

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

SECOND SECTION

CASE OF KASPEROVIČIUS v. LITHUANIA

(Application no. 54872/08)

JUDGMENT

STRASBOURG

20 November 2012

FINAL

20/02/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Kasperovičius v. Lithuania,

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

Ineta Ziemele, *President,*
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 54872/08) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Aleksandras Kasperovičius ("the applicant"), on 24 October 2008.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged that the conditions of his detention at the Anykščiai Police Remand Facility had been degrading and in breach of Article 3 of the Convention.

4. On 21 February 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Vilnius.

6. In October 2006 the applicant was detained at the Anykščiai Police Detention Facility (hereinafter – "the Anykščiai Facility") in cell No. 3. From 9 to 11 October he shared the cell with another person, and from 12 to 16 October he was held alone. The detention facility contained seven cells in total.

7. The applicant complained to the administration of the Anykščiai Facility that the conditions of his detention had been appalling. In their letter of reply dated 6 November 2006, they informed the applicant that because the cell in which he had been held was situated at semi-basement level, it was technically impossible for it to have a window through which natural light could enter. They also explained that in order to install sinks and toilets in the cells, full-scale renovation would be required, but said that this was precluded owing to a lack of financial resources.

8. The applicant then lodged a complaint, the content of which is unknown to the Court, with the Anykščiai District Prosecutor's Office. In its reply dated 16 November 2006, the Prosecutor's Office conceded that some of the applicant's allegations were true: the Anykščiai Facility had indeed not met proper "norms of hygiene and functioning". They said that the Government had been informed about the fact and that the building of a new facility was planned.

9. The applicant lodged a further complaint with the Ombudsman, arguing that he had been held in a cell without a sink or toilet. The cell also lacked a window, so there had been no natural light or fresh air.

10. The head of the Anykščiai Facility informed the Ombudsman that the building had been constructed in 1926 and thus it had been impossible to install toilets and sinks in the cells. He explained that detainees were taken to a communal toilet at the end of the corridor and that "each cell had a bucket for the night". Detainees could also take drinking water to their cell.

11. On 23 January 2007 the Ombudsman found the applicant's complaint valid. He noted that in March 2006 health care specialists had pointed out "over and over again" (*eilinį kartą*) that the cells lacked sanitary units as well as natural light, although the artificial lighting met domestic legal norms. The old air vents were inadequate and the air conditioning system was ineffective. However, the facility administration was not to blame for the insufficient funding that had precluded the possibility of improving conditions in the facility.

12. The applicant then initiated proceedings before the Panevėžys Regional Administrative Court seeking compensation for non-pecuniary damage, arguing that he had been held in degrading conditions at the Anykščiai Facility. In particular, his cell had had no built-in toilet, so he had had to use a bucket. Nor did the cell have a sink, so he had suffered from a lack of drinking water. Furthermore, as a result of the inadequate lighting and the lack of fresh air, he had suffered constant headaches and his eyes had become sore. The applicant claimed 210,000 Lithuanian litai (approximately 61,000 euros) in non-pecuniary damages. He also claimed that his rights under Article 3 of the Convention had been violated.

13. In reply to the lawsuit, the Anykščiai Facility acknowledged that the establishment did not meet the domestic legal hygiene requirements, but argued that its administration was not to blame for the lack of funding that

had caused the problem and that the construction of a new remand facility was planned.

14. On 19 October 2007 the Panevėžys Regional Administrative Court dismissed the applicant's claims as unfounded. The court acknowledged that the conditions at the Anykščiai Facility had been unacceptable, particularly as the cells lacked sinks and toilets and inmates had to be taken to a communal toilet and had to take water to their cells. Moreover, not all cells had natural light, the air came through old vents and the air conditioning system was ineffective. Nevertheless, the court held that the facility's administration could not be held liable for those deficiencies because the State had not allocated sufficient financial resources to improve the situation.

15. The applicant appealed against the judgment, and on 11 July 2008 the Supreme Administrative Court granted the appeal in part, acknowledging that the conditions of the applicant's detention had been unacceptable. The court noted that the Anykščiai Facility had not challenged the applicant's claim that while detained, he had had to relieve himself in a bucket at night. The court considered that fact degrading. The court also found it established that the applicant had been held in a cell without a sink, and that his cell had had no natural light or adequate ventilation, which had had a negative effect on his mental health (*sukėlė neigiamus išgyvenimus*). On these points the court found that certain domestic regulations on hygiene standards in detention facilities - providing that cells should have natural light and that detainees should be able to use a toilet in conditions that were not degrading - had been breached. The court conceded that degrading conditions of detention could in theory amount to a violation of Article 3 of the Convention. With regard to the applicant's case, the court held that the conditions in which he had been held had "approached the threshold of a violation of Article 3 of the Convention". Nevertheless, the applicant had been held for only a short time, he was 44 years of age and there was no evidence that the conditions at the detention facility had affected his [physical] health. Nor was there any indication that the detention facility administration had intended to humiliate the applicant. Certain hardships, such as a lack of privacy, were to be considered unavoidable for those who were deprived of their liberty. In the light of the above-mentioned considerations, the Supreme Administrative Court held that, in the applicant's case, the minimum level of severity within the meaning of Article 3 of the Convention had not been reached.

16. As to the applicant's claim in respect of non-pecuniary damage, the Supreme Administrative Court referred to the case-law of the European Court of Human Rights, noting that in some cases the finding of a violation was recognised as sufficient just satisfaction. It also noted that the applicant had instituted court proceedings for damages nine months after the end of

his detention in the police facility, by which time the effects of the negative experience would have diminished to a certain extent. Emphasising that in the instant case there had been no violation of Article 3 of the Convention, as well as the fact that the poor detention conditions were a result of limited financial resources, the Supreme Administrative Court rejected in its entirety the applicant's claim for pecuniary compensation for the non-pecuniary damage he had sustained.

17. When submitting their observations on the admissibility and merits, the Government provided the Court with a copy of the schedule of the Anykščiai Facility, which showed that at the relevant time the inmates were to be taken for an hour's walk once a day.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The Civil Code provides:

Article 6.250. Non-pecuniary damage

"1. Non-pecuniary damage shall be deemed to be a person's suffering, emotional distress, inconvenience, mental shock, emotional depression, humiliation, damage to reputation, diminished opportunity to associate with others, etc., evaluated by a court in pecuniary terms.

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

19. In case no. A[143]-1966/2008 the Supreme Administrative Court acknowledged that a person who had been detained in improper, unsanitary conditions had sustained non-pecuniary damage.

20. The Regulations applicable to the activities of detention facilities at police stations, approved by Order no. 88 of the Ministry of the Interior on 17 February 2000, provide that "detainees shall have a right to use the lavatory in conditions that do not degrade their honour and dignity" (point 76). They also provide that "the [detainees] shall be taken by a guard from the cells that lack sanitary units to a lavatory (...). During the changing of the guards' shifts, any other traffic on the remand facility premises is forbidden" (point 219).

21. Hygiene Norm HN 37:2002 "Detention facilities. Rules for construction and operation", approved by Ministry of Health Order no. 215 of 17 May 2002, reads, in so far as relevant, as follows:

"1. This hygiene norm applies to all newly constructed, reconstructed, renovated and operational police station detention facilities.

2. The hygiene norm prescribes the main hygiene requirements applicable to the construction of police station detention facilities, providing a safe and healthy living environment for the detainees and a safe and healthy working environment for the employees and officials.

3. The hygiene norm must be observed by all persons who design, equip or operate in the detention facilities and the detainees ...

22. In operating detention facilities, natural light and air circulation shall be ensured in the cells by constructing clear glass windows which can be opened ...

28. The cells and the lock-up room shall contain a sanitary unit (a lavatory and a washbasin). In the cells the sanitary unit shall be separated by a 1.2 metre high barrier ..."

III. RELEVANT INTERNATIONAL DOCUMENTS

22. Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe on the European Prison Rules, adopted on 11 January 2006, reads as follows:

Basic principles

"1. All persons deprived of their liberty shall be treated with respect for their human rights. ...

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources. ..."

Scope and application

"10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction. ..."

Allocation and accommodation

"...

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2 In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law."

Hygiene

"19.1 All parts of every prison shall be properly maintained and kept clean at all times ...

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy."

23. The Committee for the Prevention of Torture and Inhuman or Degrading Treatment (hereinafter referred to as "the CPT") visited Lithuania from 17 to 24 February 2004. Its report reads as follows:

Police detention centres

"34. In its first report to the Lithuanian authorities, drafted following its visit in 2000, the CPT was critical of conditions of detention in police detention centres; with a view to improving the situation in the establishments concerned, it made a number of specific recommendations.

In their follow-up report (dated September 2001), the authorities acknowledged that of the 47 police detention centres in Lithuania, only eight (i.e., 17%) met "the requirements set forth by Hygiene Norm HN 37-1997"; it was considered necessary to secure sufficient resources in order to renovate or replace the other detention centres. Nevertheless, by the time of the 2004 visit, the proportion of detention centres which conformed to the requisite standards remained low (20%). As the Seimas (Parliamentary) Ombudsman has recently pointed out, 'legal acts have been adopted on the improvement of living conditions of inmates in police commissariat detention establishments, however the real results are expected only in a couple of years since the implementation of the program directly depends on State funding'.

The 2004 visit confirmed that many of the CPT's key recommendations concerning conditions of detention in police detention centres have yet to be implemented.

35. The material conditions under which detained persons (in police custody, on remand, or sentenced) were being held in the police detention centres in Kaunas and Marijampolė were totally unacceptable. Detainees were locked up ... with little or no access to natural light and, in many cases, dim artificial lighting. A tap placed directly above the minimally partitioned lavatory was the only source of drinking water. In certain cells, persons were obliged to relieve themselves in a bucket in the direct presence of their cellmates. The ventilation system which had been installed in

> Kaunas since the visit in 2000 could scarcely counter the effects of the above-mentioned conditions on the air in the cells ...
>
> The cumulative effect of the very poor material environment and the impoverished regime could be described as inhuman and degrading, especially considering that persons were being held under such conditions for prolonged periods."

24. After a further visit to Lithuania from 21 to 30 April 2008, the CPT delegation noted that efforts were being made to improve conditions in certain police detention centres. Particular mention was made of the recent substantial renovation of the detention facilities at Kaunas City Police Headquarters, which had been the subject of severe criticism by the CPT after the 2000 and 2004 visits. During the 2008 visit, the delegation observed very good material conditions in that establishment. The authorities informed the delegation at the outset of the visit that major renovation had also been carried out in police detention centres at Klaipėda and Panevėžys. Indeed, when visited by the delegation, the latter establishment was found to offer good detention conditions. The delegation was also informed that renovation work was planned in several other police detention centres, in the context of the "Police Development Programme for 2007-2011" (paragraphs 24 and 25 of the CPT report).

25. However, the CPT noted that material conditions in the other police detention centres visited (Jonava, Rokiškis, Kupiškis, Šiauliai and Trakai) displayed a number of major shortcomings and could in some cases be considered inhuman and degrading. The majority of cells seen by the delegation were in a poor state of repair and filthy. Detainees often had little or no access to natural light, and the cells had dim artificial lighting and poor ventilation. At Jonava, a tap placed directly above the minimally partitioned and unhygienic in-cell toilets was the only source of drinking water. Furthermore, as was the case during previous CPT visits, most detainees in police detention centres were locked in their cells for the majority of the day, their only diversions consisting of conversing with their cellmates or, in some detention centres, watching TV. For the CPT, "such a state of affairs was totally unacceptable" (paragraph 26 of the CPT report).

26. More generally, the CPT called upon the Lithuanian authorities to step up their efforts to bring conditions of detention in all police detention centres to an acceptable level. In particular, measures had to be taken to ensure first that access to natural light and artificial lighting, as well as ventilation, was adequate; secondly that all detainees had ready access to drinking water in salubrious conditions and were provided with basic hygiene products; and thirdly that the state of repair and hygiene in the cells and the communal sanitary facilities was adequate (paragraph 27 of the CPT report).

27. After a further visit to Lithuania from 14 to 18 June 2010, the CPT concluded:

Conditions of detention

"25. Material conditions of detention in the three police detention centres visited ranged from very good (Kaunas) to satisfactory (Wing 2 at Klaipėda) to poor − and in some areas very poor (Wing 1 at Klaipėda and Vilnius).

Kaunas City Police Detention Centre had been renovated prior to the 2008 visit and the CPT's report commented favourably on the material conditions. The delegation which carried out the 2010 visit observed that those conditions remained of a very good standard.

Klaipėda City Police Detention Centre had been partially refurbished. In the renovated wing of the building (Wing 2), material conditions were satisfactory on the whole. Nonetheless, access to natural light left something to be desired, and the toilets were insufficiently partitioned. Conversely, conditions in the non-renovated wing (Wing 1) were very poor. The cells were in a dilapidated state, dirty and damp, and the same was true of the mattresses and blankets. Further, access to natural light, artificial lighting and ventilation were limited, and the toilets lacked a partition and were malodorous. As for the electrical installations, they seemed hazardous. The delegation was also informed that, in winter, the cells were very cold.

At Vilnius City Police Detention Centre, the cells were in a poor state of repair and hygiene, and access to natural light and ventilation were inadequate. Moreover, the toilets only had a low partition. In four cells (nos. 8 to 11), the windows had been concreted over, and there was therefore no access to natural light and no evident means of ventilation; the atmosphere in these cells was damp and suffocating."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained that the conditions of his detention at the Anykščiai Facility had amounted to inhuman and degrading treatment. He relied on Article 3 of the Convention, which reads as follows:

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

A. The submissions by the parties

1. The applicant

29. The applicant argued that the conditions of his detention at the Anykščiai Facility had been appalling, in breach of domestic legislation and

the European Prison Rules, and amounted to a violation of Article 3 of the Convention.

30. In particular, he had been held in a cell located at semi-basement level. Given that there was no toilet in the cell, he had had to relieve himself in a bucket or plastic bottle, despite the fact that he had not been the only occupant of the cell. The odour from the bucket had been so strong that it had been impossible to eat in the cell. Furthermore, as the cell had had no sink, he had not had sufficient drinking water. Poor lighting and ventilation had further aggravated his situation by causing him headaches and sore eyes. The applicant submitted that he remembered the degrading conditions of his detention to this day. He noted that the accuracy of his complaints had been confirmed by the Ombudsman, the administration of the police facility itself and the prosecutor.

31. Lastly, the applicant was also dissatisfied that although the Supreme Administrative Court had acknowledged the inappropriateness of the detention conditions, it had failed to award him any damages.

2. The Government

32. The Government noted at the outset that, in contrast to *Peers v. Greece* (no. 28524/95, § 75, ECHR 2001-III), where the applicant had spent at least two months in a remand facility and the Court had found a violation of Article 3 of the Convention, in the present case, similarly to the Court's decision in *Karalevičius v. Lithuania* (no. 53254/99, 6 June 2002), the applicant had spent only seven days in the Anykščiai Facility. During that time, he had been held with another person for only three days; for the remaining four days he had been held alone. Furthermore, the remand facility was very small, consisting of only seven cells in total. The inmates were taken out of the cell daily for an hour's walk, which improved their well-being.

33. Whilst in essence admitting the shortcomings established by the Lithuanian authorities as regards the conditions of the applicant's detention, the Government nonetheless had a few observations to make. They submitted that although the cells in the facility had not been equipped with sanitary units, the inmates were accompanied to a lavatory shared by all detainees in accordance with their individual needs. This was one of the statutory functions of the guard on duty. The Government maintained that the officers of the small detention facility could always be reached by knocking on the cell doors. The cells were also equipped with containers for the satisfaction of physiological needs, which served "as an additional tool only". Whilst certain discomfort had been caused by the infrastructural limitations of the remand facility, the conditions of the applicant's detention had not caused him any adverse health effects. Furthermore, despite the lack of natural light and the ineffective ventilation system, the artificial lighting and the microclimate in the cell met the requirements of the domestic

legislation. In addition, the domestic courts had not found that the conditions in the facility were unsanitary in general. Lastly, it was important to note that the officers in the remand facility had not intended to degrade the applicant by subjecting him to unsanitary conditions in that institution.

34. In the light of the above, the Government concluded that the applicant had not been subjected to inhuman or degrading treatment during his stay at the Anykščiai Facility. The complaint that Article 3 of the Convention had been breached was thus unfounded.

B. The Court's assessment

1. Admissibility

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

2. Merits

36. The Court reiterates that, according to its case-law, 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 level of severity 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).

37. Furthermore, in considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Raninen v. Finland*, 16 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII).

38. To the extent that the applicant complains about the detention conditions at the Anykščiai Facility, the Court notes that the applicant was detained there for seven days from 9 to 16 October 2006. The Government have argued that the instant case was similar to that of *Karalevičius* (cited above), where the applicant had spent only six days in detention and the Court had found that short duration of relevance when finding that the unsatisfactory conditions of his detention had not attained the minimum level of severity to fall within the ambit of Article 3 of the Convention. Whilst acknowledging that the two cases appear similar as regards the duration of the detention, the Court nonetheless notes that the particular

elements characterising the conditions of detention are different. In particular, in *Karalevičius* the applicant complained about the absence of windows and a stroll yard at the Kaunas Central Police Department Remand Prison. In the instant case, however, the applicant has laid emphasis on the allegedly degrading treatment that consisted of the necessity to relieve himself in a bucket at night, sometimes in the presence of another inmate, and the lack of adequate ventilation, alongside a complaint about inappropriate lighting. For the Court, a lack of appropriate toilet facilities, combined with limited ventilation, appear to be factors that affected his situation in a way that was more severe than in *Karalevičius*. Accordingly, the Government's argument must be dismissed.

39. On the facts of the instant case, the Court notes that, except for one hour's walk, the applicant had to spend the entire 24-hour period in his cell. Of the seven days that he spent in the Anykščiai Facility, the applicant shared his cell with another inmate for three days. As has been acknowledged by the administration of the remand facility (see paragraph 7 above) and established by the Ombudsman and the Supreme Administrative Court, at night the applicant had to use a bucket toilet in the presence of another inmate and be present while the bucket toilet was being used by his cellmate (see paragraphs 11 and 15 above). This fact had in essence been acknowledged by the Government, which stipulated that "containers for the satisfaction of physiological needs had been provided in the cells as an additional tool only". Furthermore, even though the Government suggested that the inmates could knock on the cell door to ask the guard to take them to the toilet, the Court finds that this measure merely left the inmates at the discretion of the guard. In addition, such practice appears to have been in contradiction with the Lithuanian legislation itself (see paragraphs 20 and 21 above). Finally, the situation the applicant was in did not meet Council of Europe standards to the effect that prisoners should have ready access to sanitary facilities that are hygienic and respect privacy (point 19.3 of the European Prison Rules; see paragraph 22 above).

40. The Court also notes that, as established by the Ombudsman and the Supreme Administrative Court, the ventilation system in the remand facility was "ineffective". Given the lack of appropriate toilet facilities in the cell, it is not unreasonable to conclude that the lack of a proper ventilation system must have contributed to a malodorous cell and thus further aggravated the applicant's situation.

41. The Court next turns to the Government's argument that the Anykščiai Facility's administration had no intention of humiliating the applicant. Be that as it may, it reiterates that although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *V. v. the United*

Kingdom [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Peers*, cited above, § 74).

42. Indeed, in the present case, the fact remains that the competent authorities took no steps to improve the objectively unacceptable conditions of the applicant's detention. In the Court's view, this omission denotes a lack of respect for the applicant. On this point the Court also takes into account that, despite the fact that in 2006 health care specialists had already pointed out "over and over again" the lack of sanitary units in the Anykščiai Facility (see paragraph 11 above), the institution was still used to hold remand prisoners. The Court also has had regard to the CPT reports to the effect that the situation in a substantial number of police detention facilities, especially in smaller towns, was "totally unacceptable" and in some cases "could be considered inhuman and degrading" (see paragraphs 23-27 above).

43. In the light of the above considerations, the Court is not convinced by the Government's submission that these conditions did not affect the applicant in a manner incompatible with Article 3. On the contrary, the Court is of the view that the prison conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him. In sum, the Court considers that the conditions of the applicant's detention in the Anykščiai Police Detention Facility amounted to degrading treatment within the meaning of Article 3 of the Convention.

There has thus been a breach of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 210,000 Lithuanian litai (approximately 60,820 euros (EUR)) in respect of non-pecuniary damage.

46. The Government disputed the claim as unsubstantiated and excessive.

47. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court also considers that the applicant's suffering and frustration cannot be compensated for by a mere

finding of a violation. Nevertheless, the amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant made no claims for the costs and expenses incurred before the domestic courts or the Court. Accordingly, the Court makes no award under this head.

C. Default interest

49. 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. *Declares* unanimously the application admissible;

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention;

3. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Lithuanian litas at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Ineta Ziemele
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 Jočienė is annexed to this judgment.

I.Z.
S.H.N.

PARTLY DISSENTING OPINION OF JUDGE JOČIENĖ

I agree with the majority's conclusion that there has been a violation of Article 3 of the Convention in this case concerning the degrading conditions of the applicant's detention at the Anykščiai Police Remand Facility.

However, I would like to express my disagreement as regards the just satisfaction claim under Article 41, where the Chamber decided to award the applicant 3,000 euros in respect of non-pecuniary damage.

In my opinion, the sum awarded is excessive, insufficiently reasoned and unacceptable in the overall circumstances relevant to the case. The applicant was detained in the above-mentioned Police Remand Facility for only seven days. Moreover, the Lithuanian administrative courts found (see paragraphs 14 to 16 of the judgment) that certain domestic regulations on hygiene standards had been breached (as regards the natural light in cells and the possibility to use the toilet in conditions that were not degrading), but nevertheless came to the conclusion that the minimum level of severity required under Article 3 of the Convention had not been reached in this case as there was no indication that the conditions of detention had affected the applicant's physical health.

Therefore, even while disagreeing with the national courts' conclusion that the minimum level of severity required in order to find a substantive violation of Article 3 was not reached in this case, I think that the Chamber should have taken into account the analysis of the national courts regarding the fact that no negative impact of the detention conditions on the applicant's physical health had been established (see paragraph 15 of the judgment). Furthermore, the national courts placed great emphasis on the fact that the applicant was a healthy man of 44, detained for a very short period of seven days. They also had regard to the fact that there had been no intention on the part of the authorities to humiliate or debase the applicant. In my opinion such facts, established by the national courts, are of crucial importance and must be taken into account also in the light of the case-law of the Court when awarding just satisfaction to applicants in Article 3 cases (see *Price v. the United Kingdom*, no. 33394/96, § 34, ECHR 2001-VII).

I could accept that the Chamber, bearing in mind its findings with regard to the degrading treatment suffered by the applicant (see paragraph 43 of the judgment), might have considered that the applicant had suffered some non-pecuniary damage even as a result of his short detention which could not be compensated solely by the finding of a violation (see *Peers v. Greece*, no. 28524/95, § 88, ECHR 2001-III; *Savenkovas v. Lithuania*, no. 871/02, § 117, 18 November 2008; and *Longin v. Croatia*, no. 49268/10, § 76, 6 November 2012). However, in my opinion, in determining the amount of the award, the above-mentioned criteria should have been taken

into account and therefore the award for non-pecuniary damage should have been significantly reduced in this case.

Further, I note that the just satisfaction claim of the applicant (even for non-pecuniary damage under Article 41) is not supported by any medical evidence which might provide proof of the adverse consequences caused to the applicant, such as distress and/or frustration. The claim is based on the applicant's personal assessment, which cannot be considered reasonable in the particular circumstances of this case.

I conclude that the Chamber should have been more cautious when deciding on the non-pecuniary award under Article 41, in order to justify the satisfaction claims as "just" in the circumstances of the case at issue while also taking into account the economic situation or standard of living in the country (see, *mutatis mutandis*, *Giedrikas v. Lithuania* (dec.), no. 51392/07, 14 December 2010). In Lithuania, the average minimum monthly salary is 850 Lithuanian litai[1], meaning that the applicant, for seven days' detention without any negative consequences, will receive compensation equal to approximately twelve months' average salary in that country.

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[1] Key social indexes. <http://www.sodra.lt/index.php?cid=2841>; Exchange rate: 1 EUR = 3.45 LTL.