



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

FOURTH SECTION

**CASE OF BIRŽIETIS v. LITHUANIA**

*(Application no. 49304/09)*

JUDGMENT

STRASBOURG

14 June 2016

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Biržietis v. Lithuania,**

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

András Sajó, *President*,

Vincent A. De Gaetano,

Nona Tsotsoria,

Krzysztof Wojtyczek,

Egidijus Kūris,

Iulia Motoc,

Gabriele Kucsko-Stadlmayer, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 24 May 2016,

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

## PROCEDURE

1. The case originated in an application (no. 49304/09) 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 Rimantas Biržietis (“the applicant”), on 31 August 2009.

2. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged that a prohibition on his growing a beard while in prison had violated his right to respect for his private life under Article 8 of the Convention.

4. On 8 July 2010 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in the village of Patiltė (Utena Region).

6. On 20 November 2006 the applicant began serving a prison sentence at the Marijampolė Correctional Facility. The prison regulations were explained to him, which included a prohibition on prisoners growing beards (see paragraph 17 below). The applicant signed to confirm that he had read and understood the rules.

7. On 4 October 2007 the applicant submitted a request to the Prison Department to allow him to grow a beard for health reasons. He stated that he had been diagnosed with tongue cancer and had undergone radiation treatment, and therefore shaving irritated his skin.

8. On 17 October 2007 the applicant was examined by the correctional facility's medical personnel. The subsequent medical report stated that no traces of irritation had been found on the applicant's skin and that, according to the applicant himself, the main reason why he wanted to grow a beard was that his electric razor was almost broken and he could not afford to buy a new one. On 23 October 2007 the Prison Department denied the applicant's request, based on the results of the examination.

9. The applicant later submitted another request to grow a beard to the Prison Department, and on 19 November 2007 it was denied on the same grounds.

10. On 5 December 2007 the applicant submitted a complaint to the Vilnius Regional Administrative Court. He argued that there was no law prohibiting beards in prison, so the Marijampolė Correctional Facility did not have the right to establish such a prohibition in its internal regulations. He also contended that the prohibition, which had been applied to him regardless of his health problems, had caused him great mental suffering and had breached his rights.

11. On 21 April 2008 the Vilnius Regional Administrative Court upheld the applicant's complaint. The court acknowledged that prisons were in principle justified in having rules on prisoners' beards in so far as it was necessary for hygiene-related reasons. However, it dismissed the Prison Department's argument that the prohibition on beards was necessary for the purpose of the swift identification of prisoners, and held that such a restriction was contrary to the requirement to reintegrate prisoners into society. Accordingly, the court concluded that the prohibition on the applicant having a beard was against the law and was neither necessary nor proportionate.

12. However, on 24 March 2009 the Supreme Administrative Court overturned the first-instance judgment. Firstly, the court noted that the applicant had not proven that he had been unable to shave regularly because of health reasons (see paragraph 8 above). The court also noted that although prisoners' human rights and fundamental freedoms could only be restricted by laws and not by legal acts of a lower order, the desire to grow a beard could not be considered as such a right or freedom. Therefore, unless it was related to other rights, such as, for example, religious freedom, the growing of a beard could be restricted by internal prison rules. Lastly, the Supreme Administrative Court considered that a prohibition on growing beards could be justified by the prison authorities' need to swiftly identify prisoners, and thus it was necessary and proportionate.

13. On 15 December 2009 the applicant was released from the Marijampolė Correctional Facility on probation.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant provisions of the Code of Execution of Penalties provide the following:

**“Article 5. The principle of legality**

...

2. Restrictions on the rights and freedoms of convicted persons, as well as their duties, can only be imposed by laws of the Republic of Lithuania.

3. A convicted person’s conduct can only be restricted by a prohibition or duty. The institution or officer executing the penalty may only act in accordance with the methods and means established by law ...

**Article 12. General duties of convicted persons**

1. Convicted persons must comply with any obligations established by law and act in accordance with the rules of conduct which apply to them.

2. Convicted persons must comply with instructions or orders given by the institution or officer executing the penalty ...

**Article 110. Special duties of convicted persons who are serving a sentence of imprisonment**

1. Convicted persons who are serving a sentence of imprisonment must:

1) comply with the established order of the correctional facility;

2) comply with requests from the administration of the correctional facility; ...

**Article 116. Internal order of correctional facilities**

Correctional facilities shall have an established internal order. Convicted persons must be informed of their rights and duties and the restrictions placed on them.”

15. At the material time, the relevant parts of the Internal Rules of Correctional Facilities, approved by the Minister of Justice on 2 July 2003, provided:

**“XI. The regime of imprisonment – one of the means of correction**

73. The sentence of imprisonment is a penalty in and of itself. Therefore, the conditions and regime of serving a sentence of imprisonment in correctional facilities must not increase the suffering of convicted persons, except when that is justified by the need to isolate them and ensure discipline ...

**XLI. Compliance with sanitary and anti-epidemic rules in correctional facilities**

255. The staff of correctional facilities, visitors and prisoners must strictly comply with sanitary and anti-epidemic requirements ...

257. Newly arrived prisoners undergo decontamination and must take a shower. The staff of correctional facilities cannot demand that a prisoner shave his or her head, unless there is written confirmation by a doctor that that is necessary for health or sanitary reasons ...

258. At least once a week prisoners are given the opportunity to go to a sauna, to receive clean bedding and underwear; they must have regular access to the services of a barber ...”

16. At the material time, the relevant parts of Hygiene Norm No. HN76:1999, approved by the Minister of Healthcare on 22 October 1999, provided:

“13.14. In accordance with an established schedule, prisoners and detainees shall take a shower or bath at least once every seven days, cut their hair and shave regularly.”

17. At the material time, the Internal Rules of the Marijampolė Correctional Facility, approved by the head of the Marijampolė Correctional Facility on 26 July 2006, established various restrictions for prisoners, including the prohibition to store or consume alcoholic beverages or narcotic substances, to keep pets, to smoke outside the specially designated areas, and to put tattoos on oneself or other persons. Paragraph 3.18 of that document read:

“3. It is prohibited: ...

3.18. to grow a beard; ...”

18. At the material time, a prohibition on growing beards was also part of the internal rules of Lukiškės Remand Prison, and the Alytus and Pravieniškės Correctional Facilities, as approved by the heads of those facilities.

19. In August 2008 the Parliamentary Ombudsperson received a complaint from a prisoner serving a sentence in the Pravieniškės Correctional Facility who complained that he had been punished by five days of solitary confinement for refusing to shave off his beard and moustache. In her report no. 4D-2008/2-1015 the Ombudsperson stated:

“7. ... In the Ombudsperson’s view, the requirement for prisoners to cut their hair and shave regularly does not mean that they have to keep their hair at a certain length determined by the administration, or have always to be shaved, but it simply establishes a basic rule of hygiene that hair or beards must not be allowed to grow without regular care ...

9. The documents provided by the Pravieniškės Correctional Facility do not indicate that at the time of the applicant’s arrival at that facility his appearance had been untidy or not in accordance with the rules of hygiene, or that he had been a carrier of any parasitic diseases. Accordingly, the staff at the Pravieniškės Correctional Facility could not require him to shave his beard.

10. The Ombudsperson agrees ... that the administration’s arguments concerning the protection of the public interest (namely that if a prisoner grew long hair or a beard or sideburns, then it would be very difficult or impossible to identify him in the event of his escape from prison owing to changes in his facial appearance) cannot be accepted because they are based on speculation ...

11. ... Without denying that the administration of a correctional facility has an obligation to ensure the security of the facility and its internal rules, convicted prisoners must be allowed to grow beards, and if their appearance changes

noticeably, then the administration could change their identification documents, as long as prisoners do not abuse that right.”

The Ombudsperson also stated that the prohibition on prisoners growing beards was not in line with domestic legal acts of higher authority and recommended that the head of the Pravieniškės Correctional Facility ensure compliance of the facility’s internal rules with those legal acts.

### III. RELEVANT INTERNATIONAL MATERIAL

20. The relevant parts of the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 at the 952nd meeting of the Ministers’ Deputies, provide the following:

*“Basic principles*

...

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed ...

*Hygiene*

...

19.4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5. Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6. The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials ...

*General approach to good order*

49. Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities in accordance with Rule 25 ...

*Security*

51.1. The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody ...”

21. In its report to the Turkish Government on the visits to Turkey from 10 to 16 December 2000 and 10 to 15 January 2001 and from 18 to 21 April and 21 to 24 May 2001, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated:

“20. ... [A] considerable number of prisoners complained that their hair and beards/moustaches had been forcibly shaved off ...

21. ... As regards the forcible shaving of hair, beards and moustaches ... the information gathered by the delegation clearly suggests that in many cases the shaving had a punitive character.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained about the prohibition on growing a beard in prison. He relied, in substance, on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### A. Admissibility

##### 1. *Victim status*

23. The Government submitted that the applicant could no longer claim to be a victim of an alleged violation of his rights under Article 8 of the Convention because he had been released from prison on probation and therefore was no longer subjected to a restriction on growing a beard.

24. The applicant did not comment on that point.

25. The Court reiterates that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive that person of his or her status as a “victim” for the purposes of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, a breach of the Convention and then afforded redress (see, among many other authorities, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012, and the cases cited therein).

26. The Court observes that in the present case the domestic authorities have neither acknowledged a breach of the Convention, nor afforded the applicant any redress. Accordingly, the Court considers that the applicant has not lost his status as a victim, and so this preliminary objection by the Government is dismissed.



## 2. *Abuse of the right of application*

27. The Government submitted that the applicant had abused the right of individual application within the meaning of Article 35 § 3 (a) of the Convention because his application had not concerned any legitimate interest and was therefore manifestly devoid of any real purpose.

28. The applicant insisted that the prohibition on growing a beard in prison had caused him serious mental suffering and thus the purpose of his application was to obtain redress.

29. The Court considers that the applicant has brought genuine grievances to its attention and nothing in the case file discloses any appearance of an abuse of the right of individual petition. Accordingly, the Government's preliminary objection on that point should be dismissed.

## 3. *Incompatibility ratione materiae*

30. The Government further submitted that Article 8 of the Convention was not applicable in the present case. Relying on *Costello-Roberts v. the United Kingdom* (25 March 1993, § 36, Series A no. 247-C), they contended that not every act or measure which may be said to affect adversely the physical or moral integrity of a person necessarily gives rise to an interference with private life. The Government noted that the Court, in *Tig v. Turkey* ((dec.), no. 8165/03, 24 May 2005), refrained from establishing whether a prohibition on having a beard would in itself constitute an interference with the right to respect for someone's private life. That same question was examined by the Supreme Administrative Court of Lithuania in the applicant's case (see paragraph 12 above), and that court held that the mere wish to grow a beard could not be considered an element of human dignity that is protected by law. The Government submitted that the applicant's desire to grow a beard had not been motivated by reasons of religious expression, nor had he had a long and established history of wearing a beard. The Government also submitted that in the domestic proceedings the applicant had not argued that the prohibition on growing a beard had interfered with his private life, but had only focused on health-related reasons. Accordingly, the Government considered that the applicant's physical and moral integrity had not suffered to such a degree as to fall within the scope of Article 8 of the Convention.

31. The applicant did not comment on that point.

32. The Court reiterates that there is no exhaustive definition of the notion of private life within the meaning of Article 8 of the Convention, but that it is a broad term (see, among many other authorities, *Parrillo v. Italy* [GC], no. 46470/11, § 153, ECHR 2015). It encompasses, *inter alia*, aspects of an individual's physical, psychological and social identity, such as the right to personal autonomy and personal development (see, among many other authorities, *V.C. v. Slovakia*, no. 18968/07, § 138, ECHR 2011 (extracts)).

33. The Court further reiterates that personal choices as to an individual's desired appearance, whether in public or in private places, relate to the expression of his or her personality and thus fall within the notion of private life (see *S.A.S. v. France* [GC], no. 43835/11, § 107, ECHR 2014 (extracts), and the cases cited therein). It has found to this effect previously as regards a haircut (see *Popa v. Romania* (dec.), no. 4233/09, §§ 32-33, 18 June 2013) and a choice of clothing (see *S.A.S. v. France*, cited above, § 107). Accordingly, the Court considers that, in the circumstances of the present case, the choice to grow a beard constituted a part of the applicant's personality and individual identity and fell within the scope of private life, and Article 8 of the Convention is therefore applicable.

#### *4. No significant disadvantage*

34. The Government further submitted that the complaint was inadmissible because the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention.

35. The applicant disagreed.

36. The Court reiterates that the "significant disadvantage" admissibility criterion under Article 35 § 3 (b) of the Convention hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 55, ECHR 2012 (extracts), and the cases cited therein).

37. In the present case, the internal regulations of the prison prohibited the applicant from growing a beard, which the Court has considered as falling within the ambit of private life under Article 8 of the Convention (see paragraph 33 above). The applicant did not claim that he had suffered any financial disadvantage. However, he contended that the prohibition had caused him mental suffering, and the Court sees no reason to question his subjective assessment. In any event, the Court considers that the present case raises issues concerning restrictions on prisoners' personal choices as to their desired appearance, which is arguably an important matter of principle. Accordingly, the Court does not find it appropriate to dismiss the present application with reference to Article 35 § 3 (b) of the Convention, and thus also dismisses this preliminary objection by the Government.

#### *5. Conclusion on admissibility*

38. Having rejected the Government's submissions on inadmissibility, the Court concludes that the application is not inadmissible on any other grounds and it must therefore be declared admissible.

## B. Merits

### 1. *The parties' submissions*

39. The applicant complained that the prohibition on growing beards in prison was not in accordance with the law and had caused him feelings of humiliation and distress.

40. The Government acknowledged that there had been an interference with the applicant's private life, however, they submitted that that interference had been in accordance with the requirements of Article 8 § 2 of the Convention.

41. As regards accordance with the law, the Government submitted that the prohibition on prisoners growing and having beards was provided in the internal rules of the Marijampolė Correctional Facility, which were presented to the applicant immediately upon his placement at that facility. They contended that although that prohibition was not explicitly established in any of the higher domestic legal acts (such as the Code of Execution of Penalties, or the Internal Rules of Correctional Facilities, approved by the Minister of Justice), those legal acts entitled each correctional institution to establish its own internal order. The Government submitted that the prohibition on growing beards, established in the internal rules, was in accordance with the general principles set down in the higher legal acts - such as the need to maintain discipline and hygiene among prisoners, as well as to ensure their security and proper supervision. They also noted that, at the material time, such a prohibition was in place in all the correctional institutions in Lithuania.

42. As regards a legitimate aim, the Government submitted that the prohibition was intended to maintain discipline and prevent disorder among prisoners, as well as to ensure their supervision, hygiene and a tidy appearance.

43. Lastly, as regards the necessity and proportionality of the prohibition, the Government argued that imprisonment necessarily entailed certain restrictions on the personal choices of prisoners – for example, the requirement to wear special clothing could be justified by the need to facilitate identification and prevent disorder (see *McFeeley et al. v. the United Kingdom* (dec.), no. 8317/78, 15 May 1980). The Government also referred to the special nature of correctional facilities in Lithuania – in those facilities, the prisoners were not kept in closed cells but in open dormitory-type rooms, which created additional challenges in supervision and control. In that context, the Government submitted that the prohibition on growing and having beards was necessary for the purposes of identification and maintaining order.

44. The Government drew the Court's attention to the fact that the applicant had not had a beard at the time of his placement in the Marijampolė Correctional Facility, and that he had also not grown a beard

after his release on probation. They further noted that his decision to grow a beard had not been based on religious or other, similar motives, and that the medical examination had not identified any health reasons for the applicant not being able to shave. In addition, the applicant had only had to comply with the prohibition for two years (while he was in prison). In those circumstances, the Government considered that the applicant had not been disproportionately affected by the measure in question.

## 2. *The Court's assessment*

### (a) **Relevant general principles**

45. The Court reiterates that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty – there is no question that a prisoner forfeits his or her Convention rights merely because of his or her status as a person detained following conviction. For example, prisoners may not be ill-treated, they continue to enjoy the right to respect for family life, the right to freedom of expression, the right to practise their religion, the right to respect for correspondence and the right to marry, among others (see *Dickson v. the United Kingdom* [GC], no. 44362/04, §§ 67-68, ECHR 2007-V, and the cases cited therein). The circumstances of imprisonment, in particular considerations of security and the prevention of crime and disorder, may justify restrictions on those other rights; nonetheless, any restriction must be justified in each individual case (*ibid.*).

### (b) **Application of the above principles in the present case**

46. In the first place, the Court observes that it is not in dispute between the parties that the prohibition on the applicant having a beard while in prison constituted an interference with his right to respect for his private life, protected by Article 8 of the Convention. It remains to be seen whether that interference was justified under the second paragraph of that provision.

#### (i) *Lawfulness of the interference*

47. Under the Court's case-law, the expression "in accordance with the law" in Article 8 § 2 requires, firstly, that the impugned measure should have a basis in domestic law. Secondly, it refers to the quality of the law in question, requiring that it should be formulated with sufficient precision so as to be accessible to the person concerned, who must moreover be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among many other authorities, *Khoroshenko v. Russia* [GC], no. 41418/04, § 110, ECHR 2015, and the cases cited therein).

48. In the present case, the prohibition on prisoners growing beards was established in the Internal Rules of the Marijampolė Correctional Facility,

approved by the head of that facility (see paragraph 17 above). Those rules were shown to the applicant on the day of his placement in the facility, and he signed to confirm that he had read and understood them (see paragraph 6 above). The applicant did not claim that the prohibition was not accessible or foreseeable for him, and the Court sees no reason to hold otherwise.

49. However, the applicant argued that putting such a prohibition in the internal rules of the correctional facility was unlawful because it had not been provided for in any of the legal acts with greater authority, such as the Code of Execution of Penalties, or the Internal Rules of Correctional Facilities, approved by the Minister of Justice.

50. In that connection, the Court notes that the term “law” in Article 8 § 2 of the Convention must be understood in its substantive and not formal sense, thereby encompassing not only written laws enacted by Parliament, but also statutes and regulatory measures of a lower order passed by professional regulatory bodies under independent rule-making powers delegated to them by Parliament, as well as unwritten law (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 88, ECHR 2005-XI, and the cases cited therein). Even if domestic law may require the interference with the right to private life to be provided at a specific level of legislation, Article 8 of the Convention establishes no such requirement.

51. The Court further notes that the Supreme Administrative Court of Lithuania, when examining the applicant’s complaint, held that although prisoners’ human rights and fundamental liberties could only be restricted by laws enacted by Parliament, the wish to grow a beard could not be considered as such a right or liberty, and thus restrictions on that wish could be provided for in legal acts of a lower order (see paragraph 12 above). The Court reiterates that it is not its function to deal with errors of fact or law allegedly made by national courts (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 29, ECHR 1999-I). Accordingly, the Court is prepared to accept, as the national court did, that the interference complained of had a legal basis in domestic law, and that it satisfied the “lawfulness” requirements established in the Court’s case-law.

52. In conclusion, the Court considers that the prohibition on the applicant having a beard in prison was “in accordance with the law” within the meaning of Article 8 § 2 of the Convention.

(ii) *Legitimate aim*

53. The Court reiterates that the enumeration of the exceptions to the right to respect for private life, as listed in Article 8 § 2, is exhaustive and that their definition is restrictive. For it to be compatible with the Convention, a limitation of that right must, in particular, pursue an aim that can be linked to one of those listed in that provision (see *S.A.S. v. France*, cited above, § 113).

54. In the present case, the Government submitted that the prohibition on prisoners growing beards was aimed at the prevention of disorder and crime among prisoners, as well as at the maintenance of hygiene and at making sure prisoners had a tidy appearance. As to the latter aim, the Court observes that the Government did not explain how it was related to any of the “legitimate aims” expressly mentioned in Article 8 § 2 of the Convention. As to the prevention of disorder and crime, the Government did not clearly identify how allowing the applicant (or other prisoners) to grow a beard could lead to disorder and crime – for instance, they never mentioned situations where there had been attempts by prisoners to commit offences that could have been helped in some way by the presence of facial hair. Nor did the Government argue that the prohibition on beards was aimed at ensuring respect for social norms and standards among prisoners (see, for example, *mutatis mutandis*, *S.A.S. v. France*, cited above, §§ 121-122, where the Government invoked the need to ensure “respect for the minimum requirements of living together”). However, the Court does not find it necessary to assess whether the disputed measure pursued a legitimate aim because it considers that, in any event, it was not necessary in a democratic society, for the reasons set out below.

(iii) *Necessary in a democratic society*

55. The Court reiterates that the notion of “necessity” implies that the interference with an individual’s right to respect for his or her private life corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was “necessary in a democratic society”, the Court will take account of the fact that the Contracting States have a margin of appreciation. The breadth of that margin varies and depends on a number of factors, including the nature of the activities restricted and the aims pursued by the restrictions. In any event, it remains incumbent on the respondent State to demonstrate the existence of the pressing social need behind the interference (see *Khoroshenko*, cited above, § 118, and the cases cited therein).

56. In the present case, the applicant was serving a prison sentence, during which time he was prohibited from growing a beard by the internal rules of the correctional facility. Those rules placed an absolute prohibition on prisoners growing a beard, irrespective of its length, tidiness, or any other considerations, and did not explicitly provide for any exceptions to that prohibition (see paragraph 17 above). The applicant submitted two requests to the authorities to allow him to grow a beard, but his requests were rejected as being contrary to the internal rules of the facility (see paragraphs 7 and 9 above).

57. While the Court accepts that the Contracting States are in principle justified in setting certain requirements related to prisoners’ personal

appearance, it reiterates that any such restrictions must conform to the requirements of necessity and proportionality within the meaning of Article 8 § 2 of the Convention. In the present case, the Court has expressed its reservations as to the existence of a legitimate aim pursued by the impugned restriction on the applicant's Article 8 rights (see paragraph 54 above). It also takes note of the conclusion of the Parliamentary Ombudsperson, in a case similar to the applicant's and which was delivered around the same time as the applicant's complaints were examined by the domestic courts, that such a prohibition could not be justified by hygiene requirements or by the need to identify prisoners (see paragraph 19 above). The Court further considers that the Government did not demonstrate that the absolute prohibition on growing a beard, irrespective of its hygienic, esthetic or other characteristics, and not allowing for any exceptions (see paragraph 56 above), was proportionate. Lastly, it observes that in the applicant's case the prohibition on beards did not seem to affect other types of facial hair, such as moustaches or sideburns, thereby raising concerns of arbitrariness.

58. Taking into account all the circumstances of the present case, the Court considers that the applicant's decision on whether or not to grow a beard was related to the expression of his personality and individual identity, protected by Article 8 of the Convention, and that the Government has failed to demonstrate the existence of a pressing social need to justify an absolute prohibition on him growing a beard while he was in prison. There has accordingly been a violation of Article 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government submitted that the applicant's claims were unsubstantiated and excessive.

62. The Court considers that in the circumstances of the case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

**B. Costs and expenses**

63. The applicant did not submit a claim for costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court makes no award under this head.

**FOR THESE REASONS, THE COURT,**

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention;
3. *Holds*, unanimously, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Maridalena Tsirli  
Registrar

András Sajó  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

A.S.  
M.T.



## DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I respectfully disagree with the majority because in my view there has been no violation of Article 8 in the instant case.

2. The majority have emphasised the fact that the respondent Government have neither shown that the restriction under consideration serves a legitimate aim nor that it is necessary in a democratic society (see paragraphs 54 and 57). In the light of this reasoning, the outcome of the instant case has depended on the way the Government pleaded in the proceedings before the Court. It conveys the idea that a State may be able to justify a similar restriction in the future if sufficiently strong arguments are provided to justify it and therefore it is not legitimate to draw a general conclusion that a ban on beards in prisons is always contrary to the Convention. The impact of the judgment is therefore limited to the instant case.

The approach adopted by the majority operates on the implicit assumption that the procedure before the Court is based on the adversarial principle combined with a limited role of the Court, which should adjudicate on the basis of the parties' submissions and refrain from establishing relevant elements of a case of its own motion. I am not persuaded that the Court should adhere to this method of proceeding. Neither the Convention nor the Rules of Court prohibit the Court from establishing of its own motion important factual or legal elements of a case. I note in this context that the methodology adopted in the instant case has serious flaws. Firstly, the outcome of the case depends on the quality of the pleadings. Secondly, it is difficult to establish general legal principles which may be relevant in other similar cases. Thirdly, the margin of appreciation of the High Contracting Parties varies and depends on their capacity to plead convincingly before the Court. Fourthly, it does not fit with the assumption that proceedings before the European Court of Human Rights should serve not only the individual interests of the parties but also the public interest.

3. It is also important to note that the majority stress the absolute character of the ban on beards in Lithuanian prisons (see paragraph 58). In other words, the majority seem to find a violation of Article 8 because the ban in question is absolute, suggesting that a ban with certain exceptions would have been assessed differently in the light of the Convention. This further limits the potential general impact of the judgment rendered in the instant case.

4. The majority state that they do not find it "necessary to assess whether the disputed measure pursued a legitimate aim because [they] consider that, in any event, it was not necessary in a democratic society, for the reasons set out below" (see paragraph 54 *in fine*). Such an approach triggers methodological objections because the existence of a legitimate aim is one

of the preconditions of the proportionality assessment. Proportionality can be assessed only in the light of the aims pursued. If there is no legitimate aim then the assessment of proportionality becomes purposeless.

5. The majority state that “taking into account all the circumstances of the present case, the Court considers that the applicant’s decision on whether or not to grow a beard was related to the expression of his personality and individual identity, protected by Article 8 of the Convention”. The wording of the reasoning suggests that the majority would not have found a violation in the case of persons whose decision whether or not to grow a beard had not been related to the expression of their personality and individual identity. In the absence of further explanations, it is difficult to understand which circumstances are relevant for assessing whether the decision to grow a beard is related to the expression of one’s personality and individual identity.

6. Imprisonment necessarily involves restrictions on individual freedom as set forth in the prison rules. The prison rules have to lay down the conditions of living together in a prison and to ensure minimum discipline. They necessarily entail a certain homogeneity of prison conditions. For instance, in many States prisoners are required to wear uniforms, which substantially limits the possibility of expressing personality and individual identity through the choice of clothes. In this context I am not convinced that the restriction in question goes beyond the margin of appreciation left to the High Contracting Parties in respect of prison rules.

I note here that much more far-reaching restrictions on personal freedom outside the prison context have been declared compatible with the Convention. An example here is the ban on Islamic burkas in all public spaces (see *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts)) or the ban on Islamic headscarves in certain public institutions (see *Sevgi Kurtuluş v. Turkey* (dec., no. 65500/01, 2016 January 24). In my view, the case-law on all those questions is not consistent.

7. I agree that an absolute ban on beards in prisons may be problematic from the viewpoint of the Convention in certain circumstances, for instance if the decision to grow a beard stems from the observance of religious rules or is motivated by specific health problems. However, no such specific circumstances have been shown by the applicant. In my view, the Court should not in principle call into question general measures imposed without exceptions (“absolute bans”) as long as their implementation in the circumstances of a specific case is not incompatible with the Convention (see my dissenting opinion in the case of *Firth and Others v. the United Kingdom*, applications nos. 47784/09, 47806/09, 47812/09, 47818/09, 47829/09, 49001/09, 49007/09, 49018/09, 49033/09 and 49036/09, 12 August 2014).