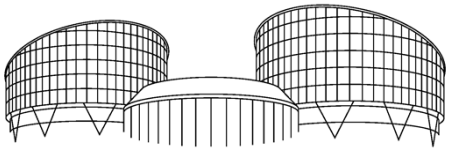

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JANKOVSKIS v. LITHUANIA

(Application no. 21575/08)

JUDGMENT

STRASBOURG

17 January 2017

FINAL

17/04/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jankovskis v. Lithuania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 13 December 2016,

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

PROCEDURE

1. The case originated in an application (no. 21575/08) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Henrikas Jankovskis ("the applicant"), on 7 January 2008.

2. The applicant, who had been granted legal aid, was represented by Ms L. Meškauskaitė, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their former Agent, Ms E. Baltutytė.

3. The applicant alleged a violation of his right to receive information, because he was refused Internet access in prison. He relied on Article 10 of the Convention.

4. On 21 September 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961. According to the latest information in the Court's possession, he was serving a sentence in the Pravieniškės Correctional Home.

A. Internet access

6. On 30 May 2006 the applicant wrote to the Ministry of Education and Science (*Švietimo ir mokslo ministerija*, hereinafter "the Ministry"), requesting information about the possibility of enrolling at university. He mentioned having graduated in 1996 from the Medical Faculty of Vilnius University. The applicant stated that he wished to pursue studies via distance learning to acquire a second university degree (*studijuoti neakivaizdiniu būdu aukštojoje mokykloje*), this time in "law with a specialisation in human rights" (*teisės studijos su žmogaus teisių pakraipa*). The applicant mentioned that he was a prisoner and thus could not physically attend the place of study.

7. In a letter of 12 June 2006 sent to the applicant at the Pravieniškės Correctional Home, the Ministry of Education and Science wrote that information about the study programmes could be found on the website <www.aikos.smm.lt>. This website states that it belongs to the Ministry of Education and Science, and is administered by a public entity, the Centre for Information Technologies in Education (*Švietimo informacinių technologijų centras*), which is a public institution founded by the Ministry of Education and Science. The website contains information about learning and study possibilities in Lithuania. The website states the following about the aims of the "AIKOS" system:

> "AIKOS is an open system for providing information, consultation and guidance, the main aim of which is to provide information about opportunities for learning in Lithuania.
>
> AIKOS provides the possibility of searching information about professions, qualifications, studies and study programmes, educational and science institutions and rules of admission...
>
> AIKOS allows users to submit a question to a consultant and to receive a reply ...
>
> The information provided in the central part of the AIKOS website under the sections 'I wish to learn', 'I wish to study', 'I wish to improve my qualifications' reflects only the current and most pertinent information relevant to the current academic year and is aimed at those who wish to enter university, vocational school, or a secondary school, or who wish to improve their qualifications. The site also contains historical data regarding education ...
>
> AIKOS provides information to three groups of users: adults, children (up to fourteen years of age) and English speakers. The users may use more functions after they have registered on this site.
>
> The AIKOS website is refreshed daily, to reflect information about education and science institutions, study and learning programmes and the qualifications a person receives upon graduating from those programmes, ... programmes for improving qualifications... It also provides information from the Lithuanian Labour Exchange about job vacancies and unemployment. The latter information on the AIKOS website is renewed monthly..."

8. On 28 June 2006 the applicant wrote to the Pravieniškės Correctional Home authorities, noting the reply by the Ministry and asking to be granted Internet access to a website "where there was information from the Ministry about studies, as well as to [the applicant's] email accounts hosted on the Internet sites <www.one.lt> and <www.yahoo.com>".

9. On 1 July 2006 the Pravieniškės Correctional Home governor replied that the prison authorities did not consider the Ministry's reply to be comprehensive. In particular, the Ministry had not taken into account the applicant's particular situation – namely that he was in prison. The prison considered that the Ministry should have provided a comprehensive reply in writing. According to the prison governor, "given that the Ministry's reply did not satisfy [the applicant], the latter should write to the Ministry again, so that he is provided with a comprehensive reply".

10. The prison governor also informed the applicant that the request to have Internet access could not be granted because at that time none of the legislation allowed the prisoners to use the Internet or to have a mailbox. For that reason, the Pravieniškės Correctional Home authorities were unable to grant the applicant's request.

11. The applicant then lodged a complaint with the Department of Prisons (*Kalėjimų departamentas*), arguing that none of the laws prohibited him from obtaining information from a State institution electronically. The applicant referred to the Ministry's reply and asked to be granted Internet access.

12. On 26 July 2006 the Department of Prisons responded that the legal instruments regulating the execution of sentences did not permit prisoners to use the Internet. It was suggested that the applicant again ask the Ministry to provide the information he sought.

13. On 1 August 2006 the applicant started court proceedings, referring to his correspondence with the Ministry and challenging the Pravieniškės Correctional Home authorities' decision not to grant him access to Internet.

14. In their written response to the court, the Pravieniškės Correctional Home authorities noted that, although prisoners had a right to address requests and complaints to the State authorities under Article 100 of the Code of the Execution of Sentences (see paragraph 29 below), this meant correspondence by regular post and not via electronic communication. Furthermore, the use of mobile phones in prisons was prohibited so that prisoners could not continue their criminal activity whilst serving a sentence. According to the Pravieniškės Correctional Home authorities, a number of fraudsters had already cheated people of large sums of money with the help of mobile phones. If the prisoners had the right to use Internet, they could pursue criminal activities and could also coordinate the activities of criminal organisations. Lastly, given that postal correspondence between prisoners was not permitted, providing prisoners with access to the Internet would make that prohibition pointless. The same was true regarding the

prohibition in the 1st Annex of the Code of the Execution of Sentences of the prisoners' possession of topographic maps (see paragraph 30 below).

15. The Prisons Department also asked the court to dismiss the applicant's complaint, arguing that although Article 96 of the Code of the Execution of Sentences permitted prisoners to use computers (see paragraph 29 below), this did not encompass the right to Internet use. There was no right under Lithuanian law for a prisoner to be provided with Internet access.

16. On 2 February 2007 the Kaunas Regional Administrative Court dismissed the applicant's complaint. Having reviewed the legal provisions regulating prisoners' conditions of detention, the court pointed out that the prisoners could communicate with State institutions by postal correspondence and that their letters had to be sent via the prison authorities (see paragraph 33 below). Giving Internet access to prisoners would not be compatible with those legal norms. However, as the Internet was not an object, it was not possible to list Internet among the "objects" which the prisoners were not allowed to have in prison. At the same time, from the existing ban on telephone and radio communication devices in prison it was obvious that this ban included the Internet. Such prohibition was aimed at preventing crimes being committed in prison. The court also observed that the requirements were set by order of the prison authorities and were therefore mandatory for the applicant, as he was under an obligation to obey prison orders.

17. The applicant appealed, disputing the lower court's interpretation of domestic law. He also argued that the lower court had ignored the fact that the core of his complaint was the restriction of his right to education and the right to obtain information. The applicant relied on Article 25 of the Constitution (see paragraph 28 below), and Articles 10 and 14 of the Convention.

18. The Pravieniškės Correctional Home authorities replied, indicating that there was "a secondary school (*vidurinė mokykla*) in the prison where students could access all the literature necessary for their studies. The secondary school graduation exams showed good results". Furthermore, the prisoners could pursue computer literacy studies organised by the Elektrėnai vocational school (*Elektrėnų profesinio rengimo centras*), and that institution had not asked for Internet access. The prison thus considered that Internet access, or the lack thereof, had no impact on the quality of studies.

19. On 11 December 2007 the Supreme Administrative Court dismissed the applicant's complaint. The court noted that, for its users, the Internet provided very wide opportunities to use email, to obtain information, to download files, and to sell or buy things. The Internet could be used for more than merely educational purposes. However, the right to use the Internet was not absolute and this right could be restricted to certain social groups. This stemmed from Article 10 of the Code of the Execution of

Sentences (see paragraph 29 below). There was no legal provision in Lithuania permitting prisoners to use the Internet. Even so, the prisoners' right to have computers could not be interpreted so widely as to encompass the right to have Internet access. The Supreme Administrative Court lastly noted that if prisoners had access to the Internet, the prison authorities would be hampered in their fight against crime by being unable to fully monitor the prisoners' activities.

20. On 30 June 2006 the Elektrėnai Vocational Educational Centre (*Elektrėnų profesinio mokymo centras*) awarded the applicant a diploma in computer skills.

21. According to the Government, in 2007-2008 the applicant had attended English language courses and computer literacy courses organised by a secondary school in Kaunas region.

B. Conditions of the applicant's detention and seizure of his computer

22. In 2006 the applicant started court proceedings, arguing that in July 2006 he had been held in the Lukiškės Prison for seven days in degrading conditions. Among other things, he also argued that the Lukiškės Prison authorities had seized the personal computer which the applicant had brought with him into prison.

23. On 15 January 2007 the Vilnius Regional Administrative Court dismissed the claim by the applicant as unfounded.

24. In a final ruling of 12 October 2007, the Supreme Administrative Court concluded that the computer had been unlawfully seized by the Lukiškės Prison authorities. However, the court found that the conditions of the applicant's detention had been satisfactory overall, except for a few minor details, and that the gravity of those violations was not such as would amount to inhuman or degrading treatment.

C. Denial of extended visits

25. In 2006 the Pravieniškės Correctional Home authorities granted the applicant's request for an extended visit by his parents. However, the applicant later committed a disciplinary offence, and for that reason the extended visit was denied.

26. On 4 May 2007 the Kaunas Regional Administrative Court upheld the refusal of the extended visit as legitimate.

27. By a final ruling of 6 February 2008 the Supreme Administrative Court upheld the lower court's decision.

II. RELEVANT DOMESTIC LAW

28. The Constitution reads as follows:

Article 25

"Everyone shall have the right to have his own convictions and freely express them.

No one must be hindered from seeking, receiving, or imparting information and ideas.

The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation.

Citizens shall have the right to receive, according to the procedure established by law, any information held about them by State institutions."

29. The Code of the Execution of Sentences (*Bausmių vykdymo kodeksas*), as in force in the period between 1 June 2006 and 28 February 2010, read as follows:

Article 10. Legal status of prisoners

"1. Lithuanian citizens serving a sentence shall have all the rights, freedoms and duties established by law for the Lithuanian citizens with the restrictions established by law or the court judgment..."

Article 11. General rights of prisoners

"1. In accordance with the procedure set out by law, prisoners have a right:

1) to receive, in writing, information concerning the manner and conditions for serving the punishment, as well as information concerning their rights and duties ...

2) to address the correctional institution administration or the State or municipal institutions ... with proposals, requests and complaints ..."

Article 96. The right of prisoners to use televisions, computers, video and audio players, radios and playstations

"1. Prisoners, other than those serving a sentence under the conditions of a disciplinary group, are allowed to use televisions, computers, video and audio players, radios, playstations and other items indicated in the Internal Rules of Correctional Facilities that were purchased using money held in their personal accounts or handed over by a spouse, partner or close relative.

2. Rules governing the use of televisions, computers, video players, radios, playstations and other items are set out in the Internal Rules of Correctional Facilities..."

Article 99. Prisoners' right to correspondence

"1. Prisoners are allowed to send and receive letters without restriction on their number.

2. Correspondence between prisoners kept in places of detention on remand, police custody or correctional institutions, other than between spouses or close relatives, is prohibited.

3. The administrative authorities of the correctional institution shall deliver letters received in the name of a prisoner and shall also send off letters handed to them by a prisoner within three working days of the receipt or handing in thereof.

4. The postage cost of sending such letters shall be covered by the prisoners.

5. In order to prevent crimes being committed, or to protect the rights and freedoms of others, letters received or sent by prisoners can be censored following a reasoned decision by a prosecutor, or the director of a correctional facility or a court decision."

Article 100. Prisoners' right to submit proposals, applications, petitions and complaints to the State and municipal officials, to non-governmental organisations and to international institutions

"1. Prisoners have the right to submit proposals, applications, petitions and complaints to State and municipal officials, to non-governmental organisations and to international institutions. If necessary, explanatory letters from the administrative authorities of a correctional facility may be attached to a prisoner's proposal, application, petition or complaint.

2. The proposals, applications and complaints to State and municipal officials and to international institutions ... shall not be subject to censorship and shall be sent off within one day of their receipt by the prison authorities.

3. Replies to prisoners' proposals, applications, petitions and complaints shall be delivered to the prisoners and must be signed for ...

5. Prisoners are prohibited from sending anonymous or collective complaints to State or municipal institutions or officers.

6. Prisoners are prohibited from submitting to State and municipal institutions proposals, applications, petitions and complaints on behalf of other prisoners, nor may they submit them by means other than through the administrative authorities of the correctional facility.

7. The postage cost of sending such proposals, applications, petitions and complaints shall be covered by the prisoner concerned."

Article 102. Prisoners' right to make a telephone call

"1. Prisoners are allowed to make telephone calls. [The number of phone calls a prisoner may make depends of the severity of correctional institution and the disciplinary group that a prisoners belongs to].

2. A prisoner may make a phone call [if he can cover the costs of that telephone conversation].

3. Phone calls between prisoners kept in places of detention on remand, police custody or correctional institutions are prohibited..."

Article 110. Special duties of prisoners who are serving prison sentences

"1. Prisoners serving prison sentences must:

1) comply with the established rules for the correctional facilities;

2) comply with the demands of the correctional facility administrative authorities ..."

30. Annex no. 1 to the Code of the Execution of Sentences, as in force in the period between 1 June 2006 and 28 February 2010, read:

"1. List of prohibited items and articles (*daiktai ir reikmenys*) which may not be kept by prisoners serving a prison sentence:

(...)

6. ... telephones (their parts and accessories), means of radio communication...

(...)

16. Topographic maps..."

31. As of 1 March 2010, the aforementioned Annex no. 1 reads:

List of items and articles which are not permitted to be kept by persons serving a prison sentence:

"6. ... telephones (their parts and accessories), and other means of electronic communication."

32. Annex no. 2 to the Code of the Execution of Sentences, as in force in the period between 1 June 2006 and 28 February 2010, read:

List of tasks which persons serving a prison sentence may not carry out:

"1. Tasks involving copying machines, radio and electronic communications ..."

33. The Internal Rules of Correctional Facilities (*Pataisos įstaigų vidaus tvarkos taisyklės*), approved by the Minister of Justice order no. 194 of 2 July 2003, at the relevant time read:

"192. The prisoners must submit proposals, requests, petitions or complaints in writing. Proposals, requests, petitions or complaints, which need to be sent out by post, must be handed to the correctional facility's administration in a postal envelope ... "

34. The Law on Education (*Švietimo įstatymas*) in force at the time when the applicant contacted the Ministry of Education and Science read:

Article 26. Provision of information about education

"1. The purpose of providing information about education is to furnish a person with information to help him or her choose the right education and education provider, as well as the aspired education and profession in line with his interests, dispositions and abilities.

2. A school shall make public the information about programmes of formal and non-formal education implemented at schools, choices offered, terms of admission,

paid services, teachers' qualifications, major school survey findings, and the traditions and achievements of the school community.

3. Vocational information and vocational guidance services shall include the provision of information about opportunities afforded by vocational training programmes, higher education study programmes (*aukštojo mokslo studijų programas*) ... employment prospects on the labour market in Lithuania, as well as consultations. This service shall be provided by schools, information centres, consultancy companies and labour exchanges (*darbo biržos*) in compliance with requirements laid down by the Minister of Education and Science and the Minister of Social Security and Labour."

III. RELEVANT INTERNATIONAL MATERIALS

35. In the Second General Report on its activities (CPT/Inf (92) 3 [EN]), published on 13 April 1992, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter, "the CPT") noted the following in relation to conditions of imprisonment:

"47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organisation of regime activities in such establishments – which have a fairly rapid turnover of inmates – is not a straightforward matter. Clearly, there can be no question of individualised treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable."

36. Other Council of Europe and international law documents concerning the role of Internet in connection to the right to receive and impart information are quoted in *Kalda v. Estonia* (no. 17429/10, §§ 23-25, 19 January 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

37. The applicant complained that he had not had Internet access in prison. He argued that this had prevented him from receiving education-related information, in breach of Article 10 of the Convention. This provision reads:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The submissions by the parties

1. The applicant

38. The applicant contended that the restriction of inmates' use of the Internet in prison was not prescribed by law. The legislation relied on by the Government, namely point 6 of Annex 1 to the Code of the Execution of Sentences (see paragraph 30 above), which explicitly prohibited prisoners from having telephones and other means of communication such as radios, could not be regarded as formulated with sufficient precision to be foreseeable and therefore as meeting the Court's standards. The fact that none of the legal rules clearly and unambiguously stated that prisoners may not be granted access to the Internet was further supported by the fact that Article 96 of the Code of the Execution of Sentences allowed prisoners to use computers and radios (see paragraph 29 above). The Government themselves stated that the restriction on Internet use by prisoners was only implicit, and was derived systemically from the regime applicable to prisoners *per se*.

39. The applicant further argued that in his case restricting the use of Internet in prison had had no connection with the aim of preventing crimes or other offences. In fact, he had requested Internet access only to the website indicated to him by the Ministry of Education and Science, and only to obtain specific information, that is to say, information about distance learning possibilities and programmes in Lithuania.

40. Lastly, the prohibition had not been proportionate. The Ministry of Education and Science, which was a competent State authority in the field of education in Lithuania, had explicitly told the applicant that all the information of interest about the possibilities for distance learning in higher education and study programmes was accessible via the Ministry's official website at <www.aikos.smm.lt>. The Ministry, as the official body responsible for providing information about study programmes, had indicated no alternative ways or means for the applicant to obtain that information. The applicant further submitted that information about study

programmes and the opportunities for distant studies was of a constantly evolving nature. The educational establishments usually updated such information in the course of the year. Accurate information was therefore only available on the Internet and without Internet access the applicant had no means of obtaining the information necessary to pursue his studies. The applicant lastly pointed out that a number of States permitted limited Internet access in prisons for educational purposes, thus showing that the absolute restriction that existed in Lithuania was disproportionate.

2. The Government

41. The Government argued that the applicant had not properly exhausted the available domestic remedies, because he had not complained about the Ministry's response in separate court proceedings − a fact which the prison authorities found incomprehensible. To the Government's knowledge, neither had the applicant made enquiries directly to higher education establishments in Lithuania which provided legal studies.

42. Alternatively, the Government submitted that the complaint was manifestly ill-founded, as the denial of one particular means of receiving information could have been circumvented by using other means available to the applicant.

43. As the third alternative, the Government submitted that the complaint was inadmissible for the applicant had not suffered a significant disadvantage, because he had followed certain courses in the Pravieniškės Correctional Home and could obtain information sought by other means (see paragraph 46 below). The applicant's complaints had been examined by the domestic courts, which had come to reasoned decisions. The Government also considered that there was clear case-law of the Court to the effect that States' positive obligations under Article 10 were not interpreted as requiring them to provide a particular form of access to information for prisoners.

44. Should the Court nevertheless find that there had been an interference with the applicant's right to receive information, the Government considered that that interference had had a basis in law. The implicit prohibition of prisoners' use of the Internet stemmed from the statutory prohibition of the use of telephones and radios as communication devices, and this had been properly examined by the domestic courts in 2007. Taking into account the technological developments, the Code of the Execution of Sentences had been amended in 2010 in order to explicitly include a prohibition of the use of means of electronic communication by prisoners (see paragraph 31 above).

45. The prohibition of Internet access in prison was aimed at preventing crime, given that the Internet could be used as a means of communication like other prohibited items, such as mobile phones, which prisoners sometimes use illegally from inside prison to commit new

crimes – particularly telephone fraud – or to influence participants in criminal proceedings.

46. The Government also considered that the interference had been necessary and proportionate. As noted by the Supreme Administrative Court, the wide scope of opportunities afforded by the Internet could pose a threat to the rights of other persons. This, in turn, would require "huge efforts" by the prison authorities to prevent any such potential illegal acts. The Internet was only one means of receive information, and the prisoners could effectively exercise that right by other means, such as by postal correspondence (letters) via the prison authorities. In the present case, the information which the applicant sought was available in various forms – the information concerning admission to educational institutions is announced in the press, special publications are printed, and such information could also have been imparted by the applicant's relatives. Prisoners may also receive information concerning the possibility of studies in social rehabilitation units or correctional institutions. General and vocational education was organised in Lithuania in prisons so as to guarantee the inmates' the right to education, and the applicant had made use of those possibilities whilst serving his sentence (see paragraphs 20 and 21 above).

47. The Government pointed out that, whereas in his initial request of 28 June 2006 to the prison authorities the applicant had specifically asked for access to the Ministry's website (see paragraph 8 above), in his lawsuit of 1 August 2006 before the Kaunas Regional Administrative Court (see paragraph 13 above) the applicant had asked for general access to the Internet, instead of complaining about his inability to obtain some particular information. As noted by the Lithuanian courts, the applicant also sought access to his email accounts, whereas the Convention institutions had already accepted that certain limitations as regards prisoners' correspondence did not infringe the guarantees of Articles 8 and 10 of the Convention (the Government relied on the Commission decision in *X v. the United Kingdom*, no. 5270/72, 8 July 1974).

48. Lastly, Government argued that most of the Council of Europe member States restricted Internet use in correctional institutions.

B. The Court's assessment

1. Admissibility

49. The Court notes first of all that before the domestic courts the applicant challenged the decision by the Pravieniškės Correctional Home authorities, under whose effective control he was, not to grant him Internet access. For the applicant, such access was indispensable for the purposes of obtaining education-related information (see paragraph 17 above). The Court has also recently observed that an increasing amount of services and

information is available only via the Internet (see *Kalda v. Estonia*, no. 17429/10, § 52, 19 January 2016). That being so, and given that the applicant's complaint is construed as concerning the right to receive information – thus falling under Article 10 of the Convention − as opposed to a complaint about the denial of education as such, the Court rejects the Government's objection concerning the failure to properly exhaust the domestic remedies by, firstly, not having written letters to Lithuanian educational institutions in Lithuania and by, secondly, not having pursued court proceedings against the Ministry (see paragraph 41 above). As to the first avenue, it was not even a remedy within the sense of Article 35 § 1 of the Convention. As to the second avenue, the Court notes that as a remedy for his grievance of lack of access to information the applicant chose to pursue court proceedings against the Pravieniškės Correctional Home which had effectively barred him from accessing the Ministry's website. In this context the Court recalls that in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Leja v. Latvia*, no. 71072/01, § 46, 14 June 2011).

50. The Court also considers that the Government's objection about the applicant not having suffered a significant disadvantage (see paragraph 43 above) is intrinsically linked to the merits of the applicant's complaint. Accordingly, it must be joined to the merits.

51. The Court furthermore finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) On the existence of an interference

52. The Court has consistently recognised that the public has a right to receive information of general interest. Furthermore, the Court has held that the right to receive information basically prohibits a Government from preventing a person from receiving information that others wished or were willing to impart (see *Kalda*, cited above, §§ 41 and 42).

53. In the present case, however, the question at issue is not the authorities' refusal to release the requested information (compare and contrast *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 149-156, 8 November 2016); the applicant's request concerned information that was freely available in the public domain. Rather, the applicant's complaint concerns a particular means of accessing the information in question: namely, that he, as a prisoner, wished to be granted

access – specifically via the Internet – to information published on a website belonging to the Ministry of Education and Science (see paragraph 7 above).

54. In this connection, the Court reiterates that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 133, ECHR 2015; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 48, ECHR 2012; and *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009).

55. Nevertheless, the Court notes that imprisonment inevitably entails a number of restrictions on prisoners' communications with the outside world, including on their ability to receive information. It considers that Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners (see *Kalda*, cited above, § 45). However, in the circumstances of the present case, since access to information relating to education is granted under Lithuanian law (see paragraph 34 above), the Court is ready to accept that the restriction of access to the Internet site to which the Ministry referred the applicant in reply to his request to provide information constituted an interference with the right to receive information.

(b) Whether the interference was justified

56. The above-mentioned interference contravened Article 10 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in paragraph 2 of that Article and was "necessary in a democratic society" for achieving such aim or aims. The Court will examine each of these criteria in turn.

(i) Whether the interference was prescribed by law

57. The parties have disputed whether the restriction of prisoners' use of the Internet had a basis in domestic law. The Court acknowledges that in 2006, when the applicant requested Internet access in the Pravieniškės Correctional Home, no such explicit prohibition on the use of Internet in prisons existed. The ban on the use of "other means of electronic communication", which could be understood as also encompassing means providing Internet access, was only introduced in March 2010 in Annex no. 1 of the Code of the Execution of Sentences (see paragraph 31 above). Be that as it may, the Court notes that in 2006 numerous domestic legal norms did indeed provide for an explicit ban on telephone and radio communications by prisoners, prohibited the prisoners from working with radio and electronic communication devices, and required that all correspondence by prisoners' be conducted in writing and sent by post via

the prison authorities (see paragraphs 29, 30 and 32 above). It is not unreasonable to hold that all those prohibitions could have been circumvented, if prisoners were allowed access to Internet. The Court therefore does not consider that the applicant was left without an indication that there was a prohibition on the use of the Internet in prison. It therefore concludes that the prohibition on the inmates' use of the Internet in prison was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

(ii) Whether the interference pursued a legitimate aim

58. The Court also accepts the Government's argument (see paragraph 45 above) that the interference in question served the aim of protecting the rights of others and preventing disorder and crime (see *Kalda*, cited above, § 47). This was moreover noted by the Pravieniškės Correctional Home authorities, as well as by the administrative courts of two instances (see paragraphs 14, 16 and 19 above). The Court accepts that the domestic courts must have knowledge of the situation prevailing in the country when a number of telephone fraudsters from prisons had already cheated people of large sums of money.

(iii) Whether the interference was "necessary in a democratic society"

59. The Court notes that the website to which the applicant wished to have access contained information about learning and study programmes in Lithuania. The information on that site was regularly updated to reflect, for example, admission requirements for the current academic year. It also provided up to date information from the Lithuanian Labour Exchange about job vacancies and unemployment (see paragraph 7 above). It is not unreasonable to hold that such information was directly relevant to the applicant's interest in obtaining education, which is in turn of relevance for his rehabilitation and subsequent reintegration into society. As underlined by the CPT, a satisfactory programme of activities, including education, is of crucial importance for the well-being of all detainees, including prisoners awaiting trial. This is all the more relevant in relation to sentenced prisoners (see paragraph 35 above), and the applicant, who was serving a sentence in the Pravieniškės Correctional Home, was one such prisoner (see paragraph 5 above). In fact, as regards the Pravieniškės Correctional Home, the CPT specifically noted after its 2008 visit that steps should be taken to ensure that all sentenced prisoners in that prison were able to engage in purposeful activities of a varied nature, such as educational programmes (see point 49 *in fine* of the CPT report, quoted in *Mironovas and Others v. Lithuania*, nos. 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13, § 65, 8 December 2015).

60. The Court also considers that accessing the AIKOS website in the manner advised by the Ministry of Education and Science – namely

browsing through it in order to find information that was relevant – was more efficient than making requests for specific information, as was proposed by the Government (see paragraph 46 above). Indeed, in order to make a specific request to an educational institution one would need to be aware of the competencies of that institution and the services provided by it. Such preliminary information would be provided by the AIKOS website. The Court furthermore notes the applicant's argument that the information about the study programmes was of a constantly evolving nature (see paragraph 40 above). This fact is also highlighted on the AIKOS website itself (see paragraph 7 above).

61. Turning to the Lithuanian authorities' decisions, the Court cannot but observe that they essentially focussed on the legal ban on prisoners having Internet access as such, instead of examining the applicant's argument that access to a particular website was necessary for his education (see paragraphs 10, 12, 14, 15, 16 and 19 above). It is true that the Pravieniškės Correctional Home authorities pointed out the presence of a secondary school in that prison, as well as the possibility of following computer courses at Elektrėnai vocational school (see paragraph 18 above). However, this appears to be a very remote proposition in relation to the applicant's wish to acquire a second university degree (see paragraph 6 above). In the present case the Court also observes that the prison authorities or the Lithuanian courts did not even go so far as to argue that extended Internet access could incur additional costs for the State (see paragraphs 14, 15, 16 and 19 above). Whilst the security considerations arising from prisoners' access to Internet, as such, and cited by the prison authorities (see paragraph 14 above) may be considered as relevant, the Court notes that the domestic courts failed to give any kind of consideration to the fact that the applicant asked for access to a website created and administered by the Ministry of Education and Science, which was a State institution. In fact, both courts were completely silent on the matter of education (see paragraphs 16 and 19 above).

62. Lastly, the Court is mindful of the fact that in a number of the Council of Europe's and other international instruments the public-service value of the Internet and its importance for the enjoyment of a range of human rights has been recognised. Internet access has increasingly been understood as a right, and calls have been made to develop effective policies to achieve universal access to the Internet and to overcome the "digital divide" (see *Kalda*, cited above, § 52). The Court considers that these developments reflect the important role the Internet plays in people's everyday lives, in particular since certain information is exclusively available on Internet. Indeed, as has already been established in this case, the AIKOS website provides comprehensive information about learning possibilities in Lithuania. In this connection it is also noteworthy that the Lithuanian authorities did not even consider a possibility of granting the

applicant limited or controlled Internet access to this particular website administered by a State institution, which could have hardly posed a security risk.

63. In these circumstances, the Court is not persuaded that sufficient reasons have been put forward in the present case to justify the interference with the applicant's right to receive information. Moreover, having regard to the consequences of that interference for the applicant (see paragraphs 59-61 above), the Government's objection that the applicant had not suffered significant disadvantage (see paragraph 50 above) must be dismissed.

64. The Court concludes that the interference with the applicant's right to receive information, in the specific circumstances of the present case, cannot be regarded as having been necessary in a democratic society.

There has accordingly been a violation of Article 10 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. In another application form which the applicant signed on 28 August 2008, and which the Court received on 12 September 2008, the applicant further complained about the seizure of his computer and the conditions of his detention in Lukiškės Prison. Given that the Supreme Administrative Court adopted a final decision in the set of proceedings concerning these issues on 12 October 2007 (see paragraph 24 above), the Court finds that this complaint has been lodged out of time and is therefore inadmissible, in accordance with Article 35 §§ 1 and 4 of the Convention.

66. In the application form which the applicant signed on 11 November 2008, and which the Court received on 5 December 2008, the applicant complained of being denied extended visits in the Pravieniškės Correctional Home. The Court notes, however, that the domestic proceedings in connection with this complaint ended with the Supreme Administrative Court's decision of 6 February 2008 (see paragraph 27 above). It follows that this complaint must likewise be dismissed as being lodged out of time, in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government disputed the claim as unfounded and excessive.

70. The Court considers that in the circumstances of this case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see, *mutatis mutandis*, *Kalda*, cited above, § 58).

B. Costs and expenses

71. The applicant claimed reimbursement of costs, without specifying the sum claimed.

72. The Government made no comment on this issue.

73. The Court notes that the applicant was granted legal aid under the Court's legal aid scheme, under which the sum of EUR 850 has been paid to the applicant's lawyer to cover the submission of the applicant's observations and additional expenses. In the absence of any specific claims by the applicant as well as any supporting documents, the Court decides to make no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection that the applicant did not suffer a significant disadvantage for the purposes of Article 35 § 3 (b) of the Convention, and *rejects* it;

2. *Declares* the applicant's complaint about right to receive information admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 17 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	András Sajó
Deputy Registrar	President