CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44558/98
by Juozas VALAŠINAS
against Lithuania

The European Court of Human Rights (Third Section), sitting on 14 March 2000 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mrs F. Tulkens,
Mr K. Jungwiert,
Mrs H.S. Greve, *judges*,

and Mrs S. Dollé, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 14 May 1998 and registered on 16 November 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant is a Lithuanian national, born in 1974. He is currently detained in Pravieniškės Prison in the Kaunas region.

He is represented before the Court by Mr V. Sviderskis, a lawyer practising in Vilnius.

A. Particular circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

Since 5 October 1993 the applicant has been serving a sentence of 9 years' imprisonment for the theft, possession and sale of firearms.

The applicant's initial detention

The applicant was initially detained in Pravieniškės Prison. He states that in March 1995 he met a member of the Parliamentary Assembly of the Council of Europe, Mr G. Frunda, who was visiting Pravieniškės in the context of the monitoring process of Lithuania by the Committee on Legal Affairs and Human Rights of the Assembly. The applicant shared with the parliamentarian his opinion on the Lithuanian penitentiary system. He particularly criticised the conditions of his detention. The applicant alleges that it was this conversation with Mr Frunda that prompted the administration to apply to a court for his transfer to Lukiškės Prison in Vilnius, which runs the strictest regime in Lithuania. He claims that the authorities decided to penalise him for expressing his views to this parliamentarian, although the formal ground for his removal to Lukiškės was the fact that he had received several disciplinary punishments.

On 29 March 1995 a judge arrived at Pravieniškės Prison to hear the transfer application. The judge ordered the applicant's transfer. The judge's decision did not refer to the fact that a lawyer represented the applicant, whereas the hearing transcript did. In addition, the judge stated in his decision that it was not subject to appeal, whereas the transcript stated that the applicant was "acquainted with the decision and the appeal procedure against it".

The applicant was transferred to Lukiškės immediately following the hearing.

Lukiškės Prison

The applicant gives the following account of events at Lukiškės Prison:

On 4 April 1995 he was penalised for sleeping during the day. He was placed in solitary confinement in the prison basement. The applicant alleges that no daylight could enter the cell, and that it was illuminated by a small electric lamp. The cell's floor was soaked with water. The mobile bed was fixed to the wall during the day so that it was impossible to lie or sit on it. The applicant allegedly had no bedding. Food was limited to a bowl of water and a slice of "very sour" bread three times a day. Every second day he received some soup for lunch. After three days in the cell he started urinating blood. As there was no medical treatment, he collapsed unconscious on the fourth day of solitary confinement. On 9 April 1999 he was taken out of the cell. The applicant's medical record of the above

date says, “Hypertonic crisis. Hypertonic illness, first stage … . Release from the solitary confinement cell”. The applicant states that for some time thereafter he received out-patient medical treatment in the prison clinic. He asserts that it took a long time for him to recover physically and mentally after what he had suffered in the cell.

The applicant complains that he was not allowed to attend the funeral of his mother in April 1997. He further submits that the administration had beforehand prevented him from visiting her in hospital when she was seriously ill.

He states that at Lukiškės he was subjected to “the strictest regime” and had no right to complain against any act of the prison authorities.

The segregation unit at Pravieniškės Prison

After completing 3 years of his sentence in Lukiškės, the applicant was returned to Pravieniškės in April 1998.

From April 1998 to 30 June 1998 he was kept in the separate segregation unit of the prison. He gives the following account of the conditions of detention there:

The unit consisted of sleeping premises where 15 to 20 inmates were held, a small kitchen, a relaxation room and a shower cubicle. There was also a corridor to the small yard outside. Only the sleeping premises had windows. There were no windows or ventilation in the kitchen and the relaxation room.

There was no access to the prison laundry, and any washing had to be done by hand.

On 7 May 1998 the applicant had a personal visit when he was given some additional food. Afterwards he was allegedly stripped naked in the presence of other detainees and a woman working in the prison administration, and checked by a security guard, who was touching his whole body without wearing gloves. Then the guard, without washing his hands or putting gloves on, examined the food from the relatives. During the check the applicant was also ordered to squat when naked.

On 11 June 1998 the applicant felt he had a fever. He instantly called the prison infirmary by a special telephone line which connects the segregation unit to the administration. The medical staff arrived only on 16 June 1998 and confirmed that he had caught a cold. He was told to lie in bed.

The applicant was offered no activities in any meaningful sense in the segregation unit. There was no possibility for training or sports, nor were there any educational classes or recreational activities.

The normal regime of detention at Pravieniškės

On 30 June 1998 the applicant was released from the segregation unit. He was thereafter subjected to normal detention at Pravieniškės. He gives the following description of the conditions of his imprisonment there:

The applicant was detained in Wing 1 of the prison. Although each of the five wings of the prison was intended to hold 300 prisoners, the applicant's wing was overcrowded, as there were more than 400 detainees. Wing 1 consisted of several sections, i.e. living premises for 20-30 prisoners. There were 24 inmates in the applicant's section. The approximate space allotted for each inmate was 2 square metres. All detainees in the section slept in one room, which constantly lacked air, especially at night.

Based on an order of the Minister of Interior, from August to November 1998 no prisoner was permitted to lie in bed during the day; they were only permitted to stand or sit. As sleeping time was eight hours per day, the prisoners were required to spend the remaining 16 hours on their feet. The applicant complains that many detainees, but himself in particular, given his weight and heart problems, were unable to endure the "standing regime" under the above order. It was only amended as a result of numerous protests by detainees, including various applications lodged to this effect by the prisoners' organisation "Aim", led by the applicant (also see below).

Sanitary conditions in the prison were deplorable. Toilets, sinks and showering facilities were "colonies of bacteria". There were various leaks and the water pipes were very old, rusty and affected by fungus.

The applicant states that it was very difficult to keep clean as he was only allowed to shower once a week on designated days. Showering on an unspecified day was penalised. Shower facilities only worked five days a week, and were always overcrowded. Hot water was only available at week-ends.

There were special laundry facilities where prisoners' bedding was washed. At times, however, it was not possible to give all the bedding to the laundry. Clothes, and some bedding, thus had to be washed by hand in a special sink. In the latter case the applicant could not dry the washed items and slept on a wet sheet.

Food was served three times a day. It was always cold, and there were no facilities to heat it. Vegetables were added to a course once a week. The applicant submits that the lunch that was served three times a week was impossible to eat due to its awful taste. Overall, food was prepared in an insanitary manner. At times he had found wood shavings, little stones and pieces of iron in his food. As the prison canteen was not big enough for all prisoners in the wing, catering was organised by separating detainees into groups. However, the number of inmates in each group was always greater than the number of places in the canteen. A prisoner who arrived late would be left without food. There was a shop where detainees could obtain additional food. There was also a limited list of items that could be given by prisoners' relatives during personal visits. No food supplement containing proteins was allowed, however, despite the fact that the prison infirmary had recommended such a diet to the applicant. He alleges that the administration thereby forced detainees to buy more food from the prison shop.

Qualified doctors only visited the prison at times. It was therefore impossible to have permanent, professional medical assistance at the prison infirmary. The infirmary lacked medication, especially painkillers. All illnesses were treated with aspirin and paracetamol. The applicant states that he is immensely overweight, and that he has been diagnosed as having a heart disease and severe knee problems. The prison administration refused to let the applicant undergo a knee operation.

He states that there was no work provided in the prison, and that the number of meaningful activities was very limited. In summer and in-between seasons it was possible to engage in sports in the open air in the exercise yard; however, no such possibilities existed in winter. In addition, until lunchtime each day the prisoners were not permitted to go to the stroll circle and the exercise yard, and they could only circulate within the narrow territory of their respective wings during this time. There were also few concerts or cinema shows. No retraining or educational programmes were organised in the prison; the applicant's numerous requests to this effect were ignored.

The number of personal visits was very limited. There were four telephones in the prison; personal calls were allowed from 7 a.m. until 10.30 p.m. However, given that there were 2100 prisoners at the time, barely half of them could avail themselves of the opportunity to call their relatives.

Conditions of the applicant's detention in 1999

From 5 to 20 January 1999 the applicant was detained in solitary confinement for disciplinary reasons (see below).

Since 21 January 1999 the applicant has again been placed in the segregation unit of the prison. He states that the conditions of detention in the unit have not substantially changed, except that maintenance work is being undertaken there at the moment and a window has been put in the kitchen.

The applicant submits that his numerous complaints about the general conditions of detention in Pravieniškės have been dismissed by the prison administration and other executive authorities.

The applicant's specific treatment and disciplinary penalties against him

The applicant alleges that the lower prison staff are very poorly qualified. He states that they have an inferiority complex, and that they need to show their authority in a degrading manner. Their actions are allegedly very provocative. The administration tolerates the constant consumption of alcohol by staff during working hours. Many prisoners are allegedly employed as secret informers by the administration, in return for promises of parole or conditional release. The applicant receives daily abuse from the staff because of his firm opposition to and the criticism of the general policies of the penitentiary system in Lithuania, as well as his specific criticism of the conditions of detention at Pravieniškės.

According to the applicant, the acts of the prison administration, including those whereby disciplinary penalties were imposed on him, have never been subject to effective revision. He gives the following recent examples:

Throughout 15-19 April 1998 he wrote numerous letters to the Director of the Penitentiary Department, the Minister of Interior, the Minister of Justice and the Ombudsman about his allegedly unlawful placement for three years in the Lukiškės Prison. He received no reply.

He contested a disciplinary penalty imposed on him on 24 August 1998, depriving him of better conditions of detention. His relevant complaints to the Prison Department and the Ombudsman were rejected as unsubstantiated.

On 10 October 1998 he was deprived of the right to buy food at the prison shop. He complained about a member of the prison staff who had ordered this. This complaint was not dealt with by the administration.

On 13 October 1998 he received a warning for threatening other prisoners with force. He states that his relevant application was again ignored by the prison management.

On 15 October 1998 the applicant was penalised for trespassing in the territory of the wing. He was ordered to wash the windows of the 21st section of the wing. The execution of this penalty was to be controlled by a member of staff against whom the applicant had lodged a complaint on 10 October 1998. The applicant initially refused to wash the windows in the presence of the said member of staff and other prisoners, as this allegedly meant the manifest abuse of any right to complain about that member of staff. The applicant later washed the windows while not being observed by the administration. The member of staff refused to accept that the work had been done. Consequently, on 16 October 1998 the applicant received a penalty of 10 days' solitary confinement. He was instantly conveyed there in handcuffs. Following only one hour of his placement in the cell, the Prison Director arrived and released him. The applicant alleges that this fact confirms the arbitrariness of the above penalties.

On 23 October 1998 the applicant was penalised for still being asleep at 6.40 a.m., that is, ten minutes after the regulatory wake-up call. On 28 October 1998 he received a further disciplinary warning for queuing beyond the privacy line while waiting to call his relatives on the telephone. He did not formally complain about these matters because of his disillusionment with the rejection of or lack of response to his previous applications.

The applicant states that in December 1998 "confidential sources" informed him that one member of staff was involved in criminal activities relating to the falsification of documents. On 28 December 1998 the applicant lodged a specific complaint against the staff member on behalf of the prisoners' organisation "Aim". The complaint was given to the administration in order to be transmitted to the Ombudsman. On 29 December 1998 a high-ranking member of the prison administration requested the applicant not to send the complaint, promising that the staff member would be dismissed, and that the applicant would be afforded better conditions of detention. The applicant refused to do so and insisted on the onward transmission of the complaint. He states that this refusal gave rise to his solitary confinement a week later (see below). According to the applicant, the member of staff in question was forced to leave the prison service as a result of the Ombudsman's investigation.

In December 1998 the applicant also filed with the Ombudsman a complaint against another staff member for alleged misuse of his functions. The applicant claimed in particular that that officer had been deliberately provoking conflicts with the applicant and other prisoners. The above complaint was dismissed as unsubstantiated.

In the middle of December 1998 the applicant obtained oral permission from the Prison Director to visit detainees in other wings to greet them for Christmas on behalf of "Aim". Having obtained the relevant permission, on 24 December 1998 he was trying to go from Wing 1 to Wing 3. He was allowed to enter Wing 3, but was immediately stopped by Wing 3 staff. On 29 December 1998, as a disciplinary sanction, the applicant was ordered to clean up his section's living space. The applicant states that, as the relevant regulations did not require that the cleaning be done in the presence of a member of staff, he performed the work ordered while not being seen. The staff member who was supervising the work did not accept that the job had been done. As a result, on 5 January 1999, the applicant was penalised with 15 days' solitary confinement. He immediately announced a hunger strike.

On 6 January 1999 the applicant wrote complaints to the Parliament, the Ombudsman, the Director of the Prison Department and a regional prosecutor. He also wrote to various non-governmental organisations and the media. On 8 January 1999 the applicant's sister called the Prison Director, who allegedly lied to her that the applicant was not on a hunger strike. On 9 January 1999 the biggest Lithuanian daily "Lietuvos Rytas" wrote an article on page two, stating that the applicant was on a hunger strike. On the sixth day of the hunger strike, on 11 January 1999, a prosecutor arrived and advised the applicant to seek a compromise with the administration. On 13 January 1999 the applicant discontinued the hunger strike. On 21 January 1999 two disciplinary sanctions were imposed on the applicant - he was deprived of access to the prison shop and the right to be given additional food during personal visits. He was transferred to the segregation unit of the prison. No further investigation of the above events by the prosecution or any other authority followed.

The applicant considers that the above penalties taken as a whole reveal the basic picture of ineffectiveness of any internal efforts to review the alleged acts of ill-treatment. His complaints about the penalties of 24 August 1998, 10, 13, 15, 16, 23 and 28 October 1998, 29 December 1998 and 5 January 1998 were rejected by the Ombudsman by sole reference to the statements of the prison staff, without due regard to the actual circumstances. In the applicant's view, the disciplinary penalties in question also demonstrate the pressure that is exerted upon him as a leader of prisoners at Pravieniškės. He asserts that this pressure was increased when the administration became aware of his criticisms of the conditions of his detention, while censoring his correspondence to and from the Convention organs.

Correspondence with the Convention organs

The applicant states that the first letter from Strasbourg of 18 June 1998 was shown to him when it had already been opened. He was only allowed to write down the contents thereof, and had to give it back to the administration. The subsequent letters from Strasbourg have been opened by the administration and given to the applicant some three days following their receipt in the prison.

In his letter of 3 December 1998 the applicant states that all his communications with the outside world, including those addressed to the Court, were subject to censorship. He gave his hand-written letters to the administration, who ought to have sent them to Strasbourg. He was unsure whether any of his communications had eventually reached the addressee. He was refused the possibility to make copies of his own letters.

In the letter of 3 December 1998 the applicant also states that on 27 November 1998 he asked the Prison Director to furnish him with information pertaining to the number of

detainees at Pravieniškės, which was refused. The applicant thus alleged that he was denied access to elementary information in order to support his Convention complaints. He was forced to obtain such information from "unofficial sources".

On 7 December 1998 the Prison Director wrote a letter to the Court, stating *inter alia*:

> "On 2 December 1998 the prison administration received a letter by [the applicant] addressed to [the Court]. Having acquainted myself with the contents of the letter … I would like to set out certain considerations as to the facts alleged [therein] … .
>
> It is true that pursuant to the order of the Minister of Interior of 14 August 1998 … it is prohibited for convicted persons to lie in bed save during the sleeping hours specified in the schedule, if there is no special permission thereto from the administration … , [but] it is not true that all convicted persons have been prevented from lying in bed during the day, as J. Valašinas says in the letter ... because elderly, handicapped [prisoners] have been afforded [that] opportunity … .
>
> [The applicant] alleges that some wings in the prison accommodate more than 400 convicted persons in breach of the requirement of Rule 2 § 11 of the Prison Rules that "no more than 300 persons should be held in a wing". [However,] there is no practical possibility to implement the above rule in view of the rapid increase in the number of convicted persons (the limit is 1,830 [detainees], [but] on 3 December 1998 there were 2,109).
>
> As regards the education of convicted persons … , from 1 January 1999 the administration of the Chairman of Kaunas County is prepared to set up an education point for adults in the prison … .
>
> On 20 August 1998 [the prisoners at Pravieniškės] founded an organisation of mutual assistance and support, "Aim" (its president is [the applicant]). … We think that the establishment of this organisation is to be welcomed … . However, in practice, from the moment when it was set up, this organisation and its president J. Valašinas only defend the interests … of the "authorities" of the underworld … .
>
> Several observations as to the disciplinary penalties of J. Valašinas … . [He] persistently breaches the internal order of the prison, for example, … on 24 August 1998 he, together with other members of "Aim", threatened one convicted person with force ... ."

In a letter to the Court of 16 December 1998 the applicant's sister complained that the applicant told her by telephone on 15 December 1998 that he had been prohibited from pursuing correspondence with Strasbourg, and that his letters to the Court of 30 November and 3 December 1998 had not been sent by the prison administration.

On 18 December 1998 the administration sent to the Registry the applicant's letters of 30 November, 3 December and 15 December 1998. They also included a transcript of the administration's meeting of 15 December 1998 in which the question of the applicant's

correspondence with Strasbourg was discussed. The acting Director of the prison said in the transcript that he:

> "explained to [the applicant] that he has to apply first to certain authorities of the Republic of Lithuania, that is: the Prisons Department, the Ministry of Interior, the Ministry of Justice, the Ombudsman, the Office of the Prosecutor General and other institutions. The [applicant] is familiar with this procedure, laid down by Article 50 of the Prison Code and Rule 7 § 3 of the Prisons Interim Rules; he categorically required however that his letter to [Strasbourg] be sent … . [The applicant] asked me a question whether I had a right to have access to the contents of [his] letter … I explained that I had such a right under Rule 7 § 1 (7) of the Prisons Interim Rules [stating that] 'the letters of convicted persons (expect those to a prosecutor) that are sent or received are subject to censorship'. Given the categorical requirement of [the applicant], [his] complaint shall be sent to the addressee."

On 1 March 1999 the Registry received one more letter from the applicant, sent on 15 February 1999. According to him, this letter was not sent "through the prison administration". He enclosed therewith an original of the Registry's letter of 14 January 1999 as evidence that the communications from the Court have been censored: on the Registry's letter there was a prison stamp with the date of receipt, 1 February 1999, a hand-written remark by the Prison Director ordering that the applicant be acquainted with the letter on 1 February 1999, and the applicant's written confirmation that he had had such access on 3 February 1999.

The facts of the case, as submitted by the Government, may be summarised as follows.

The applicant's initial detention

The Government contest the allegation that the applicant was transferred to Lukiškės as a result of his meeting with the representative of the Parliamentary Assembly of the Council of Europe (see the 'Facts' part, p. 2). They state that he was in fact moved to the stricter prison as a consequence of seven disciplinary penalties imposed from 1993 to 1995, and that the administration of the Pravieniškės Prison had requested his transfer to Lukiškės before his meeting with Mr Frunda.

Lukiškės Prison

The Government state that they can neither confirm nor deny that, when in solitary confinement at Lukiškės, the applicant was treated in the manner he has alleged. They confirm that he received out-patient medical treatment following his solitary confinement (see the 'Facts' part, pp. 2-3). The Government aver that there are no prison medical records showing a severe deterioration of his health in April 1995 or immediately afterwards. They accept that at the material time there was no bedding in solitary confinement cells, and that the catering norms were reduced on alternate days. The Government stress that that situation has now been remedied. They confirm that the applicant was not be permitted to leave Lukiškės for his mother's funeral as, pursuant to Article 45-1 of the Prison Code, a person

detained in a strict regime prison like Lukiškės cannot obtain leave to visit his family even on exceptional occasions, such as the death of a close relative.

The segregation unit of Pravieniškės Prison

The Government doubt whether a woman attended the strip-search on 7 May 1998 (see the 'Facts' part, p. 3), as only a very small number of women work with detainees. In addition, the applicant's allegations in this respect were not confirmed by the conclusions of the Ombudsman and the Director of the Prison Department, in their replies to the applicant's complaints in this connection. Moreover, the Government doubt that the applicant's food was checked in the manner specified by him, because the prison staff are aware of the requirements of hygiene which are supervised by the prison medical service, a branch of the Ministry of Health.

The Government can neither confirm nor deny that the applicant was not afforded adequate medical assistance on 11 June 1998 or immediately thereafter (see the 'Facts' part, p. 3), because no request for such assistance was made by the applicant through the Head of the Segregation Unit, not the special telephone line, as required by the Prison Interim Rules. According to the applicant's medical records, on 22 June 1998 he had sore throat, but no temperature.

The normal regime of detention at Pravieniškės

The Government partly confirm the applicant's allegation regarding the sanitary conditions at Pravieniškės (see the 'Facts' part, p. 4), but they stress that renovation of the sanitary installations is being carried out at the moment.

The Government further submit that the applicant's description of the catering conditions (see the 'Facts' part, p. 4) is doubtful. They state that detainees are fed three times a day with intervals of no more than seven hours. Food is prepared each time separately, and an appropriate permit is issued by the prison medical officer for each course to be served. A special branch of the Ministry of Health monitors the catering conditions. In order to avoid the spread of infectious diseases, and to prevent the smuggling of alcohol or drugs, no perishable products or items in home-made packaging are allowed in the prison.

The Government also doubt that the applicant had no access to qualified medical assistance (see the 'Facts' part, p. 5). There are six qualified physicians and nine nurses in the prison. In addition, detainees who are seriously ill can be hospitalised in a special hospital in Vilnius. If specific treatment is needed, a detainee can be transferred to a normal hospital.

With regard to the alleged lack of work (see the 'Facts' part, p. 5), the Government state that 250 prisoners in the prison are in fact working.

Concerning the applicant's allegations about a lack of recreational activities (see the 'Facts' part, p. 5), the Government submit that the prison has not only an exercise yard outdoors, but also table tennis and pool tables, as well as gym facilities indoors. A special recreational room has a television, a compact disc player and loudspeakers. The detainees can obtain newspapers and, once a week, choose books in the prison library. They are also permitted to have their own televisions and radios. During 1998 the following cultural and recreational events were organised in the prison: several sports tournaments, four theatre

productions, fourteen concerts, two art exhibitions, two television game shows, six visits by national celebrities, 82 spiritual services, 80 cinema screenings and 200 video shows.

The Government are of the opinion that the number of personal visits permitted under Article 24 of the Prison Code (see the 'Relevant domestic law' part, p. 13) is sufficient for a detainee to maintain his private and social links outside the prison.

The disciplinary penalties against the applicant

The Government further submit that the applicant's allegations of mischief and lack of competence on the part of prison staff are absolutely unsubstantiated (see the 'Facts' part, p. 5).

Furthermore, his allegations about the arbitrary nature of the disciplinary penalties against him are very doubtful, as they were not confirmed by the conclusions of the Ombudsman. In this connection the Government refer to the following decisions of the Ombudsman:

On 10 September 1998 the Ombudsman rejected as unsubstantiated the applicant's complaint against the disciplinary penalty of 24 August 1998 (see the 'Facts' part, p. 6), finding that it had been imposed in accordance with the relevant provisions.

On 19 January 1999 the Ombudsman rejected as unsubstantiated the applicant's complaints against the penalties of 10, 13, 15, 23 and 28 October 1998 (see the 'Facts' part, p. 6), finding that they the prison management had acted lawfully. In connection with the events of 16 October 1998 (see the 'Facts' part, p. 6), the Ombudsman noted that no disciplinary penalty was imposed on the applicant. No allegations about his solitary confinement on the above date were noted by the Ombudsman.

On 20 January 1999 the Ombudsman dismissed the applicant's complaint about the penalty of 29 December 1998 (see the 'Facts' part, p. 7). By reference to the explanations by the prison staff, the Ombudsman held that the Prison Director had denied having given the applicant permission to freely circulate within other wings of the prison, and that Wing 3 officers had not allowed him to pass freely from Wing 1 to Wing 3. The Ombudsman concluded that the prison administration had lawfully imposed the penalty.

On 21 January 1999 the Ombudsman dismissed the applicant's complaints about the allegedly improper activities of two members of the prison staff (see the 'Facts' part, pp. 6-7). The Ombudsman held that there were no grounds to examine the above complaint insofar as it concerned one staff member who had left the prison. The Ombudsman established no wrongdoing or intent to seek conflicts with prisoners by another staff member.

On 21 January 1999 the Ombudsman rejected the applicant's complaint against the disciplinary penalty of 5 January 1999 (see the 'Facts' part, p. 7). In this connection the Ombudsman established that the applicant, owing to his authority among other prisoners, could indeed have ordered other prisoners to clean up his section's living space, thereby avoiding executing the penalty of 29 December 1998 personally. According to the Ombudsman, it was reasonable for the staff member to wish to supervise that the applicant performed the work himself. Such supervision could not amount to an unjustified interference with the applicant's honour. As a result of the applicant's refusal to be monitored by the staff

in this connection, the Ombudsman concluded that he had not done the job himself, and that the penalty of 5 January 1999 had therefore been lawful.

B. Relevant domestic law

Prison management system

A prison is headed by a Director. The prison administration is responsible to the Prison Department, which is supervised by the Ministry of Interior (Article 5 of the Prison Code).

The role of the prosecuting authorities

Under Article 11 of the Prison Code, the Prosecutor General and subordinate prosecutors ensure the protection of the rights of prisoners.

Statutory prohibitions on torture and ill-treatment

Pursuant to Article 21 of the Constitution, no one may be subjected torture, inhuman or degrading treatment or punishment.

Article 1 of the Prison Code provides that imprisonment shall not be intended to cause physical suffering or offend human dignity.

Correspondence

Article 22 of the Constitution provides that a person's correspondence is inviolable. Persons shall be protected by courts from arbitrary or unlawful interference with that right.

Article 41 of the Prison Code provides that "the correspondence of convicted persons shall be censored".

Rule 7 § 1 (7) of the Prison Interim Rules states that "convicted persons' letters (except those to a prosecutor) which are sent from or received at a prison are subject to censorship".

Rule 7 § 1 (8) states that any letters containing "cryptography [and] cynical or threatening statements shall not be sent to the addressee".

Rule 7 § 3 (4) provides that written "suggestions, applications or complaints containing insults, jargon or obscenities shall not be sent, [and that] disciplinary penalties may be imposed on the persons who have signed" such papers.

Leave on special occasions

Pursuant to Article 45-1 of the Prison Code, detainees can be given leave on specific occasions, such as the death of relatives, etc. Such leave is not available in Lukiškės, which has the strictest regime prison.

Personal visits

Article 24 of the Prison Code provides that a person detained under the prison regime in operation at Pravieniškės is entitled to four short-term (up to four hours) and four long-term (up to 2 days) personal visits per year. Upon completing half of his sentence, the prisoner can request two more short-term and two more long-term visits a year. The prison director has a discretion to permit an unlimited number of personal visits.

Medical assistance

Pursuant to the Prison Interim Rules, requests for urgent medical assistance should be made through the head of a particular unit of the prison.

Article 78 of the Prison Code provides that detainees from all national prisons can be hospitalised in a special hospital on the request of a qualified doctor.

Disciplinary penalties

Pursuant to Article 71 of the Prison Code, the list of prison officials entitled to impose disciplinary penalties and their competence in relation to the establishment of breaches of the prison regime is set out in Rule 1 § 1 (1) of the Prison Interim Rules.

Pursuant to Article 70 § 9 of the Prison Code, a detainee can complain against a disciplinary penalty to a higher authority within the prison. The complaint does not affect the execution of the penalty.

Rule 7 § 3 (2) of the Prison Interim Rules provides that a complaint against the disciplinary penalty is first examined by the prison management. If the detainee is not satisfied with the conclusions of the administration, he can insist on sending the complaint to another authority.

Complaints in connection with conditions of detention

Article 50 of the Prison Code entitles a prisoner to apply to any State authority with recommendations, applications and complaints regarding his conditions of detention.

Under Article 1 of the Parliamentary Ombudsmen Act, the Ombudsman can examine individual complaints about the wrongdoing or misuse of office by executive officials.

Under Article 14 of the Act, the Ombudsman may not examine the allegations the investigation of which falls within the competence of courts.

Pursuant to Article 23 § 2 of the Act, the Ombudsman may not revise or revoke the executive decision or act in question. Pursuant to subparagraphs (1) to (3) of Article 23 § 1,

the Ombudsman may only refer the results of his investigation to prosecuting authorities for the institution of criminal proceedings, or bring a court action, or recommend an appropriate course of action in connection with any wrongdoing established.

The former provisions of Articles 269-1, 269-2 and 269-5 of the Code of Civil Procedure (in force until 1 May 1999) provided the right for a person to bring an action against the acts of public authorities breaching personal rights. Pursuant to the provision of Article 269-2, no complaint against an act of a public authority was possible if other statutes provided specific complaint procedures. Identical provisions are now set out in the Code of Administrative Procedure.

Pursuant to Article 102 of the Constitution and the relevant provisions of the Constitutional Court Act, the Constitutional Court can examine actions alleging incompatibility of a statute, by-law or rule with the Constitution. Only a limited number of official bodies, including courts, can complain to the Constitutional Court. No private individual can lodge an action with the Constitutional Court.

COMPLAINTS

1. Under Articles 3 and 10 of the Convention the applicant complains about the conditions of his initial detention in Pravieniškės Prison from 1993 to 1995. He further complains about his transfer to Lukiškės because of the opinions he expressed to the parliamentarian from Strasbourg, his solitary confinement in Lukiškės in April 1995 and the prohibition on leaving the prison to attend his mother's funeral in April 1997.

2. Under Article 3 of the Convention he also complains that, while at Lukiškės, he was subjected to the strictest regime of imprisonment.

3. Under Article 3 the applicant further complains about the conditions of his detention following his re-detention in Pravieniškės since April 1998. He complains of the conditions of his detention in the segregation unit and the conditions under the normal regime at that prison. In addition to the general conditions of detention, the applicant also complains about specific ill-treatment, namely the allegedly arbitrary disciplinary penalties against him. He claims that there is no adequate domestic remedy for his situation. The applicant states that the above conditions cannot lead to his rehabilitation, and that the punishment to which he has been subjected is inhuman and degrading. The applicant states that he intends to foster the reform of the penitentiary system in Lithuania by submitting his complaints to the Court.

4. Under Articles 8 and 34 of the Convention, the applicant also complains of the control of his correspondence by the administration of Pravieniškės Prison. He further alleges that his letters to Strasbourg have been stopped and kept unsent for some time by the prison administration.

5. Under Article 2 of Protocol No. 1 of the Convention the applicant complains that he has been denied the right to education in Pravieniškės Prison. In this connection he complains about the failure of the prison administration to organise retraining programmes for detainees.

PROCEDURE

The application was introduced before the European Commission of Human Rights on 14 May 1998. It was registered on 16 November 1998, by which time the case fell to be examined by the Court by operation of Article 5 § 2 of Protocol No. 11 to the Convention.

On 16 March 1999 the Court decided to communicate the application to the respondent Government. The Government's written observations were submitted on 28 May 1999. The applicant replied on 28 July 1999.

On 16 June 1999 the Court granted the applicant legal aid.

THE LAW

1. Under Articles 3 and 10 of the Convention the applicant complains about the conditions of his initial detention in Pravieniškės, his transfer and solitary confinement in Lukiškės, and the refusal of leave to attend a funeral.

Article 3 reads:

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

Article 10 provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government submit that in certain respects the applicant did not exhaust domestic remedies, as required by Article 35 § 1 of the Convention, and that in any event the Court has no competence *ratione temporis* to examine this part of the application as it relates to the events prior to 20 June 1995, which is the date of the entry into force of the Convention with respect to Lithuania.

The applicant argues that the Court has competence *ratione temporis* to examine all the facts alleged in this part of the application by virtue of the persistent effects of these

matters, resulting in a continuous violation of his rights after the entry into force of the Convention.

The Court does not share the applicant's opinion of a continuous violation. The disciplinary sanctions against him, his transfer from one prison to another, his solitary confinement and the refusal of permission to leave the prison were either instantaneous or lasted for a limited period of time, but did not constitute the continuous ill-treatment of the applicant.

The Court recalls that it cannot examine complaints that relate to a period prior to 20 June 1995, which is the date of the entry into force of the Convention with respect to Lithuania. Furthermore, in accordance with Article 35 § 1 of the Convention, the Court may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the "final" domestic decision. Where a complaint is made about the absence of an adequate remedy against a particular act, which is alleged to be in breach of the Convention, the date when that act takes place is "final" for the purposes of the six months' rule.

As regards the applicant's complaints about the conditions of his initial detention at Pravieniškės until his transfer to Lukiškės on 29 March 1995, his actual transfer to Lukiškės and his solitary confinement there in April 1995, the Court notes that these matters arose before 20 June 1995, which is the date of the entry into force of the Convention with respect to Lithuania. Therefore the Court has no competence *ratione temporis* to examine these aspects of the case.

In connection with the applicant's complaint that he could not leave the prison to visit his sick mother or to attend her funeral in April 1997, the Court notes that the applicant was effectively barred from leaving Lukiškės Prison by virtue of the provisions of Article 45-1 of the Prison Code. In this respect, he had no remedy within the meaning of Article 35 § 1 of the Convention. As the events alleged in this part of the application relate to a period in April 1997, i.e. more than six months before the application was introduced, this part of the application was submitted out of time.

It follows that this part of the application must be rejected under Article 35 §§ 1, 3 and 4 of the Convention.

2. The applicant also complains that throughout the whole period of his detention in Lukiškės he was subjected to "the strictest regime" incompatible with Article 3 of the Convention.

The Court notes that the applicant alleges that he had no remedies to complain about his situation in Lukiškės. By reference to Article 35 § 1 of the Convention, the Court may only examine that part of the complaint which relates to the period from 14 October 1997, i.e. six months before the introduction of the application. However, the applicant has failed to present any *prima facie* evidence to show that his treatment in Lukiškės from that date until his re-detention in Pravieniškės involved treatment contrary to Article 3.

It follows that this aspect of the case is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected under Article 35 § 4.

3. Under Article 3 of the Convention the applicant further complains about the general conditions of detention and his specific ill-treatment in Pravieniškės since his re-detention there in April 1998.

The Government contend that the applicant failed to exhaust domestic remedies. According to the Government, Article 50 of the Prison Code gives the applicant the right to apply first to the Prison Department or the Ministry of Interior, and then to other governmental authorities concerning specific aspects of his detention. For example, the applicant should have applied to the Ministry of Health concerning the allegedly bad sanitary conditions in Pravieniškės. If he did not obtain redress, he was free to further challenge the executive decision, applying to the prosecuting authorities, the Ombudsman or courts. The Government emphasise that prisoners' rights are protected by the Prosecutor General and his subordinates who are entitled to issue "mandatory directives" to the prison administration. The competence of the Ombudsman includes examining complaints into alleged wrongdoing or misuse of office by any executive authority. Finally, the applicant should have applied to the civil courts, alleging a violation of personal rights in connection with the conditions of his detention. However, he failed to do so. In these circumstances, the Government submit that the Court is precluded by Article 35 § 1 of the Convention from examining this part of the application.

As regards the conditions of the applicant's detention in the segregation unit at Pravieniškės, the Government do not accept the reliability of the applicant's allegations regarding the strip-search on 7 May 1998. Furthermore, he failed to request medical help in connection with the illness of 11 June 1998 in accordance with the requirements of the relevant prison regulations.

In respect of the applicant's allegations about the conditions of detention at Pravieniškės under the normal regime, the Government stress that the sanitary conditions in the prison are being improved, that there is no prohibition on the prisoners circulating outdoors before noon, that proper work and recreational facilities and qualified medical assistance exist, and that the statutory limit on personal visits in the prison is adequate. The Government doubt the validity of the applicant's description of the catering conditions.

The Government further argue that the applicant's allegations of staff incompetence are absolutely unsubstantiated, and that his complaints about the arbitrariness of the disciplinary penalties against him are ill-founded, as no wrongdoing by the prison administration was established by the Ombudsman. In the Government's view, the facts of the case do not disclose any specific treatment of the applicant which was different from the handling of other prisoners. Moreover, the applicant failed to exhaust the domestic remedies that were available to him regarding the disciplinary penalties in question, as he did not complain to the Prison Department, or the Ministry of Interior, by reference to Articles 70 § 9 and 71 of the Prison Code and Rule 7 § 3 (2) of the Prison Interim Rules, or to other authorities under the above mentioned Article 50 of the Prison Code.

The Government stress the provisions of the Constitution (Article 21) and the Prison Code (Article 1) which prohibit ill-treatment within the meaning of Article 3 of the Convention. In their view the general conditions of the applicant's detention are compatible with the above provisions of domestic law and the Convention. The Government recall the Court's case-law (the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26) whereby it has been established that treatment contrary to Article 3 must include the

intention to cause harm on the part of the authorities, great moral or mental suffering, and the absence of justification for such actions. In the Government's opinion, none of these elements can be detected in the present case. While a number of alleged facts, including specific measures taken against the applicant as a result of various breaches of discipline, interfered with his personal rights, the interference in question was lawful and sought legitimate aims. Overall, neither the applicant's personal treatment, nor the situation in Pravieniškės in general, discloses any breach of Article 3 of the Convention.

The applicant denies that an adequate remedy was available to him. He submits that Article 50 of the Prison Code is too general and vague to create an effective remedy within the meaning of Article 35 § 1 of the Convention. The number of authorities listed by the Government as proper, but unused, avenues of redress under Article 50 of the Prison Code, only shows that there was in fact no channel for the applicant's specific complaints of ill-treatment, or the general structural and economic problems in prisons which amounted to treatment in breach of his rights under Article 3 of the Convention. In any event, no complaint to an executive authority, prosecutor, or the Ombudsman is a remedy satisfying the requirements of Article 35 § 1 of the Convention. Only in relation to his recent detention at Pravieniškės did the applicant try various avenues, lodging 21 complaints or applications with the prison management, the executive, or the penitentiary and parliamentary authorities concerning either the general administration or facilities in the prison or specific ill-treatment, but to no avail. In his view, these facts show that no effective steps could be taken to defend his rights before complaining to the Convention organs.

The applicant further claims that there was no adequate possibility for him to complain to a court. He notes in the first place that the provisions of the Code of Civil Procedure referred to by the Government as possible avenues of redress have now been repealed. In any event, no court action is available to him because no provision of the Prison Code or of the Prison Interim Rules envisages such an action. By reference to the former Article 269-2 of the Code of Civil Procedure, the applicant observes that no action in tort was in fact available in connection with the disciplinary penalties in prison, because Articles 70 § 9 and 71 of the Prison Code and Rule 7 § 3 (2) of the Prison Interim Rules establish a specific procedure for contesting a disciplinary penalty, but give no right of appeal to a court. The same is true for the current administrative procedure, which provides for an identical procedure. Thus, the applicant considers that the disciplinary penalties could only be contested by way of a hierarchical complaint to a superior penitentiary or other authority, but not to a court. In any event, he could not have obtained free legal aid for a court action. Furthermore, his specific situation as a prisoner also placed an immense burden on him to seek the objective establishment of the facts, even if he was entitled to apply to a court without legal assistance. Overall, no remedy satisfying the requirements of Article 35 § 1 of the Convention existed in relation to the conditions of his detention.

The applicant maintains his claims about the strip-search on 7 May 1998, and inadequate medical treatment in June 1998. Moreover, he claims that the bar on remaining in bed at day-time for three months in 1998 was wholly unjustified and humiliating physically as well as mentally. The disciplinary penalties imposed against him were intended to humiliate him and disclosed the underlying disapproval of the prison management for his defence of prisoners' rights through "Aim" and for his case before the Court. By exerting such systematic pressure upon him, the prison management only sought to discourage him from his legitimate activities, humiliate his dignity and destroy his human personality.

The applicant claims that all the facts alleged by him in connection with this part of the application are true. They disclose various administrative and economic problems in the prison in general, as well as specific ill-treatment of his person in Pravieniškės, which amounts to a breach of Article 3 of the Convention.

The Court recalls that there is no obligation under Article 35 § 1 of the Convention to have recourse to remedies, which are inadequate. In addition, according to the "generally recognised rules of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust domestic remedies at his disposal. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement. One such reason may be constituted by the passivity of the national authorities in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of (see, the Menteş and Others v. Turkey judgment of 28 November 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2706, § 57).

Furthermore, the application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant (*loc*. *cit*., p. 2707, § 58).

(a) The Court will examine first whether the applicant had remedies within the meaning of Article 35 § 1 of the Convention in respect of his complaints relating to the general administration and facilities in the prison.

The Court notes in this respect the possibility of lodging a complaint under Article 50 of the Prison Code which, according to the Government, requires the applicant to complain first to a superior prison authority, and from there - to other State authorities, including the executive, prosecutors, the Ombudsmen and courts.

The Court considers that any complaint to the penitentiary or other governmental authority under the above provision about the general conditions of detention would have been examined on the basis of more general economic and political considerations. No complaint to the executive could thus adequately remedy the applicant's personal grievances in this respect.

The Court also notes the Government's argument that the applicant could apply to the prosecuting authorities, if the decision of the executive was unacceptable to him. According to the Government, the prosecuting authorities act as the guardians of prisoners' rights, being entitled to issue mandatory directives to the prison management. The Court observes that the competence of the prosecuting authorities in this respect extends beyond the institution of criminal proceedings in cases where the domestic criminal law has been breached. However, the Government do not submit any examples of investigations by prosecutors of the general administrative and economic situation in Lithuanian prisons, or the legal consequences of such investigations, which might demonstrate that the remedy theoretically available to the applicant could also prove effective in practice. Instead, the Government argue that the general conditions of detention at Pravieniškės neither amount to ill-treatment under domestic law, nor involve a breach of Article 3 of the Convention. The only visible sign of activity by the prosecuting authorities in relation to the applicants' complaints was the intervention by the prosecutor during the events in December 1998 and January 1999, when it was suggested that the applicant seek a compromise with the prison administration. However, there was no investigation into his allegations of systematic ill-treatment. The manner in which the prosecutor handled the above dispute shows that the applicant could not reasonably expect any protection from that authority for his complaints about the general conditions of detention. It follows that no remedy within the meaning of Article 35 § 1 of the Convention was available from the prosecuting authorities.

As regards the possibility of applying to the Ombudsman, the Court observes that, while being an authority independent from the executive, the Ombudsman cannot adopt enforceable decisions vis-à-vis governmental authorities (Article 23 § 2 of the Parliamentary Ombudsmen Act). An application to the Ombudsman cannot therefore be regarded as a remedy satisfying the requirements of Article 35 § 1.

The Court further notes the Government's argument that the applicant could apply to courts, alleging a violation of personal rights under the provisions of Articles 269-1, 269-2 and 269-5 of the Code of Civil Procedure, either directly or on appeal from the decision of the executive under Article 50 of the Prison Code. These provisions of civil procedure have now been repealed and replaced by identical provisions in the Code of Administrative Procedure. Nonetheless, the Court considers that the success of an action in tort would require the applicant to show that he was in fact subjected to treatment, which was illegal under domestic law. However, the Government have submitted in the context of Article 21 of the Constitution and Article 1 of the Prison Code that the general prison conditions do not amount to treatment in breach of the applicant's rights. Furthermore, the Court notes that the applicant is a prisoner and that he has no right to free legal aid for such a court action. These circumstances would have made it more difficult, if not impossible, for him to argue his case. The Government have presented no case-law showing that an action in tort under the general provision governing a breach of personal rights could indeed be construed as a remedy satisfying the requirements of Article 35 § 1 of the Convention. The Court concludes that no court action for a breach of personal rights in relation to the general administration and facilities in Pravieniškės Prison could be considered to be an adequate remedy within the meaning of Article 35 § 1 of the Convention.

(b) The Court will next consider the Government's argument that the applicant failed to exhaust domestic remedies for his complaint about specific ill-treatment in Pravieniškės as regards the disciplinary penalties against him. The Government state that the applicant failed to make use of the remedies available under Articles 70 § 9 and 71 of the Prison Code and

Rule 7 § 3 (2) of the Prison Interim Rules, or that he did not use those remedies in connection with the general conditions of his detention.

The Court considers that this aspect of the case relates to an allegation of systematic ill-treatment of the applicant, the inactivity of prison management and other State authorities in the face of allegations of misconduct by State agents, and their failure to undertake proper investigations or offer assistance (see, *mutatis mutandis*, the Menteş and Others v. Turkey judgment cited above, *loc. cit.*). The Court observes that the applicant lodged 21 complaints concerning his situation in Pravieniškės with prison management, penitentiary and other executive institutions and prosecuting and parliamentary authorities, but to no avail. Although the applicant may not have complained to such bodies against each and every one of the disciplinary penalties, or other acts or omissions on the part of the authorities, the Court finds that non-exhaustion cannot be held against him for the following reasons.

The Court notes in particular the applicant's conflict with the prison management from December 1998 to January 1999 which, in the Court's view, required a thorough investigation. However, no penitentiary authority appears to have undertaken such an investigation. The prosecutor acted as a mediator between the applicant and the prison management during the applicant's hunger strike, but he did not examine the applicant's allegations of ill-treatment that had prompted that excessive measure. The Ombudsman, notwithstanding his independence from the executive, examined the administrative "lawfulness" of the separate disciplinary penalties, but did not investigate the alleged systematic ill-treatment of the applicant. In these circumstances, the Court finds that the State authorities failed adequately to respond to the scale and seriousness of the matters complained of.

The Government also allege non-exhaustion of judicial remedies in respect of this aspect of the case, stating that the applicant failed to sue the prison authorities for a breach of his personal rights in connection with the disciplinary penalties against him. In this respect the Court observes that Article 14 of the Parliamentary Ombudsmen Act bars the Ombudsman from examining any complaint the determination whereof would fall within the competence of the courts. However, the applicant's complaints about the disciplinary penalties against him were in fact examined by the Ombudsman. It would seem, therefore, that such matters are not generally deemed to be within the normal jurisdiction of the courts. In any event, the judicial action suggested by the Government, even if theoretically possible, could scarcely offer a reasonable prospect of success in view of the applicant's situation as a prisoner and the absence of a right to claim free legal aid. The Government have presented no case-law in connection with a court action against disciplinary penalties in prison. They have failed to prove the existence of a remedy within the meaning of Article 35 § 1 of the Convention in this respect. Accordingly, the Court is not satisfied that the applicant had, in theory or in practice, judicial remedies to complain about his specific ill-treatment in the prison.

Against the above background, the Court concludes that this part of the application cannot be rejected under Article 35 § 1 of the Convention for failure to exhaust domestic remedies.

The Court has had regard to the parties' other observations. It considers that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. This part of the application cannot therefore

be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. The applicant also complains under Articles 8 and 34 of the Convention about the control of his correspondence by the administration of Pravieniškės Prison. He further alleges that his letters to Strasbourg have been stopped and kept unsent for some time by the prison administration.

Article 8 provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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 34 states:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Government submit that the applicant did not exhaust the domestic remedies cited above, relying on Article 22 of the Constitution which establishes freedom of communication. Although the relevant provisions of the Prison Code and the Prison Interim Rules may be incompatible with Article 22 of the Constitution, the applicant could have still complained to a civil court about the censorship and the breach of his personal rights by reference to the Constitution. Having registered such an action, the judge could in turn apply to the Constitutional Court, requesting it to rule on the compliance of the above provisions of the Prison Code and the Prison Interim Rules with the Constitution.

The Government do not comment on the merits of the applicant's complaint under Article 8 of the Convention. They submit that there was no legal basis for the prison management to stop the applicant's letters to the Convention organs, but there is no evidence that the applicant's letters were not ultimately sent which could raise an issue under Article 34 of the Convention.

In the applicant's view, the Government have conceded that domestic law permitted the censorship of his correspondence in breach of Article 8 of the Convention. No remedy was thus available to defend his Article 8 right. The applicant notes that on 18 December 1998 the prison administration did send three of his letters to the Court, namely the letters of 30 November 1998, 3 December 1998 and 15 December 1998, but only after his numerous demands in this respect. In his view, those letters were in any event unjustifiably stopped and delayed because he had allegedly slandered the prison authorities in them.

The applicant submits that domestic law gave the authorities the possibility of interfering with his rights under Article 34 of the Convention. The fact that the prison management tried to hinder the applicant from pursuing his case before the Court is also confirmed by the transcript of the administration's meeting of 15 December 1998, whereby the prison management advised the applicant to apply first to various governmental and parliamentary authorities before complaining to the Court.

The Court notes that the domestic law permitted censorship of the applicant's correspondence, and any domestic avenue was devoid of any prospect of success. The procedure before the Constitutional Court suggested by the Government cannot be regarded as a remedy within the meaning of Article 35 § 1 of the Convention as the Constitutional Court cannot afford redress for a violation of the rights of an individual, but may only examine the compatibility of a law with the Constitution. In any event, a constitutional action was not accessible to the applicant personally or directly (see the 'Relevant domestic law' part above). It follows that this part of the application cannot be rejected for failure to exhaust domestic remedies.

The Court has examined the parties' other observations. It finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. This part of the application cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

5. Under Article 2 of Protocol No. 1 to the Convention, the applicant complains that the Pravieniškės Prison administration failed to organise retraining programmes for prisoners.

Article 2 of Protocol No. 1 states:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Court observes that Article 2 of Protocol No. 1 to the Convention concerns mainly elementary education, and that it guarantees the right to make use of educational facilities existing at a given time; it does not guarantee an absolute right to all forms of education (see, *mutatis mutandis*, the Belgian Linguistic judgment of 23 July 1968, Series A no. 6, pp. 30-32, §§ 1-6). The Court considers that the above provision does not impose upon the State an obligation to organise retraining programmes for prisoners.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and that it must be rejected under Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaints about the general conditions of his detention and his specific ill-treatment in Pravieniškės Prison since his re-detention there in April 1998, the control of his correspondence and the interference with the exercise of his rights under Article 34 of the Convention;

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

N. Bratza
President