

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

FOURTH SECTION

CASE OF MICHNO v. LITHUANIA

(Application no. 29826/15)

JUDGMENT

STRASBOURG

4 December 2018

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



In the case of Michno v. Lithuania,

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

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

Having deliberated in private on 13 November 2018,

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

PROCEDURE

1. The case originated in an application (no. 29826/15) 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 Viačeslav Michno ("the applicant"), on 15 June 2015.

2. The applicant was granted leave to represent himself in the proceedings before the Court and to use the Lithuanian language pursuant to Rule 34 § 3 (a) of the Rules of Court. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

3. On 28 September 2017 the complaints under Article 3 of the Convention concerning the applicant's conditions of detention, the applicant's complaint under 13 about the absence of an effective remedy for his Article 3 complaints, and under Article 8 taken alone and in conjunction with Article 14 regarding his being unable to receive long-stay visits as a remand prisoner, were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in Klaipėda.

5. On 2 July 2013 the applicant was arrested on suspicion of possession of drugs with intention to distribute. On 9 July 2013 the applicant was brought to Šiauliai Remand Prison and was held there until 31 May 2016. In judgment of 23 December 2015 the applicant was sentenced to four years imprisonment by the Klaipėda District Court. Following an appeal by the

applicant, the judgment became final on 25 May 2016. The applicant was then transferred to Alytus Correctional Facility and after serving his sentence was released on 30 June 2017.

6. In April 2014 the applicant lodged a complaint with the Šiauliai Regional Administrative Court about his conditions of detention in Šiauliai Remand Prison. He complained of: overcrowding; of there being no partition wall between toilets and cells; of insufficient ventilation; of insufficient time in the open air; of insufficient time for showering; of the presence of cockroaches; of inmates smoking in the cells; of no long-stay or short visits; of the fact that he had not been allowed to go home; of the low energy value of the food provided; of the prohibition on receiving food from relatives and friends; and of the prohibition on having his own blanket and a music player.

7. On 27 June 2014 the Šiauliai Regional Administrative Court held that for 135 days the applicant had been housed in cell no. 53, and the personal space available to him had varied between 1.87 and 3.12 sq. m. This had been a clear violation of domestic norms. For eighty-seven days the applicant had been held in cell no. 50, where the personal space available to him had varied between 1.86 and 4.65 sq. m, and it had come close to a violation of domestic norms. The court further held that the presence of toilets in the applicant's cell had not corresponded to the requirements of domestic law, that the lighting had been insufficient and the temperature had been too low, and that the food provided had had insufficient energy value. The court noted that inmates could buy food and other necessities in the shops of the facility. The applicant's other complaints were dismissed as unsubstantiated. As regards the prohibition on having his own blanket and a music player, the court held that the use of personal blankets was not allowed in accordance with domestic norms. As for music players, inmates could use television sets, computers, computer-game devices, discs that could not be rewritten, other memory cards of up to 4GB and bedding (except for a pillow, a mattress and a blanket) that could be given to them by their spouses, partners or close relatives. As regards long-stay and short visits, the court held that remand prisoners did not have a right to long-stay visits but he had a right to short visits of up to two hours. The applicant asked for a long-stay visit but on 20 January 2014 the prosecutor decided not to allow him such a visit. The court also held that inmates could be allowed to go home for up to five days in the event of the death or serious illness of a spouse, partner or close relative, or in the event of a natural disaster that had caused serious pecuniary damage to the inmate, his or her spouse, partner or close relatives. However, in his request of 31 January 2014 the applicant did not indicate any of those circumstances. As a result, the applicant was awarded 1,200 Lithuanian litai (LTL – approximately 348 euros (EUR)) in compensation for inadequate material conditions of

detention for 222 days during the period between 9 July 2013 and 3 April 2014.

8. The applicant appealed, and on 11 February 2015 the Supreme Administrative Court held that it was impossible to calculate for how many days the applicant had had sufficient personal space at his disposal, and decided to hold that for 245 days the applicant had not had sufficient personal space, and that this had been a breach of Article 3 of the Convention. The court thus decided to increase the compensation to EUR 1,500.

9. In October 2014 the applicant lodged a new complaint concerning his material conditions in Šiauliai Remand Prison. He complained of overcrowding, low temperature, dampness, insufficient lighting, prisoners smoking in the cells, that his partner had not been able to pay him a long-stay visit and that he had not been allowed to "take holidays". It appears that the applicant had asked the prison management to allow him to receive a long-stay visit from his spouse and his sister on 28 April 2014.

10. On 5 December 2014 the Šiauliai Regional Administrative Court held that during the period between 4 April and 5 October 2014 – for 176 days – the applicant had had insufficient cell space. As regards long-stay visits, the court agreed with Šiauliai Remand Prison and stated that the applicant had not been entitled to them under domestic law; he could have had short visits but, however, he had never asked for them. The court accepted the argument of the Šiauliai Remand Prison that remand detainees had been held in prisons or correctional facilities for short periods of time and they were not in a similar situation to convicted inmates. The court awarded the applicant EUR 869 in compensation for the material conditions of his detention.

11. The applicant appealed, and on 21 September 2015 the Supreme Administrative Court upheld the first-instance decision in its entirety.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND RELEVANT INTERNATIONAL LAW

A. Domestic law and practice

12. For the relevant domestic law and practice and international material on conditions of detention, see *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 50-69, 8 December 2015).

13. For the relevant domestic law and practice as regards visits, see *Varnas v. Lithuania* (no. 42615/06, §§ 58-61, 9 July 2013) and *Čiapas v. Lithuania*, ((dec.), no. 62564/13, §§ 10-14, 4 July 2017).

14. At the material time, Article 22 of the Law on Pre-trial Detention (*Suėmimo vykdymo įstatymas*) provided that remand detainees could have an unlimited number of visits from relatives and other people. However, the

administration of the facility allowed such visits only with the written consent of a prosecutor or a court. If consent was not given, the detainee had to be provided with a reasoned decision. Visits could not exceed two hours.

15. In cases unrelated to that of the applicant, the Supreme Administrative Court has held that direct application of the Convention means that its provisions can be relied on directly before the courts of the Republic of Lithuania and that the Convention has priority if domestic law conflicts with it (decisions of 14 April 2008, no. A-575-164/08 and of 18 April 2008, no. A-248-58/08).

16. In a case unrelated to that of the applicant, the Supreme Administrative Court relied on the Court's interpretation in the case of *Varnas* (cited above) and awarded a detainee compensation of EUR 2,000 for both his conditions of detention and the lack of long-stay visits since 2009 (decision of 19 April 2016, no. A-618-552/2016). In another case unrelated to that of the applicant, the Supreme Administrative Court also relied on the Court's interpretation in the case of *Varnas* (cited above) and held that public administration authorities should apply Article 8 of the Convention. The Supreme Administrative Court acknowledged that the refusal on the basis of domestic law to grant long-stay visits to remand detainees was not justified by objective and reasonable grounds in treating remand detainees and convicted inmates differently. As a result, the Supreme Administrative Court awarded the detainee in that case compensation of EUR 1,000 for the period between July 2013 and April 2015 (decision of 8 September 2016, no. A-850-662/2016).

17. In case unrelated to that of the applicant, the Supreme Administrative Court accepted the conclusions drawn by the first-instance court that remand detainees had no right to long-stay visits under domestic law and awarded no compensations (decisions of 22 February 2016, nos. A-926-624/2016, A-958-624/2016). The Supreme Administrative Court did not make a reference to the case of *Varnas* (cited above). In another case unrelated to that of the applicant, where a person was detained on remand for more than two and a half years, the Supreme Administrative Court held that long-stay visits could not be granted to remand detainees, and that it was a proportionate limitation of a detainee's rights. As a result, no compensation was awarded to the detainee (decision of 10 July 2015, no. A-342-858/2015). The Supreme Administrative Court did not make a reference to the case of *Varnas* (cited above).

B. International law

18. Rule 99 (a) of the Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules, adopted on 11 January 2006 (European Prison Rules), provides that unless there is a specific prohibition for a specified period by a judicial authority in the

individual case, untried prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19. Relying on Article 3 of the Convention, the applicant complained that the conditions of his detention had been inadequate. Article 3 provides:

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

A. Periods to be taken into consideration

20. The Court notes at the outset that there were two sets of domestic proceedings concerning the applicant's conditions of detention because the applicant submitted two different complaints as regards the period between 9 July 2013 and 3 April 2014 and between 4 April and 5 October 2014.

21. The Court considers that because those two periods concerned different domestic proceedings and slightly different complaints, it will examine them as separate periods for the purposes of the present application.

B. Admissibility

1. Period between 9 July 2013 and 3 April 2014

22. Stressing the domestic courts' findings that the conditions of the applicant's detention during the period between 9 July 2013 and 3 April 2014 had not been compatible with Article 3 of the Convention, the Government abstained from any further submissions with regard to that period.

23. The Court observes that although the Government have not raised an objection on the applicant's victim status, such objection is an objection which goes to the Court's jurisdiction and, as such, the Court is not estopped from raising it of its own motion (see *R.P. and Others v. the United Kingdom*, no. 38245/08, § 47, 9 October 2012; *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, 27 June 2017).

24. The principles governing the assessment of an applicant's victim status have been summarised in paragraphs 178-92 of the Court's judgment in the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V). In that connection, the Court notes that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and the afforded redress for the breach of the Convention. One of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded as a result of using the domestic remedy. The Court indicates that an applicant's victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court (ibid., §§ 180 and 202).

25. The Court also refers to the general principles concerning the assessment of an applicant's victim status in cases of conditions of detention, stemming from its case-law and to its earlier findings (see *Mironovas and Others and Others v. Lithuania*, nos. 40828/12 and 6 others, §§ 84-85 and 93-94, 8 December 2015) and the specific aspects of the victim status in conditions of detention cases against Lithuania (ibid., §§ 86-88).

26. Turning to the facts of the present case, the Court observes that the Supreme Administrative Court in the proceedings instituted by the applicant held that the applicant had had insufficient cell space for a period of 245 days and acknowledged a breach of Article 3 of the Convention (see paragraph 8 above). As the applicant is no longer incarcerated (see paragraph 5 above), the Court considers that the violation of the applicant's rights has been brought to an end and, in such circumstances, monetary compensation constitutes an effective remedy (*Mironovas and Others*, cited above § 85).

27. The Court notes that in the domestic proceedings the applicant was awarded EUR 1,500 in respect of non-pecuniary damage. The Court considers this amount not to be inconsistent with what it would award in similar cases (ibid., §§ 95-98). It therefore finds that in respect of the period between 9 July 2013 and 3 April 2014 the applicant may no longer claim to be a victim of a violation of Article 3 of the Convention. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must therefore be rejected, pursuant to Article 35 § 4.

2. Period between 4 April and 5 October 2014

28. The Government submitted that the domestic courts had acknowledged a violation of domestic norms and awarded the applicant sufficient compensation for the period between 4 April and 5 October 2014.

29. The Court observes that the Lithuanian courts admitted a violation of domestic legal norms setting out specific aspects pertinent to the conditions of detention (see paragraphs 10 and 11 above). However, the Court considers that even though the applicant was awarded EUR 869, this amount, whilst apparently consistent with Lithuanian case-law at that time, is significantly lower than the amounts that the Court awards in similar cases (see, *mutatis mutandis*, *Mironovas and Others*, cited above, §§ 99 and 156). The Court thus considers that notwithstanding the fact that the applicant was awarded compensation he retains his victim status in respect of the 176 days of detention in unsuitable conditions suffered between 4 April and 5 October 2014.

30. The Court furthermore notes that the applicant's complaint about his conditions of detention for the period between 4 April and 5 October 2014 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

31. The applicant submitted that in Šiauliai Remand Prison he had been detained in overcrowded cells. He also complained of other unsanitary conditions (open toilets, insufficient heating, presence of parasites) and that the food provided had had insufficient energy value.

32. The Government acknowledged that during the period between 4 April and 5 October 2014 the applicant had been afforded less than 3.6 sq. m of personal space for sixty-six days. For the remaining 110 days the personal space had varied but, because the Šiauliai Remand Prison had failed to provide accurate data, the courts had interpreted the situation in the applicant's favour, meaning that in the absence of data they held that for all those 110 days the applicant had not had sufficient personal space. The Government observed that the applicant's remaining grievances concerning the material conditions of his detention had been dismissed as unsubstantiated. The Government also noted that the applicant had been able to engage in various out-of-cell activities every day, sports and cultural events had been organised once a month, and religious ceremonies had also been organised. The applicant had been able to take computer classes for up to three hours per day.

2. The Court's assessment

33. The Court refers to the principles summarised in its case-law regarding overcrowding (see *Muršić v. Croatia* [GC], no. 7334/13, §§ 136-41, 20 October 2016).

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

35. The applicant complained of the conditions of his detention in Šiauliai Remand Prison from 4 April until 5 October 2014. The domestic courts found that for 176 days the applicant had been held in overcrowded cells (see paragraphs 10 and 11 above). In the absence of specific calculations (or a list of cells in which the applicant was detained and the number of inmates held in them every day), the Court will proceed on an assumption that the applicant had less than 3 sq. m of personal space at his disposal for 176 days, and that this created a strong presumption of a violation of Article 3 (see *Muršić*, cited above, §§ 136-37).

36. The Court reiterates its findings as regards Šiauliai Remand Prison (see paragraph 34 above) and holds that it cannot accept the Government's argument that the lack of personal space could have been compensated for by the applicant's freedom to engage in certain out-of-cell activities and by the otherwise adequate conditions of his detention.

37. Having examined all the material submitted to it, the Court concludes that the applicant's conditions of detention in Šiauliai Remand Prison from 4 April 2014 until 5 October 2014 amounted to degrading treatment prohibited by Article 3 of the Convention. There has accordingly been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

38. Relying on Article 13 of the Convention, the applicant claimed that no domestic remedy had been available to him in order to obtain an improvement in the conditions of detention as he was detained in the same prison. The relevant Article provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

40. The applicant stated the he had been in the same prison when he had submitted his application, and that he had not had an effective remedy and that improvement of his conditions of detention had not been possible.

41. The Government submitted that compensation constituted an appropriate remedy. In the applicant's case, he had received compensation, and the domestic courts had taken into account the duration and the extent of the violation, the consequences for his health, the actions of the applicant, the economic conditions in Lithuania at the relevant time, similar case-law examples, the criteria of equity, fairness and reasonableness, and the principle of proportionality when awarding compensation. The Government also submitted that the new legislative measures aimed at tackling of prison overcrowding had been in force since 1 July 2012 and they had helped to decrease the prison population.

2. The Court's assessment

42. The Court has previously stated that for a person held in inhuman or degrading 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 of the Convention (see *Mironovas and Others*, cited above, § 85). However, the Court observes that at the time the applicant lodged his application, he was no longer detained in Šiauliai Remand Prison, i. e. the same facility about which he was complaining (see paragraph 5 above).

43. Accordingly, a claim for monetary compensation constituted an effective remedy for the applicant's complaints. Even though the compensation which the applicant was awarded for the period between 4 April and 5 October 2014 is not adequate in the light of the Court's standards (see paragraph 29 above), it should be reiterated that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 79, ECHR 2012).

44. It follows that there has been no violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

45. The applicant complained under Article 8 of the Convention that not being allowed long-stay visits from his partner and his sister had caused him

intolerable mental and physical suffering. He also complained, under Article 8 taken in conjunction with Article 14, that his entitlement in that connection had been restricted more than that of a convicted person serving a prison sentence. The relevant parts of Article 8 and Article 14 provide as follows:

Article 8

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. The parties' submissions

46. The Government argued that the applicant had failed to exhaust the domestic remedies with regard to his complaint. They noted that long-stay visits could only be allowed with the written consent of a prosecutor or a court. In the applicant's case, his first request for a long-stay visit was rejected on 20 January 2014 due to the ongoing pre-trial investigation (see paragraph 7 above). It was the Government's view that the applicant should have appealed against this decision to a higher prosecutor, which he had failed to do. The Government also noted that the applicant had failed to raise the issue of discrimination before the domestic courts. As regards the applicant's second request for a long-stay visit of 28 April 2014 (see paragraph 9 above), the Government argued that the applicant had complained of being unable to receive long-stay visits *per se*, and that he had not raised the issue of discrimination.

47. The Government also submitted that after the judgment in *Varnas v. Lithuania* (no. 42615/06, 9 July 2013) the provisions of the Convention and domestic law had conflicted with each other. According to the Government, in accordance with the practice of the Supreme Administrative Court, the applicant had been able to rely on the provisions of the Convention directly before the domestic courts. In support of their submission the Government relied on several domestic case-law examples (see paragraph 15 above).

48. The Government also argued that the domestic courts had established an effective domestic compensatory remedy, specifically that the Supreme Administrative Court had taken account of differences in treatment between remand detainees and convicted people when it came to long-stay visits, and had found violations and awarded compensation (see paragraph 16 above). Had the applicant formulated his complaints properly, he could have received compensation as well. The Government stated that the judgment in *Varnas* (cited above) had been in effect for two years when the applicant had submitted his application to the Court, and thus it had been clear that new domestic remedies would be incorporated into the State's judicial system.

49. The applicant did not comment on the admissibility issue.

2. The Court's assessment

50. The Court reiterates that applicants are only obliged to exhaust domestic remedies which are available in theory and in practice at the relevant time and which they can directly institute themselves, that is to say, remedies that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (see *Stoian v. Romania*, no. 33038/04, § 100, 8 July 2014).

51. In the present case, the Government first argued that the applicant had to appeal against the prosecutor's decision not to grant him a long-stay visit on 20 January 2014 to a higher prosecutor. The Court cannot accept this argument. The Government stated that long-stay visits could be allowed for detainees on remand with the written consent of a prosecutor or a court. The Court notes that Article 22 of the Law on Pre-trial Detention explicitly stated that visits could not exceed two hours, which meant that long-stay visits were not available for remand detainees at all (see paragraph 14 above, see also *Čiapas v. Lithuania* (dec.), no. 62564/13, § 10, 4 July 2017). Under these circumstances, the Court does not see how an appeal to a higher prosecutor would have benefited the applicant.

52. The Government claimed that the applicant had been able to rely on *Varnas* (cited above) and the provisions of the Convention directly before the domestic courts. The Court notes that that judgment was adopted on 9 July 2013 and became final on 9 December 2013. The prosecutor refused to allow the applicant a long-stay visit for the first time on 20 January 2014 (see paragraph 7 above). Although the date when the applicant submitted a request to the prosecutor is not indicated, it can be presumed that it was before 20 January 2014, which means that the judgment in *Varnas* (cited above) had been in effect for only about a month. Even if the applicant's ignorance with regard to the judgment was unfortunate, the Court cannot agree that the applicant's failure to explicitly rely on it influenced the outcome of the courts' decisions, especially taking into account that the domestic courts had not relied on *Varnas* themselves.

53. The Court is also unable to accept the Government's argument as regards the applicant's second request. Although the domestic courts did not analyse the refusal of the prison management of 28 April 2014 to grant the applicant a long-stay visit with his partner and his sister (see paragraph 9 above), they accepted the arguments submitted by the Šiauliai Remand Prison that domestic law did not provide for long-stay visits to remand detainees and, because such persons were only detained for short periods of time, they were not in a similar situation to convicted inmates (see paragraph 10 above). It cannot therefore be considered that the applicant failed to properly raise his complaints regarding refusal of long-stay visits and discrimination because they were nevertheless analysed in the courts' decisions (compare and contrast *Kazlauskas v. Lithuania* (dec.), no. 13394/13, § 33, 11 July 2017).

54. Considering that, the applicant should not be blamed for not appealing against the prosecutor's refusal to grant him a long-stay visit, for not relying on the Convention directly before the domestic courts or for not explicitly referring to *Varnas* (cited above).

55. In this context, the Court also notes that the Government cited two examples of domestic case-law where the courts had only stated what direct application of the Convention meant (see paragraph 15 above). The Court accepts this general position of the Government on the direct application of the Convention. However, illustrating this position in the context of long-stay visits, the Government cited two examples of domestic case-law where claimants had obtained damages in a situation similar to the applicant's (see paragraph 16 above). These examples belong to quite recent domestic case-law, as they are both from 2016, while the present application was introduced on 15 June 2015 (see paragraph 1 above) and the applicant's claims at the domestic level were examined even before that date (see paragraphs 7-8 and 10-11 above). Moreover, there are other examples from domestic case-law where the Supreme Administrative Court held that remand detainees had no right to long-stay visits and, as a result, no compensations were awarded (see paragraph 17 above). The latter cases were examined when the judgment of *Varnas* (cited above) was already final; however, the Supreme Administrative Court did not even mention that judgment. The Court thus considers that there was no established case-law of the domestic courts on the application of the principles established in the judgment of *Varnas* (cited above) at the material time. In view of the above, it can be concluded from the information provided by the Government and from the case-law proving the contrary to what was stated by the Government that the remedy in question was not an effective one.

56. As a result, the Government's objection of non-exhaustion of domestic remedies must be dismissed.

B. Merits

1. The parties' submissions

57. The applicant stated that he had not had long-stay visits in Šiauliai Remand Prison.

58. The Government did not comment on the merits of the case.

2. The Court's assessment

59. The Court notes the Government's argument that the applicant had failed to raise the issue of discrimination before the domestic authorities (see paragraph 46 above). However, the Government did not provide any information to support this assertion. Nor did the applicant provide information that he raised the issue of discrimination at the domestic level. Under these circumstances and being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), the Court considers that the applicant's complaint should be examined from the standpoint of Article 8 of the Convention alone.

(a) Whether there was an interference with the applicant's rights under Article 8 of the Convention

60. The Court reiterates that detention, like any other measure depriving a person of his or her liberty, entails inherent limitations on private and family life. However, it is an essential part of a prisoner's right to respect for family life that the authorities enable him or her or, if need be, assist him or her in maintaining contact with his or her close family (see, among many other authorities, *Trosin v. Ukraine*, no. 39758/05, § 39, 23 February 2012; *Epners-Gefners v. Latvia*, no. 37862/02, § 61, 29 May 2012; and *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, ECHR 2015).

61. Turning to the circumstances of the present case, the Court notes that the applicant could not have the long-stay visits he had asked for on two occasions in 2014. From the information available to the Court it appears that the first time a long-stay visit was refused owing to the ongoing investigation, and the second time it was refused because the applicant was not entitled to it under domestic law (see paragraphs 7, 10 and 46 above).

62. Having regard to its case-law and the above-mentioned circumstances of the case, the Court finds that the measures in question constituted an interference with the applicant's "private life" and "family life" within the meaning of Article 8 of the Convention (see, *mutatis mutandis*, *Khoroshenko*, cited above, § 109). It remains to be seen whether that interference was justified under the second paragraph of that provision.

(b) Whether the interference was justified

(i) "In accordance with the law"

63. According to the Court's case law, the expression "in accordance with the law" in Article 8 § 2 of the Convention requires, among other things, that the measure or measures in question should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects. In order for the law to meet the criterion of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice – to regulate their conduct (see *Khoroshenko*, cited above, § 110 and the references therein).

64. The Court notes that the contested restrictions were imposed on the applicant in accordance with Article 22 of the Code for the Execution of Sentences (see paragraph 14 above), which provide that remand detainees are only entitled to short visits.

65. The Court finds, and it is undisputed by the parties, that the ban on the applicant having long-stay visits had a basis in Lithuanian law and that the law itself was clear, accessible and sufficiently precise.

(ii) Legitimate aim

66. Having regard to the information available to it, the Court is ready to accept that the impugned measure was taken in pursuance of "the prevention of disorder and crime", which is a legitimate aim under Article 8.

(iii) Necessity in a democratic society

(α) General principles with respect to visiting rights

67. The approach to assessing the proportionality of State measures taken with reference to "punitive aims" has evolved over recent years, with heavier emphasis now being placed on the need to strike a proper balance between the punishment and rehabilitation of prisoners. In this connection, the Court reiterates its observations in *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09 and 2 others, §§ 111-16, ECHR 2013 (extracts)), and *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, §§ 243-46, ECHR 2014 (extracts)), where it insisted that the emphasis on rehabilitation and reintegration had become a mandatory factor that the member States needed to take into account in designing their penal policies (see *Khoroshenko*, cited above, § 121).

68. As is well established in the Court's case-law, during their imprisonment prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty (see, for instance, *Dickson*, § 67, and *Khoroshenko*, § 116, both cited above).

69. Accordingly, on imprisonment a person does not forfeit his or her Convention rights, including the right to respect for family life (see *Płoski v. Poland*, no. 26761/95, §§ 32 and 35, 12 November 2002), so that any restriction on those rights must be justified in each individual case (see *Dickson*, cited above, § 68). It was stressed in the European Prison Rules that remand prisoners had to maintain their visiting rights in the same manner as convicted prisoners (see paragraph 18 above). At the same time, the Court has recognised that some measure of control over prisoners' contact with the outside world is called for and is not of itself incompatible with the Convention (see *Aliev v. Ukraine*, no. 41220/98, § 187, 29 April 2003, and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)). Such measures could include limiting the number of family visits, supervising those visits and, if justified by the nature of the offence and the specific individual character of a detainee, subjecting the detainee to a special prison regime or special visiting arrangements (see *Hagyó v. Hungary*, no. 52624/10, § 84, 23 April 2013).

70. However, the State does not have a free hand in introducing restrictions in a general manner without affording any degree of flexibility for determining whether limitations in specific cases are appropriate or indeed necessary (see *Andrey Smirnov v. Russia*, no. 43149/10, § 54, 13 February 2018).

(β) Application of the above principles to the present case

71. Under the provisions of domestic law, while in detention on remand, the applicant could make use of an unlimited number of short visits of up to two hours (see paragraph 14 above). The applicant was not allowed to have the long-stay visits he had asked for and he did not make use of his right to short visits.

72. The Court observes that the conditions of the possible applicant's short visits were not the same as the long-stay visits because physical contact was not allowed during visits to remand detainees (see *Čiapas v. Lithuania* (dec.), no. 62564/13, § 12, 4 July 2017), so it cannot be stated that the possibility to receive short visits covered the absence of long-stay visits. Even short visits had to be authorised either by a prosecutor or a court, which made them completely dependent on the relevant authority (prosecutor or court) and the law provided no details as regards the conditions for granting such permission, no guidance as to how the authorities might decide whether the prohibition of visiting rights was merited in a particular case, and what factors might be relevant to that decision.

73. In these circumstances, and having regard to the duration of the applicant's detention on remand, which lasted more than two years and five months, from July 2013 until 23 December 2015 (see paragraph 5 above),

the Court concludes that the limitation went beyond what was necessary in democratic society "to prevent disorder and crime".

74. It follows that there has been a violation of the applicant's right to respect for his private and family life, as guaranteed by Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage.

77. The Government considered that amount to be excessive and unsubstantiated.

78. The Court considers that the applicant must have suffered distress as a result of the violations of Article 3 and Article 8 of the Convention found in the present case. Having regard to the amount granted to the applicant at the domestic level for the inadequate conditions of his detention and deciding on an equitable basis, the Court considers it reasonable to award EUR 3,700 under the head of non-pecuniary damage.

B. Costs and expenses

79. The applicant did not submit a claim for costs and expenses. Accordingly, the Court is not called to make any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 of the Convention, with regard to the applicant's material conditions of detention between 4 April and

5 October 2014, under Article 13 and under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention with regard to the applicant's material conditions of detention between 4 April and 5 October 2014;

3. *Holds* that there has been no violation of Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 3,700 (three thousand seven hundred euros), 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President