

CASE OF KASPEROVI IUS V. LITHUANIA – Application no. 54872/08 (2012)

In the Chamber's judgment in the case of **KASPEROVI IUS V. LITHUANIA** (2012) the European Court of Human Rights held, unanimously, that there had been:

- a violation of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention;

I. Principal Facts

The applicant, Aleksandras Kasperovi ius, is a Lithuanian national. In October 2006, he was detained for seven days at the Anykš iai Police Remand Facility. The applicant complained to the administration of the Anykš iai Facility that the conditions of his detention had been appalling. In their reply, they explained that full-scale renovation would be required, but said that this was precluded owing to a lack of financial resources.

The applicant then lodged a complaint with the Anykš iai District Prosecutor's Office, but his complaint was unsuccessful. He lodged a further complaint with the Ombudsman. On January 2007 the Ombudsman found the applicant's complaint valid. However, the facility administration was not to blame for the insufficient funding that had precluded the possibility of improving conditions in the facility.

The applicant then initiated proceedings before the Panev žys Regional Administrative Court seeking compensation for non-pecuniary damage. On October 2007 the Panev žys Regional Administrative Court dismissed the applicant's claims as unfounded. The applicant appealed against the judgment but the Supreme Administrative Court rejected in its entirety the applicant's claim for pecuniary compensation for the non-pecuniary damage he had sustained.

II. Complaints and procedure

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), he complains of the poor conditions of his detention, and in particular that there was no toilet in the cell and insufficient drinking water, lighting and ventilation.

III. Decision of the Court

According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. It depends on all circumstance of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and stage of health of the victim.

In the present case the Court notes that, except for one hour's walk, the applicant had to spend the entire 24-hour period in his cell. Of the seven days that he spent in the Anykš iai

Facility, the applicant shared his cell with another inmate for three days. As has been acknowledged by the administration of the remand facility and established by the Ombudsman and the Supreme Administrative Court, at night the applicant had to use a bucket toilet in the presence of another inmate and be present while the bucket toilet was being used by his cellmate. Furthermore, even though the Government suggested that the inmates could knock on the cell door to ask the guard to take them to the toilet, the Court finds that this measure merely left the inmates at the discretion of the guard. In addition, such practice appears to have been in contradiction with the Lithuanian legislation itself. Finally, the situation the applicant was in did not meet Council of Europe standards to the effect that prisoners should have ready access to sanitary facilities that are hygienic and respect privacy.

The Court also notes that the ventilation system in the remand facility was “ineffective”. Given the lack of appropriate toilet facilities in the cell, it is not unreasonable to conclude that the lack of a proper ventilation system must have contributed to a malodorous cell and thus further aggravated the applicant’s situation. The Court next turns to the Government’s argument that the Anykšiai Facility’s administration had no intention of humiliating the applicant. Be that as it may, it reiterates that although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3.

Indeed, in the present case, the fact remains that the competent authorities took no steps to improve the objectively unacceptable conditions of the applicant’s detention. In the Court’s view, this omission denotes a lack of respect for the applicant. On this point the Court also takes into account that, despite the fact that in 2006 health care specialists had already pointed out “over and over again” the lack of sanitary units in the Anykšiai Facility, the institution was still used to hold remand prisoners.

In the light of the above considerations, the Court is of the view that the prison conditions complained of diminished the applicant’s human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him. In sum, the Court considers that the conditions of the applicant’s detention in the Anykšiai Police Detention Facility amounted to degrading treatment within the meaning of Article 3 of the Convention.

IV. Just satisfaction

The Court held that Lithuania was to pay the applicant 3,000 (EUR) in respect of non-pecuniary damage.

V. Dissenting Opinion

The dissent agree with the majority that there has been a violation of the Article 3 of the convention. However it disagree regarding the just satisfaction claim awarded to the applicant. In the dissent opinion the sum awarded is excessive. The dissent argued that the applicant was detained in the above mentioned Police Remand Facility for only seven days

and although certain domestic regulations on hygiene standards had been breached, nevertheless the minimum level of severity required under the Article 3 of the Convention had not been reached as there was no indication that the conditions of detention had affected the applicant's physical health. In the dissents view such facts are of crucial importance and must be taken into account also in the light of the case-law of the Court when awarding just satisfaction to applicants in Article 3 cases.

The dissent concludes that the Chamber should have been more cautious when deciding on the non-pecuniary award under Article 41, in order to justify the satisfaction claims as "just" in the circumstances of the case at issue while also taking into account the economic situation or standard of living in the country. In Lithuania, the average minimum monthly salary is 850 Lithuanian litai, meaning that the applicant, for seven days' detention without any negative consequences, will receive compensation equal to approximately twelve months' average salary in that country.