



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

FOURTH SECTION

CASE OF ALVER v. ESTONIA

(Application no. 64812/01)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Alver v. Estonia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 64812/01) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Rein Alver ("the applicant"), on 5 June 2000.

2. The applicant was represented before the Court by Mr I. Kütt, a lawyer practicing in Jõgeva. The Estonian Government ("the Government") were represented by their Agent, Ms M. Hion, Director of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs, and Mr E. Harremoës, Special Adviser to the Mission of the Republic of Estonia to the Council of Europe.

3. The applicant alleged that the poor conditions of his detention on remand amounted to treatment contrary to Article 3 of the Convention.

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

5. By a decision of 9 March 2004 the Court declared the application partly admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), and this case was allocated to the newly composed Fourth Section of the Court.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1969.

A. Criminal proceedings

9. On 22 May 1996 the applicant was taken into custody by the Jõgeva police on suspicion of having committed burglary.

10. On 8 November 1996 the applicant was charged with fraud and three counts of burglary.

11. On 19 May 1997 the Jõgeva County Court (*Jõgeva Maakohus*) convicted the applicant as charged and sentenced him to four years' imprisonment.

12. On 8 October 1997 the Tartu Court of Appeal (*Tartu Ringkonnakohus*) quashed the judgment of the County Court on procedural grounds and remitted the case to it for fresh consideration by a differently constituted court. The applicant was ordered to remain in custody.

13. In November 1998 a new criminal case concerning an act of hooliganism in prison was opened against the applicant, which was later joined to the charges under consideration before the trial court.

14. On 28 September 1999 the County Court convicted the applicant on all charges and sentenced him to four years and six months' imprisonment.

15. On 29 November 1999 the Court of Appeal acquitted the applicant of hooliganism, upholding the County Court's judgment in respect of the other charges.

16. On 19 January 2000 the Supreme Court (*Riigikohus*) refused the applicant leave to lodge an appeal with it.

B. The applicant's detention

17. During his detention on remand from 22 May 1996 the applicant was kept for the most part in Tallinn Central Prison (*Keskvangla*). In addition to several shorter stays in the prison hospital totalling about three months, the applicant was hospitalised from 17 May 1999 until 22 December 1999.

18. The applicant spent 14 short periods, lasting from 5 to 15 days, in the Jõgeva Police District Arrest House (*Jõgeva Politseiprefektuuri arestimaja*), where he was escorted from the Central Prison in connection with his trial. In total he spent 139 days in the arrest house.

19. On 22 December 1999 he was sent to serve his sentence in Murru Prison. He was released in November 2000.

*1. The applicant's submissions on the facts***(a) The Jõgeva Arrest House**

20. As regards the Jõgeva Arrest House, the applicant submits that his cell measured 9 sq. m (or 3.5 m by 3 m). It had no ventilation and had only a small window (25 cm by 25 cm). The ventilation was installed in 2000. There was no chair, table or proper bed. Inmates slept on a shared platform which was used by four to five persons. In the cell there was little room for movement, since 60% of it was occupied by the large plank bed. From 6 November to 9 November 1998 the applicant shared his cell with R.J., who was ill with tuberculosis in its contagious form.

The inmates were provided with food only once a day. They had to keep their food on the floor, as there were no cupboards for it. The toilet (a hole) and the sink also occupied part of the tiny room. The condition of the cell was extremely insanitary.

(b) The Central Prison

21. The general conditions in Tallinn Central Prison were equally unsatisfactory. The applicant's cell lacked fresh air and it had no natural light as there were metal slats fitted to the cell window. He was permitted to walk outside his cell for one hour a day. The food in the detention facility was of poor quality.

22. All ordinary confinement cells where the applicant was held in the Central Prison measured 14 m by 3 m. He stayed in the following cells.

From July to September 1996 he was held in cell no. 89. There were fourteen inmates in it.

From October to December 1996 he was in cell no. 141. There were four inmates.

In December 1996 he was in cell no. 78. The number of detainees was eleven.

From December 1996 to April 1997 he was held in cell no. 67. There were fifteen inmates.

From April to May 1997 he was in cell no. 50. It accommodated seventeen persons.

From May 1997 to April 1998 he was held in cell no. 67. The number of detainees was fifteen.

From May to September 1998 he was accommodated in cell no. 73. There were fourteen inmates in it.

For one week in September 1998 he stayed in cell no. 72, which held eight inmates.

From September 1998 to April 1999 he was in cell no. 58. The number of inmates was twelve.

In May 1999 he was held in cell no. 95, which accommodated twelve detainees.

From May to December 1999 he was in cell no. 168 in the prison hospital. This cell measured 5 m by 2.5 m and there were four inmates in it.

On nine occasions the applicant was held in a cell designed for solitary confinement. This room measured 2 m by 2.5 m. It was cold and damp. For the toilet there was a hole in the floor from which rats came out during the night.

2. The Government's submissions on the facts

(a) The Jõgeva Arrest House

23. The Jõgeva Arrest House was built in 1984 and is located on the first floor of the regional police headquarters, with windows facing south. There were eight cells in the arrest house which measured between 7.55 sq. m and 11.32 sq. m. On average, there were between two and four inmates in a cell. The original size of the glass block windows had been 1.10 m by 3 m. In most of the cells the windows had subsequently been walled up for security reasons. The glass block windows were preserved in cells nos. 7 and 8. Each cell had one electric light. The cells were fitted with large bunk beds for sleeping and each inmate had his own sleeping place. In the cells there was a secluded toilet corner and cold water for daily hygiene. In 1999 the central-heating radiators were replaced with floor heating. In 2000 the ventilation system was renovated. There was a courtyard for walking and, where possible, inmates could take walks for one hour a day. Once a week inmates could take a shower. Once a week inmates could receive parcels and once a month they had the possibility of a visit. If medical aid was needed, it was called for from the town hospital.

Meals were provided three times a day in the cells, two of them being hot meals. In case of necessity dietary food was provided to the inmates.

Inmates were fully provided with bedclothes and hygiene articles (soap, toilet paper). Bedclothes were changed one a week or more frequently when necessary.

24. Not all information concerning the various periods of the applicant's stay in the Jõgeva Arrest House has been preserved. In so far as the information is available, the applicant was kept in the following cells.

From 5 May to 20 May 1997 he was kept in cell no. 4, measuring 10.7 sq. m. There were between one and four inmates in the cell.

From 5 October to 10 October 1997 he was in cell no. 5. The size of the cell was 10.9 sq. m and there were four to six persons in the cell.

From 27 February to 13 March 1998 he was again in cell no. 4. There were up to four detainees in the cell.

From 6 November to 13 November 1998 he was held in cell no. 6. The size of it was 10.9 sq. m and there were between two and four inmates in the cell.

From 21 January to 29 January 1999 he was held in the same cell. There were between three and five inmates in it.

From 12 February to 26 February 1999 he was again in cell no. 5. There were between three and five persons in the cell.

From 9 April to 20 April 1999 he was in cell no. 6. There were between three and five inmates in the cell.

From 10 August to 13 August 1999 he was in cell no. 5. There were three inmates in it.

From 17 September to 1 October 1999 he was in the same cell. There were between three and five persons in the cell.

From 26 November to 3 December 1999 he was again in the same cell. There were three to four persons in it.

There was no confirmation that the applicant had been in the same cell as a contagious tuberculosis carrier. Detainees with such a disease were held in the hospital of the Central Prison.

(b) The Central Prison

25. Until 1994 the Central Prison was the only pre-trial detention institution in Estonia alongside police arrest houses. In 1994 a new prison was built in Maardu to house under-age male prisoners. In 1996 and 1997 two sections for remand prisoners were built in Tallinn Prison, to which around 650 inmates were transferred from the Central Prison, allowing for an improvement of the conditions there.

The Central Prison was housed in the building of a sea castle built in 1840. In 1914 the building was converted into a prison. The cells in the prison had been rebuilt from the former cannon chambers and were designed for between two and sixteen persons. The outer wall of the castle was built of limestone and was about 1.5 metres thick. The prison's windows were built where there had formerly been embrasures for cannons. Accordingly, the size of the windows and the natural light coming through them did not comply with the requirements for dwelling facilities. However, all windows could be opened and there was no problem with the inflow of air. The artificial lighting in the cells was sufficient. In 1997-1998 the heating system in most cells had been renovated.

In each cell there was a secluded toilet corner and access to cold drinking water, where it was also possible to wash oneself if necessary. At least once a week all inmates went to the sauna or could take a shower. The detainees were given bedclothes, which were changed once a week, or more frequently if necessary. Those who wished were provided with soap, washing powder and toilet paper by the prison. There was at least one hour's walking time in fresh air every day. Inmates had an unlimited right to

make appointments for meetings with the prison chaplain, social workers, doctors and the prison management.

For sleeping, the cells had double-tier bunks. There was at least one large table and chairs, the number of which depended on the size of the cell and the number of inmates. In the cells there were cupboards for personal belongings for each detainee. There was also a table and a stool in the punishment cells. Sleeping berths in the punishment cells were folded up and locked for the day.

Prisoners received three hot meals a day in the cells. The quality of the food was regularly checked by the prison doctor and administration. Persons with health problems could follow a special diet prescribed by the doctor. All detainees had the right to buy additional foodstuffs, tobacco products and articles of basic necessity at the prison shop and to receive parcels from visitors.

Prisoners could borrow books from the prison's library. In addition to a couple of copies of newspapers subscribed to by the prison, the inmates could order newspapers and magazines at their own expense. In general, the prisoners were allowed to use radios or television sets in their cells.

26. The prison hospital was in one of the wings of the Central Prison that was facing the land, where the walls were not as thick and the windows were larger. The natural light in the hospital was also better.

Detainees with active tuberculosis were treated in a separate ward of the hospital, which was renovated in 1997-1998. Patients with this disease were offered two hours of outdoor exercise every day.

27. All persons in custody had to pass health checks when admitted to prison; these included an X-ray examination. Examinations carried out by the medical staff showed that more than half of the patients were infected before incarceration.

28. In 1998 the Government decided that the prison should be condemned as the building was unsuitable for that purpose, and that a new prison should be built in Tartu. Following the completion of the new establishment, the Central Prison was closed down in 2002.

29. During the applicant's stay in the Central Prison, he was in fourteen different cells altogether, as well as four different hospital wards and five punishment cells.

(i) The cells in which the applicant was held in the Central Prison

30. From 25 June to 2 September 1996 he was in cell no. 89. The size of the cell was 36.4 sq. m and during the period concerned there were between twelve and fourteen detainees in the cell. The cell had a window measuring 97 cm by 175 cm.

From 2 September to 17 October 1996 he was in cell no. 141. The size of the cell was 7.4 sq. m and there were three detainees. The cell had a window measuring 95 cm by 175 cm.

From 17 October to 22 October 1996 the applicant was kept in cell no. 125. Its size was also 7.4 sq. m. The number of detainees was between one and three. The cell had a window measuring 95 cm by 175 cm.

From 22 October to 22 November 1996 and from 25 November 1997 to 28 November 1997 the applicant was in cell no. 78. The size of the cell was 37.6 sq. m and the number of inmates was between ten and fourteen. The cell had a window measuring 95 cm by 175 cm.

The applicant stayed in cell no. 67 for several periods: from 22 November to 20 December 1996, from 25 December 1996 to 2 February 1997, from 11 February to 10 April 1997, from 20 May to 28 October 1997, from 1 December 1997 to 11 February 1998, from 25 February to 30 April 1998 and from 13 July to 14 July 1998. The size of the cell was 37.6 sq. m and the number of detainees was between six and fourteen. The size of the window was 95 cm by 175 cm.

From 8 February to 11 February 1997 the applicant was in cell no. 58. Its size was 34.9 sq. m and the number of inmates was between eleven and fourteen. The cell had a window measuring 95 cm by 175 cm.

From 20 April to 20 May 1997 he was in cell no. 50. The size of the cell was 35.5 sq. m and the number of detainees was between eight and fourteen. The cell had a window measuring 95 cm by 175 cm.

From 23 October to 25 October 1997 and from 20 November to 25 November 1997 the applicant was in cell no. 131. The size of the cell was 7.4 sq. m and the number of inmates in the cell was two or three. The cell had a window measuring 95 cm by 175 cm.

From 25 October to 6 November 1997 he was in cell no. 87. Its size was 36.1 sq. m and the number of detainees was between twelve and fourteen. The cell had a window measuring 95 cm by 175 cm.

From 2 May to 26 May 1998 the applicant was kept in cell no. 64a. The size of the cell was 35.8 sq. m and there were between eight and twelve detainees in it. It had a window measuring 95 cm by 175 cm.

From 26 May to 13 July 1998 the applicant was in cell no. 71. Its size was 38.2 sq. m and it had between ten and fourteen detainees. The size of the window was 95 cm by 175 cm.

From 14 July to 1 September 1998 and from 1 October to 2 October 1998 the applicant was in cell no. 73. The capacity of the cell was 37.6 sq. m and it accommodated twelve to fourteen detainees. It had a window measuring 95 cm by 175 cm.

From 2 October 1998 to 5 February 1999 the applicant was held in cell no. 72. The size of the cell was 37.9 sq. m. There were between eight and fourteen detainees in the cell. The cell had a window measuring 95 cm by 175 cm.

The applicant was held in cell no. 95 for several periods: from 5 February to 8 February 1999, from 20 April to 6 May 1999 and from

14 May to 17 May 1999. The cell's capacity was 33.1 sq. m and it had six to fourteen inmates. Its window measured 95 cm by 175 cm.

(ii) The punishment cells in which the applicant was detained in the Central Prison

31. While serving a disciplinary punishment from 20 December to 25 December 1996 the applicant was alone in punishment cell no. N-5. The cell had a window measuring 70 cm by 150 cm.

From 10 April to 20 April 1997 the applicant was alone in punishment cell no. N-8. Its size was 7.4 sq. m and it had a window measuring 70 cm by 150 cm.

From 28 November to 1 December 1997 the applicant was alone in punishment cell no. N-4. The size of the cell was 7.4 sq. m and it had a window measuring 70 cm by 150 cm.

From 30 April to 2 May 1998 the applicant was alone in punishment cell no. 1. Its size was 7.4 sq. m and it had a window measuring 70 cm by 150 cm.

From 3 September to 9 September 1999 he was held alone in punishment cell no. N-7. Its capacity was 7.4 sq. m and its window measured 70 cm by 150 cm.

(iii) The wards in which the applicant stayed in the Central Prison hospital

32. On 6 November 1997 the applicant was hospitalised for medical treatment. He was in prison hospital ward no. 153, which measured 29.4 sq. m. There were five patients in the ward. The ward had a window measuring 230 cm by 165 cm.

The applicant spent several periods in hospital ward no. 154: from 6 November to 20 November 1997, from 14 September to 1 October 1998, from 8 February to 20 April 1999 and from 6 May to 14 May 1999. The size of the ward was 29.4 sq. m and it housed five patients. It had a window of 230 cm by 165 cm.

From 11 February to 25 February 1998 the applicant was in hospital ward no. 177. It measured 26 sq. m and there were four patients in it. It had a window of 230 cm by 165 cm.

From 17 May to 3 September 1999 and from 9 September 1999 to 9 March 2000 he was in hospital ward no. 168. The size of the ward was 15.5 sq. m and there were two to three patients in it. It had a window measuring 230 cm by 165 cm.

C. Medical records and an expert finding

33. According to the applicant's medical records, he was healthy in March 1997.

34. In November 1997 cirrhosis of the liver arose as a complication of hepatitis B and C, from which he had suffered in 1994. The applicant was admitted to Tallinn Central Prison hospital with liver damage from 6 November to 20 November 1997.

On 11 February 1998 the applicant was again hospitalised and was further diagnosed with hepatitis B and C. He stayed in the prison hospital until 25 February 1998.

His further stays in the hospital lasted from 14 September to 1 October 1998, from an unspecified date in October to 6 November 1998 and from 7 May to 14 May 1999.

35. In May 1999 the applicant was diagnosed with tuberculosis, which led to his hospitalisation from 17 May to 22 December 1999. According to a medical certificate, he was suffering in addition from cirrhosis and hepatitis B and C.

36. Examinations conducted in March and September 2000 revealed that the applicant was no longer in need of special treatment.

37. Following the applicant's release, in November 2000, from Murru Prison where he was serving his sentence, the Tartu County Expert Committee on Disabilities established, in a decision of 28 February 2001, that the applicant's capacity to work had been reduced by 80%. The cause of this incapacity was general illness. The experts assessed his invalidity as being of the second degree. The decision was effective until 31 March 2002 and a new expert assessment was scheduled for 6 March 2002.

In taking their decision, the experts relied on the information on the applicant's state of health provided by his family doctor and the medical records submitted by the Central Prison hospital.

II. FINDINGS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT (CPT)

38. In July 1997 the CPT carried out its first visit to Estonia. On 30 October 2002 it published a report of its visit, which contains the following findings concerning the Jõgeva Police District Arrest House and the Central Prison.

“ ...

26. The CPT's delegation visited eight police arrest houses. Conditions of detention were extremely poor in almost all of them.

...

30. Very poor conditions of detention were ... found in the arrest houses in Jõgeva ... Here also, the cells were frequently overcrowded and invariably poorly equipped, there was little or no access to natural light, and artificial lighting and ventilation were often woefully inadequate. ...

Nevertheless, it should be added that detained persons met at Jõgeva Arrest House indicated that staff in that establishment did what they could to alleviate the conditions of detention; for example, family members were allowed to bring packages at any time (rather than once a week, which was the case elsewhere), and detained persons without soap or toilet paper were provided with these items.

...

33. In all the arrest houses visited, the delegation observed that the food supplied by the State to detained persons was very meagre in quantity. Invariably, only one meal was provided per day; this was served at midday and usually consisted of bread and soup, which might on some occasions be accompanied by an egg or a piece of sausage. Breakfast and supper each consisted merely of tea, which was not always provided with sugar ... In several arrest houses, staff members voiced concern about the inadequate amount of food provided, but added that the very low food allowance per detained person (reportedly 19 kroons in Tallinn and Tartu, falling to 12 kroons in Narva) made it difficult to improve the situation. Not surprisingly, several detainees indicated that they relied heavily on food brought in by family members.

...

37. ... The CPT was also concerned to learn that several detained persons who had been returned from the Central Prison to an arrest house alleged that their medical treatment for tuberculosis had been interrupted, allegations which were confirmed by health care staff in some arrest houses. Such a situation is highly dangerous for both the prisoners concerned and the public at large.

38. Depriving someone of his liberty brings with it the responsibility to detain him under conditions which are consistent with the inherent dignity of the human person. The facts found in the course of the CPT's visit show that, regarding persons placed in police arrest houses, the Estonian authorities are not fulfilling that responsibility. Almost without exception, the conditions in the police arrest houses visited could fairly be described as inhuman and degrading.

...

60. The CPT's delegation examined in some depth the situation at the Central Prison in Tallinn, which is widely recognised as the most problematic establishment in the Estonian prison system. Senior officials of the Prison Board referred to it as 'a stone around our necks'.

...

61. The Central Prison serves principally as a remand facility for the whole of Estonia and also comprises a prison hospital with a nationwide function. The prison moved into its current premises – an old naval fortress – as a temporary measure in 1914. The delegation was informed that, at the time of the visit, its official capacity was 1,100 (including 90 hospital beds). On the first day of the visit, the establishment was holding a total of 1,271 prisoners (including 60 women prisoners, 104 in-patients at the hospital and 107 sentenced prisoners assigned to work in the establishment).

...

64. At the outset of the visit, members of the Prison Board identified three serious problems facing the Estonian prison system: a rising prison population, which had led to overcrowding; a lack of work for prisoners, approximately 80% of whom were unemployed; and difficulties in the field of prison staff.

...

73. Finally, although the Central Prison shall be dealt with in a separate section of this report, the CPT must emphasise already at this point that many of the prisoners in that establishment were subject to a series of negative factors – overcrowding, poor hygiene conditions, an impoverished regime – which could certainly be described as inhuman and degrading treatment.

74. The conditions of detention of remand prisoners at the Central Prison were intolerable.

First of all, the prisoners were being held in grossly overcrowded conditions; even the very modest standard applied in Estonia of 2.5 m² per prisoner was not being offered to the majority of remand prisoners. By way of example, cells measuring 35 m² were being used to accommodate 18 or more prisoners; one such cell in the reception unit was accommodating 28 recently admitted prisoners. The delegation also found six prisoners being accommodated in cells measuring 15 m² (in the women's section). Reference should also be made to a suite of 12 cells, each measuring 3.3 m², found in section 7 of the prison. Most of them had a single occupant, but some were accommodating two inmates. In the CPT's opinion, a cell of such a limited size is unfit to serve as accommodation for one prisoner, let alone two.

In many cells, there was little room for any furniture apart from bunk beds; at best there was a table and stools. Indeed, living space was at such a premium that, in some cells, inmates did not have their own bed and, consequently, had to take turns to sleep. All of the cells were equipped with a lavatory and a wash basin. However, the lavatory was not partitioned and prisoners had to resort to makeshift curtain arrangements to try and provide a modicum of privacy; further, these in-cell sanitary facilities were frequently in a very poor state of repair and dirty, as were the cell facilities in general.

Most cells had only limited access to natural light – often because cell windows were small and/or had been screened or covered – and ventilation was poor. As for the 3.3 m² cells in section 7, they did not have a window at all; consequently, they had no access to natural light and no evident means of ventilation. Further, allegations were heard that the prison's heating system was not a match for Estonian winters.

75. The CPT was also concerned to note that many remand prisoners had difficulty maintaining an acceptable level of personal hygiene. Two factors contributed to this situation: the prisoners were themselves often destitute, and they received virtually no assistance from the prison establishment.

Washing powder was the sole item provided to prisoners in their cells, and soap was made available only during the weekly shower. Prisoners without money or help from their families had to rely on the generosity of fellow inmates to obtain items such as lavatory paper, soap and toothpaste. This situation was particularly resented by female remand prisoners at the Central Prison; they complained that they had even to manufacture their sanitary towels using rags.

Further, no assistance was provided to prisoners who did not have proper clothing at their disposal.

76. The deplorable material conditions described above were compounded by the absence of anything which remotely resembled a regime. The principal – practically the only – out-of-cell activity consisted of one hour of outdoor exercise every day. Inmates took their exercise in small groups, in facilities which were not large enough to enable them to exert themselves physically. Loud music was played during exercise periods, apparently in order to prevent any communication between inmates placed in different yards. The only other regular out-of-cell activity was a weekly 20-minute shower session. Visits from relatives or friends were subject to authorisation by the relevant investigating authority and, apparently, a rare occurrence.

As regards in-cell activities, they were limited to reading newspapers and books. In short, remand prisoners held at the Central Prison led a monotonous and purposeless existence, a situation which could last for months and, on occasion, for years.

...

99. Medical staff in the Central Prison expressed alarm about the rising number of tuberculosis cases. Having regard to available information concerning the prevalence of tuberculosis in Estonian prisons, the CPT tends to agree that there is cause for major concern. Tuberculosis is a serious life-threatening condition if left untreated; prison authorities have a clear obligation to ensure adequate methods of detection and to provide treatment.

The screening procedures currently employed (i.e. fluorographic examination of the lung fields on entry to prison and at six monthly intervals) are effective in detecting cases of active pulmonary tuberculosis. However, in view of the rising prevalence of tuberculosis, consideration might usefully be given to the introduction of a more sensitive detection technique by using a tuberculin skin sensitivity test (such as the Mantoux test), in addition to fluorography. By combining these two techniques, a higher case detection rate could be achieved, in particular during the earlier stages of the disease. Further, in view of the high risk of transmission during custody in police arrest houses (where conditions are very conducive to air-borne infection), it would be highly desirable to have the tuberculosis screening process carried out at an earlier stage of a person's deprivation of liberty.

...

101. Hepatitis B transmission amongst inmates was also a source of concern for medical staff at the Central Prison; they indicated that, in their view, transmission was taking place through using non-sterile tattooing needles or penetrative sex between inmates.

...

103. The Prison Hospital provided in-patient care, covering a range of surgical and non-surgical specialities, to inmates from all prisons in Estonia.

The hospital's health care staff were sufficient in number, comprising fourteen medical doctors and twenty-six nurses; they were all employed full-time at the hospital, and a shift system enabled them to provide a 24-hour emergency service.

Further, medical staff were adequately trained and appeared committed to providing the best possible care to patients under the prevailing adverse conditions. It should be added that medical and nursing files were well kept.

...

105. Despite the efforts of medical staff, the material conditions in the hospital were such that care was seriously sub-standard. The hospital was both overcrowded (150 patients for a theoretical capacity of 90) and in a poor state of repair.

By way of illustration, up to eight patients were being accommodated in 27 m² rooms, with very limited access to natural light and inadequate ventilation. More generally, the premises as a whole were in a dilapidated state (flaking plaster and peeling paint, broken windows, uneven floors with broken surfaces, and potentially hazardous electrical wiring/installations), which rendered it practically impossible to clean and disinfect to hospital standards.

Patients' rooms were not equipped with a call system; further, they were kept locked by prison officers, thus hampering access of health care staff to patients.

106. The negative effects upon patients' lives of the situation described above were exacerbated by the fact that, with the exception of those suffering from tuberculosis, patients were offered no outdoor exercise or other activities (reading, games, recreation).

107. As regards inmates requiring treatment for pulmonary tuberculosis, they were held and cared for in similar conditions to those described in paragraph 105 above. In particular, they were accommodated in overcrowded, poorly-ventilated rooms. The only differences as compared to other patients were that they benefited from two hours of outdoor exercise every day and received a supplemented diet.

The CPT has noted that, at the time of the visit, four additional rooms had been laid out to accommodate patients suffering from tuberculosis, but were not yet in service. It appeared that they would offer a far more therapeutic environment: they were spacious, and had good access to natural light and ventilation."

39. In their responses to the CPT report, filed in June 1998, the Government submitted the following in respect of the general conditions in the Central Prison and its future:

"A reduction of the number of remand prisoners in the Central Prison can be made only by their transfer to the Tallinn Prison which is built according to modern standards. This can be done only within certain limits. In the remand unit of the Tallinn Prison up to 5 persons are kept in a cell for reasons of lack of available space.

The cells in the Central Prison from which the inmates are transferred to Tallinn Prison will remain in use and as a result the overcrowding of other cells will be reduced. Demolition of the cells which are less than 6 m² is programmed and they will soon be condemned.

The general conditions prevailing in the Central Prison will be improved step by step, dependent on resources, which are short at present.

- Every inmate has his own mattress today;
- During the period August 1997 to April 1998 19 cells have been repaired. During the preparation for last winter the heating system in 27 cells was repaired;
- In July 1997 4 new wards were opened in the hospital's tuberculosis unit; at the present time (according to the plan) the remaining wards of the tuberculosis and surgery units are under repair;
- In the fourth quarter of the year 1997 the sauna in the tuberculosis unit was opened and a room for long-term meetings was built. The indoor gymnasium for the convicted was also opened;
- In 1998 the disinfection-cell, the kitchen and dependencies (dish washing room, storeroom and corridor) were repaired.

...

The Estonian Prison Board is of the opinion that the Central Prison should be condemned as the building is unfit for the purpose. It was built as a naval fortress and was taken into use as a prison in 1914. It has also been shown that economically it is unprofitable to keep the Central Prison in use. The reasons are that:

- the architectural layout of the building is impractical (large cells, insufficient lighting in cells, etc.)
- technical facilities (the water supply, canalisation and the central heating piping) are derelict and to replace them would be too expensive
- there is no proper ventilation
- there is permanent humidity and damp in the building, because the prison is situated on the seaside.

It will be necessary to reallocate the prisoners at present detained in the Central Prison. For this reason it is planned to build a new prison in Tartu. The Government decided on 12 May 1998 to find the necessary funds and the construction work will start shortly."

40. In September 2003 the CPT carried out its latest visit to Estonia, during which the Jõgeva Arrest House was also inspected. On 27 April 2005 the CPT published a report on its visit. The report contains the following findings, in so far as relevant:

" ...

26. The material conditions under which detained persons (in police custody, on remand or sentenced) were being held in certain police arrest houses, including those in Kohtla-Järve and Narva, were appalling; conditions also remained very poor in Jõgeva.

Detainees were locked up 24 hours per day - with no outdoor exercise - in cells that were filthy, dimly lit (with no access to natural light, and poor artificial lighting) and

severely overcrowded (up to 15 persons in a cell of 15 m²). [Footnote no. 18: In a number of cases, the levels of arrest house overcrowding in September 2003 actually exceeded those observed by the CPT in 1997 and 1999.] The unpartitioned lavatories – where persons were obliged to relieve themselves in the direct presence of their cellmates – exacerbated the effects of the very poor ventilation, rendering the already dank air nauseating. In many cases, persons were provided with no mattresses and blankets, and lacked basic personal hygiene products. The cumulative effect of the execrable material conditions and the impoverished regime could well be described as inhuman and degrading. This state of affairs was exacerbated by the fact that persons were being held under such conditions for prolonged periods (i.e. for up to three months and, on occasion, even longer).

...

28. An impoverished regime – 24-hour in-cell lock-up – remained the norm for everyone detained in an arrest house. Of the six arrest houses visited by the delegation, Jõgeva was the only one where detainees were being offered the opportunity to take outdoor exercise, albeit only twice a week or so. Even if a particular establishment was equipped with yards, staff shortages were cited as reasons for not granting outdoor exercise to detainees. The promised enlargement of the 6 m² ‘yards’ at Tartu Arrest House had not taken place, and they remained unused.

As regards contacts with the outside world, the Internal Rules of Tallinn Arrest House permitted one two-hour visit once a week. However, many persons detained at other arrest houses complained that they were allowed only one 15-minute visit per month.

...

53. More generally, the CPT has noted that the average amount of space per remand prisoner in Estonia is 3 m². Such an average does not offer a satisfactory amount of living space; the Committee recommends that the Estonian authorities strive to maintain a standard of at least 4 m² of living space per prisoner in multi-occupancy cells, and that official capacities be calculated accordingly.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained that his prolonged detention on remand in poor conditions, leading to liver disease and tuberculosis, had amounted to treatment contrary to Article 3 of the Convention. Before he had been sent to a prison to serve his punishment, he had been kept in detention on remand for about three years and seven months. He had been detained for

almost five months in the Jõgeva Arrest House and for 38 months in the Central Prison (including ten months in the Central Prison hospital).

A. Submissions of the parties

1. The Government

42. The Government submitted that the conditions in the Central Prison and the Jõgeva Arrest House could not be regarded as amounting to inhuman or degrading treatment. The Government acknowledged that the conditions were problematic for economic reasons but asserted that the authorities had made all possible efforts to improve the situation. They definitely had no desire to cause physical or mental suffering to the applicant.

The Government noted that cells in the Central Prison had been designed to accommodate up to sixteen persons. However, regardless of the large number of inmates in the Central Prison, the cells in which the applicant had been detained had never been filled to their maximum capacity – there had been at most fourteen inmates in the cells and at any time the space required by law for each inmate (2 sq. m) had been guaranteed.

There had been a window in each cell where the applicant had been held; the cells had been ventilated and the windows could be opened.

43. The Government maintained that after the CPT visit in 1997 the conditions in the Central Prison had improved significantly. Extensive refurbishment had been carried out there, most of the heating system had been replaced and the number of prisoners had been reduced. The prison hospital, where the applicant had spent a considerable part of his detention and where the conditions were significantly better than in the rest of the prison, had been refurbished in 1997-1998 and in 1999 new premises with 50 additional beds had been added. It was stressed that the reform of the prison system, which had begun in 1992 and included the construction of new establishments, could not be carried out overnight and required considerable resources.

44. As regards the applicant's health, the Government submitted that he had had access to professional care to treat liver diseases and tuberculosis, from which he had made a successful recovery. According to the medical records, the applicant's liver problems had started before his incarceration. The weakening of his health as a result had probably made him more susceptible to tuberculosis. It was, however, unlikely that the applicant had caught the disease from a fellow inmate as all detainees in the Central Prison had to undergo on admission an X-ray examination, which was subsequently repeated twice a year.

45. The Government further argued that the conditions of detention could not in any way have caused the applicant's health problems. The

applicant had had health problems since 1994, when he was infected with hepatitis B and C. There was no causal link between his detention or the prison conditions and his illness. In prison he had received good treatment, which had improved his health.

Even assuming that the applicant's detention had adversely affected his health, the Government were of the opinion that the spreading of diseases among inmates had been inevitable to a certain extent, regardless of how good the conditions of detention had been or what preventive measures had been taken. In any event, the prison administration had taken reasonable and adequate measures to prevent the spreading of tuberculosis among inmates; these also included X-ray examinations and immediate treatment, if needed, in the prison hospital.

Moreover, the Government noted that the certificate attesting the applicant's invalidity had been effective from 28 February 2001 until 31 March 2002 and that there had been no information about his incapacity to work after the last-mentioned date.

46. They also submitted that the applicant had on two previous occasions been sentenced to imprisonment. He had served his second sentence from 1992 until March 1996.

2. The applicant

47. The applicant alleged that the Government's observations reflected the conditions of detention as required theoretically rather than the actual situation in the incarceration facilities, which had been absolutely intolerable in both the Central Prison and the Jõgeva Police Arrest House. He had been kept in those conditions for three years and seven months, during which time he had developed major health problems. Until November 1997 he had been reasonably healthy. There was a direct causal link between the conditions of detention and his health problems.

48. The applicant submitted that he had not been able to renew the certificate of invalidity issued to him after his release from prison as by the date scheduled for a new expert report he had again been taken into custody.

B. The Court's assessment

49. As the Court has stated on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some

cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

50. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment. Nevertheless, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI). When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI, and *Kehayov v. Bulgaria*, no. 41035/98, § 64, 18 January 2005).

51. In the present case, the Court notes at the outset that before the applicant was sent to Murru Prison to serve his punishment he was held in detention for about three years and seven months. He was kept in the Jõgeva Arrest House for almost five months of this period. He spent approximately 38 months in the Central Prison, including about ten months in the Central Prison hospital (see paragraphs 17-19 above). His complaints concern his detention in the Central Prison and in the Jõgeva Arrest House.

52. The Court invited the parties to submit additional information on the size of the cells and the number of inmates held there during the applicant's detention on remand. It notes that in the Jõgeva Arrest House, the cells measuring approximately 11 sq. m accommodated four or five inmates on average (see paragraphs 20 and 24 above).

The occupancy rate of the cells in which the applicant was detained in the Central Prison varied considerably. According to the Government's submissions, the size of the cells in the Central Prison where the applicant had been held was usually between 33 sq. m and 39 sq. m. According to the applicant, for two months there were seventeen inmates accommodated in his cell. For seventeen months the number had been fifteen, and for seven months the number had been fourteen (see paragraph 22 above). Whereas the information provided by the Government with regard to the size of the

cells and the dates when the applicant was kept in one cell or another was very precise, they provided only brackets within which the number of detainees in individual cells varied (usually between six, eight, ten or twelve and fourteen), failing to indicate for how long the number of inmates remained at fourteen and for which periods it was below that figure (see paragraph 30 above).

The Court considers that it can legitimately draw inferences from the Government's failure to provide more specific information on this point. Although it is unable to establish the exact amount of space per detainee in the cells concerned during all of the relevant time, it notes that, even according to the Government, there were periods where this amount was limited to 1.81 sq. m in Jõgeva and 2.36 sq. m in the Central Prison (see paragraphs 24 and 30 above). Furthermore, the Court has regard to the findings set out in the CPT's report, according to which the cells in the Jõgeva Arrest House and in the Central Prison were often overcrowded (see paragraph 38 above). Against this background, the Court finds it established "beyond reasonable doubt" that the applicant was kept in overcrowded conditions during a large part of the period of his detention on remand in the Central Prison and in the Jõgeva Arrest House.

Moreover, unlike in the *Valašinas* case, in this case the scarce amount of space was not compensated for by the detainees' enjoyment of a wide freedom of movement outside the dormitory during the daytime (see *Valašinas*, cited above, § 107). In the present case, the applicant was kept in locked cells and was not allowed to walk outside his cell for more than one hour a day (see paragraphs 21, 23, 25 and 38 above).

The Court finds that the lack of space in the cells, combined with the limited freedom of movement outside the cells and the length of the period during which the applicant was subjected to these conditions, weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, §§ 36-39, 7 April 2005, with further references).

53. The Court observes that the above factor was compounded by the poor conditions in the detention facilities where the applicant was held.

The applicant submitted that the cells in the Jõgeva Arrest House were extremely insanitary, had no ventilation and had only a small window; there had been no proper furniture. Food had been provided only once a day. With regard to the Central Prison, he maintained that the cells lacked fresh air and natural light; the quality of the food had been poor. The punishment cells had been cold and damp and rats had come out from the hole used as a toilet (see paragraphs 20-22 above).

The Government only partly contradicted the applicant's submissions on this point. In particular, they stated that the cells in the Jõgeva Arrest House had large glass block windows, although in most of the cells they had been

walled up for security reasons, and that three meals, including two hot meals, had been served daily. As regards the conditions in the Central Prison, the Government conceded that the natural light had been insufficient, though there had been no lack of fresh air and the heating system in most of the cells had been renovated in 1997-1998. The quality of the food had been regularly checked by the medical staff and prison administration (see paragraphs 23 and 25 above).

The Court must have regard to the assessment of the conditions of detention in the Jõgeva Arrest House and in the Central Prison made by the CPT in its 1997 report. According to the report, the cells in the Jõgeva Arrest House were poorly equipped, there was little or no access to natural light and the artificial lighting and ventilation was often “woefully inadequate”. The food was very meagre in quantity. With regard to the Central Prison, where the applicant spent most of his time in pre-trial detention, the report pointed out that the hygiene conditions were poor, the cell facilities were in a very poor state of repair and dirty, access to natural light was limited and the ventilation was inadequate. An impoverished regime was in place. The CPT described the conditions in the Estonian police arrest houses and in the Central Prison as inhuman and degrading (see paragraph 38 above). In this context, the Court notes the Government’s admission that the detention conditions were problematic for economic reasons and that the Central Prison had been closed down in 2002 as the building had been deemed unsuitable to serve as a prison (see paragraphs 28 and 42 above).

54. In addition, the Court observes that the applicant was diagnosed with tuberculosis more than two years after he had been taken into custody and that it appears to be most probable that he was infected while in detention. Although this fact in itself does not imply a violation of Article 3, given, in particular, the fact that the applicant received treatment (see, *mutatis mutandis*, *Khokhlich v. Ukraine*, no. 41707/98, 29 April 2003), the Court considers this to be a characteristic element of the overall conditions of the applicant’s detention.

55. Finally, as regards the Government’s submissions that the authorities had no desire to cause physical or mental suffering to the applicant, the Court 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 exclude a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov*, cited above, § 101).

56. In the light of the foregoing, the Court considers that the conditions of the applicant’s detention as described above, in particular the overcrowding, inadequate lighting and ventilation, impoverished regime, poor hygiene conditions and state of repair of the cell facilities, combined with the applicant’s state of health and the length of the period during which

he was detained in such conditions, were sufficient to cause distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

57. Accordingly, there has been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant did not make any claim for costs and expenses but claimed the sum of one million euros (EUR) in compensation for the suffering and distress caused to him by the conditions of his detention, which had ruined his health.

60. The Government did not comment on the claim.

61. The Court finds that the applicant has suffered non-pecuniary damage as a result of the violation found under Article 3 of the Convention. Deciding on an equitable basis, and having regard to the specific circumstances of the present case, which involve a relatively long period of detention in degrading conditions, the Court awards the applicant EUR 3,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Estonian kroons at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President