



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

FIFTH SECTION

CASE OF SELEZNEV v. RUSSIA

(Application no. 15591/03)

JUDGMENT

STRASBOURG

26 June 2008

FINAL

01/12/2008

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 Seleznev v. Russia,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Anatoly Kovler,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 3 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 15591/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Aleksandr Nikolayevich Seleznev (“the applicant”), on 15 April 2003.

2. The applicant was represented by Ms O. Dmitriyeva, a lawyer practising in Kingisepp. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. On 2 October 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1950 and lives in Kingisepp, Leningrad Region.

A. Criminal proceedings against the applicant.

6. On 8 March 2001 the applicant was arrested on suspicion of extortion.

7. In 2001 the applicant complained several times to a local prosecutor about the alleged unlawfulness of his detention. It appears that he never received any reply.

8. On 19 November 2001 the preliminary investigation was completed.

9. On 29 November 2001 the investigator allegedly interrupted the examination of the case file by the applicant and his lawyer. Numerous complaints by the applicant in this respect to the prosecutor's office were of no avail.

10. On 19 April 2002 the Kingisepp Town Court, following adversarial proceedings in the course of which many witnesses including co-defendants and victims gave evidence, convicted the applicant of extortion and sentenced him to six years' imprisonment.

11. The applicant and his lawyer appealed against this judgment. On 11 December 2002 the Leningrad Regional Court, having heard the applicant and his lawyer, upheld the judgment of 19 April 2002. According to the applicant, in the courtroom he was kept in a metal cage measuring two or two and a half square metres with ten other defendants, and had no room in the cage to take out his notes and use them.

B. Conditions of the applicant's detention and transport

1. Conditions of detention in the temporary detention unit of the Kingisepp police department

12. Between 8 and 25 March 2001 and between 26 February and 30 May 2002 the applicant was held in the temporary detention unit of the Kingisepp police department (*Изолятор временного содержания г. Кингисеппа*) in cells nos. 10 and 11. The applicant stated that cell no. 10 had measured fifteen square metres and had held eight to ten inmates; and cell no. 11 had measured eight square metres and had held four inmates. The detainees had never had exercise outside. The applicant was not allowed to take a shower between 8 and 25 March 2001; between 26 February and 30 May 2002 he took a shower only three times. The ventilation never worked, the windows were covered with metal shutters, and the detainees were not provided with bedding or mattresses. The applicant and other detainees had to use the toilet in front of their cellmates, and they did not have a table to eat at. According to the applicant, these detention conditions led to deterioration of his eyesight and caused hypertension and bronchitis. Furthermore, the detainees never had daily outdoor exercise.

13. The Government confirmed that the inmates had been prevented from taking showers because of maintenance work. No further information on conditions of detention in the temporary detention unit of the Kingisepp police department was provided by the Government.

14. The applicant produced written statements by Mr L. and Mr R., who had been detained in cell no. 10 in the Kingisepp police department in 2002 and 2004 respectively. They confirmed the applicant's account of the conditions of detention there, namely that the cell measured fifteen square metres and held eight inmates; that the sanitary conditions were terrible and that no shower or daily outdoor exercise had been provided.

2. Conditions of detention in pre-trial detention facility IZ-47/1, Saint Petersburg

15. From 25 March 2001 to 25 February 2002, and then from 30 May 2002 to 8 January 2003, the applicant was held in pre-trial detention facility IZ-47/1, Saint Petersburg, in different cells.

16. The applicant asserted that the cells had been overcrowded. All the cells had measured approximately 8.5 sq m, had had six beds and had accommodated from eight to thirteen inmates. In particular, in cells nos. 428a and 679 the applicant had been kept with twelve other detainees, and in cells nos. 694, 682 and 681 there were ten, nine and eight inmates respectively. The cells had been seriously infested with insects, rats and mice. The applicant had had no separate bed or appropriate bedding, and the inmates had slept in shifts. The cells where the applicant had been held had had no ventilation. As the windows had no glass and had only been covered with metal shutters, in winter the temperature had been extremely low and in summer the cells had been hot, stuffy and damp. There had been insufficient access to daylight. The toilet had been less than one metre from the table and the applicant had had to use it in front of his cellmates. The detainees' attempts to curtain the toilet were punished by wardens.

17. The Government submitted that the applicant had been held in nine different cells (nos. 258, 448, 933, 428a, 676, 694, 679, 682 and 681). Each cell measured eight square metres. According to the Government, no information on the number of inmates in the cells was available, as the documents had been destroyed. All cells had been equipped with heating, natural ventilation, water supply, daylight and artificial light, and with a lavatory pan. The lavatory pan had been separated from the living area by a wall 1.5 m in height. The inmates had been allowed to take a shower once a week. The applicant had had an individual sleeping place and bedding. He had had one hour's outside exercise a day. The sanitary conditions and temperature in the cells had been adequate, and the cells had been disinfected on a monthly basis. Furthermore, during the detention period the applicant had had regular medical examinations and received appropriate treatment.

18. The applicant produced written statements by Mr L. and Mr R., who had been detained in detention facility IZ-47/1, Saint Petersburg, in 2002 and 2004 respectively. They confirmed the applicant's account of the conditions of detention there, namely that the cells were constantly overcrowded and the detainees always slept in shifts.

3. Complaints to various authorities

19. According to the applicant, he had complained numerous times to the courts, the Leningrad Regional Prosecutor's Office, and the detention facilities management, but either had no reply or had been told "the conditions were the same for all". He stated that he had submitted at least nine written complaints concerning the inhuman conditions of his detention and had complained verbally every day.

20. According to the Government's submissions, the applicant had complained about the conditions of detention in the Kingisepp police department on 16 and 27 May 2002 and had received a reply on 31 May 2002 about the impossibility of taking a shower for technical reasons. During the whole period of his detention in IZ-47/1 he had lodged only one complaint with the Kingisepp Court.

4. The conditions of transport between the detention facility and the courthouse and the conditions of confinement at the courthouse

(a) Conditions of transport to and from the courthouse

21. On 11 December 2002 the applicant was taken to the Leningrad Regional Court for the appeal hearing.

22. The applicant contended that the conditions of his transport to the courthouse and back to the detention facility on 11 December 2002 had been appalling. He had been transported in a special car, designed for ten to fifteen people, with twenty-five to twenty-seven other detainees. The car had been so crowded that the wardens had not been able to close the door and had had to use force to push the detainees in. They had not been able to move during the journey because of the cramped conditions.

23. The Government submitted that the applicant had been transported in a special prison van equipped for the transport of detainees in accordance with applicable standards and designed for twenty-four people. The Leningrad Regional Court is located 2.8 kilometres from IZ-47/1, and the travel time did not exceed 30 minutes.

(b) Conditions of detention at the Leningrad Regional Court

24. The applicant stated that before and after the hearing he had been confined to a small unventilated courthouse cell (*комната для задержанных*) measuring approximately twelve square metres, together

with twelve to seventeen other defendants. There were no windows and people had had to remain standing. The applicant had received no food on the hearing day.

25. The applicant had been brought to the courtroom with ten other defendants. They had all been handcuffed to a steel wire, which surrounded the group (“group handcuffing”).

26. The Government submitted that the detention unit of the Leningrad Regional Court had ten cells, was equipped with a toilet and wash stand and had natural light. The cells had mandatory ventilation and lighting. Handcuffs were used only to convey the applicant to the courtroom and back; there was no “group handcuffing”.

II. RELEVANT DOMESTIC LAW

27. Section 23 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell. According to section 24, administration of detention facilities shall meet the sanitary and hygienic requirements which secure the detainees’ health.

III. RELEVANT INTERNATIONAL DOCUMENTS

28. Relevant international documents and reports concerning the conditions in Russian penitentiary establishments can be found in the judgment of 25 October 2005 in the case of *Fedotov v. Russia*, (no. 5140/02, §§ 54-55), judgment of 10 May 2007 in the case of *Benediktov v. Russia*, (no. 106/02, § 21) and judgment of 8 November 2005 in the case of *Khudoyorov v. Russia* (no. 6847/02, §§ 97-98).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT’S DETENTION

29. The applicant complained that conditions of his detention in the Kingisepp police department and detention facility IZ-47/1 of Saint

Petersburg had been inhuman and degrading in breach of Article 3 of the Convention which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Submissions by the parties

30. The Government stated that the complaint about the detention conditions in the Kingisepp police department should be rejected as out of time. The applicant complained about the conditions in this facility on 16 and 27 May 2002 and received a reply on 31 May 2002, whereas the application had been submitted more than six months later. The Government also argued, with respect to conditions in the detention facility IZ-47/1, that the applicant had not exhausted the domestic remedies available to him. In particular, he had not complained to the prosecutor's office about the conditions of his detention, or lodged a civil action with any court.

31. The Government further submitted that detention conditions in facility. IZ-47/1 had been adequate. They annexed to their submissions a copy of a certificate issued by the Federal Service for the Execution of Sentences, confirming that the applicant had been provided with an individual sleeping place and bedding, which had been laundered once a week. The sanitary, hygienic and temperature conditions had been satisfactory.

32. The applicant challenged the Government's description of the conditions in detention facility. IZ-47/1 and insisted that they had been unacceptable. He submitted that the cells had at all times been severely overcrowded and the cell area per detainee had been insufficient, that the toilet offered no privacy, and that the lighting had been dim. Despite his repeated complaints he had not been provided with sufficient medical assistance.

B. The Court's assessment

1. Admissibility

33. The Court notes, as far as exhaustion of domestic remedies is concerned, that the applicant complained about the degrading conditions of his detention several times, both to the prosecutor's office and the trial court, which was accepted by the Government. The Court therefore considers that the authorities were thereby made sufficiently aware of the applicant's situation. It is true that he did not lodge separate complaints with the courts or prosecutor's offices as suggested by the Government. However

the Government did not demonstrate what redress could have been afforded to the applicant by such a measure, taking into account that the problems arising from the conditions of his detention were apparently of a structural nature and did not only concern his personal situation (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006 and *Benediktov v. Russia*, no. 106/02, §§ 29-30, 10 May 2007). The Court therefore finds that this complaint cannot be rejected for failure to exhaust domestic remedies.

34. The Court reiterates that Article 35 § 1 of the Convention permits it to deal with a matter only if the application is lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies. It also reiterates that in cases where there is a continuing situation, the six-month period runs from the cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). In the instant case, during the period of his detention the applicant was held in two detention facilities and was transferred to other facilities several times. Therefore, with respect to the Government objection that the application in respect of detention conditions in the Kingisepp police department had been submitted too late, the question to be resolved is whether the whole period of the applicant's detention constitutes a "continuing situation", and thus meets the six-month criterion.

35. The Court reiterates that the concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). Complaints which have as their source specific events which occurred on identifiable dates cannot be construed as referring to a continuing situation (see *Camberrow MM5 AD v. Bulgaria*, (dec.), no. 50357/99, 1 April 2004). Hence, the Court has previously refused to treat the time spent by applicants in different detention facilities as a continuing situation in cases where their complaints related to specific episodes, such as force-feeding (see *Nevmerzgitskiy v. Ukraine* (dec.), no. 58825/00, 25 November 2003), failure to render medical assistance at different facilities (see *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005) or complaints relating to different detention regimes (see *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). The Court has also refused to take into account an applicant's earlier periods of detention where his complaints mainly concerned the conditions of the most recent detention (see *Khudoyorov v. Russia* (dec.), no. 6847/02, 22 February 2005). Further, where an applicant has been released between different periods of detention, the Court has limited the scope of its examination to the later period (see *Dvoynikh v. Ukraine*, no. 72277/01, § 46, 12 October 2006, and *Grishin v. Russia*, no. 30983/02, § 83, 15 November 2007).

36. In the present case, the applicant complained about the conditions of his detention at two institutions, and he did so consistently. It appears that throughout the whole period of his detention he was not released at any time and the detention conditions remained substantially identical; the applicant's transfer from one facility to another did not in any way change his situation. His complaints do not relate to any specific event but concern the whole range of problems regarding the sanitary conditions, the temperature in the cells, overcrowding and so on, which he suffered during the entire period of his detention. It follows that the applicant's detention in the Kingisepp police department and detention facility no. IZ/47 can be regarded as a continuous situation. Accordingly, the Court dismisses the Government's objection.

37. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

38. An outline of the Court's case-law under Article 3 of the Convention on account of the conditions of detention can be found in a number of judgments concerning Russia (see, in particular, *Kalashnikov v. Russia*, no. 47095/99, §§ 95 et seq., ECHR 2002-VI, and *Mayzit v. Russia* no. 63378/00, §§ 34 et seq., 20 January 2005), and the Court does not consider it necessary to repeat it here.

39. The Court observes that the parties disagreed as to the specific conditions of the applicant's detention. However, there is no need for the Court to establish the truth of each and every allegation, since it considers that those facts that are not in dispute give it sufficient grounds to make substantive conclusions on whether the conditions of the applicant's detention amounted to treatment contrary to Article 3 of the Convention.

40. The main characteristic which the parties have agreed upon is the measurements of the cells. However, the applicant claimed that the number of inmates severely exceeded the cells' designed capacity; the Government were unable to indicate the exact number of inmates in the cells, alleging that the relevant documents had been destroyed.

41. In this respect, the Court observes that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, among other authorities, *Fadeyeva v. Russia*, no. 55723/00,

§ 79, ECHR 2005-IV, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

42. Having regard to the above-mentioned principles, in the absence of any official data as to the number of detainees the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions, confirmed by his former cell-mates Mr L. and Mr R.

43. The applicant argued that the cells in the Kingisepp police department had measured fifteen and eight square metres and had held eight to ten and four inmates respectively, thus giving 1.5-2 sq. m of space per inmate. The cells in detention facility IZ/47 measured eight square metres, were equipped with six bunks and usually accommodated eight to thirteen inmates. Inmates were thus afforded about 0.6-1 sq m of personal space.

44. The applicant's situation was further exacerbated by the fact that he could not take a shower often enough and had to share the bed with other detainees, taking turns to sleep.

45. Irrespective of the reasons for the overcrowding and lack of shower facilities, the Court considers that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova*, cited above, § 63).

46. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, cited above, § 39 et seq.; *Kalashnikov v. Russia*, cited above, § 97 et seq.; and *Andrey Frolov v. Russia*, no. 205/02, § 43 and seq., 29 March 2007, which also concerned detention facility. IZ-47/1, Saint Petersburg).

47. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was an explicit intention to humiliate or debase the applicant, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates for about two years was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

48. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the temporary detention unit of the Kingisepp police department and in detention facility. IZ-47/1, Saint Petersburg.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S TRANSPORTATION TO AND DETENTION AT THE COURTHOUSE

49. The applicant complained that on 11 December 2002 he had been transported in a prison van to and from the Leningrad Regional Court and had been kept in the court cell in inhuman and degrading conditions incompatible with Article 3 of the Convention.

A. Submissions by the parties

50. The Government submitted that a special prison van, in which the applicant had been transported on 11 December 2002, was designed for twenty-four people. They annexed a certificate issued by the Board for Security of Suspects and Accused, according to which the conditions of the applicant's transportation had been satisfactory; there had been twenty-three detainees and one police officer in the van. The travel time had been around 30 minutes. According to the Government, the conditions of the applicant's transport had been compatible with Article 3 of the Convention. Furthermore, the Government emphasised that the applicant had never lodged any complaint in respect of the conditions of his transportation.

51. In the Government's view, there had been no violation of Article 3 as regards the conditions of the applicant's detention in the Leningrad Court's temporary detention unit either. The unit had 10 cells and natural light. The applicant had received food in the detention facility in the morning before departure for the court and in the evening after he had been brought back. In the court he had been handcuffed individually, and only on the way from the detention cell to the courtroom and back.

52. The applicant challenged the Government's description of the conditions of transport: in his view, the prison van was designed for ten to fifteen people, however in fact there had been twenty-five to twenty-seven detainees, some of whom had had to remain standing. There had been insufficient ventilation.

53. The applicant further submitted that the cell in the Leningrad Regional Court measured approximately twelve square metres. Throughout the day he had had to share it with twelve to seventeen other detainees. There had been no window and the ventilation did not work, so the cell was extremely stuffy. Furthermore, on the day of the hearing he had been woken up at around 4.20 a.m. and returned late in the evening; he had not been given any food during the day. He had been brought to the courtroom handcuffed with 10 other detainees to a metal cable so that they formed a "chain".

54. The applicant also described the conditions on his numerous journeys from the Kingisepp police department to IZ 47/1 on trains and in cars as inhuman and degrading. Each trip had lasted approximately seven to eight hours, there had not been enough room to sit down, and the ventilation had never worked.

B. The Court's assessment

1. Scope of the complaint

55. The Court notes that in his observations after the communication of the case to the respondent Government the applicant raised an additional issue under Article 3 of the Convention, namely the conditions of transportation between the Kingisepp police department and detention facility IZ 47/1.

56. In the Court's view, this new complaint is not an elaboration of the applicant's original complaint under Article 3 with respect to conditions of transportation, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up in the present context (compare, *mutatis mutandis*, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

2. Admissibility

57. The Court notes that the parties submitted different accounts of the conditions of the applicant's transport to the courthouse on 11 December 2002 and his detention at the Leningrad Regional Court.

58. The parties' submissions on the number of detainees in the prison van did not substantially diverge. Nevertheless, the applicant stated definitely that the van had been intended to transport ten to fifteen people, whereas according to the documents presented by the Government it was designed for twenty-four. Furthermore, the Court observes that the applicant did not contest the Government's statement that the journey to the courthouse took about thirty minutes.

59. The Court has previously found a violation of Article 3 of the Convention in a Russian case where the applicant was transported in an overcrowded prison van (see *Khudoyorov*, cited above, §§ 112-20), however the applicant in that case was transported in that van no fewer than 200 times in four years of detention. In the instant case the applicant was taken to the Leningrad Regional Court only once, and this trip took approximately one hour both ways.

60. As far as the detention conditions in the court cell are concerned, whereas the Government indicated that the temporary detention unit premise of the Leningrad Regional Court had ten cells, they did not tell the

Court the size of the cells. Neither did they provide any information about the number of detainees in the applicant's cell throughout the day.

61. The Court reiterates that it must be satisfied, on the basis of the materials before it, that the conditions of the applicant's detention constituted treatment which exceeded the minimum threshold for Article 3 of the Convention to apply. In that connection, it notes that the applicant's detention in these conditions was of limited duration. Even though the size of the court cell which he shared with other prisoners in the temporary detention unit could potentially raise an issue under Article 3 of the Convention (see *Moiseyev v. Russia*, (dec.), no. 62936/00, 9 December 2004), it is to be observed that he was only confined there for a period of one day. Furthermore, in the present case it cannot be established "beyond reasonable doubt" that ventilation, lighting or sanitary conditions in the court cell were unacceptable from the standpoint of Article 3, nor is it possible to contest the documents produced by the Governments with respect to the handcuffing of the applicant. Finally, neither the Government nor the applicant specified the number of defendants who were in the metal cage in the courtroom with the applicant during the hearing on 11 December 2002.

62. Given the above considerations, the Court concludes that the distress and hardship the applicant endured during his transportation to the Leningrad Regional Court on 11 December 2002 and his detention in the court's premises did not attain a minimum level of severity sufficient to bring the complaint within the scope of Article 3 of the Convention.

63. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (b) OF THE CONVENTION

64. The applicant complained that he could not adequately state his case during the appeal hearing as he could not take out the notes he had prepared for the hearing. He referred to Article 6 § 3 (b) of the Convention which reads as follows:

"3. Everyone charged with a criminal offence has the following minimum rights: ...

(b) to have adequate ... facilities for the preparation of his defence..."

A. Submissions by the parties

65. In the Government's submission, the applicant had had ample opportunity to state his case, to communicate with his lawyer during the appeal hearing and to use his notes. He had not requested the court to

interrupt the hearing to give him time to prepare his defence with his lawyer, and had never complained that he was unable to take out his notes. The Government also emphasised that the applicant had not been handcuffed during the hearing.

66. The applicant agreed that he had not been handcuffed throughout the trial; however he had still been prevented from using his notes due to the very cramped conditions in the metal cage in which he had been kept during the hearing with about ten other defendants.

B. The Court's assessment

67. The specific guarantees laid down in Article 6 § 3 exemplify the notion of fair trial in respect of typical procedural situations which arise in criminal cases, but their intrinsic aim is always to ensure, or contribute to ensuring, the fairness of the criminal proceedings as a whole. The guarantees enshrined in Article 6 § 3 are therefore not an end in themselves, and they must accordingly be interpreted in the light of the function which they have in the overall context of the proceedings (see *Mayzit v. Russia*, cited above, § 77).

68. Article 6 § 3 (b) guarantees that the accused must have the opportunity to organise his defence in an appropriate way and without restrictions on the opportunity to put all relevant defence arguments before the trial court, and thus to influence the outcome of the proceedings. The provision is violated only if this is made impossible (see *Connolly v. the United Kingdom* (dec.), no. 27245/95, 26 June 1996, and *Mayzit v. Russia*, cited above, § 78). Further, an accused's effective participation in his criminal trial must equally include the right to make notes in order to facilitate the conduct of his defence, irrespective of whether or not he is represented by counsel. Indeed, the defence of the accused's interests may best be served by the contribution which the accused makes to his lawyer's conduct of the case before the accused is called to give evidence (see *Pullicino v. Malta* (dec.), no. 45441/99, 15 June 2000).

69. Turning to the present case, the Court notes that during the appeal hearing both the applicant and his lawyer were heard by the court, furthermore, the applicant's lawyer had not in any way been restricted from using whatever she needed in order to defend her client's interests. The applicant's allegation that he had been unable to take out his notes in a small metal cage remain unsupported by any evidence. Nor has it been shown that the applicant at any moment availed himself of the right to bring this issue to the attention of the court which heard the case. Moreover, the applicant never claimed that he had been impeded in his contacts with his counsel either before or during the appeal hearing.

70. Having regard to the above considerations, the Court finds that the proceedings before the Leningrad Regional Court afforded the applicant an

effective opportunity to present his defence. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant relied on Article 5 § 1 (c) and Article 6, complaining of unlawful pre-trial detention, alleged errors of fact and law committed by the domestic courts, and lack of sufficient time to prepare his defence.

72. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 333,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government averred that the claim was unsubstantiated because the application was inadmissible.

76. The Court considers that the applicant suffered humiliation and distress because of the degrading conditions of his detention. Making its assessment on an equitable basis, having regard to its case-law on the subject and, taking into account, in particular, the term of the applicant's detention, the Court awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicant claimed compensation in respect of his legal costs for the proceedings before the Court, leaving its amount to the Court's discretion.

78. The Government stated that the applicant's claim in respect of legal costs was not set out in sufficient detail and should be dismissed.

79. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *Khudobin v. Russia*, no. 59696/00, § 147, ECHR 2006-... (extracts)). In the present case, the Court notes that the applicant failed to present a legal fees agreement with his lawyer or other document in respect of the claimed legal expenses, which have not therefore been shown to have been actually incurred. Therefore, the Court does not make any award under this head.

C. Default interest

80. 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. *Declares* the complaint under Article 3 on account of conditions of detention in the Kingisepp police department and detention facility no. IZ-47/1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *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 5,000 (five thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement.

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

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

Done in English, and notified in writing on 26 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President