there. In particular, the entire premises of Šiauliai facility were old and run down. Prisoners were accommodated in dilapidated and damp cells, where in-cell toilets were only partially partitioned and often dirty. In addition, the mattresses and blankets provided to prisoners were soiled and worn out. 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 for them being one hour of outdoor exercise (see points 48, 49 and 55 of the CPT report, cited in paragraph 67 above; also see point 49 of the CPT 2nd General report, cited in paragraph 61 above; contrast *Shkurenko*, cited above). It is very unlikely that Mr Zeleniakas, who had to languish in the Šiauliai Remand Prison for 328 days, remained unaffected by those unsavoury conditions noted by the CPT.

150. Such impoverished conditions of detention, especially as regards hygiene and access to the toilets, coupled with episodes of overcrowding, can without doubt be regarded as giving rise to a breach of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

151. 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

152. The applicants Mr Mironovas, Mr Ivanenkov, Mr Traknys and Mr Zeleniakas claimed between 14,500 euros (EUR) and EUR 87,000 in non-pecuniary damages in respect of the breach of their rights under Article 3 of the Convention.

153. Without wishing to speculate on the amount of compensation for non-pecuniary damage which could be considered just for the applicants' suffering, the Government argued that the sums claimed by those applicants were excessive and exceeded by far the sums awarded for a breach of Article 3 in previous cases against Lithuania (the Government referred to *Savenkovas v. Lithuania* (cited above, § 117), where an award of EUR 5,000 had been made, and to *Karalevičius v. Lithuania* (cited above, § 66), where an award of EUR 3,000 had been made). The Government also referred to the dissenting opinion of Judge Jočienė in the judgment of *Kasperovičius v. Lithuania* (no. 54872/08, 20 November 2012) as to the need to take into account the current economic situation and standard of living in the country.

154. The Government also noted that in respect of some applicants (Mr Mironovas, Mr Traknys and Mr Zeleniakas) compensation for non-pecuniary damage had been awarded by the national courts.

155. The Court finds that the suffering caused to a person detained in conditions that are so poor as to amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention cannot be made good by a mere finding of a violation; it calls for an award of compensation. The amount of time spent by the person concerned in these conditions is the most important factor for assessing the extent of this damage (see *Ananyev and Others*, § 172, and *Torreggiani and Others*, § 105, both cited above).

156. The Court finds that four applicants must have experienced suffering and frustration as a result of the breaches found concerning conditions of their detention.

It notes that Mr Mironovas and Mr Zeleniakas spent under one year in such conditions. Ruling equitably, as required under Article 41 of the Convention, and taking in particular account of the amount of time spent by these applicants in poor conditions, the Court awards each applicant EUR 6,500.

As regards Mr Ivanenkov, the breaches found concerned his detention at the Alytus Correctional Home for a period of about twenty three months. As

regards Mr Traknys, the violation of his rights under Article 3 of the Convention concerns a period of some twenty months.

Ruling in equity, and taking in particular account of the amount of time spent by these applicants in poor conditions, it awards Mr Ivanenkov EUR 10,000 and Mr Traknys EUR 8,000.

B. Costs and expenses

1. The parties' submissions

157. Mr Mironovas claimed EUR 4,000 for legal costs incurred before the Court.

158. Mr Ivanenkov did not submit any claims for costs and expenses.

159. The other two applicants, Mr Zeleniakas and Mr Traknys, claimed EUR 6,500 and EUR 10,000, respectively, for the preparation of their applications to the Court and for assistance with drafting responses to the Government's observations. In support of their claims, they relied on the invoices addressed to those two applicants, which Mr S. Tomas issued on 25 September 2014.

160. As to the applicant Mr Mironovas, the Government disputed the claim of EUR 4,000 for costs and expenses as excessive.

161. The Government also urged the Court to reject the claims for costs and expenses made by the applicants Mr Zeleniakas and Mr Traknys because the invoices enclosed by the applicants' representative had been signed not by the applicants' lawyer, Mr K. Ašmys, as indicated in the authority form, but by Mr S. Tomas, whereas on 8 July 2014 the Court had adopted the decision not to recognise him as a representative pursuant to Rule 36 § 4 (a) of the Rules of Court. 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 considered that in these exceptional circumstances the applicants should have sought alternative representation under Rule 36 § 4 (b).

162. In the alternative, the Government argued that the sums requested were excessive, ungrounded and unsubstantiated. In addition, copies of the payment order for those sums had not been included, thus certain doubts may arise as to whether the applicants had in fact paid them.

2. The Court's assessment

163. The Court notes that the applicant Mr Mironovas, as well as the applicants Mr Zeleniakas and Mr Traknys, had the benefit of legal aid from the Council of Europe for their representation, totaling EUR 850 paid to their representatives, respectively, Mr S. Tomas and Mr K. Ašmys in the present cases.

164. 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 information and documents in its possession and the above criteria, the Court rejects the claims for costs and expenses for the proceedings before the Court.

C. Default interest

165. 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

1. *Decides* unanimously to join the seven applications;

2. *Declares* by a majority the application submitted by Mr Petrulevič inadmissible;

3. *Declares* unanimously the applications submitted by Mr Mironovas, Mr Ivanenkov, Mr Klintovič, Mr Gaska, Mr Traknys and Mr Zeleniakas admissible;

4. *Holds* unanimously that there has been a violation of Article 3 of the Convention in respect of Mr Mironovas, Mr Ivanenkov, Mr Traknys and Mr Zeleniakas;

5. *Holds* by six votes to one that there has been no violation of Article 3 of the Convention in respect of Mr Klintovič and Mr Gaska;

6. *Holds* unanimously
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,500 (six thousand five hundred euros) each to Mr Mironovas and Mr Zeleniakas; EUR 10,000 (ten thousand euros) to Mr Ivanenkov; and EUR 8,000 (eight thousand euros) to Mr Traknys, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

7. *Dismisses* by six votes to one the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 December 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	András Sajó
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pinto de Albuquerque is annexed to this judgment.

A.S.
F.E.P.

PARTLY DISSENTING OPINION OF JUDGE PINTO DE ALBUQUERQUE

1. Like the majority, I voted for a violation of Article 3 of the European Convention on Human Rights (the Convention) with regard to the placement of the applicants Mr Mironovas, Mr Zeleniakas, Mr Ivanenkov and Mr Traknys in overcrowded prisons. But, unlike the majority, I also voted for a violation of the same provision in respect of the applicants Mr Petrulevič, Mr Klintovič and Mr Gaska. This vote requires a detailed explanation to address not only the prison conditions of these applicants separately, but also the national preventive and compensatory remedies applied in connection with their conditions of detention. That is the purpose of this opinion.

Prison overcrowding in Europe

2. Prison overcrowding, as a systemic problem of European criminal justice systems, has been on the agenda of the Court since 2009[1]. The structural nature of the problem and the consequent need to address it in general terms were first acknowledged in *Orchowski*[2] and *Norbert Sikorski*[3], in which the Court concluded that from 2000 until at least mid-2008, the overcrowding in Polish remand centres had revealed a structural problem consisting of a "practice that [was] incompatible with the Convention". The Polish cases were followed by similar judgments with regard to Russian remand prisons[4], Italian prisons[5], Belgian prisons[6], Bulgarian prisons[7], and,

1. The expression "prison overcrowding" is used in the present opinion in its widest possible sense, including not only prison facilities, but all other publicly governed detention facilities, like police stations and prison hospitals. Likewise, I will refer to "prisoners" in order to include people detained on remand, serving a sentence or interned in prison hospitals.

2. *Orchowski v. Poland*, no. 17885/04, § 154, 22 October 2009. The language used is not imperative ("would encourage"). The new domestic remedies were assessed in *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010, and *Łomiński v. Poland* (dec.), no. 33502/09, 12 October 2010.

3. *Norbert Sikorski v. Poland*, no. 17599/05, § 161, 22 October 2009.

4. *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 239, 10 January 2012. The language used is clearly imperative ("must") both with regard to the requirements of the remedies and the deadline by which they should be made available, together with the interim solution for all victims who had lodged their applications with the Court before the delivery of this judgment.

5. *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, 8 January 2013. The language used is imperative ("*devra*") both with regard to the requirements of the remedies and the deadline by which they should be made available. The new domestic remedies were assessed in *Stella and Others v. Italy* (dec.), nos. 49169/09, 54908/09, 55156/09, 61443/09, 61446/09, 61457/09, 7206/10, 15313/10, 37047/10, 56614/10, 58616/10, 16 September 2014.

more recently, Hungarian prisons[8]. In the present case, the European Court of Human Rights (the Court) is once again confronted with the task of determining the mandatory level of human rights protection when Contracting Parties to the Convention are faced with the problem of prison overcrowding, in terms of both the binding standards for material prison conditions and the remedies for lack of compliance with these standards[9].

Compensatory remedies

3. Prison overcrowding is a form of inhuman treatment, the damage to human dignity being the basis of the Convention violation[10]. Several major consequences stem from the objective nature of the violation by the public authorities. Firstly, the Convention violation may be established regardless of any specific faulted conduct (action or omission) or *dolus* on the part of the prison authorities. The absence of any intention to humiliate or debase a prisoner by placing him or her in overcrowded facilities does not rule out a finding of violation of Article 3 of the Convention[11].

4. In addition, the Convention violation does not depend on evidence of any concrete physical or psychological harm or other negative health effects caused to the prisoner subjected to detention in overcrowded facilities, still less on any causal link between the prison authorities' conduct and such

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6. *Vasilescu v. Belgium*, no. 64682/12, § 128, 25 November 2014. The language used is equivocal, using the verbs *recommander* and *devoir*. No deadline is established.

7. *Neshkov and Others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, §§ 281, 292, 27 January 2015. The language used is clearly imperative ("must") with regard to the general measures. The Court adds a binding concrete measure of urgent transfer of Mr Zlatev to another correctional facility "if he so wishes".

8. *Varga and Others v. Hungary*, nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13, 10 March 2015. The language used is imperative, but the verb is different ("should").

9. It is relevant to note that the same diagnosis of the structural nature of the problem and the similar general approach to resolving it were adopted by the United States Supreme Court with regard to the situation of Californian prisons in *Brown, Governor of California, et al. v. Plata et al.*, 23 May 2011, which confirmed a federal court order by three judges to release 46,000 prisoners within two years, in view of the fact that the state of California had 150,000 prisoners in prisons designed for 80,000 people.

10. The Convention violation may even reach the degree of torture, especially when the placement of the prisoner in an overcrowded environment is intentional and, for example, aimed at extracting a confession or exerting pressure on the prisoner or any other person related to him or her to adopt or not a certain behaviour.

11. *Ananyev and Others*, cited above, §§ 117 and 229, *Torregiani and Others*, cited above, § 78, *Vasilescu*, cited above, § 105, *Neshkov and Others*, cited above, § 184, and *Varga and Others*, cited above, §§ 56 and 59. In the light of this case-law, whose origin goes back to *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, the approach of the Lithuanian courts is incorrect (see paragraphs 27, 49 and 59 of the judgment).

harm to the prisoner[12]. A finding that the conditions fell short of the requirements of Article 3 of the Convention gives rise to a non-rebuttable presumption that they have caused non-pecuniary damage to the aggrieved person[13]. The domestic rules and practice governing the operation of the remedy must reflect the existence of this presumption rather than make the award of compensation conditional upon the claimant's ability to prove, through extrinsic evidence, the existence of non-pecuniary damage in the form of emotional distress[14].

5. Furthermore, the procedural rules governing the examination of claims for compensation must conform to the principle of fairness enshrined in Article 6 § 1 of the Convention, including the reasonable-time requirement, and the rules governing costs must not place an excessive burden on the inmate where his or her claim is justified[15].

6. The existence of a Convention violation may be ascertained even where there has been no prior complaint by the prisoner[16]. A compensation claim on the basis of prison overcrowding is not precluded by the fact that it was not anticipated by a complaint to the prison authorities regarding those same prison conditions. The absolute character of the Article 3 prohibition would be incompatible with any such domestic preclusion provision.

7. In view of the particular vulnerability of such claimants, the burden of proof must be softened[17]. While prisoners may be required to make a *prima*

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12. For the incorrect approach of the Lithuanian courts see paragraphs 10, 14, 21, 32, 37, 42 and 59 of the judgment.

13. In spite of the absolute nature of the Article 3 prohibition, the non-rebuttable nature of the presumption has not yet been clearly acknowledged by the Court. In some cases, the Court has admitted that this presumption can be rebutted by the "mitigating cumulative effect" of the conditions of detention, in particular the brevity of the applicant's incarceration or the freedom of movement afforded to inmates and their unobstructed access to natural light and air (see paragraph 122 of the judgment and a critique of this below in this opinion).

14. The technical concept of "presumption" has been used equivocally by the Court: sometimes as a factual assumption of non-pecuniary damage and other times as a legal assumption of degrading treatment (*Orchowski*, cited above, §123, *Ananyev and Others*, cited above, §§ 148 and 219, *Neshkov and Others*, cited above, §§ 190, 204 and 232, and *Varga and Others*, cited above, §§ 74 and 77). Only the first use is correct. It links a proven, known fact (certain prison conditions) with an unproven, unknown fact (non-pecuniary damage). The second use corresponds to a fallacious equation of a fact and a (legal) judgment. To avoid this so-called natural fallacy, I use the concept of presumption in the first sense alone.

15. *Ananyev and Others*, cited above, § 228, *Torreggiani and Others*, cited above, § 97 ("*mettre rapidement fin à l'incarcération*"), and *Neshkov and Others*, cited above, § 184. A domestic compensatory remedy that would take more than a year would definitely not be effective, even if compensation were accompanied by the payment of interest. This relevant timeliness aspect was not considered by the majority in the reasoning of the judgment.

16. For the incorrect approach of the Lithuanian courts see paragraphs 10, 14, 27, 37, 38, 47, 49 and 59 of the judgment.

17. For the correct approach of the Lithuanian courts see paragraphs 12 and 37 of the judgment.

facie case and produce such evidence as is readily accessible, such as a detailed description of the impugned conditions, witness statements, or complaints to and replies from the prison authorities or supervisory bodies, it then falls to the authorities to refute the allegations. In such instances they alone have access to evidence capable of corroborating or definitively refuting the claims. Hence, the presentation of *prima facie* evidence by the claimant suffices to shift the burden of proof onto the prison authorities to justify the prison conditions. In the absence of a sufficient reply from the prison authorities, the facts of the complaint must be considered established. Moreover, a *prima facie* grounded claim of prison overcrowding also triggers an obligation to investigate *ex officio* the denounced human-rights-incompatible situation and thus to collect available evidence in the possession of the prison authorities[18].

8. Finally, the statutory limitation period for bringing a claim for damages must be sufficiently adapted to the vulnerable circumstances of victims of human rights violations in the prison context, such that the limitation period starts to run only when he or she is no longer in a position of unsurmountable difficulty to access the justice system and lodge his or her claim[19]. When dealing with complaints in relation to conditions of detention that do not simply relate to a specific event, but concern a whole range of problems which have affected a prisoner throughout his or her incarceration, regarding overcrowding, sanitary conditions, the temperature in the cells and a lack of adequate food and medical treatment, these complaints should be treated as a continuing situation, even where the person concerned has been transferred between various detention facilities[20]. Accordingly, the statutory limitation period starts to run, in this specific scenario of a continuing situation, only after the termination of the entire period of incarceration.

The criteria for ascertaining the existence of a Convention violation

9. Resocialisation is the primary purpose of imprisonment of human beings. Prison overcrowding, with its physical, psychological and social consequences, is the first obstacle to the implementation of any resocialisation program. Adequate personal living space is a *sine qua non*

18. *Orchowski*, cited above, § 131, *Ananyev and Others*, §§ 123, 228 and 229, *Torreggiani and Others*, cited above, §§ 72-73, *Vasilescu*, cited above, § 101, and *Neshkov and Others*, cited above, §§ 184 and 196. Here again, the case-law is not uniform. One thing is to require the prison authorities to present proof to the contrary, as in *Vasilescu*, another is to require them to produce any pertinent documents or information, as in *Torreggiani and Others*, and another is to draw inferences as to the well-foundedness of the applicant's allegations from the inertia of the prison authorities to submit convincing evidence, as in *Ananyev*.

19. For the correct approach of the Lithuanian courts, see paragraph 9 of the judgment.

20. *Neshkov and Others*, cited above, § 199.

condition for the resocialisation of prisoners[21]. This absolute minimum space is not essentially different for mentally fit remand prisoners, prisoners serving sentences for the first time or recidivists, on the one hand, and interned mentally unfit persons, on the other, since there is no objective reason from an Article 3 perspective to submit the former to a higher standard of protection than the latter, still less to distinguish between mentally fit prisoners according to the harshness of their sentence or to whether they have been remanded or finally convicted[22]. By the same token, there is no plausible reason to differentiate significantly between the needs in terms of personal living space of prisoners in individual cells, multi-occupancy cells and dormitory-type rooms[23].

10. In the absence of any universal standard, the International Committee of the Red Cross (ICRC) has recommended 5.4 square metres per person in single-cell accommodation and 3.4 square metres per person in shared or dormitory accommodation[24]. In the European penological context, the standard is more generous. The minimum living space of each prisoner in all these situations should not be less than 6 square metres in a single-occupancy space and 4 square metres per person in a shared space, as the Committee for the Prevention of Torture (CPT) has stated[25]. Thus, this bare minimum of personal living space in prison facilities is an absolute condition whose non-fulfilment entails *per se* a violation of Article 3[26].

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21. As the UNODC Handbook on strategies to reduce prison overcrowding (2010) has indicated, prison overcrowding is "the root cause of a range of challenges and human rights violations in prison systems worldwide, threatening, at best, the social reintegration prospects, and at worst, the life of prisoners".

22. This is the current situation in Lithuanian law, which differentiates without plausible reason between the situation of these prisoners (see paragraphs 54 and 55 of the judgment). This legal framework has been repeatedly criticised by the CPT (see the reports cited in paragraphs 65 to 67 of the judgment).

23. For the differentiated approach of the Lithuanian courts see paragraph 42 of the judgment and for a critique of it by the CPT see paragraph 65-67 of the judgment.

24. See the *ICRC Water, Sanitation, Hygiene and Habitat in Prisons Supplementary Guidance*, 2012. The ICRC adds that the appropriate amount of space cannot be assessed by a simple measuring of space alone, other factors having to be taken in account, such as the condition of the building, the amount of time prisoners spend in the sleeping area, the number of people in that area, the other activities occurring in the space, the ventilation and light, the facilities and services available in the prison, and the extent of supervision available.

25. See the Commentary to Rule 18 of the European Prison Rules.

26. *Ananyev and Others*, cited above, § 145-148, *Torreggiani and Others*, cited above, § 76, and *Vasilescu*, cited above, § 100. In the *Ananyev and Others* case, the Court set out the relevant standards for deciding whether or not there had been a violation of Article 3 on account of a lack of personal space. In particular, the Court will have regard to the following three elements: (a) each detainee must have an individual sleeping place in the cell; (b) each must dispose of at least 3 square metres of floor space; and (c) the overall surface area of the cell must be such as to allow detainees to move freely between items of furniture. In the Romanian cases, the Court's case-law evolved to a more demanding criterion, that of at least 4 square metres (*Apostu v. Romania*, no. 22765/12, § 79,

11. The lack of sufficient personal living space cannot be offset by the presence of other material conditions, such as personal sleeping space, access to natural light during the day and electric lighting at night, ventilation, heating, proper hygiene conditions and adequate food, and even less by an absence of negative factors, such as any adverse health effects on the prisoner or any *dolus malus* on the part of the prison authorities. Otherwise, a "mitigating cumulative effect" approach would water down the absolute Article 3 standard, inviting the prison authorities to go down a slippery slope with no objective limits[27]. This evidently does not mean that, where the prisoner has had at his or her disposal sufficient personal living space, other aspects of the material conditions of detention may not lead to the finding of a violation of Article 3. Whenever the adequate size of the personal living space is coupled with inadequate conditions of sleeping, lighting, ventilation, heating, sanitation and health care, the ill-treatment of the prisoner must still unequivocally be censured and duly compensated for.

12. The belatedness of a prisoner's application regarding a breach of his or her Article 3 rights cannot be counted as a mitigating factor in relation to the violation[28]. All present and past alleged violations must be ascertained and, if established, remedied by the domestic authorities, even retrospectively in respect of violations of Article 3 which predated the introduction of the domestic remedies[29], including in those cases where the

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3 February 2015). This point of uncertainty of the case-law is well exposed in Judge Sicilianos' separate opinion in *Mursic v. Croatia*, no. 7334/13, 12 March 2015.

27. The Lithuanian courts have embarked frequently upon such "mitigating cumulative effect" assessment (see paragraphs 21, 26, 27, 32, 35, 37 and 59 of the judgment). The majority followed this approach in the cases of Mr Klintovič and Mr Gaska (paragraphs 134 and 139 of the judgment). I note that the majority uses the "cumulative effect" approach in two very different senses: on the one hand, the "cumulative effect" of mitigating factors serves to attenuate the Article 3 obligations, in order to exonerate the respondent Government of any Convention liability, as in the cases of Mr Klintovič and Mr Gaska; on the other hand, the majority share the CPT's conclusion that the "cumulative effect of overcrowding and poor material conditions, including lack of out-of-cell activities, could be considered to be inhuman or degrading" (paragraphs 143 and 148 of the judgment). I cannot be in agreement with this equivocal use of terminology.

28. As in the case of Mr Petrulevič (see paragraph 14 of the judgment) and Mr Zeleniakas (paragraph 47 of the judgment).

29. *Ananyev and Others*, cited above, § 231, and *Neshkov and Others*, cited above, § 289. Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance and urgency of complaints about inhuman or degrading treatment, the Court did not consider it appropriate to adjourn the examination of similar cases pending the implementation of the relevant measures by the respondent State, in *Ananyev and Others*, cited above, § 236, *Neshkov and Others*, cited above, § 291, and *Varga and Others*, cited above, § 116. Yet in *Torreggiani and Others*, cited above, § 101, it decided that complaints of which notice had not yet been given to the government would be frozen. I voted for this approach with many doubts. The Court must at all cost avoid the impression that it has a double standard for the reform of European prisons, one very demanding for East-European countries and another, more tolerant, for the Western-European countries.

Court has taken a decision of "retroactive inadmissibility" in respect of the prisoner's complaint because of a failure to exhaust new remedies introduced in the domestic legal order after the complaint was taken to Strasbourg[30].

The criteria for determining the amount of the compensation

13. Prison overcrowding as an Article 3 violation is not sufficiently remedied by a mere acknowledgment of the violation. This is a necessary but not a sufficient part of the satisfaction due to the victim of the human rights breach[31]. Either prison overcrowding is sufficiently serious to attain a form of inhuman treatment, and then it must be financially compensated for; or it does not reach such a degree of seriousness, and then it is out of the scope of Article 3. What is contradictory is to conclude that prison overcrowding constitutes inhuman treatment and therefore lies within the scope of the Convention, but that it does not deserve financial compensation.

14. The criteria for determining the amount of the compensation do not fall within the discretion of the national authorities. There are three basic principles that any compensatory remedy must adhere to. Firstly, the individualisation principle, i.e., the amount of the compensation must correspond to the concrete situation of each prisoner; secondly, the holistic principle, i.e., the amount of the compensation must take into account the "aggravating cumulative effect" of deficient material prison conditions, such as a lack of personal sleeping space, lack of access to natural light during the day and electric lighting at night, lack of ventilation and heating, improper hygiene conditions or inadequate food or health care[32]; and thirdly, the resocialisation principle, i.e., the amount of the compensation

30. *Stella and Others* (dec.), cited above, §§ 45 and 57. Only those applicants in respect of whom the domestic statutory limitation period has not yet expired and who, on the date of adoption of the inadmissibility decision, still have adequate time to prepare and bring a compensation action for the infringement of personal rights, can reasonably be expected to make use of it (*Latak* (dec.), cited above, § 85).

31. *Ananyev and Others*, cited above, § 225.

32. The ground-breaking text of the CPT on the "detrimental cumulative effect" of prison conditions in overcrowded facilities is paragraph 50 of the Second General report (CPT/Inf (91) 3): "The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners". The Court has accepted this test since *Dougoz v. Greece* (no. 40907/98, § 46, ECHR 2001-II) and has repeatedly held that overcrowding may be aggravated by other prison conditions (for example, *Orchowski*, cited above, §§ 132-135, *Ananyev and Others*, cited above, §§ 142 and 151, *Vasilescu*, cited above, §§ 101-104, *Neshkov and Others*, cited above, § 235, and *Varga and Others*, cited above, §§ 72, 78, 89-92).

must take into account the existence and degree of implementation of the individual sentence plan[33].

15. The basic compensatory principle is the imperative of individualised compensation, which implies that pre-determined, flat or fixed daily compensation rates will be inadmissible. An "individualised assessment" of the concrete situation of each prisoner requires that the duration and global severity of detention conditions be taken in account[34]. The longer the detention conditions last below Article 3 standards, the graver the violation and the higher the daily compensation rate must be[35]. Likewise, the longer the period of daily detention under those standards, the graver the violation and the higher the corresponding daily rate[36]. In other words, time spent in Convention-incompatible prison conditions counts in two different ways: the time spent each day and the whole period of time spent in detention.

16. Furthermore, the young age of a prisoner cannot be held against the claimant, as in the case of Mr Petrulevič[37]. On the contrary, the youth as well as the old age of a prisoner will be an aggravating factor in the calculation of compensation. Other aggravating factors are the breaching of hygiene requirements, lack of access to natural light during the day and electric lighting at night, inadequate ventilation and heating, any negative health effects on the prisoner[38] and any *dolus malus* on the part of the prison authorities.

17. In the case of post-trial detention of mentally unfit prisoners, as well as mentally fit prisoners sentenced to a term of five years or more, the inexistence of an individual sentence plan or any serious shortcomings in its implementation will be major aggravating factors. Personal living space in the prison should be viewed in the context of the applicable resocialisation

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33. The cornerstone of a penal policy aimed at resocialising prisoners is the individualised sentence plan, under which the prisoner's risk and needs in terms of health care, activities, work, exercise, education and contacts with the family and outside world should be assessed (Rule 103.8 of the 2006 European Prison Rules and the commentary to Rule 103 in the relevant Explanatory Report; and see also the opinions joined to *Valiuniene v. Lithuania*, no. 33234/07, 26 March 2013, and *Khoroshenko v. Russia (GC)*, no. 41418/04, 30 June 2014).

34. *Ananyev and Others*, cited above, § 225, *Torreggiani and Others*, cited above, § 105, and *Neshkov and Others*, cited above, § 299.

35. *Ananyev and Others*, cited above, § 172, and *Torreggiani and Others*, cited above, § 105.

36. For the correct approach of the Lithuanian courts see paragraph 13 above, mentioning the Supreme Administrative Court's conclusion in the case of Mr Petrulevič that detention for a period of twenty-three hours a day in overcrowded cells went beyond the inevitable element of discomfort connected to detention. Yet in the case of Mr Zeleniakas, a stroll for one hour per day was considered by the same Supreme Administrative Court as sufficient (see paragraph 49 above).

37. See paragraph 14 of the judgment above.

38. These factors were also considered to the detriment of Mr Petrulevič (see paragraph 14 of the judgment).

regime[39]. The inexistence of health, exercise, education and work programmes, or the existence of deficient programmes, will worsen the prisoner's situation to such a point that compensation must be correspondingly raised. Intimately linked to this aspect, any breach of the rules on the separation of prisoners is also a factor to be considered when compensating them[40].

18. Consideration of the country's economic situation is an intrinsic limitation of monetary compensation. While an economic crisis in itself does not justify Article 3 violations – the Contracting Parties to the Convention having the obligation to comply with its requirements even in hard times – it is understandable for the amounts awarded to the victims of these violations to be reasonably aligned with the living standard of the country[41]. In any event, economic difficulties do not relieve them of their obligation to organise the penal system in such a way as to ensure respect for the dignity of prisoners[42].

19. Finally, compensatory remedies are not the sole possible satisfaction for prison overcrowding. Although not mentioned in the present case, the reduction of a sentence may be an appropriate way of remedying the Convention breach[43].

Preventive remedies

20. Where the fundamental right to protection against torture and inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective[44]. The majority considered it useful to provide the Lithuanian

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39. *Varga and Others*, cited above, §§ 15, 16 and 51.

40. See for the correct approach of the Lithuanian courts, paragraph 42, where it is mentioned that in the case of Mr Traknys the Supreme Administrative Court considered that he had been placed with inmates who smoked and most importantly with previously convicted inmates, even though it was his first time in prison.

41. That does not mean that I can accept the highly speculative argument of the Government that large compensation amounts could risk encouraging people to commit criminal offences in order to be kept in inadequate prisons and afterwards secure the desired compensation (paragraph 77 of the judgment).

42. According to *Ananyev and Others*, cited above, § 117, the scarcity of means available to the State should not be accepted as mitigating its liability and was thus irrelevant in assessing damages under the compensatory remedy. Here again, the position of the Court is much more tolerant in *Stella and Others* (dec.), cited above, § 62.

43. A reduced prison sentence may offer adequate redress for deficient material conditions of detention, provided the reduction is carried out in an express and measurable way. In spite of the doubts raised by *Ananyev and Others*, cited above, § 222-226, the Court has accepted this practice in *Stella and Others* (dec.), cited above, §§ 60-63, *Neshkov and Others*, cited above, § 287, and *Varga and Others*, cited above, § 109.

44. *Ananyev and Others*, cited above, §§ 96-98 and 214, and *Neshkov and Others*, cited above, § 181. On general remedies to the problem, see Max Planck Institute for Foreign

authorities with certain guidance on preventive remedies[45]. I agree entirely with this approach, but I find insufficient the considerations developed.

21. In order to prevent or put an end to an Article 3 violation, short-term action should be taken through the immediate transfer of the prisoner to another prison facility[46]. If this is not possible, an appeal to an independent body should be available to address the prisoner's complaints. This authority must (a) be independent of the authorities in charge of the prison system; (b) secure the inmates' effective participation in the examination of their grievances; (c) ensure the fair, contradictory and speedy handling of the inmates' complaints, but not necessarily an oral and public hearing; (d) have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints; and (e) be capable of rendering binding and enforceable decisions[47].

22. Moreover, the European Prison Rules require that the national law set specific minimum requirements in respect of the accommodation provided for prisoners, with particular regard being had to the floor space, cubic content of air, lighting, heating and ventilation (Rules 18.1-18.3). It is therefore appropriate to establish the maximum capacity (*numerus clausus*) for each prison through the definition of space per inmate as a minimum of square and possibly cubic meters[48]. Hence, prison capacity must not be assumed to be a "slippery concept" whose elasticity can be used to manipulate prison reality and make overcrowding more or less apparent. Preventive remedies should be immediately available if and when the prison capacity minima are disregarded.

23. An integrated approach to the problem of prison overcrowding requires long-term solutions as well, including in particular changes to the legal framework, practices and attitudes. Penal policies that over-criminalise and over-punish must be subjected to transformative change. Decriminalisation of petty offences and offences committed by minors, elimination of life sentences and mandatory minimum sentencing, a reduction in penalties for minor offences, an increase in punishment suspension, parole and early release possibilities, a reduction in custodial

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and International Criminal Law, *Prison Overcrowding – Finding Effective Solutions, Strategies and Best Practices Against Overcrowding in Correctional Facilities*, 2011.

45. See paragraph 101 of the judgment.

46. *Vasilescu*, cited above, § 72. Thus, I cannot agree with the majority that the authorities' decisions on the transfer of prisoners between prisons are "to a great extent discretionary" (paragraph 103 of the judgment), since these decisions are, as any other referring to the adequateness of the prisoners' detention conditions, subject to the supervision of the Court.

47. *Ananyev and Others*, cited above, §§ 100-106, 214-216, 219, *Torreggiani and Others*, cited above, § 97, *Stella and Others* (dec.), cited above, § 49, and *Neshkov and Others*, cited above, §§ 183, 282-284.

48. The Court accepted the CPT's proposal with regard to Russian remand centres (as in *Ananyev and Others*, cited above, § 205). There is no reason not to apply this well-founded proposition to all other prisons in Europe.

measures, diversion of mentally-ill offenders and drug-addicted offenders to therapy thus replacing the autopilot cycle of arrest, prosecution and incarceration – all these are well-known alternatives to a strict penal policy[49]. As the Court itself put it, "[i]f the State is unable to ensure that prison conditions comply with the requirements of Article 3 of the Convention, it must abandon its strict penal policy in order to reduce the number of incarcerated persons or put in place a system of alternative means of punishment."[50]

24. The building of new prisons or the increasing of prison places should be considered a measure of last resort[51]. The proven net-widening effect of this policy choice must not be overlooked. As the CPT once stated, "[t]o address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates"[52].

The application of Convention standards to the present case

25. The majority acknowledge that the compensation awarded to the applicant Mr Petrulevič is lower than that which the Court would award for improper conditions of detention[53]. In fact, the Court would normally have awarded the applicant three times as much, having regard to the duration and general conditions of his detention. In the very similar cases of the applicants Mr Mironovas and Mr Zeleniakas, the Court fixed the just satisfaction at 6,500 euros, well above the amount of 2,300 euros determined by the domestic courts for Mr Petrulevič. This huge difference is unacceptable.

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49. See for example the Committee of Ministers Rec (99)22 et Rec (2006)13, and *Torreggiani and Others*, cited above, § 94, *Stella and Others* (dec.), cited above, §§ 9-12, 11-14, 21-24, and 51-52, and *Varga and Others*, cited above, § 105. Hence, I cannot accept the majority's limitative views on paragraph 104 of the judgment, which reproduces the argument of *Ananyev and Others*, cited above, § 111, and *Varga and Others*, cited above, § 63, that the improvement of the personal situation of the applicants in overcrowded facilities would necessarily mean that it would be to the detriment of other prisoners. This would only be true if two conditions obtained at the material time: that all prisons were above their capacity limit in Lithuania and that all decarceration possibilities, namely in terms of suspended punishment and parole, had been exhausted. The Government did not put forward any corresponding evidence of these conditions.

50. *Orchowski*, cited above, § 153.

51. *Stella and Others* (dec.), cited above, § 52.

52. See paragraph 14 of the 7th General Report (CPT/Inf (97) 10).

53. See paragraph 95 of the judgment, in conjunction with paragraph 156.

26. As a matter of fact, I will not dispute that Lithuania has gone through a difficult economic situation. As a matter of law, I am also ready to admit that the standard of living in the country must be taken into account when determining the level of compensation for an Article 3 violation and that the finding of facts and the fixing of compensation are, in principle, the domain of domestic courts[54]. What I cannot follow is the conclusion of the majority in differentiating between the applicants and in treating Mr Mironovas and Mr Zeleniakas much better than Mr Petrulevič. Their factual conditions were very similar. If there was any difference between their situations, it would be that Mr Petrulevič was placed for one entire year in worse prison conditions than Mr Mironovas or Mr Zeleniakas. Since the economic situation of Lithuania was not a valid argument on the basis of which to award the applicants Mr Mironovas and Mr Zeleniakas a lower amount of compensation than was usual under the Court's standards[55], the same argument should not be put forward in order to justify the very low amount received by Mr Petrulevič from the domestic courts. Thus, Mr Petrulevič must be considered a victim, in so far as the compensation paid to him at the national level was clearly insufficient under Convention standards[56].

27. Applying the above-mentioned criteria to the cases of the applicants Mr Petrulevič, Mr Klintovič and Mr Gaska, I cannot but find that there has been a violation of Article 3 on the basis of the conditions of their detention. Mr Petrulevič stayed for at least 361 days in cells where he had less than 3 squares metres of personal space, during periods of twenty-three hours per day. Mr Klintovič stayed for one month in a dormitory-type room where he had less than 2 square metres of personal space, over four months in a dormitory-type room where he had 2.03 square metres of personal space and almost four years in a dormitory-type room where he had between 2.27 and 2.57 square metres of personal space. Mr Gaska stayed for almost four months in a dormitory-type room where he had 2.4 square metres of personal space. The possibility for Mr Klintovič and Mr Gaska to move about freely during the day and to have access to natural light and air, and still less the inexistence of evidence that these violations had actually caused negative effects on the applicants' health, are not factors capable of downgrading the absolute character of the Convention violations[57].

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54. *Ananyev and Others*, cited above, § 221.

55. The domestic courts explicitly rejected a hospital's lack of financing as a justification for its flaws in the case of Mr Mironovas (see paragraph 20 of the judgment).

56. In other words, the compensation awarded by domestic authorities was much lower than the Court's practice (*Ananyev and Others*, cited above, § 230, and *Neshkov and Others*, cited above, § 288).

57. Therefore, I cannot accept the reasoning or conclusions of paragraphs 135, 136, 139 and 140 of the judgment.

Conclusion

28. Prison overcrowding is a plague throughout Europe which reflects the inappropriateness of criminal and penal policies in most countries[58]. Systemic deficiencies require lasting, structural solutions and are not compatible with a temporary, superficial *toilettage* of the prison scenario. When those deficiencies persist, the victims must have at their disposal adequate remedies of both a compensatory and a preventive nature. That was not the case for the applicants Mr Petrulevič, Mr Klintovič or Mr Gaska.

58. See "Council of Europe Annual Penal Statistics, Prison Stock on 01 Jan. 2014 & 2015".