



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

THIRD SECTION

CASE OF VALAŠINAS v. LITHUANIA

(Application no. 44558/98)

JUDGMENT

STRASBOURG

24 July 2001

FINAL

24/10/2001

In the case of Valašinas v. Lithuania,

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr P. KŪRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mrs H.S. GREVE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 March 2000 and 3 July 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 44558/98) against the Republic of Lithuania lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Juozas Valašinas (“the applicant”), on 14 May 1998.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr V. Sviderskis, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Mr G. Švedas, Deputy Minister of Justice.

3. The applicant alleged, in particular, that the conditions of his detention in Pravieniškės Prison from April 1998 to April 2000 amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, and that the control of his correspondence with the Convention organs by the prison authorities amounted to a violation of Articles 8 and 34 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 14 March 2000 the Chamber declared the application partly admissible [*Note by the Registry*]. The Court’s decision is obtainable

from the Registry]. On 25 and 26 May 2000 delegates of the Court took evidence in Lithuania, including a visit to Pravieniškės Prison.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Outline of events

7. The applicant is a Lithuanian national, born in 1974.

8. From 5 October 1993 the applicant served a sentence of nine years' imprisonment for the theft, possession and sale of firearms. On an unspecified date in early April 1998 he was transferred from Lukiškės Prison to Pravieniškės Prison (*Pravieniškių 2-oji sustiprintojo režimo pataisos darbų kolonija*).

9. From the moment when the applicant arrived in Pravieniškės Prison he was placed in the separate segregation unit of the prison (*Sunkiai auklėjamųjų būrys* – “the SAB”), located in Wing 5 of the prison (*V lokalinis sektorius*). On 30 June 1998 the applicant was released from the SAB and detained under normal conditions in Section 13 and later in Section 21 (*13 ir 21 brigados*), located in Wing 1 of the prison (*I lokalinis sektorius*). From 5 to 20 January 1999 the applicant was detained in solitary confinement (*Baudos izoliatorius*). He was again placed in the SAB on 20 January 1999. The applicant stayed in Pravieniškės Prison until his release on 14 April 2000 following a presidential pardon.

10. The present case concerns the conditions of the applicant's detention in Pravieniškės Prison and his treatment there from April 1998 until April 2000.

B. Oral evidence before the Court's delegates

1. The applicant

11. The evidence of the applicant was taken by the Court delegates in Vilnius on 25 May 2000 and then in Pravieniškės on 26 May 2000. The applicant's statements may be summarised as follows.

(a) General conditions of detention

(i) The SAB

12. The unit consisted of a dormitory where twenty-two inmates were held, a small kitchen, a relaxation room and a shower cubicle. In the applicant's view, only six to eight persons could be held in the SAB, and it was accordingly seriously overcrowded. Only the dormitory had windows. There were no windows or ventilation in the kitchen and the relaxation room. A window was installed in the kitchen during renovations in 1999.

13. The SAB had a corridor leading to the small courtyard outside. The yard was closed off above with wire netting, which was covered with snow in the wintertime. As a result there was a lack of light in the courtyard during the winter.

14. The toilets consisted of eight Asian-type "squat" holes, which lacked partitions. Inmates in the SAB used the toilets one by one in order to respect each other's privacy. There were no windows, and a ventilation system was installed in the toilets only after renovations in late 1999. As a result the toilets smelled terribly.

15. There was no access to the prison laundry for washing private clothes; it therefore had to be done by hand in bowls in the shower. Drying such items in the small courtyard was complicated. In addition, no private bedding was allowed. Every inmate received from the prison administration bed linen and towels, which were regularly washed in the prison laundry.

16. The administrative officers visited the SAB only during the distribution of meals and check-ups. The prison governor used to visit the unit from time to time. Doctors went to the SAB very rarely. The only way of communicating with the outside world was by telephone. On 11 June 1998 the applicant felt that he had a fever. His condition was so serious that he missed the regular check-ups at the SAB and lay in bed. He asked the guards to send for a doctor. He also used the special telephone line connecting the SAB to the prison medical service. However, no one answered, as it was lunchtime. The applicant did not telephone the medical service again. Instead, he orally asked the SAB guards for a doctor several times a day. The medical staff only arrived on 16 June 1998 and confirmed that he had caught a cold. He was told to stay in bed.

17. No work, recreation or other meaningful activities were organised in the unit. The only reasonable activity permitted in the SAB was playing chess. The applicant conceded that there were no restrictions on watching television, reading or listening to the radio.

(ii) The normal regime (Wing 1)

18. The applicant was detained in Sections 13 and 21 located in Wing 1 of the prison. Each of the five wings of the prison was intended to hold 300 prisoners. The prison was seriously overcrowded. There were approximately 400 detainees in Wing 1, which consisted of 12 sections – namely dormitories with adjacent toilet areas – where 20 to 30 prisoners were held. A total of 32 inmates were sleeping in Section 13 at the time of the

applicant's placement there. Section 21 accommodated 24 inmates. In the applicant's view, a maximum of eight people could be held in Section 13 and six people in Section 21. The sections lacked air, especially at night, due to overcrowding. Two-tier bunk beds were installed in the dormitories and the windows were almost completely hidden by these beds, thus obstructing the flow of fresh air from the outside. During the day, prisoners were allowed to circulate freely within the wing and its outside stroll yard.

19. Sanitary conditions were deplorable. Toilets, sinks and shower facilities were infested with germs. There were various leaks and the water pipes were very old, rusty and covered with mould. The toilets in the sections consisted of several Asian-type "squat" holes with no partitions between them. Toilet paper was only provided sporadically. The applicant stated that it was very difficult to keep himself 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. During the summer, hot water was only available at weekends. The applicant's bedding was washed in the prison laundry. Private items such as clothes had to be washed by hand in a sink.

20. Food was served three times a day. Only 2.17 litai (LTL) per prisoner per day were allocated by the authorities for the catering in Pravieniškės Prison. The food was always cold, and there were no facilities to heat it. Vegetables were only added to a course once a week. Lunch was impossible to eat due to its awful taste at least three times a week. Overall, food was not prepared in a sanitary manner. At times the applicant had found wood shavings, little stones and pieces of metal in his food. Supplementary food could be provided by the prison canteen only when a special diet had been recommended by a doctor. As the prison canteen was not big enough for all prisoners, catering was organised in shifts. However, the number of inmates at each shift was always greater than the number of places in the canteen. A prisoner who arrived late would be left without food. There was a prison shop where detainees could obtain additional food. The applicant acknowledged that he regularly had a couple of hundred litai on his account in the prison shop. There was also a limited list of items that could be given by prisoners' relatives during personal visits. The applicant was permitted to receive additional food from his relatives.

21. Qualified doctors only visited the prison occasionally. 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 stated that he had a heart disease. He admitted, however, that he had not undergone an appropriate cardiology test at the infirmary. The applicant also alleged that he had a knee problem due to his huge overweight. The prison administration had not performed a knee operation due to a lack of facilities. The applicant acknowledged, however, that the

knee operation was not a matter of primary urgency. Once out of prison, he had not sought a knee operation due to its high cost. The applicant further stated that he had had gastritis, but the prison doctors had refused to prescribe a better diet for him in the prison canteen.

22. Following an order of the Minister of the Interior, from August to November 1998, all prisoners were subjected to a “standing regime”. No prisoner was permitted to lie in bed from the wake-up call at 6.30 a.m. to lock-in at 10.30 p.m., that is sixteen hours a day. Exceptions to the order were permitted only upon recommendation by a doctor. The applicant complained that many detainees, himself in particular given his weight and heart problems, were unable to endure this regime. The prison doctors found, however, that the applicant was fit to comply with the order. Upon various complaints by the applicant and other prisoners, the Ombudsman recommended that the order be revoked. The applicant alleges that it was nevertheless maintained.

23. There was no work provided within the prison, and the number of meaningful activities was very limited. Weather permitting, it was possible to engage in open-air sports in the exercise yard; however, no such possibilities existed in winter. There were also few concerts or cinema shows. No retraining or educational programmes were organised in the prison.

24. The applicant had initially complained about an interference with his right to receive visits from his relatives. During the interview with the Court delegates he admitted, however, that he had been afforded sufficient opportunities to receive visits, particularly following an intervention by the Ombudsman further to a complaint on his part.

(iii) The solitary confinement cell

25. From 5 to 20 January 1999 the applicant was placed in a solitary confinement cell of approximately 6 sq. m where he was held with another person. There was an Asian-type toilet, a sink for washing, and a table in the middle of the room.

(b) Specific acts by the prison administration

(i) The body search of 7 May 1998

26. On 7 May 1998 the applicant had a personal visit when he was given some additional food. Afterwards he was stopped in the access zone for the usual security check to establish whether he had been given any illegal items. The chief guard, P., conducted the search, while two other officers looked on. P. told the applicant to take off his clothes. When the applicant was only in his underwear, a female prison officer, J., came into the room. P. then told the applicant to strip naked. The officer threatened him with a reprimand in case of non-compliance. The applicant submitted to the order,

taking off his underwear, in the presence of Ms J. She was watching the check with the rest of the officers and was smoking. The applicant's body, including his testicles, was examined by the male officers. The officers wore no gloves, touching the applicant's sexual organs and then the food given to him by his relatives, without washing their hands. The applicant was also ordered to do sit-ups to establish whether he had concealed anything in his anus. No unauthorised item was found on him. He alleged that the purpose of the check had been to ridicule him in front of the woman.

(ii) Alleged victimisation of the applicant and the absence of review

27. According to the applicant, the lower-ranking prison staff were very poorly qualified, had an inferiority complex, and showed their authority in a degrading manner. The administration tolerated the constant consumption of alcohol by the prison staff during working hours. Many prisoners were allegedly employed as secret informers by the administration, in return for promises of parole or conditional release. The actions of the prison staff concerning the applicant were provocative. The applicant received daily abuse 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 the prison. He gave the following examples of his alleged victimisation.

28. The applicant's placement in the SAB in April 1998 had been arbitrary, as he had had no disciplinary record before that date. Following his release from the SAB on 30 June 1998, he was detained under the normal regime and even afforded better conditions of detention. On 20 August 1998 some prisoners established an association for their mutual assistance and support called Aim. The applicant was elected President of that association. On 24 August 1998 the administration imposed on the applicant a disciplinary penalty, depriving him of the better detention conditions. The official ground for that penalty, imposed on the basis of information given to the administration by a secret informer, was the fact that the applicant had beaten another prisoner. The applicant denied the beating, stating that he had been present at the incident without intervening. The applicant's complaints to the Prison Department and the Ombudsman about the unlawfulness of the penalty were rejected as unsubstantiated.

29. On 10 October 1998 the applicant's right to buy food at the prison shop was suspended for one month, and on 13 October 1998 he received a disciplinary warning for threatening other prisoners with force. The administration rejected his complaints against these penalties. His application against a staff member, Officer Kmieliauskas, who had allegedly initiated these penalties, was not examined.

30. On 15 October 1998 the applicant was penalised for leaving the territory of Wing 1. He was ordered to wash the windows of Section 21.

The execution of this penalty was to be controlled by Officer Kmieliauskas. 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 his right to complain about that member of staff. The applicant later washed the windows while not being observed. Officer Kmieliauskas refused to accept that the work had been done.

31. On 16 October 1998, as the prison governor was absent, Officer Kmieliauskas ordered the applicant's solitary confinement. He was instantly conveyed to the solitary confinement cell in handcuffs. Within an hour, the prison governor returned to the prison. After hearing the applicant and certain prison officers, the prison governor decided that the applicant had not been in breach of duty on 15 October 1998 and the applicant was immediately released from solitary confinement.

32. In his written submissions to the Court, the applicant stated that on 23 October 1998 he had been warned for still being asleep at 6.40 a.m., this being ten minutes after the regulation wake-up call. During the meeting with the Court delegates he insisted that the officers had arrived and found him in his bed at 6.30 a.m. 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.

33. In December 1998 "confidential sources" informed the applicant that one member of staff, B., was involved in criminal activities relating to the falsification of documents. On 28 December 1998 the applicant lodged a specific complaint against B. on behalf of 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 allegedly requested the applicant not to send the complaint, promising that B. would be dismissed, and that the applicant would be afforded better detention conditions. The applicant refused to do so and insisted on the onward transmission of the complaint. According to the applicant, B. 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, P., for allegedly abusing his authority. The applicant claimed, in particular, that P. had deliberately provoked conflicts with the applicant and other prisoners. This complaint was dismissed as unsubstantiated.

34. On 21 December 1998 the applicant met the prison governor, who granted him permission to visit detainees in other wings to greet them for Christmas on behalf of Aim. According to the applicant's written submissions to the Court the permission was oral, but he also stated during the meeting with the Court delegates that the permission had been posted in writing on the special information board. The permission was valid from 24 to 27 December 1998. On 24 December 1998 the applicant tried to go from Wing 1 to Wing 3. At a special check-point between these wings, the

applicant was stopped by the guards and told that he did not have permission to enter Wing 3.

35. On 29 December 1998, as a disciplinary sanction for “trespassing” on 24 December, the applicant was ordered to clean up the area around his bed in Section 21. As the Interim Prison Rules did not require that cleaning be done in the presence of a member of staff, he performed the work unseen. The staff member, Officer Kmieliauskas, who was to supervise the work, did not accept that the job had been done.

36. As a result, on 5 January 1999 the applicant was punished with fifteen days’ solitary confinement. He immediately announced a hunger strike as he considered the sanction arbitrary. On 6 January 1999 the applicant wrote complaints to various State authorities and the media. On 8 January 1999 the applicant’s sister called the prison governor, 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 2, 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 15 January 1999 the prison governor gave an interview to a newspaper, *Akistata*, which was printed with the title “Stirring up trouble without reason”. In the interview the prison governor said that the applicant was “doing nothing [to conform to the prison regime] but lodging various complaints”. According to the applicant, the prison governor thereby expressed his biased attitude towards him.

37. On 21 January 1999 two disciplinary sanctions were imposed on the applicant for the unlawful hunger strike. His access to the prison shop and the right to be given additional food during personal visits were suspended. He was also transferred to the SAB.

38. The applicant considered that these penalties, taken as a whole, revealed the ineffectiveness of any internal efforts to review allegations of ill-treatment. His complaints about the disciplinary penalties against him were rejected by the Ombudsman with sole reference to the statements of the prison administration, without due regard to the actual circumstances. According to the applicant, his treatment in the prison was degrading because he had no access to an independent and impartial authority to complain about his conditions of detention.

39. There was no information about any effective review of the general treatment of prisoners or the specific treatment of the applicant because the Interim Prison Rules (*Pataisos darbų įstaigų laikinosios taisyklės*) had not been published. The Rules defined the legal basis for the prison regime and the administration’s actions. The absence of publicity of such an important legal document gave the administration the right to act arbitrarily. This document was lacking both at the Prison Department and in prisons. In the

applicant's view, every section of the prison should have had a copy of the Rules. However, only one copy of the Rules was in his prison.

(iii) The control of correspondence with the Convention organs

40. The applicant stated that the first letter addressed to him from the European Commission of Human Rights, dated 18 June 1998, was shown to him when it had already been opened. He was only allowed to write down its contents, and had to give it back to the administration. Subsequent letters from the Convention organs were opened by the administration and given to the applicant some three days after their arrival at the prison.

41. On 7 December 1998 the prison governor 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 14 August 1998 of the Minister of the Interior ... it is prohibited for convicted persons to lie in bed save during the sleeping hours as specified in the schedule, if there is no special permission to do so 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 Rule 2 § 11 of the Prison Rules requiring 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 Kaunas County is prepared to set up an education point for adults in the prison ...

On 20 August 1998 [the applicant] founded an association of mutual assistance and support, ‘Aim’ ... We think that the establishment of this association is to be welcomed ... However, in practice, from the moment when it was set up, this association and its President, J. Valašinas, only defended the interests ... of the ‘authorities’ of the underworld ...”

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

43. 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 the Court was discussed. The acting governor 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 the Interior, the Ministry of Justice, the Ombudsman, the Office of the Prosecutor General and other institutions. [The applicant] is familiar with this procedure ... but he categorically required that his letter to [the Court] be sent ... [The applicant] asked me the 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 Interim Prison Rules [stating that] ‘the letters of convicted persons (except those to a prosecutor) that are sent or received are subject to censorship’. Given the categorical request by [the applicant], [his] complaint shall be sent to the addressee”.

44. 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 correspondence with the Court had been censored: on the Registry's letter was a prison stamp with the date of receipt, 1 February 1999, a handwritten remark of the same date by the prison governor ordering that the applicant be acquainted with the letter, and the applicant's written confirmation that he had had such access on 3 February 1999.

45. During the meeting with the Court delegates, the applicant also stated that in December 1998 he had handed to the prison administration a further letter to the Court dated 16 December 1998. No such letter reached the Court.

2. *Alekas Morozovas*

46. The witness was the prison governor at the time of the applicant's detention there.

(a) **General conditions of detention**

(i) *The SAB*

47. The witness admitted that there had been no partitions between the squat holes in the toilets until 1999. In that year renovations were carried out, during which each toilet hole was separated by cement partitions covered with ceramic tiles.

(ii) *The normal regime (Wing 1)*

48. At the time of the applicant's detention under the normal conditions in Wing 1, each prisoner was allocated 2.7 sq. m in the dormitory in Section 13, and 3.2 sq. m in the dormitory in Section 21. The Prison Code (*Pataisos*

darbu kodeksas) required a minimum space of 2 sq. m in sleeping areas, while a special Ministry of Health sanitary norm of 1999 required at least 3 sq. m. The witness considered that the prison had not been seriously overcrowded at the time of the applicant's detention, at least within the meaning of the domestic requirements valid until 1999. The situation improved following an Amnesty Act in 2000; while the total occupancy of the prison was 2,303 detainees in 1999, only 1,782 prisoners were detained in May 2000, the lowest level in five years.

49. Prisoners were provided with bed linen, which was washed and dried in the prison laundry free of charge once every two weeks. Once a week inmates had access to the shower. Sinks in the shower facilities could also be used to wash personal items. Each prisoner was provided free of charge with 200 g of soap every month, and was able to buy more in the shop.

50. Inmates could buy various products, including food and items of personal hygiene, in the prison shop three times a month. Prices in the shop were not excessive, and were regularly reviewed by the administration in the light of regional price levels. While no cash was used in the prison shop, every inmate had an account to which resources from his family, his salary at the prison, or a financial benefit in the case of an orphan, were transferred. These accounts were debited upon a purchase at the shop.

51. The witness admitted that the canteen, which could normally accommodate about 500 prisoners at once, had been overcrowded at times. He denied, however, that any prisoner had missed a meal due to overcrowding. Five shifts were organised in the canteen to enable every prisoner to have three meals a day. The witness had never received a complaint from any prisoner that he had been deprived of a meal because of an overcrowded canteen. The witness had not heard of any complaint about the quality of the food. He said that the prison medical service checked the quality of the food every day and that the sanitary norms in the canteen were being met.

52. The witness had not received any complaint from the applicant about a lack of medical assistance in the prison. The witness also said that the prison doctor and the health authorities had confirmed that a knee operation had not been necessary during the applicant's detention. The witness had never received a complaint from the applicant that he had been supplied with a food item incompatible with the sanitary norms. Nor had the applicant complained that he had lacked a special diet in the prison or needed supplementary food to be provided free of charge.

53. Previously, there were no partitions between the squat holes in the toilets; they were installed during the 1999 renovations. Currently all toilets were equipped with partitions. The witness said that a special government decree of 1995 required that all inmates be given toilet paper. However, the prison administration had budgetary difficulties in complying with this decree. Toilet paper had not been distributed during recent months. The

prison lacked money even for the postal service. The witness considered that the lack of free toilet paper was not an essential problem in the prison, as he had heard no complaint in this connection from any prisoner. according to the witness, it had to be noted that toilet paper was always available in the prison shop at about LTL 0.50 to 0.60 per roll. In addition, toilet paper could be given by relatives. At worst, other kinds of paper could be used, such as newspapers, which were supplied to prisoners free of charge. The witness drew a parallel between toilet paper and other items of personal hygiene, such as toothpaste and toothbrushes. While such items were not distributed free of charge, prisoners could obtain them from their relatives or the prison shop.

54. The prison had a wood-processing factory, but only a small proportion of prisoners worked there due to the lack of commercial orders. However, a recent government contract would permit an increase in production and create more employment for detainees. A total of 115 prisoners also worked at the service department of the prison, including the laundry and the canteen. The applicant did not work during the time of his detention.

(b) Specific acts of the administration

(i) The body search of 7 May 1998

55. After a personal visit, a prisoner and any items he has received from his visitor must be checked in accordance with the Interim Prison Rules. Such a check could include stripping the prisoner naked. The Interim Prison Rules provide that only a person of the same sex may conduct a strip-search.

56. The witness said that he was not present at the time of the alleged event. He was informed about it by the applicant. The witness acknowledged that the female officer J. worked at the prison and supervised personal visits. Her functions included accompanying prisoners to and from the visitors' area and handing the prisoner over to the male officers conducting the search. The Court was unable to interview Ms J. as she was not in the prison on the day of the delegation's visit.

57. The three male officers who conducted the body search were interviewed by the witness immediately following the applicant's complaint in May 1998. They denied that a woman had been present. No record of the applicant's complaint or of any investigation of the incident was made.

58. The witness said that he did not know whether Ms J. took part in the search. If the applicant was stripped naked in the presence of a woman, it was a violation of the Interim Prison Rules. However, given Ms J.'s functions, the witness conceded that both theoretically and practically she could have attended the search.

(ii) Alleged victimisation of the applicant and the absence of review

59. The witness described the procedure for disciplinary offences established under the Interim Prison Rules. According to this system, Pravieniškės Prison had a Disciplinary Commission consisting of the prison governor, his deputies and the heads of sections. The commission was in charge of examining all alleged violations of prison discipline. When a particular incident occurred or specific information about such an incident reached the administration, a senior staff member such as a head of section wrote a report on the facts and stated his opinion as to whether those facts disclosed a breach by a detainee of the provisions of the Interim Prison Rules. The report was normally shown to the detainee, who had the right to submit observations. The detainee was informed about the contents of the report if it could not be presented to him, for example, where there were statements by anonymous witnesses concerning the incident. However, even in such exceptional cases, the prisoner had the right to know about such accusations without having access to the witnesses' names.

The report and the detainee's observations were sent to the Disciplinary Commission, which decided whether or not to impose a disciplinary penalty. It was an absolute requirement that the prisoner appeared in person before the commission prior to its reaching its decision. Witnesses who were detainees were not normally heard in person at the hearing, their evidence being included in the report in written form. However, any officer involved in the incident had to be heard in person by the commission, together with the alleged perpetrator.

60. It was possible to appeal against the commission's decision. Where a report on the incident had been filed by a staff member no higher in rank than a deputy governor, the prison governor could quash the penalty. Where the report had been filed by the governor himself, the detainee could appeal to the director of the Prison Department. From there an appeal lay to the Minister of the Interior or the Ombudsman. Although the Ombudsman could not revoke the penalty, he could recommend that the prison authorities do so. In most cases the Ombudsman's recommendations were followed. In general, prisoners were not prohibited from complaining to any authority concerning any aspect of their detention. However, the internal hierarchical procedure was the principal remedy for prisoners.

61. The procedure for complaints against staff members was similar to that for disciplinary offences. The witness was not aware of any specific complaint by the applicant against a staff member. He said however that, if the applicant had lodged any such complaint, it had been sent to the competent authority.

62. All detainees were familiar with the Interim Prison Rules, which established this procedure and set out other provisions pertaining to the regime in all Lithuanian prisons. A copy of the Rules and of the Prison Code was in the prison library. Every detainee had unlimited access to those documents. In addition, upon the arrival of a new prisoner, a head of section

must inform him of the rules, which had to be confirmed by the detainee's signature.

63. The witness hardly knew the applicant personally until August 1998. The applicant had had no disciplinary record during the period of his placement in the prison before that. The witness had participated in the foundation meeting of the Aim association in August 1998. He considered that the purposes of the association as stated in its statute, namely mutual assistance and support to defend prisoners' rights and better conditions of detention, were to be welcomed. There had been no interference by the administration with the functioning of the association. However, according to the witness, after becoming the leader of Aim, the applicant forgot that he himself was a prisoner and that he had not only rights but also obligations. He ignored lawful orders from staff and on various occasions seriously breached prison discipline.

64. The witness confirmed that the applicant had received nine disciplinary punishments during his time at the prison, namely on 24 August, 10, 13, 15, 23 and 28 October, 29 December 1998, and 5 and 21 January 1999. As to the nature of these punishments, the witness stated that eight of them had been minor. The deprivation of better detention conditions on 24 August 1998 involved the temporary removal of the applicant's entitlement to certain socio-economic benefits, such as the right to receive additional personal visits, to make purchases in the prison shop, or to receive parcels from relatives. The disciplinary warnings of 13, 23 and 28 October 1998 meant essentially remarks in the applicant's prison file. The chores (*budėjimas be eilės*) imposed on 15 October and 29 December 1998 were insignificant cleaning jobs. These penalties were minor, as the applicant's breaches of discipline had not been serious.

Only the penalty of 5 January 1999, namely the applicant's solitary confinement, was to be considered serious, in the opinion of the witness. It was imposed for non-compliance with the legitimate order of a prison officer, namely the failure of the applicant on 29 December 1998 to wash the area around his bed. In any event, none of those penalties humiliated the applicant, in the view of the witness, but amounted to the normal enforcement of prison discipline.

65. The witness asserted that good reasons had been given for each of the punishments. In every case the prison management carefully assessed the facts about alleged disciplinary breaches by the applicant and properly weighed the evidence before them. The validity of the conclusions of the prison management was confirmed by the Ombudsman. The witness mentioned as an example the events of 16 October 1998, when it was not clear whether or not the applicant had personally performed the chore imposed on 15 October 1998. Regardless of the statements of Officer Kmieliauskas alleging that the applicant had not performed the task himself, the witness decided that the applicant should have the benefit of the doubt,

and that there had been no breach of discipline. However, in another case, concerning the chore imposed on 29 December 1998, the overwhelming evidence suggested that the applicant had indeed breached discipline by ordering another detainee to perform his task. As a result the applicant was punished with solitary confinement.

66. The witness admitted that he had said that the applicant “was doing nothing but lodging complaints” in an interview published on 19 January 1999 in *Akistata*, a special newspaper on matters of crime, law and order. The witness did not consider that he had in any way humiliated the applicant by that statement. He said that he had no personal prejudice towards the applicant because of his activism amongst prisoners, his presidency of Aim, his complaint to the Convention organs, or any other reason. The sole basis for the measures restricting the applicant’s rights was his failure to comply with prison discipline, which was applied equally to all.

67. The witness said that the reasonable nature of the applicant’s treatment in the prison was reflected by the fact that he had expunged the applicant’s disciplinary record in 1999. Thereafter they had found a common ground and cooperated in organising various cultural events in the prison. Furthermore, in view of the applicant’s improved behaviour, the witness intervened on the applicant’s behalf to obtain a presidential pardon, which was eventually granted. Their cooperation continued after the applicant’s release, particularly regarding the organisation of cultural activities in the prison.

(iii) The control of correspondence with the Convention organs

68. The witness acknowledged that until June 1999 the prison administration had checked the applicant’s letters to the Convention organs in accordance with the Prison Code and the Interim Prison Rules. The witness stated that he had never prevented the applicant from complaining to the Court. His remarks about the exhaustion of domestic remedies were made to explain to the applicant the relevant procedural requirements, but not to hinder his right to pursue his Convention application. All letters to the Court handed in by the applicant to the prison administration were sent, and all letters from the Convention organs were received by the applicant.

3. Robertas Kmieliauskas

69. The witness was a staff member and a head of section.

70. The witness stated that the applicant belonged to the so-called élite of prisoners, and other inmates would normally perform jobs for him. This is why he did not think that the applicant had personally performed the chore imposed on 29 December 1998. The officer did not consider that the obligation to clean the area around his bed whilst supervised by the witness was degrading for the applicant. While the applicant had asked the witness

in advance for permission to perform the task unsupervised, the applicant had not explained why he did not want to be observed or whether he considered the order degrading. The applicant's request had clearly been an attempt to get others to do the job for him. Therefore the witness did not give his permission. The applicant's subsequent refusal to perform the job in the presence of the witness amounted to a breach of duty.

C. The inspection of the prison

71. On 26 May 2000 the delegates visited the prison. The prison held 1,782 people, a substantial reduction from the 2,303 prisoners held in 1999.

1. The SAB

72. The delegates visited the SAB where twenty people were detained, whereas twenty-two had been detained when the applicant was there. The beds had metal frames and springs, standing on four legs about 30 cm high. The beds were side by side in a dormitory of 92.2 sq. m. There were televisions, a video-player, radios, personal effects and adequate bedding. Each prisoner was allocated approximately 5 sq. m of space in the dormitory. There did not seem to be a lack of space, light or air.

73. The delegates visited a separate sanitation area in a corridor between the dormitory and the leisure room. The sanitation area consisted of toilets and a shower. Prisoners could use the shower at any time between wake-up at 6.30 a.m. and lock-in at 10.30 p.m. The area had been tiled and partial partitions installed between the Asian-type toilets since the applicant's detention there. The partitions were waist high, half walls, with no doors in front of them. In the applicant's time there had just been the squat holes. There was no toilet paper in sight. The sanitation area was somewhat muddy but not unduly smelly. The delegates learnt that people were paid to do the cleaning, and that prisoners were asked to clean only as a disciplinary punishment.

74. Food was brought from the main prison into a small kitchen three times a day. There was a courtyard, approximately the same size as the dormitory, with grass, plants, outdoor tables and benches and some weight-lifting equipment. There was no limitation on prisoners' access to the courtyard between 6.30 a.m. and 10.30 p.m. Prisoners did not wear a uniform. Most of them were in light tracksuits and T-shirts. Detainees were able to wash their own personal laundry in the sanitation area, and the delegates saw laundry being dried on clotheslines outside in the courtyard. Inmates could come and go as they liked within the whole SAB area, where there were also separate leisure and billiard rooms. Only the leisure room had no windows, but there was no lack of air. There were soft armchairs, a chessboard and an audio-system in the leisure room. Big heating radiators were seen in all the accommodation areas.

75. People could call the prison medical service directly from the SAB on a special telephone line. A doctor visited the SAB almost on a daily basis, and a sick person would be brought to the infirmary.

76. The applicant confirmed that the conditions of his detention in the SAB had been essentially the same, except that the accommodation area had since been freshly painted and better furnished, partitions had been installed in the toilets, and a kitchen window had been created.

2. The normal regime (Wing 1)

77. The delegates then moved to the area of the normal regime in Wing 1, namely an apartment block with 775.2 sq. m of living space and an adjacent large strolling yard. There were twelve sections in the wing. Sections consisted of dormitories with adjacent toilet areas. At the time of the visit, 372 detainees were held in Wing 1, whereas there had been 400 inmates when the applicant was there.

78. Section 13 had a dormitory of 86.5 sq. m holding 32 beds; some were double bunk beds. The beds had metal frames and springs, standing on four legs about 30 cm high. Each prisoner had approximately 2.7 sq. m in the dormitory. The room had windows and did not lack light or air. Several prisoners were in the dormitory during the daytime as inmates were entitled to circulate freely throughout the whole building and yard from 6.30 a.m. until 10.30 p.m. There were four stools in the room. The delegates were told by a staff member that detainees were allowed to sit or lie on the beds during the day.

79. Section 21 had a dormitory of 55.3 sq. m holding 24 beds placed side by side. Each prisoner was allocated approximately 3.2 sq. m of space in the dormitory. There were two large windows but the applicant nevertheless complained about the lack of ventilation. The windows were open during the delegates' visit, but the applicant said they remained shut in winter or if someone was ill.

80. The toilets in both sections were located in separate areas closed off from the dormitories. There were partitioned Asian-type holes, which did not seem to be in a bad or dirty condition. There was no particular smell or lack of air in the toilets. The applicant said that the walls had been painted since his time and partitions had been installed.

81. The general shower room allowed thirty prisoners to shower at the same time; this was not a renovated area. The installations were rusty and there was mould on the walls, but hot water was available and the area was generally functioning adequately. The room next to the showers had deep basins for prisoners to wash their own clothes. Prisoners were allowed access to the showers once a week.

82. The canteen consisted of two big rooms with seating arrangements for about 500 people. The food was prepared in large ovens and saucepans where huge quantities of soup (sometimes with meat), vegetables and

porridge were cooked. The quantity per prisoner was controlled by the medical service, as was the level of hygiene. The general area seemed spotless apart from some dampness on the floor. Food was dished out in metal bowls for ten people and served through two hatches in the canteen.

83. The infirmary had several consultation rooms, a dentist's chair and other equipment being in one of them. All the equipment seemed old-fashioned but functional. Since February 1999 there had been a doctor on duty twenty-four hours a day. The doctor on duty said that if someone had a fever he would get help from the infirmary.

3. The solitary confinement cell

84. The delegates next visited the solitary confinement cell in a separate building, where the applicant was detained from 5 to 20 January 1999. This consisted of a narrow room in which two people could be detained. During the day the beds are locked up against the wall like a couchette on a train. The cell had low benches and a cupboard. It also had a separate closed toilet and washbasin. The applicant said that during his placement there the walls had not been painted, there had been no cupboard, and the bedding was taken out of the cell in the daytime.

D. Conclusions of the Ombudsman in reply to the applicant's complaints concerning his alleged victimisation

85. On 10 September 1998 the Ombudsman rejected as unsubstantiated the applicant's complaint against the disciplinary penalty of 24 August 1998 depriving him of better conditions of detention. The Ombudsman noted that the applicant solely contested the facts of the incident leading to the penalty, arguing that he had not beaten up another prisoner. On the basis of written observations by the prison management, the statement of an anonymous witness and the applicant's explanations, the Ombudsman established that the applicant had participated in the beating and that the administration had duly imposed the penalty.

86. On 19 January 1999, on the basis of written observations by the prison administration and the applicant, the Ombudsman rejected as unsubstantiated the applicant's complaints against the penalties of 10 and 13 October 1998. The Ombudsman noted that the applicant solely contested the facts as established by the prison administration and had provided no plausible evidence to cast doubt on the validity of the conclusion that he had threatened other prisoners with force.

87. On 19 January 1999 the Ombudsman also dismissed as unfounded the applicant's complaint about the penalty of 15 October 1998. On the basis of written observations by the prison administration and the applicant, the Ombudsman found that the applicant had trespassed into the territory of Wing 3 without permission. According to the Interim Prison Rules, a

detainee must obtain the permission of the prison governor to visit other wings. Such a decision was valid only if it was published on the special information board. The applicant had not contested that he had had no permission to leave Wing 1 on that day or that he had not known of the relevant internal requirements prohibiting trespass. He was therefore justifiably ordered to perform a chore on that day.

88. On the same date the Ombudsman rejected as unsubstantiated the applicant's complaints against the disciplinary warnings of 23 and 28 October 1998. The Ombudsman noted that the applicant solely contested the facts as established by the prison administration and had provided no plausible evidence to cast doubt on the validity of the conclusions that he had been sleeping after the regulatory wake-up call, or that he had been queuing beyond the privacy line.

89. On 19 January 1999 the Ombudsman also dismissed complaints by the applicant and another two prisoners, B. and P., against the penalties of 29 December 1998, imposing chores. By reference to written observations by the prison administration and the detainees' comments, the Ombudsman established that the applicant, together with B. and P., all of whom were Wing 1 inmates, were stopped by guards when trespassing into the territory of Wing 3. The detainees claimed that they had oral permission from both the prison governor and other guards to go to Wing 3, and that the penalties had thus been arbitrary. The Ombudsman found that no valid permission had been given to these men, and that the penalties of 29 December 1998 had therefore been justified.

90. On 21 January 1999 the Ombudsman rejected complaints by the applicant and B. against the disciplinary penalties of 5 January 1999 ordering their solitary confinement for non-compliance with the duties imposed on 29 December 1998. By reference to written observations by the prison administration and the detainees' comments, as well as the material collected on the spot by a representative of the Ombudsman's office in January 1999, the Ombudsman established that the applicant and B. had been ordered to clean the areas around their own beds by Officer Kmieliauskas, in execution of the duties imposed on 29 December 1998. The Ombudsman held that the applicant and B., owing to their authority over other prisoners, could indeed have ordered other prisoners to clean up for them, thereby avoiding executing personally the penalties of 29 December 1998. According to the Ombudsman, it was therefore reasonable for Officer Kmieliauskas to want to supervise the task himself. Such supervision could not amount to an unjustified interference with their honour. The Ombudsman established that the detainees had refused to perform the job under the supervision of Officer Kmieliauskas and another staff member at around 10.50 a.m. on 29 December 1998. Some time later they informed Officer Kmieliauskas that they had nonetheless performed the task whilst alone. The Ombudsman held that both the refusal of the

detainees to perform their duties, and their subsequent statements that they had performed the jobs in the absence of staff, testified to their non-compliance with the penalty of 29 December 1998. The Ombudsman concluded that the penalties of 5 January 1999 had therefore been justified.

91. On 21 January 1999 the Ombudsman examined the applicant's complaints against two members of staff, on the basis of an on-the-spot investigation conducted by a representative of the Ombudsman's office in January 1999. In his complaints the applicant alleged that one member of staff, B., did not know the Lithuanian language, did not have Lithuanian citizenship, and could not work at the prison. He also alleged that a staff member, P., had provoked conflicts between the applicant and other prisoners. The Ombudsman held that there were no grounds to examine the complaint in so far as it concerned B., who had meanwhile left the prison. The Ombudsman established no wrongdoing or intent to provoke conflicts on the part of P.; in this regard the Ombudsman held that the applicant's complaints had been of a general nature, and that, during the meeting with the representative of the Ombudsman's Office, the applicant had been unable to specify a single incident when P. had breached his rights.

II. RELEVANT DOMESTIC LAW AND PRACTICE

92. According to the Prison Code, a prison is headed by a governor. The prison administration is responsible to the Prison Department. Until September 2000 the Prison Department was answerable to the Ministry of the Interior, but is now under the supervision of the Ministry of Justice.

93. According to Article 21 of the Constitution, no one may be subjected to torture or to inhuman or degrading treatment or punishment. Article 1 of the Prison Code provides that imprisonment is not intended to cause physical suffering or offend human dignity.

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

95. 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. According 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. According 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 to be set out in the Interim Prison Rules.

96. The Interim Prison Rules were adopted on 23 December 1992 by an order of the Minister of the Interior. The Rules govern all issues pertaining to the general conditions of detention and the disciplinary regime in Lithuanian prisons. The Rules were amended on a variety of occasions by

way of ministerial orders. They were published in the Official Gazette for the first time in September 2000, following the transfer of responsibilities from the Ministry of the Interior to the Ministry of Justice.

97. Under section 1 of the Parliamentary Ombudsmen Act, the Ombudsman may examine individual complaints about wrongdoing or misuse of office by executive officials. Under section 14 of the Act, the Ombudsman may not examine allegations the investigation of which falls within the competence of courts. Under the terms of section 23(2) of the Act, the Ombudsman may not revise or revoke an executive decision or act. According to subsections (1) to (3) of section 23(1), the Ombudsman may only refer the results of his investigation to the prosecuting authorities for a criminal prosecution, or bring a court action, or recommend an appropriate course of action in connection with any wrongdoing established.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. General conditions of detention

98. The applicant complained that the general conditions of his detention at Pravieniškės Prison (see paragraphs 12-25 above), amounted to 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.”

99. The Government stressed that the general situation in the prison complained of by the applicant, namely space, sanitation, catering and health-care conditions, was compatible with the requirements of Article 3 of the Convention. As regards the applicant’s complaint about the lack of recreational activities, the Government submitted that detainees were provided free of charge with newspapers and, once a week, could choose books from the prison library. During 1998 the following cultural and recreational events were organised: several sports tournaments, four theatre productions, fourteen concerts, two art exhibitions, two television game shows, six visits by national celebrities, eighty cinema screenings and 200 video shows, as well as eighty-two religious services. The Government disputed that the applicant had not been afforded adequate medical assistance on 11 June 1998 or immediately thereafter, because no request for such assistance had been made via the special telephone line, as required

by the Interim Prison Rules. Overall, the Government considered that the general conditions in the prison were compatible with Article 3.

100. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of 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).

101. The Court further recalls that, according to its case-law, ill-treatment 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 a 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).

102. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

1. The SAB

103. The Court will examine first the general conditions of detention in the SAB where the applicant spent more than a year of his time while at Pravieniškės Prison. The Court notes that the applicant was allocated approximately 5 sq. m of space in the dormitory. This figure must be viewed in the context of the wide freedom of movement enjoyed by the applicant from wake-up time at 6.30 a.m. to lock-in at 10.30 p.m. within the whole SAB area, consisting of the separate dormitory, a leisure room, the kitchen, sanitation areas and the open courtyard. The dormitory was a big room of 92.2 sq. m which did not lack lighting or ventilation. The Court considers that the space, lighting and ventilation conditions in the SAB were

substantially better than those established by the Court in *Peers*, cited above, where an applicant shared a dim and poorly ventilated cell of 7 sq. m with another inmate and had a much more limited possibility of movement outside the cell (*loc. cit.*, §§ 70-72).

104. The Court notes that the sanitation facilities, including the toilets and the shower, were in a separate area, and could be used by the applicant at any time between wake-up and lock-in times. The general area was somewhat muddy but not unduly smelly. It is true that the Asian-type toilets had lacked partitions until sometime in late 1999. While this temporary absence of partitions was regrettable, it must be noted that the sanitation area was closed off from the rest of the SAB, and the applicant was not obliged to use the toilet in the presence of another detainee (see, by contrast, *ibid.*, § 73). In his written submissions to the Court and during the meeting with the Court delegates, the applicant never alleged that he had had to use the toilets whilst being seen by another prisoner. Instead he confirmed that, in the absence of partitions, prisoners used the toilets one at a time in order to respect each other's privacy. Furthermore, whilst the absence of an adequate supply of toilet paper in a prison may raise an issue under Article 3 of the Convention, it has not been established that the applicant was so deprived in practice. The Court notes that the dormitory had adequate bedding, which was washed and dried regularly in the prison laundry. The applicant was able to wash his clothes in the sanitation area and dry them in the courtyard or on radiators in the accommodation area. In sum, the Court considers that the sanitation and laundry arrangements in the SAB were not incompatible with Article 3 of the Convention.

105. The applicant complained that he had not been afforded medical assistance from 11 to 16 June 1998. However, the applicant admitted that only once, during lunchtime on 11 June 1998, had he tried to request assistance via the special telephone line linking the SAB with the infirmary, and that thereafter he had not contacted the prison doctors directly. In these circumstances, the Court does not find it established that there was a lack of medical assistance whilst the applicant was in the SAB.

106. The Court finally notes that the dormitory, the kitchen and the leisure room were equipped with furniture for personal effects and audio-visual equipment for recreation. In sum, the Court considers that the general conditions of the applicant's detention in the SAB did not attain the minimum level of severity that could amount to degrading treatment within the meaning of Article 3 of the Convention.

2. *The normal regime (Wing 1)*

107. The Court will next examine the general conditions of detention under the normal regime in Wing 1 where the applicant spent less than a year of his time while at Pravieniškės Prison. While the space allocated for the applicant in the dormitories in Sections 13 and 21 of the wing was,

respectively, about 2.7 and 3.2 sq. m, the dormitories themselves measured 86.5 and 55.3 sq. m and did not lack light or air. Furthermore, there was no limitation on the applicant's moving about within the whole wing or the courtyard from wake-up until lock-in times. Therefore, the scarce space in relative terms was compensated for by the large size in absolute terms of the dormitories, as well as the freedom of movement allowed (see paragraph 103 above).

108. The situation concerning the sanitation and laundry facilities in Wing 1 was essentially the same as that in the SAB. While certain aspects were regrettable, namely the temporary absence of partitions between the toilets and the lack of free toilet paper, overall these facilities were not so unsatisfactory as to amount to a breach of Article 3 (see paragraph 104 above). The one notable difference between the SAB and Wing 1 was that the applicant did not have unlimited access to the shower in the latter. However, it has not been established that this limitation deprived him of the opportunity to keep himself clean to a degree which might have been incompatible with Article 3.

109. Whilst the number of seats in the prison canteen was limited, catering was organised in shifts. It has not been established that any prisoner ever went without food because of overcrowding in the canteen. The Court is satisfied that the hygiene of the canteen and the food provided was regularly checked by the competent services. There is no evidence that the applicant, or indeed any other prisoner, had been physically affected by the quality of catering in the canteen. In the Court's view, the ability to receive additional food from relatives, or to purchase it from the prison shop, could have compensated for the applicant's dissatisfaction with the possibly monotonous diet provided by the prison canteen. The Court concludes therefore that the catering arrangements at Pravieniškės Prison were not degrading.

110. The Court does not find it established that the applicant, or indeed any other prisoner, was subjected to a "standing regime" as the applicant has alleged. It is apparent that, in accordance with the relevant Prison Rule in force from August to November 1998 when it was revoked, prisoners were allowed to sit down on their beds or chairs, and some detainees could still lie on their beds if their health so required. Prisoners were able to go out into the courtyard, walk around and sit down there. There was certainly no obligation on the applicant actually to remain standing during the day. There are no medical records confirming the applicant's complaints about his poor health, including a heart disease, an urgent need for a knee operation, any need to lie down during the day, or a stomach condition requiring a better diet than that provided by the prison canteen. The Court finds that the medical service in the prison did not lack the essential equipment, drugs or personnel to ensure the protection of the applicant's health in compliance with Article 3 of the Convention.

111. The Court observes that the general lack of work and educational facilities seemed to promote an atmosphere of boredom at Pravieniškės Prison. It must be noted, however, that a number of concerts and cinema screenings were organised to provide some entertainment. In addition, detainees were able to obtain books from the library, watch television, listen to music, exercise in the stroll yard or engage in other recreational activities. The applicant conceded that he had been afforded adequate contacts with the outside world by way of personal visits. Overall, the Court finds that the general situation under the normal regime at Pravieniškės Prison was not as grim as the applicant originally alleged. In the light of these circumstances, the Court considers that the conditions of the applicant's detention under the normal regime did not attain the minimum level of severity amounting to "degrading" treatment within the meaning of Article 3 of the Convention (see, by contrast, *Peers*, cited above, §§ 70-75).

3. The solitary confinement cell

112. In the light of the conditions found by the delegates in the solitary confinement cell, the Court finds that the applicant's complaints concerning his detention there for a short fifteen-day period did not attain the minimum level of severity amounting to treatment contrary to Article 3.

4. Conclusion

113. In the light of the considerations set out above, the Court concludes that there has been no breach of Article 3 of the Convention in respect of the applicant's general conditions of detention.

B. Specific acts of the administration

1. The body search of 7 May 1998

114. The applicant complained that the search of his person on 7 May 1998 amounted to degrading treatment in breach of Article 3 of the Convention (see paragraph 26 above). In particular, he was allegedly obliged to strip naked in the presence of a female prison officer, with the intention of humiliating him. He was then ordered to squat, and his sexual organs and the food he had received from his visitor were examined by guards who were not wearing gloves.

115. The Government submitted that they doubted the truth of these allegations as the staff were aware of the relevant regulations and the norms of hygiene.

116. As regards the disputed fact involving the presence of a female officer during the search, the Court notes that its delegates found that a woman, identified by the applicant as Ms J., worked in the prison and that

her presence during the check of 7 May 1998 was possible both theoretically and practically. They also found that a search after a personal visit could include stripping the prisoner naked. In the Court's view, the absence of any record of an inquiry by the prison governor into the applicant's complaints at the material time about this search shows a reluctance on the part of the prison authorities to investigate the incident properly. Given that no evidence was presented for the Court to disbelieve the applicant's allegations and that, on the contrary, the Court received some evidence tending to corroborate his claims (see, *mutatis mutandis*, *Timurtaş v. Turkey*, no. 23531/94, § 45, ECHR 2000-VI), the Court finds that the search was conducted in the manner described by the applicant.

117. The Court considers that, while strip-searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him. The Court concludes, therefore, that the search of 7 May 1998 amounted to degrading treatment within the meaning of Article 3 of the Convention.

118. Accordingly, there has been a violation of Article 3 in this respect.

2. Alleged victimisation of the applicant and the absence of review

119. The applicant further complained that he had been victimised by the administration by way of arbitrary disciplinary punishments, and that there was no effective review of his complaints against the prison administration (see paragraphs 27-39 above). The arbitrary actions of the prison administration had allegedly been directed against him as retribution for his legitimate activities as the leader of Aim, a complainant to the Court and a critic of the conditions of detention.

120. The Government submitted that the applicant's allegations of bad faith and incompetence on the part of the prison staff and of victimisation were unfounded. In this connection the Government referred to the findings of the Ombudsman regarding the applicant's complaints (see paragraphs 85-91 above).

121. The Court observes that the disciplinary penalties imposed on the applicant involved cleaning duties, temporary restrictions on his socio-economic rights (by less comfortable conditions of detention, the suspension of purchases from the prison shop or the receipt of parcels from relatives) or his freedom of movement (temporary solitary confinement and the transfer to the SAB), or recorded disciplinary warnings. However, the Court has found that the applicant's general conditions of detention did not attain a level of severity falling within the ambit of Article 3 of the Convention (see paragraphs 103-12 above). The applicant has presented no

medical records or other evidence showing that he suffered any pain or distress as a result of these disciplinary penalties beyond the inevitable element of suffering or humiliation connected with legitimate forms of treatment or punishment, such as disciplinary sanctions against prisoners to secure good order in prisons. The Court considers therefore that the disciplinary penalties at issue did not attain the level of severity amounting to treatment contrary to Article 3 of the Convention.

122. It is true that Article 3 guarantees the right to an adequate domestic investigation of “credible assertions of ill-treatment” within the meaning of Article 3 of the Convention, “leading to the identification and punishment of those responsible” for such treatment. In *Labita*, cited above, the Court found a violation of Article 3 on the ground that the authorities had not investigated the alleged violation of Article 3. However, in that case the allegations concerned numerous acts of violence, humiliation, and other forms of torture of an applicant (see *Labita*, cited above, §§ 117-36).

In the present case the applicant complained solely about the facts found by the prison management before imposing disciplinary penalties against him and general staff inappropriateness, rather than any personal, physical or moral damage within the meaning of Article 3. The Court is not convinced that these complaints involved a “credible assertion of ill-treatment” warranting a “thorough and effective” investigation (*ibid.*, *mutatis mutandis*, §§ 130-36).

123. In any event, the applicant’s complaints were investigated. The applicant has not submitted that he had no access to the disciplinary reports filed against him, or that he could not defend himself against the alleged breaches of prison discipline. On the contrary, he was able to present his arguments in person and in writing before the Disciplinary Commission of the prison. The Court notes that the disciplinary reprimand of the applicant was not arbitrary, in view of the reasons which were given for each punishment. In the Court’s view, it was unfortunate that the Interim Prison Rules, which established the basis and scope of disciplinary action, were not published at the material time of the applicant’s detention. However, the applicant has not submitted that he lacked access to those Rules in the prison library.

Furthermore, the applicant availed himself of the right to contest all findings of the prison management before the independent authority of the Ombudsman. The Ombudsman’s investigations were speedy, and his representative was sent to the prison to investigate some of the applicant’s allegations. Although the Ombudsman had no statutory power to quash administrative decisions, it must be noted that at least on two occasions action was taken by the prison administration following the Ombudsman’s intervention (see paragraphs 22 and 24 above). The Court concludes that the review of the applicant’s complaints against his alleged victimisation at the

executive level and by the Ombudsman satisfied the requirements of Article 3 in the circumstances of the present case.

124. The Court finally notes that the prison administration did not prevent the applicant from establishing and pursuing the activities of Aim. It is true that early in 1999 the prison governor mentioned to a specialist newspaper that the applicant had been more of a “complainer than a doer”. The Court considers, however, that such remarks corresponded to a certain reality and did not show a biased attitude towards the applicant, given his numerous disciplinary breaches, and his conflicting behaviour which manifested itself, for example, in his refusals to obey the legitimate orders of the prison staff and an unjustified hunger strike.

The Court observes that, nevertheless, from early 1999 the applicant and the prison administration established good methods of communication and cooperation. Furthermore, the prison governor expunged the applicant’s earlier disciplinary record and helped him obtain early release by way of a pardon, referring to the applicant’s improved behaviour and respect for the prison regime. In these circumstances, the Court sees no merit in the applicant’s complaint that he was victimised for his activities in Aim, his complaints to the Court, or any other exercise of his legitimate rights and freedoms.

125. In sum, the disciplinary sanctions against the applicant and the domestic review of his complaints against the prison management did not amount to degrading treatment contrary to Article 3. Accordingly, there has been no violation of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

126. The applicant alleged that the prison administration had opened his letters to and from the Convention organs. The applicant alleged a breach of Article 8 of the Convention, the relevant parts of which provide as follows:

“1. Everyone has the right to respect for 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 ...”

127. The Government did not comment on these allegations, acknowledging that the censorship of prisoners’ correspondence was permitted by Article 41 of the Prison Code.

128. The Court notes that the Government do not contest the facts alleged by the applicant in this part of the application. Taking into account in particular the letter dated 7 December 1998 from the prison governor to the Court (see paragraph 41 above), it has been established that the applicant’s letters to and from the Convention organs were opened and the applicant was not allowed to keep the letters addressed to him. There was,

therefore, an interference with the applicant's right to respect for his correspondence under Article 8 of the Convention, which can only be justified if the conditions of the second paragraph of the provision are met. In particular, such interference must be "in accordance with the law", pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim (see *Peers*, cited above, §§ 81-82).

129. The interference in the present case had a legal basis, namely Article 41 of the Prison Code, and the Court is satisfied that it pursued the legitimate aim of "the prevention of disorder or crime". However, as regards the necessity of the interference, the Government have not submitted any reasons which could justify this control of correspondence to the Court, the confidentiality of which must be respected (see, *mutatis mutandis*, *ibid.*). Accordingly, the interference complained of was not necessary in a democratic society within the meaning of Article 8 § 2.

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

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

131. The applicant finally alleged that the respondent State breached Article 34 of the Convention, which provides as follows:

"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."

132. In this connection the applicant alleged that it was only on 18 December 1998 that the prison administration sent three of his letters to the Court, namely his letters of 30 November, and 3 and 15 December 1998. In the applicant's view, the transmission of those letters was delayed unjustifiably because they contained criticisms of the prison authorities. During the meeting with the Court delegates, the applicant also mentioned a letter of 16 December 1998 which he had allegedly given to the prison administration but which never reached the Court.

133. The Government contended that there was no evidence that the applicant's letters to the Court had been withheld. There was thus no violation of Article 34 of the Convention.

134. The Court notes that the letters of the applicant of 30 November, 3 and 15 December 1998 were sent to the Court by the prison administration on 18 December 1998. It considers that such a delay does not disclose any deliberate intention of the prison administration to hinder the applicant's complaints to the Court.

135. Furthermore, the transcript of the prison administration's meeting of 15 December 1998 (see paragraph 43 above) shows that the applicant was able to send his correspondence to the Court.

136. The applicant also alleged that a letter to the Court of 16 December 1998 was not sent by the prison administration. The Court doubts the validity of this allegation, as it was not raised by the applicant prior to the Court's decision on the admissibility of the application, but later at the meeting with the Court delegates. Furthermore, the applicant did not specify what was written in that letter or why it would have been withheld by the prison administration. In these circumstances, and given the fact that all of the applicant's previous letters were sent without significant delay, the Court dismisses the applicant's allegation and finds that he was in no way hindered in the exercise of his right of petition to the Court (see, *mutatis mutandis*, *Cooke v. Austria*, no. 25878/94, §§ 46-49, 8 February 2000, unreported).

137. In sum, the facts of the present case do not disclose any violation of the applicant's rights under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

138. 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. Damage

139. The applicant claimed 10,000 litai (LTL) for non-pecuniary damage.

140. The Government considered the applicant's claim excessive.

141. The Court, bearing in mind its findings above regarding the applicant's complaints, considers that he suffered some non-pecuniary damage as a result of the body search of 7 May 1998 and the screening of his correspondence to the Convention organs. The Court therefore awards the applicant 6,000 LTL on an equitable basis under this head.

B. Costs and expenses

142. The applicant acknowledged that his lawyer had been paid 5,000 French francs under the Court's legal aid scheme. However, he claimed LTL 1,693.87 for additional legal expenses in relation to the Convention proceedings, including translation and telephone expenses and

costs relating to the lawyer's participation in the Court's fact-finding mission.

143. The Government did not comment on this aspect of the applicant's claim.

144. The Court finds the claim justified and awards the applicant LTL 1,693.87 under this head.

C. Default interest

145. According to the information available to the Court, the statutory rate of interest applicable in Lithuania at the date of adoption of the present judgment is 9.28% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicant's body search on 7 May 1998;
2. *Holds* that there has been no violation of Article 3 of the Convention as regards the remainder of the applicant's complaints about his treatment and conditions of detention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there has been no violation of Article 34 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, LTL 6,000 (six thousand litai) in respect of non-pecuniary damage, LTL 1,693.87 (one thousand six hundred and ninety-three litai eighty-seven centai) for costs and expenses, plus any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 9.28% shall be payable from the expiry of the above-mentioned three months until settlement;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President