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

SECOND SECTION

CASE OF SAVENKOVAS v. LITHUANIA

(Application no. 871/02)

JUDGMENT

STRASBOURG

18 November 2008

FINAL

18/02/2009

This judgment may be subject to editorial revision.

In the case of Savenkovas v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges,*
Işıl Karakaş, *substitute judge,*

and Sally Dollé, Section Registrar,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in a voluminous application (no. 871/02) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national of Belarusian origin,
Mr Valerijus Savenkovas ("the applicant"), on 27 July 2001.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms Elvyra Baltutytė.

3. The applicant complained, *inter alia*, about the conditions of his detention in two Vilnius prisons, as well as the related litigation and the criminal proceedings against him. He invoked many provisions of the Convention and Protocol No. 1, in particular Articles 3 and 8 of the Convention.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

5. The applicant has frequently asked the Court to hold a hearing, to provide legal representation for that purpose and to translate all its communications into Russian. On 21 October 2008 the Court rejected such requests.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and lives in Vilnius. At the time of lodging his application, he was serving a prison sentence.

A. Criminal proceedings against the applicant

7. The applicant, a person with previous convictions, was suspected of robbery. On 8 September 1999 the police conducted a search of his home. The applicant complained to the prosecution that the search had been unlawful. He also alleged that the police had taken some documents and computer files belonging to the Belarusian Youth Association (BYA), a non-governmental organisation which he ran.

8. On the same date the applicant was arrested. His detention on remand was authorised by the Vilnius City Third District Court on 10 September 1999. It was thereafter extended on several occasions.

9. On 20 September 1999 the applicant was placed in custody at the Lukiškės Remand Prison (Vilniaus Lukiškių tardymo izoliatorius – kalėjimas).

10. He unsuccessfully attempted to escape from a convoy vehicle
on 28 December 1999.

11. On 23 December 1999 the prosecution rejected the applicant's complaints regarding the search of his home. The applicant did not appeal.

12. On an unspecified date the pre-trial investigation was concluded and the case transmitted to the trial court.

13. On 17 October 2000 the Vilnius City Third District Court convicted the applicant of robbery, the illegal possession of ammunition, assault and an attempt to abscond. He was sentenced to five years and ten months' imprisonment and his property was confiscated. During the hearing the applicant was assisted by an officially-appointed defence counsel and an interpreter (Russian / Lithuanian). When calculating the sentence to be imposed on the applicant, the

trial court added a period of imprisonment relating to a previous conviction, which the applicant had not served fully as he had been released on licence on 6 May 1998.

14. The applicant appealed, claiming inter alia that the case against him had been fabricated, that the court had based its conclusions on evidence obtained by force, and that the conviction was arbitrary. On 8 March 2001 the Vilnius Regional Court dismissed the applicant's allegations as unsubstantiated. The applicant was not present at the appeal hearing but was represented by officially-appointed counsel.

15. The applicant lodged a cassation appeal, claiming that the charges had been fabricated in order to undermine the activities of the BYA, that the evidence had been collected by force, that the first-instance court had rejected his request to have his handcuffs removed during the trial, that some witnesses had not been questioned, and that the transcripts of the hearings had been false. The applicant further alleged that his defence rights had been violated during his questioning on 10 September 1999, and that the majority of other procedural acts during the pre-trial investigation had been carried out in the absence of his counsel. He also complained about the quality of the services provided by the lawyers officially appointed to defend him. Finally, the applicant objected to the fact that the appellate court had examined the case in his absence.

16. On 11 September 2001 the Supreme Court dismissed the applicant's cassation appeal, the applicant's lawyer being present. The Supreme Court noted that the trial court had reasonably refused to call additional witnesses. The applicant had been able to question the witnesses summoned by the court. The applicant could also have submitted his comments on the contents of the trial transcripts. The Supreme Court further established that the applicant's lawyer had in fact been present during the examination of the applicant on 10 September 1999 and, subsequently, at each trial hearing. The Supreme Court ruled that the applicant's presence at the appellate level had not been required in view of the nature of the issues examined, the appellate court not having had any need to question him on issues that could not be determined in the sole presence of his lawyer.

17. On 17 April 2002 the Supreme Court dismissed the applicant's request to reopen the criminal proceedings, as being wholly unsubstantiated.

18. By decisions of the Vilnius City Third District Court of 22 May 2003 and the Vilnius Regional Court of 23 June 2003, the applicant's sentence of imprisonment was upheld, but the order to confiscate his property was lifted.

19. On 30 July 2003 the applicant was released after having completed the sentence.

20. On an unspecified date the applicant was again arrested, this time on suspicion of possessing a stolen computer. According to the information in the case file supplied by the parties, the applicant was remanded in custody pending trial for that charge.

B. The conditions of the applicant's detention until July 2003

21. The applicant was held at the Lukiškės Remand Prison in the centre of Vilnius from 20 September 1999 to 27 October 2000, when he was transferred to the Rasų Prison which is also in Vilnius (Vilniaus 2-oji griežtojo režimo pataisos darbų kolonija; sometimes referred to by the parties as the Vilnius Correction Home No. 2). He stayed there until 5 January 2001, when he was transferred back to the Lukiškės Prison for a week (5 to 12 January 2001). Subsequently, from 12 January 2001 to 6 June 2002, the applicant stayed in the Rasų Prison, with the exception of a period from 29 June 2001 to 10 August 2001, when he was placed in a prison hospital.

22. Thereafter, until his release on 30 July 2003, the applicant was held in the Lukiškės Prison, with short, periodic transfers to other prisons.

1. The Lukiškės Remand Prison

23. In his submissions to the Court, the applicant alleged that the cells had been severely overcrowded. In particular, 2 to 8 persons had had to share a cell of about 9 square metres (m^2), all the detainees being confined to the cell for most of the day. The applicant had frequently been transferred from one cell to another, the conditions in all the cells being very

similar. The toilets in every cell had been virtually open, requiring the inmates to relieve themselves in front of the others. This had constituted an affront to human dignity. The cells had been very dirty, inhabited by cockroaches and rodents. Mattresses and bed linen had rarely been washed. Prisoners had done their own washing (except for the bed linen) so the cells had often been humid from the attempts to dry clothes. There had been no adequate ventilation system, the applicant being obliged to stay in his cell together with smokers. His health had suffered as a passive smoker. He had only bought cigarettes himself to trade with other prisoners. Opening the windows had caused unhealthy draughts.

24. In their observations in response before the Court, the Government conceded that there had been some overcrowding in the cells, although not as serious as that alleged by the applicant. For reasons beyond the control of the administration of the Lukiškės Remand Prison, detainees had had about 2.86 m^2 of floor space per person, instead of the statutory 5 m^2 (see paragraph 56 below). The Government stated that remand prisoners at Lukiškės currently have about 3.93 m^2 of floor space per person. It had not been possible to provide the applicant with a permanent cell at that prison because there had been a constant turnover of remand prisoners.

25. The Government informed the Court that regular inspections and monthly preventive disinfections had been carried out at the Lukiškės Remand Prison (sometimes urgently albeit not during the applicant's stay there). Whilst the inspection reports had found overcrowding, no other material violation of public health or nutritional standards had been observed. No complaints about smoking in cells or an inadequate supply of soap or toilet paper had been recorded at that time. A few, minor violations of hygiene had been noted, which required repairs subsequently effected within set time-limits. A standard quantity of soap and toilet paper had been issued to each remand prisoner once a month and bedding had been changed once a week. Mattresses had been regularly disinfected and replaced when worn out.

26. The applicant complained to the Court that he had been refused a social allowance which he had requested in order to purchase basic toiletries. He could only rarely get soap and toilet paper. The standard supply to each prisoner of one bar of soap and one roll of toilet paper per month had been

wholly inadequate. No toothpaste or other such items had been provided. The prison administration had allegedly prevented him from using his own money to purchase certain items of hygiene. He had often been deprived of any social allowance for such purchases due to arbitrary disciplinary measures imposed on him. This had been done to prevent him purchasing stationery to make further complaints. Moreover, his own paltry funds had had to be used for legal representation. He had received a total of some 20 euros in social allowances in three years, and had suffered severe hardship as a result.

27. The applicant also complained that his head had been shaved against his will, that the prison food had been of very low quality, and that an orthodox priest had not been invited to visit the prison. The possibility to obtain any information from the outside world had been severely restricted. In particular, the applicant alleged that he had been precluded from visiting the library, and his requests to have books brought to him in the cell had been ignored. He had only occasionally been given some old books and newspapers. The prison administration had also refused to provide him with copies of legislation.

28. The Government responded that the applicant, as a remand prisoner, had been allowed to purchase food and necessities at the prison shop using his own money held on a personal account for him. He had only once used this facility when he had bought soap, washing powder and, despite his complaint about smoke in cells, cigarettes. Contrary to his submissions to the Court, the applicant had had a right of access, on request, to legal literature and other materials in the Lukiškės prison library. Moreover, Russian and Lithuanian newspapers were personally delivered to him on Mondays and from time to time he had received various materials from outside prison. Orthodox priests had made regular visits to the prison and had held mass. Short hair had been required of inmates, but they had not been shaved.

29. The applicant had been provided with three meals a day, according to prison nutritional standards, which had been regularly controlled. Although the applicant would have been allowed to receive certain family visits and parcels, none had been requested or sent at the material time.

30. The applicant next submitted that his outgoing letters had been delayed or withheld by the prison administration. He had thus been impeded in making complaints or prevented

from receiving replies to his complaints to various authorities. Finally, the applicant alleged that the prison administration had never registered his complaints about his conditions of detention or the actions of certain prison warders.

31. On 3 January 2001 the applicant sued the Lukiškės prison administration, alleging that his personal rights had been violated on account of the inadequate general conditions of detention, as well as his specific treatment by the prison administration. Many of these complaints were similar to those described above at paragraphs 26 and 27, a recurring grievance being that of overcrowding. He subsequently clarified his complaints on 1 March 2001.

32. On 22 November 2001 the Vilnius Regional Administrative Court rejected the applicant's claims in a succinct, global manner, holding that the applicant "had not proved that [the prison administration's] acts had breached the law". The court also stated that the prison administration had "substantiated its arguments by evidence". The applicant was present at the hearing, assisted by an interpreter.

33. The applicant appealed, complaining that the court had refused to examine certain evidence or appoint independent experts. The applicant also stated that the court had been biased since it had ignored facts which had been conceded by the prison administration (i.e. the lack of space in the cells, smokers being detained with non-smokers, and the inadequate sanitary conditions).

34. On 22 January 2002 the Supreme Administrative Court dismissed the applicant's appeal. It held inter alia:

> "The applicant alleged that his rights were violated by the officials of the [Lukiškės] prison. In this case, Article 485 of the Civil Code should be applied, being applicable to situations when damage is caused by the unlawful actions of [State officials]. The applicant claims non-pecuniary damages. Article 485 § 2 of the Civil Code stipulates that in such cases, in addition to an award for pecuniary damage, non-pecuniary damage can also be compensated. Therefore, an award for non-pecuniary damage can be made only where pecuniary damage has been established".

35. The court concluded, as cryptically as the Vilnius Regional Administrative Court, that, since the applicant had sustained no pecuniary damage, there was no legal basis to award non-pecuniary damages. It did not analyse in detail the

applicant's complaints. In particular, the court did not rule on whether there had been a violation of the applicant's personal rights as a result of the allegedly inadequate conditions of detention. The applicant was present at the hearing together with an interpreter.

36. The applicant also alleged before the Strasbourg Court that he was subjected to unlawful searches, and that he was exposed to the risk of contracting HIV in prison. However, he did not raise these complaints before the domestic courts.

2. The Rasų Prison

37. The applicant made similar complaints in his submissions to the Court about his conditions of detention after his conviction in the Rasų Prison. The Government referred to this prison as the Vilnius Correction Home No. 2, (formerly Vilnius Penal Correction Colonies Nos. 1 and 2). It was a high security corrective labour colony for recidivists who had been sentenced to imprisonment. The applicant had served part of his sentence there.

38. The relevant periods for the Court's examination ran from 27 October 2000 until 5 January 2001, from 12 January to 29 June 2001, and from 10 August 2001 to 6 June 2002.

39. In response to the applicant's complaints, the Government contended that the applicant had been detained in a sector which had had 14 unlocked rooms, housing some 300 prisoners. Prisoners had been free to walk around the sector, talk to others, watch television, play games, etc., from 7 a.m. to 11 p.m. on weekdays, and from 8 a.m. to midnight on weekends and holidays. They had been allowed out of the sector, on request, to use educational or recreational facilities, to go to the washhouse, the chapel, the library or the canteen, to perform work, etc.

40. The prison's population increased to around 500 at the end of 2001 and to some 600 at the beginning of 2002. The minimum standard of 3 m^2 of floor space per person had been respected and surpassed at the material time. After an inspection in October 2001, 606 prisoners being detained, the floor space per person had been about 3.75 m^2 in the ordinary cells and
4.5 m^2 in the punishment cells. According to the inspection in

November 2001, the floor space had increased to between 5.4 m^2 in the ordinary cells and 18.8 m^2 in the punishment cells. In May 2002 the latter had been reduced to 7.08 m^2. A refurbishment of cell accommodation had begun.

41. Prisoners had had access to the law and regulations on the execution of their sentences. The applicant had been allowed weekly visits to the library and had been offered various kinds of work, which he had refused. He had been solvent at the material time due to external remittances or social benefits, so he could have used the prison shops.

42. The prison had been regularly inspected and found to comply with sanitary and nutritional standards.

43. Nevertheless, the applicant complained to the Parliamentary Ombudsman on several occasions in 2001, but the Ombudsman found most of his complaints to be unfounded. Instead, the applicant was advised to behave better and respect the rights of others, in accordance with his statutory duties.

44. On 25 October 2001 the applicant brought an action before the administrative courts, complaining about the general conditions of detention and his specific treatment by the administration of the Rasų Prison.
On 23 November 2001 he raised further complaints. The Ministry of Justice and the Rasų Prison administration were the respondents in the proceedings. The applicant complained of the following:

- He had been refused a social allowance to purchase toiletries and certain basic items of hygiene.
- There had been no possibility of work in the prison to earn a little money, as a result of which he had been constantly hungry and unable to maintain his personal hygiene.
- He had been obliged to live in a cell with hostile persons or people suffering from infectious diseases.
- His relatives had not been allowed to visit him.
- He had not been allowed to make a telephone call freely, as he had been required to fill in a questionnaire, stating an addressee and the reason for every call; at times the right to make a call had been refused even after completing the questionnaire.

- The prison administration had refused to issue him with certain official documents, including those required to bring court proceedings.
- He had not been able to make photocopies or have free postage stamps for his complaints, and he had not been provided with paper, envelopes or pens.
- The prison administration had prevented him from having a personal stamp with his name, or a floppy disc with educational programmes, and had prohibited him from using a personal computer to type his various complaints about the conditions of detention.
- The prison administration had seized paper which the applicant had received in a parcel.
- They had unlawfully deleted his personal notes from his electronic note-book.
- The prison administration had refused to provide him with information about the internal prison rules or the statutory requirements for prisoners' diet.
- He had not been afforded free legal and translation assistance to prepare various court proceedings concerning the alleged violation of his personal rights.
- The prison administration had delayed his letters and withheld some of them; he had not been given certain letters sent to him, and certain of his letters and documents had been removed.
- He had been victimised by the prison administration in view of his criticism of the conditions of detention, by being subjected to unlawful disciplinary measures, such as solitary confinement (for an unspecified period).
- The temperature in the solitary confinement cell had been very low and the toilet had smelled awful; he had also been precluded from attending certain educational courses, church services or social activities, or from reading and using electronic equipment while in the solitary confinement cell.

45. The applicant alleged that these grievances about his conditions of detention had been ignored by the authorities, and that he had never been informed about the decisions reached in response to his complaints.

46. On 5 December 2001 the Vilnius Regional Administrative Court partly rejected the applicant's case regarding numerous disciplinary sanctions, because he had not submitted a hierarchical complaint to the Prison Department of the Ministry of the Interior, and had missed the statutory time-limit of one month to raise certain issues before the court. The applicant failed to appeal against the decision of 5 December 2001 in accordance with the relevant statutory requirements, namely to set out his complaints in a comprehensible manner.

47. However, the court agreed to hear the applicant's complaints regarding other conditions of his detention and ordered him to submit the necessary documents proving that he had suffered damage. These complaints involved, inter alia, alleged persecution for having lodged complaints criticising the prison administration, a lack of legal aid, long term personal visits or telephone calls, a failure to supply copies of documents and envelopes, a failure to control cell temperatures, the censorship of correspondence, the lack of opportunity to attend educational courses, and the like (cf. paragraph 44 above). On 18 March 2002 the Vilnius Regional Administrative Court held a hearing in the presence of the applicant, assisted by an interpreter. His complaints were subsequently rejected as unsubstantiated. In particular, the court:

> "...found no indication of unlawful action or inaction on the part of the employees of [the prison] or the Prison Department of the Ministry of the Interior. Nor is there any indication that the applicant has suffered damage... There is no evidence in the case file that the applicant has been victimised by way of revenge or psychological pressure in response to his complaints and criticism [regarding his conditions of detention], or that his rights have [otherwise] been violated. The applicant's statements about psychological pressure and a violation of his rights are [thus] unsubstantiated."

48. This decision was read out at the hearing. Subsequently, the applicant was served with a written copy of it in the Lithuanian language.

49. The applicant appealed, complaining inter alia that the first-instance court had been biased, that it had refused to examine certain witnesses and evidence, and that it had ignored various facts. In his appeal, the applicant also raised new complaints. In particular, he submitted that he had not been given enough food, that he had been deprived of the

right to dial a certain telephone number, and that the prison administration had refused to communicate with him in the Russian language.

50. On 11 July 2002 the Supreme Administrative Court upheld the first-instance decision. It noted that the applicant had failed to substantiate his complaints as to the alleged violation of his personal rights. In this connection, the court accepted the following explanations provided by the Ministry of Justice and the Rasų Prison administration (the respondents):

- The respondents argued that the prison diet had been in conformity with Decree no. 393 of 29 December 1990 on food norms, as well as Regulation no. 528 of 19 August 1991. Catering had been organised in accordance with the requirements of the Order of the Minister of Justice no. 172 of 16 August 2002, the conditions being regularly checked by the competent health authorities. The last inspection had been carried out on 8 April 2002, establishing that the quality of the food had been satisfactory, and that there had been no violation of the relevant food norms.
- In response to the applicant's complaint about the inability to dial a certain telephone number, the respondents submitted that the making of telephone calls had been regulated by the Internal Prisons Rules (Rules 201-207) and Article 45-3 of the Prison Code, which had stipulated that the cost of a telephone call should be met by the prisoner.
- All the official communications and correspondence in the prison had been conducted in the Lithuanian language, pursuant to domestic regulations, the applicant having been afforded the possibility to learn the Lithuanian language since 2001.
- In response to the applicant's complaint about the refusal to grant him a social allowance, the court noted that social benefits had been distributed in accordance with the Rules of the Prisoners' Social Support Fund, approved by Decree no. 24 of 10 January 1998. The rules stipulated that an inmate was eligible for a social allowance if, during a given month, he had no money or a sum inferior to 1/3 of the statutory minimum standard of living, and had had no

disciplinary penalties. The amount of such an allowance in each case also depended on the availability of funds. Notwithstanding the fact that the applicant had received disciplinary penalties, the prison administration had taken into account his difficult financial situation, awarding him an allowance of LTL 12 (about EUR 3.4) on four occasions: in August and November 2001, and in January and May 2002.

– Insofar as the applicant had complained about the refusal of the prison administration to grant him free legal aid, his complaints were wholly unsubstantiated.

– The applicant had been able to make photocopies of the documents necessary for the submission of his complaints. However, the prison administration had had the right to require reimbursement of the costs incurred in this respect, in accordance with Decree no. 1039 of 1 September 2000.

51. The court refused to examine the applicant's other complaints which had not been raised at first instance.

52. By final decisions of 7 March, 26 March, 28 May, 10 June, 16 June and 24 September 2003, the Supreme Court rejected the applicant's further claims for moral and pecuniary damages in relation to his conditions of detention, which claims had been lodged against various authorities, such as the central Prison Department of the Ministry of Justice, the Ministry of Justice itself and the Rasų prison administration.

C. Other proceedings

53. The applicant had unsuccessfully tried to bring numerous civil and criminal proceedings against certain private newspapers and journalists and other private persons, as well as various State agencies and officials, for alleged affronts to his dignity and reputation, as well as an interference with his private life. However, his actions had been dismissed because he had failed to comply with the statutory procedural requirements to formulate his submissions adequately, to present his complaints in the Lithuanian language or to pay stamp duty. The applicant had not appealed against those decisions.

D. Prison discipline

54. The applicant had been subjected to various disciplinary penalties during his detention. According to the Government, once, on 31 July 2000 at the Lukiškės Remand Prison, his right to use the prison shop or receive parcels from the outside had been withdrawn for a month. This penalty had been revoked before term by the prison director. Between December 2000 and June 2002 at the Rasų Prison, he had been disciplined 31 times, as a result of which he had served varying periods of 5 to 15 days in the punishment cell on 9 occasions. Otherwise the sanctions had involved mere warnings or reprimands. The applicant had frequently challenged such sanctions and, on one occasion in February 2002, the decision to confine him to a punishment cell had been quashed by the director of the Prison Department of the Ministry of Justice. The Government contended that the applicant had had access to the prison administration and the administrative courts.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

56. At the material time, detention on remand was governed by the Law on Pre-trial Detention 1996 (the "Law") and the Internal Regulations of Places of Pre-trial Detention (the 'Regulations"), approved by Resolution No. 881 of 25 July 1996 and replaced by Ministerial Order No. 178 of 7 September 2001. Article 18 of the Law provided that inmates were to be kept in common cells housing a maximum of four inmates, in adequate living conditions. The official norms on cell space fixed a minimum of 3 m^2 per person. This standard was increased to 5 m^2 of floor space per person in 1999.

57. The execution of prison sentences at the material time was governed by the Code of Corrective Labour 1971, revised in 1983 and 2001 (the "Prison Code"), as well as the Internal Regulations of Corrective Labour Institutions 2000 (the "Prison Rules"). Article 1 of the Prison Code provided that imprisonment was not intended to cause physical suffering or offend human dignity. Article 77 required the provision of adequate conditions of

detention for convicted prisoners. The official standard floor space was also 3 to 5 m^2 for such prisoners (cf. paragraph 56 above).

58. The sanitary, space, food and medical requirements in detention facilities were further regulated by Government Resolution No. 393 and Ministerial (health care) Order No. 461. Adequate heating, ventilation (windows), sanitation and cleanliness were necessary requirements for all places of detention, but no distinction was made between smoking and non-smoking cells. Prisoners were to be provided with a bath, clean bedding and underwear once a week. Men were to have short hair (not shaved), and all prisoners on arrival or transfer (including placement in solitary confinement) had to be "sanitised". The floors of sanitary facilities were to be cleaned daily. Food was free of charge and had to comply with governmental nutritional standards.

59. Detainees were required to conform to their respective regimes or face disciplinary sanctions, to be determined according to the gravity and character of the offence. Article 22 of the Law set out detainees' duty to observe order in prison, to comply with lawful demands, to refrain from communicating with people in other cells, etc. Article 24 of the Law specified the possible disciplinary penalties for remand prisoners, such as a warning or reprimand, extra cleaning duties, a denial of access to the prison shops and the receipt of parcels for up to a month, or incarceration in a punishment cell for up to 10 days. Article 69 of the Prison Code provided similar penalties for convicted prisoners and, in addition, up to 15 days in a punishment cell or a cell transfer of up to 6 months. The Rules and Regulations provided for information, defence possibilities and appeals.

60. Article 15 of the Law foresaw detainees' right to correspond, subject to censorship, with outgoing letters being posted within three days of being handed in. Letters to certain State institutions (extended to all such institutions in 2000), the Minister of Justice and the European Court of Human Rights were not to be censored, and were to be posted within a day. Detainees were to be informed of incoming correspondence within three days of its arrival but were not given it. Instead, until July 2001, it was kept in the individual's file. The Court's letters were, however, to be notified within a day of receipt. As of July 2001, the decision to censor a detainee's correspondence was only to be taken by the investigating officer, the prosecutor or a court (as well as the prison director in respect of a convicted prisoner). Article 41 of the Prison Code allowed the general censorship of the correspondence of convicted prisoners, subject to certain exceptions such as that addressed to State institutions and the Court.

61. Visits to remand prisoners were allowed by Article 16 of the Law; Article 45 of the Prison Code for convicted prisoners. The formers' visits had to be authorised by the investigating officer, could last up to two hours and were held within sight of prison officers. The latter's visits could be of short or long duration, the frequency of which was determined by the nature of the individual's regime. Short visits were to be held in the presence of prison officers.

62. Article 13 § 1.7 of the Law enabled remand prisoners to attend religious services held in the detention centre. The same right for convicted persons was contained in Article 60^1 of the Prison Code. Clergymen of all confessions were to be given free access to all places of detention.

III. RELEVANT INTERNATIONAL TEXTS

63. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter the "CPT") visited several Lithuanian detention centres between 14 to 23 February 2000 and its Report was published (CPT/Inf(2001)22). One such centre was the Lukiškės Remand Prison where the present applicant was detained. The CPT Report called it the Vilnius Prison which was designated as both a remand establishment and closed prison. It was built in 1904 and is located in the city centre. With an official capacity of 1,200, on 15 February 2000 it was holding 1,712 prisoners, including 93 women and 21 male minors. Approximately two-thirds of the prisoners were on remand; the rest were sentenced prisoners, 63 of whom were serving life sentences (§ 53 of the CPT's Report).

64. The CPT noted, *inter alia*, serious overcrowding in the prisons it inspected, a particularly high rate of prisoners remanded in custody pending trial, a lack of recreational and employment facilities and insufficient staffing. At Lukiškės, cells measured around 8 m^2 and held up to six people instead of a maximum of two, with insufficient room for furniture other than double or triple bunk beds. The in-cell toilets provided little privacy or separation from the sleeping and eating area, where prisoners were obliged to spend 23 hours a day (§ 70 *ibid*). It commented at paragraph 56 of its Report as follows (emphasis added):

> "Prison overcrowding is an issue of direct concern to the CPT. An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. The establishments visited by the CPT's delegation (and, in particular,

> Vilnius Prison) vividly illustrated these negative consequences of overcrowding, which were all present in varying degrees of severity.”

65. The CPT noted at paragraph 74 of its Report that:

> “At Vilnius Prison, 94 prisoners sentenced for minor offences were employed full-time on maintenance work. Efforts were also being made to provide some activities to male minors held in the establishment. Other inmates, including life-sentenced prisoners, were not offered anything which remotely resembled a regime of activities. The only daily out-of-cell activity consisted of an hour of outdoor exercise (2 hours for women and for ill prisoners), which was itself a relatively recent development. The yards used for this purpose were of an insufficient size (23 m^2) to allow prisoners to exert themselves physically, and were generally oppressive. ...”

66. The CPT recommended as a priority, amongst other elements, that:

- The living space for inmates should be increased to at least 4 m^2 per person;

- Adequate in-cell sanitary facilities should be installed to allow greater privacy;

- Programmes for vocational and recreational activities should be developed;

- Sufficient possibilities for daily outdoor exercise should be provided;

- Visiting entitlements should be upwardly revised to enable prisoners to maintain relations with their families (visits to remand prisoners being particularly limited, even non-existent at that time); and

- a study should be made of whether the control of prisoners’ correspondence was causing excessive delays and, if appropriate, remedial action should be taken, particularly with a view to ending the practice of systematic censorship.

67. However, the CPT commented that there was no medical justification for the segregation of prisoners who were HIV-positive or ill with AIDS unless they were known for their unsafe or irresponsible behaviour. Steps needed to be taken to respect medical confidentiality on this subject.

68. In its renewed visit from 17 to 24 February 2004 to the Vilnius [Lukiškės Remand] Prison, the CPT noted the continued, severe overcrowding (up to six prisoners in a cell of seven m^2), and that the conditions of detention, whilst varying from one part of that prison to another, nevertheless for the most part remained very poor. These conditions were further exacerbated by the absence of personal hygiene products, the lack of proper clothing for indigent prisoners, insufficient heating, dirty bedding, no access to hot running water or showers, poor ventilation, etc. No improvement was noted regarding any programme of

activities for remand prisoners (§§ 69-70 of its Report - CPT/ inf (2006)9).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Conditions of detention

69. The applicant complained that his conditions of detention at the Lukiškės Remand Prison and the Rasų Prison had amounted to inhuman degrading treatment in breach of Article 3 of the Convention, which provides as follows:

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

70. The applicant alleged that the Government have sought to blacken his character without foundation in utter disregard of prisoners' rights to pursue legal remedies. They have refused to recognise the deplorable state of Lithuanian prisons and the despair and helplessness of inmates in the face of official arbitrariness. His application represented the plight of thousands of convicted prisoners in Lithuania.

71. The applicant complained of the misrepresentation of the facts of the present case by the Government. For example, even if prisoners were provided with nutrition in accordance with so-called norms, prisoners still went hungry as only 0.83 euros was allocated per person, the actual quantities being reduced by the major theft of rations by the cooks who were themselves hungry prisoners. He challenged the good faith and accuracy of all prison inspection reports, which were never conducted in the presence of complainants or prisoners' representatives.

72. The Government contested this claim, which they considered manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. The applicant had been treated humanely throughout his detention, having been held in satisfactory conditions. He had not produced any evidence that he had suffered pain or distress due to those conditions or the disciplinary sanctions imposed on him, beyond that inherent in any form of imprisonment. They contended that the applicant had been detained in conditions which had been better than those considered by the Court in the cases of *Valašinas v. Lithuania* (no. 44558/98, ECHR 2001VIII) and

Karalevičius v. Lithuania (no. 53254/99, 7 April 2005). Accordingly he had no grounds for complaint. Those conditions had in no way attained the level of severity proscribed by Article 3.

1. The Lukiškės Remand Prison

73. The Government conceded that there had been overcrowding in the cells, for reasons beyond the control of the administration of the Lukiškės Remand Prison, when detainees had had about 2.86 m^2 of floor space per person, instead of the statutory 5 m^2 (see paragraphs 23 and 56 above). However, this did not constitute the severe ill-treatment disclosed by the case of *Kalashnikov v. Russia*, (no. 47095/99, § 97, ECHR 2002VI), where prisoners had had to take turns to sleep because of the insufficient number of beds.

74. Regular inspections and disinfection were carried out at the Lukiškės Remand Prison. Whilst the inspection reports found overcrowding, no other material violation of public health or nutritional standards was observed. Full compliance with such standards was consistently noted.

2. The Rasų Prison

75. The Government refuted the applicant's claim regarding the conditions of detention at Rasų, which they considered to have been good, in compliance with national standards (see paragraphs 39-42 above). The domestic courts at three levels of jurisdiction had fully examined these matters, but had found the applicant's complaints ill-founded, as no illegal act, omission or violation of the applicant's rights had been established, or any damage disclosed (see paragraphs 47 and 50 above).

3. Disciplinary penalties

76. The Government considered that the disciplinary penalties imposed on the applicant on various occasions had not constituted victimisation and did not amount to ill-treatment in breach of Article 3 of the Convention. The applicant had been able to challenge such sanctions before the Prison Department of the Ministry of Justice, although he had not done so on every occasion in due and proper form (paragraphs 46 and 54 above). Hence his complaints in this

connection were inadmissible for failure to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

B. General principles

77. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

78. The Court further recalls that, according to its case-law, illtreatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68, 74, ECHR 2001-III).

79. The Court has consistently stressed that a breach of Article 3 of the Convention would generally involve suffering and humiliation beyond that which are inevitably connected with a given form of legitimate treatment or punishment. Measures depriving a person of his or her liberty may often involve such elements. Thus, under this provision, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the prisoner's health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

C. The present case

1. Overcrowding at the Lukiškės Remand Prison

80. The Court notes the parties' disagreement as to the extent of the overcrowding at the Lukiškės Remand Prison at the material time. However, the Court is assisted in this matter by the objective reports of the CPT (paragraphs 63-68 above).

81. The applicant claimed that 2 to 8 persons had had to share a cell of about 9 m^2, all the detainees being confined to the cell for most of the day. The Government contended that there had been some 2.86 m^2 of floor space per person in that institution at the material time. However, the Court notes that the CPT found less available space during its visit in 2000 – 1.3 m^2 per person – which had further deteriorated by the time of their second visit to that prison in 2004 to 1.16 m^2 (paragraphs 64 and 68 above). Whilst each person apparently had a bunk bed to sleep on, the Court observes that the overcrowding was just as severe as that condemned in the aforementioned Kalashnikov v. Russia case (0.9 to 1.9 m^2; ibid. § 97). Moreover, each cell at Lukiškės had had an open toilet without sufficient privacy. In addition, as a remand prisoner, the applicant had been obliged to stay in such cramped conditions some 23 hours a day, with no access to work, or educational or recreational facilities (cf. the aforementioned judgments of *Karalevičius v. Lithuania,* §§ 34-41, and Peers v. Greece judgment, §§ 75-76).

82. It is true that the applicant did not suffer any palpable trauma as a result of these conditions. Nevertheless, the Court finds that they failed to respect basic human dignity and must therefore have been prejudicial to his physical and mental state. Accordingly, it concludes that the severely overcrowded and unsanitary conditions of the applicant's detention at the Lukiškės Remand Prison amounted to degrading treatment in breach of Article 3 of the Convention.

2. Other elements

83. The Court is unable to determine the exact nature of the applicant's conditions of detention as a convicted prisoner at the Rasų Prison, but notes that, on any account, the applicant had had more space at his disposal compared to the Lukiškės Remand Prison, and was

not cooped up in his cell 23 hours a day. He had the possibility of moving around a whole sector during the day and he could have worked if he had wished (see paragraphs 39-42 above; also cf. the aforementioned case of *Valašinas v. Lithuania,*
§§ 107-111).

84. Insofar as the applicant has raised other elements concerning his conditions of detention at that prison which are not dealt with below under other Convention provisions, the Court finds the applicant's complaints to be unsubstantiated, not disclosing the kind of severe ill-treatment proscribed by Article 3 of the Convention. It concludes, therefore, that this aspect of the case is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 5 and 6 OF THE CONVENTION

A. As regards the criminal proceedings against the applicant

85. The applicant complained under Article 5 § 1 of the Convention that his pre-trial detention had been unlawful. Moreover, under Article 6 § 1 of the Convention, he claimed that the proceedings had been unfair in the light of, *inter alia*, fabricated evidence which had led to a finding of his guilt without any proof. His contentions also concerned allegedly insufficient legal representation, handcuffing at the trial, the attitude of the prosecution and the trial judge, a failure to hear defence witnesses correctly, non-appearance at appeal hearings and superficial appeal and cassation examinations. He contended that he had been convicted for his social and political activities as head of the Vilnius Belarusian Youth Association, in respect of which the applicant also invoked his freedom of expression and association under Articles 10 and 11 of the Convention (see paragraphs 105-106 below), as well as the prohibition on discrimination ensured by Article 14 (see paragraphs 111-113 below).

86. The relevant Convention provisions for the present complaints read as follows:

Article 5 § 1

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ... (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

Article 6 § 1

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ..."

87. The Court did not invite the Government to comment on these allegations as there was nothing in the case file to indicate that the applicant's remand in custody had been unlawful, in breach of Article 5 of the Convention, or that there had been non-compliance with the procedural guarantees of Article 6. In particular, the Court observes that the applicant's complaint of a lack of legal representation was found to be groundless by the domestic courts (paragraph 16 above). Moreover, the personal attendance of the applicant at his appeal hearing, where he was represented by counsel, has not been shown to raise an issue under Article 6 in the circumstances of the present case and the context of the Lithuanian law on criminal procedure, given the thorough examination made by the first-instance court of the relevant issues (see, amongst other authorities, *Hermi v. Italy* [GC], no. 18114/02, §§ 60-67, 88, ECHR 2006...).

88. Consequently, the Court concludes that this part of the application is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. As regards the administrative proceedings pursued by the applicant

89. Invoking Article 6 of the Convention, the applicant complained that the administrative courts had failed to establish the relevant facts or give a clear legal answer to his detailed complaints about his conditions of detention. Instead, they had rejected his submissions in a vague, global fashion. They had allegedly been unfair by reason, inter alia, of bias, a lack of legal and language assistance, their excessive length, their handling of witnesses, their inadequate responses to his

complaints, and the absence of Russian translation facilities, especially a Russian translation of their judgments.

90. The Government contested this claim, arguing that Article 6 had not been applicable to the proceedings or, if it had been, had been fully respected.

91. The Court has examined the facts of the present case and finds that, even assuming that the civil limb of Article 6 § 1 of the Convention was applicable in the circumstances, there is no evidence in the case file that the applicant was not afforded an adequate opportunity to put his complaints before the courts and challenge the administration's arguments. The Court regrets the cryptic nature of the reasoning of the domestic courts in the present case. Further analysis and explanations might have assisted the applicant's understanding of his legal position. Nevertheless, the Court does not find any evidence of arbitrariness in the decisions reached by the national courts in the light of the limitations of the domestic law at the material time (cf. for example paragraph 96 below). It follows that this part of the application is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Censorship of correspondence

92. The applicant complained that the Prison Administration had censored his correspondence in breach of Article 8 of the Convention, which reads in its pertinent part as follows:

> "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 ... 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."

93. The Government conceded that at the material time some of the applicant's confidential correspondence would have been restricted in accordance with the domestic law (Article 15 of the Law on Pre-trial Detention and Article 41 of the Prison Code; paragraph 60 above). However, such restrictions had been compatible with Article 8 of the Convention (cf. the aforementioned *Peers v. Greece; Valašinas v. Lithuania;*

Puzinas v. Lithuania, no. 44800/98, 14 March 2002). Nevertheless, the applicant's correspondence to the Court and State institutions, including the national courts, had not been censored. Moreover, when the applicant had complained of delays in the dispatch and receipt of correspondence, he had failed to provide the domestic courts with the details of the letters concerned. However, on an examination of the relevant prison records, it had been established that the applicant's correspondence had been handled in a timely fashion, in accordance with the law. The Government therefore concluded that the applicant's complaint was of a purely abstract nature.

94. The Court notes that there was systematic censorship of prisoners' correspondence at the material time, with the apparent exception of letters to State institutions and the Court. Moreover, incoming and outgoing correspondence suffered certain delays and prisoners could not retain their incoming mail (cf. CPT report, paragraph 66 above, as well as paragraph 60). There was, accordingly, constant interference with the applicant's correspondence, within the meaning of Article 8 of the Convention, particularly as he appears to have been a prolific writer whilst in detention. The Court thus finds that this aspect of the applicant's complaint cannot be dismissed as abstract. On the contrary, it seems that the interference with the applicant's correspondence was in fact extensive. Accordingly, the complaint must be declared admissible, no ground of inadmissibility having been established.

95. Such an interference with correspondence will not breach the Convention if it is "in accordance with the law", pursues one or more of the legitimate aims contemplated in paragraph 2 of Article 8 and may be regarded as a measure which is "necessary in a democratic society".

96. The Court recalls that it has on a number of occasions criticised the relevant Lithuanian legislation, and particularly its rather vague definition of the word "censorship", which has resulted in a number of cases of abuse by the authorities in their extensive screening or withholding of detainees' correspondence (see *Jankauskas v. Lithuania*, no. 59304/00, §§ 19-23, 24 February 2005; the aforementioned *Puzinas v. Lithuania,* §§ 18-22; *Čiapas v. Lithuania,* no. 4902/02, §§ 24-26, 14 November 2006). It notes that in the aforementioned *Puzinas* case (§ 21), it found that the censorship of prisoners' correspondence had, at least in theory, a legal basis in Article 41 of the Prison Code, and pursued the legitimate aim of "the prevention of disorder or crime". However, the Court observes from its examination of the present case that the domestic law and practice did not clarify the criteria which could have justified a blanket system of censorship of prisoners' correspondence. That is to say, the domestic law and practice did not lay down clearly the full extent of the administration's discretion in this field.

Consequently, prisoners like the applicant were unable to foresee which of their incoming and outgoing general correspondence might be stopped or delayed by the censor (cf. e.g. *Tan v. Turkey*, no 9460/03, § 20-26, 3 July 2007). An issue as to the quality of the law therefore arises (cf. *mutatis mutandis*, *Liu v. Russia*, no. 42086/05, § 56, 6 December 2007). It follows that an argument could be made that the inadequate quality of the pertinent domestic law and practice in themselves constituted a violation of Article 8 of the Convention.

97. However, the Court finds that, even assuming that the censorship of the present applicant's correspondence could be said to have been in accordance with the law in pursuit of a legitimate Convention aim, the Government have not presented sufficient reasons to show that such an extensive control of the applicant's correspondence was "necessary in a democratic society".

98. There has consequently been a violation of Article 8 of the Convention.

B. Family visits

99. The applicant also complained that the Prison Administration had refused to allow him to have personal visits from his partner or relatives, other than three short visits from his partner when in Rasų. He invoked the right to respect for private and family life under the above-cited Article 8 of the Convention.

100. The Government pointed out that the applicant had been entitled to such visits but no application was made for any while he was on remand at Lukiškės. After his conviction, at the Rasų Prison the authorities were given no information about the applicant's relatives, but he was nevertheless visited by a couple of people. His related complaint to the administrative courts concerning the Rasų Prison was therefore dismissed as groundless. Consequently, the Government contended that this aspect of the complaint was manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. Moreover, the applicant had made no such complaint about the Lukiškės Remand Prison. Hence the Government considered that aspect to be inadmissible for non-exhaustion of domestic remedies.

101. The Court notes that, regardless of the problem of exhaustion of domestic remedies under Article 35 § 1 of the Convention, the applicant has not shown that he was denied any visits from his family. It follows that this part of the application is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4.

IV. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

102. The applicant complained that he had been unable to consult a priest whilst in prison, in breach of Article 9 of the Convention, despite his requests.

103. The Government contended that this complaint was purely abstract in nature as the applicant had failed to specify when he had been denied such contacts even though orthodox priests had freely visited both the prisons concerned and conducted mass. His partly related complaints to the administrative courts were therefore held to be groundless. The Government again relied on Article 35 §§ 1, 3 and 4 of the Convention.

104. The Court also finds the applicant's complaint wholly unsubstantiated and therefore rejects it as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLES 10, 11 AND 17 OF THE CONVENTION AND ARTICLES 1 AND 2 OF PROTOCOL NO. 1

105. In addition to his complaint that he was prosecuted for his activities in the Belarusian Youth Association (paragraph 85 in fine above), the applicant alleged that he had been denied newspapers and books whilst in prison, as well as information about conditions of detention. Moreover, he claimed that he had been unable to take part in social and educational activities when in the punishment cell at the Rasų Prison. As to the first element, he relied on Article 10 of the Convention which guarantees freedom of expression and information, subject to certain limitations, such as the prevention of disorder and crime. As to the second element, he invoked his freedom of association guaranteed by Article 11 of the Convention (again subject to such limitations as the prevention of disorder or crime), as well as his right to education guaranteed by Article 2 of Protocol No. 1. He further claimed an abuse of the Convention system under Article 17 and a violation of his right to property under Article 1 of Protocol No. 1.

106. However, the Court finds that the applicant has not substantiated his claims. It notes that, according to the Government, the applicant received and had access to newspapers and reading materials (see paragraphs 28, 39 and 41 above). Moreover, in the Court's view, the suspension of social and educational activities of a prisoner as part of a disciplinary punishment of short duration does not disclose a denial of Convention rights, without further elements. The Court therefore rejects this

part of the application as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

107. The applicant alleged in his original application that he had had no effective domestic remedy at his disposal in respect of his complaint about the courts' refusal to examine his complaints involving a disciplinary reprimand he had received at the Rasų Prison (Article 6 of the Convention also being invoked in this respect). Moreover, he complained of the refusal of the domestic courts to entertain his complaints against certain private newspapers, journalists, the police and other State institutions.

108. The applicant expanded this aspect of his complaint in his observations on admissibility and merits dated 3 December 2005, contending that there was no concept of effective legal remedies in Lithuanian law when indigenous individuals like himself had to depend on the goodwill of the State (cf. *Daktaras v. Lithuania*, no. 42095/98, ECHR 2000X). He claimed to have made full use of remedies where he could, without legal representation.

109. Article 13 of the Convention guarantees the following:

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

110. The Court will only examine the applicant's original allegations under this provision, the extended complaint having been submitted outside the six month time-limit prescribed by Article 35 § 1 of the Convention. However, as to the former aspect, the Court recalls that it did not invite the Government to comment as there was nothing in the case file to indicate a violation of Article 13. The applicant clearly had effective remedies at his disposal and, indeed, pursued them assiduously whenever he could to the point of being vexatious in the number and volume of complaints and submissions. It concludes, therefore, that the case does not disclose any appearance of a violation of Article 13 and that this complaint is also to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

111. The applicant complained under Article 14 of the Convention that he had been discriminated against in prison and before the domestic courts on grounds of language (as a Russian speaker), ethnic origin and his

pecuniary and prisoner status. In his observations, he emphasised the alleged language discrimination. He contended that he had been unable to obtain translations of or explanations about the relevant texts concerning prisoners' rights and duties, although Russian was understood by everyone.

112. Article 14 of the Convention provides as follows:

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

113. However, the Court again finds the applicant's claim to be unsubstantiated. He managed to pursue his complaints despite his alleged financial and linguistic disadvantages and, in essential areas, he was provided with extra assistance, for example with interpretation (see paragraphs 13, 35 and 47 above). The Court concludes that the present case does not disclose any appearance of discrimination against the applicant. It follows that this complaint is similarly to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

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

A. Damages, costs and expenses

115. The applicant claimed up to two million euros ("EUR") in just satisfaction and 721,88 Lithuanian litas ("LTL"; approximately 209 EUR) in costs, plus postage, the amount of which he suggested could be checked by the Court which holds copies of his correspondence.

116. The Government contended that the claim for just satisfaction was unacceptable. Any material compensation should have a causal link to the violation found by the Court. Moreover, insofar as the applicant's claim concerned non-pecuniary damage, it was wholly unsubstantiated and excessive. A finding of a violation would in itself constitute sufficient just satisfaction in the absence of any evidence that the applicant had suffered physically or mentally in respect of

his allegations. The Government also contested the applicant's costs claim as being groundless.

117. The Court recalls that it has found a breach of Articles 3 and 8 of the Convention. However, it does not consider that the applicant may claim an award of just satisfaction for pecuniary damage as a result. Nevertheless, it is convinced that the applicant suffered some non-pecuniary damage because of the unacceptable conditions of detention which he experienced at the Lukiškės Remand Prison, which the mere finding of a violation cannot compensate (see paragraph 82 above). Accordingly, reaching its decision on an equitable basis, it awards the applicant 5,000 EUR under this head.

118. As for costs, the Court notes that the applicant was not represented in the proceedings before it, but nevertheless incurred certain expenses for postage and the like. Ruling on an equitable basis, it awards the applicant 500 EUR under this head.

B. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares admissible the applicant's complaints about severe overcrowding at the Lukiškės Remand Prison and the censorship of his correspondence, and declares inadmissible the remainder of the application;

2. Holds that there has been a violation of Article 3 of the Convention;

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

4. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and

(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 18 November 2008 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Françoise
TulkensRegistrar President