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

SECOND SECTION

DECISION

Applications nos. 34179/18 and 35033/18
Viačeslav MICHNO against Lithuania
and Algimantas DIMBINSKAS against Lithuania

The European Court of Human Rights (Second Section), sitting on 26 November 2019 as a Committee composed of:

Valeriu Griţco, *President,*
Egidijus Kūris,
Darian Pavli, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above applications lodged on 12 July 2018 and 9 July 2018 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case, Mr Viačeslav Michno, is a Lithuanian national who was born in 1962 and lives in Klaipėda.

2. The applicant in the second case, Mr Algimantas Dimbinskas, is a Lithuanian national who was born in 1962 and is detained in Pravieniškės.

3. The Lithuanian Government ("the Government") were represented by their Agent, Ms L. Urbaitė.

A. The circumstances of the cases

1. The first applicant (Mr Michno)

4. The first applicant was detained in Šiauliai Remand Prison from 28 August 2015 to 25 May 2016. For that entire period he was kept in cell no. 22, except during the following periods. He was placed in distribution cells (cells in which detainees are kept before they undergo medical

examinations and are assigned to regular cells) for twelve days from 28 August to 9 September 2015, for one day on 18 November 2015, and for one day on 15 March 2016. He also spent approximately two hours in a temporary detention cell (a cell in which detainees are kept for up to two hours while their documents are processed) on 8 April 2016. During his detention in cell no. 22 the applicant had between 4.06 and 10.15 sq. m of personal space, but the amount of personal space available to him in distribution and temporary detention cells was not recorded.

5. In May 2016 the applicant lodged a civil claim against the State, alleging that he had been detained in overcrowded and unsanitary cells, and that the sanitary facilities had not been properly partitioned from the rest of the cells. He claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

6. The administration of Šiauliai Remand Prison contested the applicant's claim. It submitted that the conditions in cell no. 22 complied with domestic hygiene requirements. As concerns the partitioning of sanitary facilities, the prison administration pointed out that, in accordance with domestic law, a sanitary unit had to be separated from the rest of the cell by a partition at least 1.5 metres in height (see paragraph 14 below). It emphasised that all cells within Šiauliai Remand Prison were equipped with a sanitary unit which was separated from the rest of the cell by a wall, and the entrance to that unit was covered by a door or a curtain. As for distribution and temporary detention cells, the prison administration acknowledged that the sanitary units in those cells were not partitioned. However, it emphasised that those cells were only used for short and temporary periods of detention.

7. On 28 October 2016 the Šiauliai Regional Administrative Court allowed the applicant's claim in part. It dismissed the complaint of overcrowding, finding that during the entire period of his detention he had had sufficient personal space (see paragraph 4 above). It also dismissed as unproven the applicant's complaints concerning: a lack of hot water, parasites in the cells, insufficient personal hygiene items, the quality of the food, a lack of furniture in the cells, the presence of asbestos in the courtyards, a lack of cleaning equipment, insufficient time outdoors, and insufficient time in the shower. However, on the basis of reports from Šiauliai Public Health Centre, the court found that some of the conditions in the distribution and temporary detention cells had not complied with domestic hygiene requirements – there had been insufficient artificial lighting, the cells had been dirty, and the sanitary facilities had not been partitioned. The court also stated that, according to the case-law of the Supreme Administrative Court, a partition 1.5 metres in height was insufficient to ensure privacy while using sanitary facilities. It therefore concluded that the conditions of the applicant's detention had not been adequate. Nonetheless, the court considered that the inconvenience suffered

by the applicant had not been particularly great, and therefore the finding of a violation constituted in itself sufficient just satisfaction for any damage which he had sustained.

8. The applicant lodged an appeal against that decision, and on 14 March 2018 the Supreme Administrative Court allowed it in part. It upheld the lower court's findings on the conditions of the applicant's detention. However, the Supreme Administrative Court considered that the circumstances of the case warranted making an award in respect of non-pecuniary damage, and awarded the applicant EUR 500.

2. The second applicant (Mr Dimbinskas)

9. The second applicant was detained in Šiauliai Remand Prison from 8 April 2015 to 28 April 2016. He was kept in cells nos. 18, 20, 31, 42, 43, 52, 54, 59, 86, 92, 97 and 106. During the entire period of his detention he had between 3.16 and 18.3 sq. m of personal space.

10. On an unspecified date the applicant lodged a civil claim against the State, alleging that he had been detained in overcrowded and unsanitary cells, that sanitary facilities had not been properly partitioned from the rest of the cells, and that he had not been provided with proper medical assistance. He claimed EUR 13,000 in respect of non-pecuniary damage.

11. The administration of Šiauliai Remand Prison contested the applicant's claim. It submitted that the conditions in all the cells in which he had been kept complied with domestic hygiene requirements. As concerns the partitioning of sanitary facilities, the prison administration pointed out that, in accordance with domestic law, a sanitary unit had to be separated from the rest of the cell by a partition at least 1.5 metres in height (see paragraph 14 below). It emphasised that all cells within Šiauliai Remand Prison were equipped with a sanitary unit which was separated from the rest of the cell by a wall, and its entrance was covered by a door or a curtain.

12. On 29 December 2016 the Šiauliai Regional Administrative Court allowed the applicant's claim in part. It found that for three days, while he had been detained in cell no. 92, he had had 3.16 sq. m of personal space, in breach of the domestic standard of 3.6 sq. m, but during the remaining period the amount of personal space available to him had been sufficient. The court also found, on the basis of reports from Šiauliai Public Health Centre, that there had been fungus and damp in cells nos. 54, 97 and 106, and that those cells, as well as prison courtyards, had been in need of renovation. However, it dismissed as unproven the applicant's complaints concerning: the sanitary conditions in the remaining cells, insufficient space in the courtyards, insufficient time outdoors, a lack of food, the quality of the food, and a lack of medical assistance. Lastly, the court upheld the applicant's complaint about the partitioning of sanitary facilities. It stated that, according to the information provided by the prison administration, such facilities had to be separated from the rest of the cell by a partition at

least 1.5 metres in height, but such a partition was insufficient to ensure privacy while using the facilities. On those grounds, the court concluded that the conditions of the applicant's detention had not complied with the domestic requirements. However, it considered that the acknowledgement of a violation constituted sufficient just satisfaction in his case.

13. The applicant lodged an appeal against that decision, and on 12 February 2018 the Supreme Administrative Court allowed it in part. It upheld the lower court's findings on the conditions of the applicant's detention. However, the Supreme Administrative Court considered that the circumstances of the case warranted making an award in respect of non-pecuniary damage, and awarded the applicant EUR 1,100.

B. Relevant domestic law and practice and international material

14. For the relevant domestic law and practice and international material, see *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 50-69, 8 December 2015) and *Oskirko v. Lithuania* ([Committee], no. 14411/16, § 17, 25 September 2018).

COMPLAINTS

15. The applicants complained under Article 3 of the Convention of the conditions of their detention and the amount of compensation awarded to them by domestic courts.

THE LAW

A. Joinder of the applications

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

B. As to the first applicant

17. The first applicant submitted that during his detention in Šiauliai Remand Prison he had been kept in overcrowded and unsanitary cells, and the compensation awarded to him by domestic courts was insufficient. He invoked Article 3 of the Convention, which reads as follows:

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

18. The Government submitted that during the entire period of his detention the first applicant had had sufficient personal space (see paragraph 4 above). They pointed out that his complaints concerning the

sanitary conditions in cell no. 22, where he had spent the majority of his detention, had been dismissed by domestic courts as unproven, and the violations of domestic hygiene requirements had only concerned the distribution and temporary detention cells in which he had spent only short periods (see paragraphs 7 and 8 above).

19. The Government also referred to the submissions of the prison administration in the domestic proceedings, where it had been stated that the sanitary units in all the cells were separated by a wall and a door or a curtain (see paragraph 6 above). The Government provided the Court with a photograph of cell no. 22, taken on 30 July 2015, showing that the sanitary unit was separated from the rest of the cell by a chipboard partition which was approximately as high as the door frame, and its entrance was covered by a curtain.

20. The Court will firstly address the conditions of the applicant's detention in cell no. 22, where he spent the majority of his detention, save for some short periods. On the basis of the documents in its possession, the Court is satisfied that during his detention in that cell the applicant had sufficient personal space (see paragraph 4 above). Furthermore, the domestic courts did not establish any violations of domestic hygiene requirements with regard to cell no. 22 (see paragraphs 7 and 8 above), and nothing in the case file enables the Court to reach a different conclusion. It also observes that the domestic courts did not explicitly address the submission by the prison administration that the sanitary units in cells were separated by a wall and a door or a curtain (see paragraph 6 above). However, on the basis of the photograph provided by the Government (see paragraph 19 above), the Court is satisfied that the partitioning of the sanitary unit in cell no. 22 offered the applicant sufficient privacy when using that facility (compare and contrast *Oskirko v. Lithuania* [Committee], no. 14411/16, § 43, 25 September 2018). Accordingly, it concludes that the conditions of the applicant's detention in cell no. 22 were adequate.

21. As for the distribution and temporary detention cells, where the applicant spent a total of fourteen days and a few hours (see paragraph 4 above), the Court sees no reason to question the assessment of the domestic courts – based on reports by the Šiauliai Public Health Centre – that some of the sanitary conditions in those cells were inadequate and the sanitary units were not properly partitioned (see paragraphs 7 and 8 above). The courts acknowledged the violation of the applicant's rights and awarded him EUR 500 in respect of non-pecuniary damage. In view of the duration of the violation, the Court considers that compensation to be sufficient (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, §§ 95-98, 8 December 2015, and *Daktaras v. Lithuania* (dec.) [Committee], no. 78123/13, §§ 51-52, 3 July 2018). Accordingly, the applicant may no longer claim to be a victim of a violation of Article 3 of the Convention.

22. It follows that the first applicant's 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.

C. As to the second applicant

23. The second applicant submitted that during his detention in Šiauliai Remand Prison he had been kept in overcrowded and unsanitary cells, and that the compensation awarded to him by domestic courts was insufficient. He invoked Article 3 of the Convention.

24. The Government submitted that during the entire period of his detention the second applicant had had more than 3 sq. m of personal space (see paragraph 9 above). They pointed out that the domestic courts had dismissed as unproven his complaints concerning the sanitary conditions in most of the cells in which he had been kept (see paragraphs 12 and 13 above). The shortcomings found by the courts had concerned only cells nos. 54, 97 and 106 (see paragraph 12 above), where the applicant had spent approximately four months.

25. The Government further submitted that the domestic courts had not properly assessed the information provided by the prison administration with regard to the partitioning of the sanitary facilities in the applicant's cells (see paragraph 11 above). The Government provided the Court with photographs of all the cells in which the applicant had been kept, taken in July and October 2015, showing that the sanitary units were separated from the rest of the cells by a wall or a chipboard partition, and their entrances were covered by a door or a curtain.

26. The Court firstly observes that during the entire period of his detention the applicant had more than 3 sq. m of personal space (see paragraph 9 above). It also observes that domestic courts did not explicitly address the submission by the prison administration that the sanitary units in cells were separated by a wall and a door or a curtain (see paragraph 11 above). However, on the basis of the photographs provided by the Government (see paragraph 25 above), the Court is satisfied that the partitioning of the sanitary units in all the cells in which the applicant was kept offered him sufficient privacy when using those facilities (compare and contrast *Oskirko*, cited above, § 43).

27. Furthermore, the domestic courts found violations of domestic hygiene regulations in respect of three of the applicant's cells (nos. 54, 97 and 106), but dismissed his complaints with regard to the remaining cells (see paragraphs 12 and 13 above). The Court has no reason to question their assessment. According to the documents in its possession, the applicant was detained in cells nos. 54, 97 and 106 for a total of 109 days. The courts acknowledged the violation of the applicant's rights and awarded him

EUR 1,100 in respect of non-pecuniary damage. In view of the duration of the violation, the Court considers that compensation to be sufficient (see *Mironovas and Others*, cited above, §§ 95-98, where the Court considered EUR 2,300 as sufficient compensation for 361 days of detention in unsuitable conditions, and *Daktaras*, cited above, §§ 51-52, where the Court considered EUR 4,000 as sufficient compensation for 239.5 days of detention in unsuitable conditions and lack of conjugal visits). Accordingly, the applicant may no longer claim to be a victim of a violation of Article 3 of the Convention.

28. It follows that the second applicant's 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.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 19 December 2019.

Hasan Bakırcı	Valeriu Griţco
Deputy Registrar	President