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

FOURTH SECTION

DECISION

Application no. 19845/15
Jurijus GATČINAS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 30 April 2019 as a Committee composed of:
Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*
Having regard to the above application lodged on 20 April 2015,
Having regard to the observations submitted by the respondent Government,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Jurijus Gatčinas, is a Lithuanian national, who was born in 1988 and is detained in Kybartai Correctional Facility.
2. The Lithuanian Government ("the Government") were represented by their Agent, most recently Ms L. Urbaitė.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.
4. The applicant was held in pre-trial detention in Lukiškės Remand Prison between 17 February 2009 and 23 June 2010, 15 October and 8 December 2010, 13 January and 25 March 2011 and between 11 January and 14 June 2013.

5. On 31 August 2015 the applicant wrote to the Lukiškės Remand Prison administration and asked to be provided with information about long-stay visits. On 28 September 2015 the applicant was informed that remand prisoners could only have short visits of up to two hours. During the applicant's detention in Lukiškės Remand Prison, the domestic law did not provide for long-stay visits and thus he could not have been granted such a visit. The applicant did not appeal against this reply.

6. From the information provided by the Government it appears that the applicant was never married. It also appears that he has never submitted a request to receive long-stay visits from a specific person.

B. Relevant domestic law

7. For relevant domestic law regarding visits, see *Čiapas v. Lithuania* ((dec.), no. 62564/13, §§ 10-14 and 16, 4 July 2017).

COMPLAINTS

8. The applicant complained under Article 8 of the Convention about his inability to receive long-stay visits while detained on remand in Lukiškės Remand Prison. He also complained under Article 14, taken in conjunction with Article 8, that he had been discriminated against *vis-à-vis* convicted inmates, who had the right to receive such visits.

THE LAW

9. The applicant complained that not being allowed long-stay visits during his pre-trial detention had caused him intolerable mental and physical suffering. He also complained that his entitlement in that respect had been restricted more than that of a convicted inmate.

He invoked Articles 8 and 14 of the Convention, which, in so far as relevant, read 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. The parties' submissions

10. The Government maintained that during the period of his detention in Lukiškės Remand Prison the applicant had not been married. In that connection, the Government noted that the notion of family life under Article 8 was not confined solely to families based on marriage and might encompass other *de facto* relationships. The existence or non-existence of family life for the purposes of Article 8 was essentially a question of fact depending on the real existence in practice of close personal ties. The Government referred to the Court's case-law where it held that although, as a rule, cohabitation might be a requirement for such a relationship, other factors might exceptionally also serve to demonstrate that a relationship had sufficient constancy to create *de facto* family ties (see *Nazarenko v. Russia*, no. 39438/13, § 56, ECHR 2015 (extracts)), including the length of the relationship and whether the couple had demonstrated their commitment to each other (see *Z.H. and R.H. v. Switzerland*, no. 60119/12, § 42, 8 December 2015).

11. The Government submitted that the applicant did not provide any evidence that during his detention in Lukiškės Remand Prison he had had a spouse or a partner. Also, he had never asked to receive long-stay visits from anyone.

12. The Government thus considered that the applicant was not directly affected by the domestic regulation at issue and could not claim to be a victim of an alleged violation of Article 8 taken alone or in conjunction with Article 14.

13. The applicant submitted a general statement claiming that he had had limited opportunities to communicate and see his loved ones.

B. The Court's assessment

14. The Court reiterates that in order to rely on Article 34 of the Convention an applicant must meet two conditions: he or she must fall into one of the categories of applicants mentioned in Article 34 and must be able to make a case that he or she is the victim of a violation of the Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). The word "victim", in

the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)).

15. In the present case, the Court notes that the applicant never explicitly requested any long-stay visits (see paragraph 6 above). His only request to the prison administration was to provide him with information about such visits (see paragraph 5 above). Moreover, the applicant had not been married when he was detained in Lukiškės Remand Prison, and he did not claim to have a partner who would visit him.

16. The applicant therefore cannot be said to have suffered from the legal framework concerning long-stay visits. It follows that he cannot claim to be a victim of the alleged violation of Article 8 of the Convention in so far as he complained about the lack of long-stay visits (see, *mutatis mutandis*, *Kazlauskas v. Lithuania* (dec.), no. 13394/13, § 34, 11 July 2017).

17. Having regard to the above, the Court finds 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. It must therefore be rejected pursuant to Article 35 § 4.

18. The Court lastly notes that the applicant's complaint about his alleged discrimination is closely linked to his complaint under Article 8 examined above. Consequently, taking into account its findings above, the Court considers that the applicant cannot claim to be victim, within the meaning of the Convention, of a violation of his rights guaranteed by Article 14 (see, *mutatis mutandis*, *Kazlauskas*, decision cited above, § 36). Therefore this part of the application is likewise incompatible *ratione personae* with the provisions of the Convention and must be dismissed pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 May 2019.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President