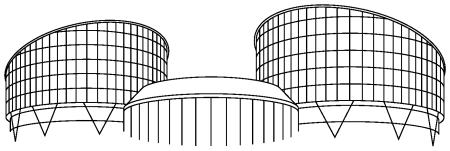

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TAMAŠAUSKAS AND RADZEVIČIUS v. LITHUANIA

(Applications nos. 8797/16 and 29486/17)

JUDGMENT

STRASBOURG

16 October 2018

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

In the case of Tamašauskas and Radzevičius v. Lithuania,

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

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

Having deliberated in private on 25 September 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 8797/16 and 29486/17) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Lithuanian nationals, Mr Osvaldas Tamašauskas ("the first applicant") and Mr Haroldas Radzevičius ("the second applicant"), on 5 February 2016 and 13 April 2017 respectively.

2. The applicants were represented by Ms M. Bartaševičiūtė, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

3. On 15 February 2018 the complaints concerning conditions of detention were communicated to the Government, and the remainder of application no. 8797/16 was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant, Mr Tamašauskas, was born in 1971. The second applicant, Mr Radzevičius, was born in 1977. They are both detained in Vilnius.

A. The first applicant (Mr Tamašauskas)

5. The first applicant was detained in Šiauliai Remand Prison from 28 September 2012 until 4 September 2014.

6. On an unspecified date he lodged a civil claim against the State, alleging that he had been detained in overcrowded and unsanitary cells. He claimed 48,493 euros (EUR) in respect of non-pecuniary damage.

7. On 9 January 2015 the Šiauliai Regional Administrative Court allowed in part the applicant's claim. It found that during the period under consideration the applicant had spent 629 days in Šiauliai Remand Prison and that during the remaining periods he had been transported outside of that prison. During those 629 days, he had between 1.72 and 16.96 sq. m of personal space. The court noted that the documents provided to it by the administration of the prison did not indicate the exact amount of personal space available to the applicant in each cell. It therefore gave the applicant the benefit of the doubt and held that during the entire period of 629 days his right to adequate personal space (3.6 sq. m, under the domestic law applicable to prison cells) might have been breached. The court also noted that parts of the cells had been occupied by furniture and that the space in which the applicant had been able to move had thus been even smaller.

8. However, the court dismissed the applicant's allegations that the conditions in the cells had been unsanitary on the basis of reports submitted by domestic public healthcare authorities. It also held that the applicant had not proved that his health had deteriorated as a result of the conditions in which he had been detained.

9. The applicant was awarded EUR 3,000 in respect of non-pecuniary damage.

10. The applicant lodged an appeal against that decision, but on 6 October 2015 the Supreme Administrative Court dismissed his appeal and upheld the lower court's decision in its entirety.

B. The second applicant (Mr Radzevičius)

11. The second applicant was detained in Alytus Correctional Facility from 22 November 2012 until 17 September 2014.

12. On an unspecified date he lodged a civil claim against the State, alleging that he had been detained in overcrowded and unsanitary dormitory-type rooms. He claimed EUR 16,611 in respect of non-pecuniary damage.

13. On 12 October 2015 the Kaunas Regional Administrative Court allowed in part the applicant's claim. It found that from 22 November 2012 until 11 April 2013 the applicant had had 2.96 sq. m of personal space, and that from 11 April 2013 to 13 August 2014 he had had 3.03 sq. m of personal space, in violation of the domestic requirement of 3.1 sq. m, applicable to dormitory-type rooms. During the remainder of his detention the personal space available to the applicant had complied with the domestic requirements.

14. On the basis of reports submitted by the domestic public healthcare authorities, the court held that the temperature, ventilation and humidity in the rooms had complied with the relevant domestic requirements, and dismissed the applicant's complaints in that regard. However, it observed that the administration of the correctional facility had not submitted any documents refuting the applicant's allegation that the natural light in the rooms had been insufficient, and found in the applicant's favour. The court also noted that during the relevant period the applicant had sought medical help for back pain, headaches, mood swings and insomnia; the court considered that those ailments might have been related to the unsuitable conditions of his detention.

15. However, the court considered that the reduction in the minimum personal space available to the applicant had been minor and that it had been compensated for by his ability to move freely around the correctional facility and by the various leisure activities available there. It therefore held that the finding of a violation was sufficient, and dismissed the applicant's claim for non-pecuniary damages.

16. The applicant lodged an appeal against that decision, but on 14 October 2016 the Supreme Administrative Court dismissed his appeal and upheld the lower court's decision in its entirety.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL MATERIALS

17. For the relevant domestic law and practice and international materials, including reports on the conditions in Šiauliai Remand Prison and Alytus Correctional Facility at the material time, see *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 50-69, 8 December 2015).

THE LAW

I. JOINDER OF THE APPLICATIONS

18. 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).

II. THE GOVERNMENT'S UNILATERAL DECLARATION CONERNING APPLICATION No. 8797/16

19. In application no. 8797/16 the Government submitted a unilateral declaration whereby they acknowledged that the conditions of the first

applicant's detention in Šiauliai Remand Prison had not complied with Article 3 of the Convention and proposed to pay him EUR 5,000 by way of just satisfaction. The Government asked the Court to strike the application out of its list of cases pursuant to Article 37 § 1 (c) of the Convention.

20. The first applicant rejected the Government's proposal on the grounds that the amount proposed as just satisfaction was insufficient. He asked the Court to continue the examination of the case.

21. The Court reiterates that it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government, even if the applicant wishes the examination of the case to be continued. Whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case will depend on the particular circumstances of the case (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI).

22. The amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar cases, bearing in mind the principles which it has developed for assessing the amount of compensation to be awarded in respect of non-pecuniary damage in cases concerning inadequate conditions of detention (see, *mutatis mutandis*, *Zherebin v. Russia*, no. 51445/09, § 40, 24 March 2016).

23. In the present case, the Court finds that the amount proposed in the Government's unilateral declaration does not correspond to its own awards in similar cases. The Government did not provide any valid reasons why the unilateral declaration should nonetheless be accepted.

24. Accordingly, the Court considers that the unilateral declaration proposed by the Government does not provide a sufficient basis for it to conclude that respect for human rights as defined in the Convention and the Protocols thereto do not require it to continue its examination of application no. 8797/16. The Court therefore rejects the Government's request to strike this application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicants complained of the inadequate conditions of their detention. They relied on Article 3 of the Convention, which reads:

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

A. Admissibility

26. Although the Government did not raise any preliminary objections, the Court nonetheless considers it necessary to address the question of the first applicant's victim status. The Court refers to the general principles stemming from its case-law and to its earlier findings (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, §§ 84-88 and 93-94, 8 December 2015). It notes that in the first applicant's case the Lithuanian courts admitted a violation of domestic legal norms setting out specific aspects pertinent to the conditions of detention. It considers that even though the applicant was awarded EUR 3,000 (see paragraphs 7 and 9 above), that amount, whilst apparently consistent with Lithuanian case-law, is inconsistent with the amounts that the Court awards in similar cases. The Court thus considers that the first applicant retains his victim status under Article 34 of the Convention.

27. The Court further notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

28. The applicants submitted that they had been detained in overcrowded and unsanitary cells. The first applicant also submitted that the compensation awarded to him by the domestic courts was too low.

29. As concerns the first applicant, the Government acknowledged that he had been detained in conditions which had not been compatible with Article 3 of the Convention. They nonetheless pointed out that the personal space available to him had varied over time (see paragraph 7 above) and that he had been awarded compensation by domestic courts (see paragraph 9 above).

30. As concerns the second applicant, the Government submitted that the domestic courts had calculated the personal space available to him on the basis of the number of beds present in each room; however, it was possible that the actual number of persons kept in the rooms could have been lower. In any event, the Government submitted that the reduction in the personal space had been minor (see paragraph 13 above) and had been compensated for by other factors. They provided reports by domestic public healthcare authorities which had examined the conditions in Alytus Correctional Facility in 2012 and 2014 and had found no violations of the domestic hygiene requirements. The Government also reiterated that the second applicant had been able to move around freely during the day and that various cultural, educational and sports activities had been available to him.

They therefore argued that the conditions of his detention had been in line with Article 3 of the Convention.

2. The Court's assessment

(a) General principles

31. The general principles relevant for the assessment of prison overcrowding were summarised in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 136-41, ECHR 2016).

(b) The first applicant

32. The first applicant complained about the conditions of his detention in Šiauliai Remand Prison from 28 September 2012 until 4 September 2014. The domestic courts found that for 629 days he had had less personal space than that required by domestic law, even though they were unable to establish the exact amount of personal space available to him in each cell (see paragraph 7 above). The Government did not provide to the Court any information that would allow it to reach a different conclusion than the one reached by the domestic courts (compare and contrast *Butkus and Remeikis v. Lithuania* (dec.) [Committee], nos. 42468/16 and 51911/16, § 23, 10 April 2018).

33. Having examined the documents in its possession and taking note of the Government's acknowledgment that the conditions of the first applicant's detention had not been compatible with Article 3 of the Convention (see paragraph 29 above), the Court finds that there has been a violation of that provision in view of the conditions of the first applicant's detention in Šiauliai Remand Prison for 629 days between 28 September 2012 and 4 September 2014.

(c) The second applicant

34. The second applicant complained about the conditions of his detention in Alytus Correctional Facility from 22 November 2012 to 17 September 2014. As can be seen from the decisions adopted by domestic courts, from 22 November 2012 until 11 April 2013 (a period of 140 days) he had had 2.96 sq. m of personal space, whereas during the remainder of his detention the personal space available to him had been above 3 sq. m. (see paragraph 13 above). Although the Government argued that the courts had based their calculation on the number of beds in each room and not the number of persons actually kept there (see paragraph 30 above), they have not provided to the Court any documents proving that the number of persons per room was indeed lower than the number of beds. In such circumstances, the Court has no reason to depart from the domestic courts' findings.

35. The Court reiterates that in cases where a prison cell measuring in the range of 3 to 4 sq. m of personal space per inmate is at issue, the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see *Muršić*, cited above, § 139).

36. Having examined the documents in its possession, the Court considers that the periods of the applicant's detention in Alytus Correctional Facility during which he had more than 3 sq. m of personal space did not raise an issue under Article 3 of the Convention.

37. However, the period of 140 days from 22 November 2012 until 11 April 2013 during which the applicant had 2.96 sq. m of personal space cannot, according to the Court's case-law, be considered as being of short duration (ibid., §§ 151-53). Therefore, the reduction in the personal space during that period could not have been compensated for by other factors.

38. The Court therefore concludes that there has been a violation of Article 3 of the Convention in view of the conditions of the second applicant's detention in Alytus Correctional Facility from 22 November 2012 until 11 April 2013.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

40. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the first applicant 6,400 euros (EUR) and the second applicant EUR 3,200 in respect of non-pecuniary damage.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Rejects* the Government's request for application no. 8797/16 to be struck out of its list of cases under Article 37 § 1 of the Convention on the basis of the unilateral declaration which they submitted;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of both applicants;

5. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, plus any tax that may be chargeable, in respect of non-pecuniary damage:
      (i) EUR 6,400 (six thousand four hundred euros) to the first applicant;
      (ii) EUR 3,200 (three thousand two hundred euros) to the second applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 16 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President