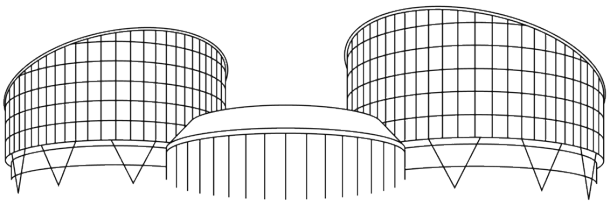

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF KOCHETKOV v. ESTONIA

(Application no. 41653/05)

JUDGMENT

STRASBOURG

2 July 2009

FINAL

02/10/2009

This judgment may be subject to editorial revision.

In the case of Kochetkov v. Estonia**,**

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 41653/05) 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 a Russian national, Mr Mikhail Kochetkov ("the applicant"), on 27 October 2005.

2. The Estonian Government ("the Government") were represented by their Agents, Ms M. Hion and subsequently Ms M. Kuurberg, of the Ministry of Foreign Affairs. The Government of the Russian Federation did not make use of their right to intervene under Article 36 § 1 of the Convention.

3. The applicant alleged that the conditions of his detention in Narva Arrest House had amounted to treatment in violation of Article 3 and that the domestic authorities had failed to provide adequate redress for this violation.

4. On 30 August 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and is currently serving a sentence in Viru Prison in Jõhvi.

A. The applicant's detention in Narva Arrest House

1. The applicant's submissions on the facts

6. On 19 April 2005 the applicant was transferred from Tallinn Prison to Narva for trial at the local city court. He was placed in Narva Arrest House (*arestimaja*) where he stayed until 2 May 2005.

7. Upon his arrival at the arrest house, the applicant was searched and several personal-hygiene items (razor, shaving foam, comb, set for cutting nails, etc.) were taken from him. He was examined by a nurse, to whom he complained that he felt ill and had a pain in his throat. The nurse did not take any measures.

8. Subsequently, he was sent to a cell designed to accommodate four persons. However, he was the eighth inmate in the cell and had to sleep on the cold and dirty floor. He was given bed sheets and a pillowcase but no mattress, pillow or blanket. Moreover, he had to sit down all the time as there was no room to walk or to stretch out since part of the floor area was taken up by the toilet corner, sink, table and benches, and the place for inmates' personal belongings. The condition of the cell was insanitary; condensation was dripping from the walls and there was a lack of oxygen as the cell was full of cigarette smoke. There was no possibility to wash or dry clothes. There was one plate and one spoon for three inmates; instead of mugs, plastic yoghurt pots had to be used for tea or water. There was a constant queue to use the sink or the toilet. The toilet was not separated from the rest of the cell. In these conditions the common cold he had had transformed into a long-lasting illness.

9. On 20 April 2005 the nurse examined the applicant and established that he had a swollen throat. He was given Biseptol pills. His request to be examined by an external specialist was refused because of the cost and the long waiting lists to get a doctor's appointment.

10. The applicant made several complaints concerning the conditions of his detention to the head of Narva Arrest House but received no reply. He also wrote to the Ministry of Justice and to the Police Board, who informed the applicant in reply that they were aware of the situation.

2. The Government's submissions on the facts

11. Narva Arrest House is located on the third (upper) floor of the regional police headquarters. The building was completed in two phases, the older part in the 1960s and the new part in the 1970s. Since 2004, that is, after the CPT's visit and recommendations, the following improvements have been made to the arrest house: new lighting has been installed in the cells, the ventilation system has been completely refurbished, the showers have been refurbished and access to national daily newspapers has been ensured to detainees.

12. Cells nos. 3 and 11, in which the applicant was held, have glass block windows measuring 1.5 m by 1 m, bunks with metal frames, a central-heating radiator, daytime lighting and night lights, a secluded corner with a toilet and cold water for daily hygiene requirements. The detainees can also use hot water.

13. On 19 April 2005 the applicant was placed in cell no. 11, which was meant for six persons. The size of the cell was 12.5 sq. m. There were seven detainees in the cell.

14. On 23 April 2005 the applicant was placed in cell no. 3, which was meant for four persons and measured 12 sq. m. On several days there were six to eight persons in the cell.

15. In respect of the items taken away from the applicant, the Government pointed out that they had been given back to him on 3 May 2005.

16. In respect of the applicant's state of health, the Government noted that according to his medical records, he had been ill before he had been placed in Narva Arrest House. He had undergone several health examinations and had been provided with treatment. From 5 December to 15 December 2005 he had been admitted to hospital, diagnosed with thyroid enlargement and prescribed Polivit; it had been found that he did not need special treatment.

B. Court proceedings concerning the conditions of the applicant's detention

17. On 16 May 2005 the applicant lodged a complaint with the Jõhvi Administrative Court (*halduskohus*), claiming 250,000 kroons (EEK – corresponding approximately to 16,000 euros (EUR)) in compensation for the health damage and mental suffering caused by his degrading treatment at Narva Arrest House.

18. The Administrative Court heard the case on 5 July 2005 in the presence of the applicant and a representative of the Ida Police Prefecture. A nurse from the arrest house gave evidence as a witness. According to her, inmates had been given mattresses and blankets upon their arrival.

19. In a judgment of 19 July 2005 the court dismissed the complaint. It established that the conditions at Narva Arrest House had not been in compliance with the requirements under the applicable legislation. The applicant had been kept in two different cells, designed respectively for six and four inmates, whereas there had actually been seven or eight persons in the cells.

20. However, the court considered that compensation for non-pecuniary damage could be awarded only if it was established that certain officials had been at fault for consciously placing the applicant in degrading conditions or for taking actions aimed at torturing or degrading him. According to the court, this had not been established as there was no evidence that the police officers had wished to torture or degrade the applicant or that the unsatisfactory conditions at Narva Arrest House had been created especially for him.

21. In respect of the damage to the applicant's health, the court found that he had already been ill on his arrival at the arrest house. He had received treatment during his stay there. The court considered that the fact that he needed subsequent treatment in Tallinn Prison did not enable it to conclude that the treatment received in Narva had been of low quality or that he should have been taken to hospital. There was no reason to assume that he could have been given medical treatment producing considerably better results during his short stay in Narva.

22. In a judgment of 16 November 2005 the Tartu Court of Appeal (*ringkonnakohus*) dismissed an appeal by the applicant. It agreed with the lower court's finding that the discomfort caused by the overcrowding did not mean that the administration of the arrest house had degraded the applicant's dignity and thereby caused damage to him. Furthermore, the Administrative Court had correctly found that the applicant had failed to prove that any damage had been caused to his health in connection with his stay at Narva Arrest House.

23. On 18 January 2006 the Supreme Court (*Riigikohus*) decided not to allow an appeal by the applicant.

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

24. In September 2003 the CPT carried out a visit to Estonia. On 27 April 2005 it published a report of its visit (CPT/Inf (2005) 6), which contains the following findings:

> "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). 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).

As regards, more particularly, the arrest house at Narva, following complaints made by detainees, the Office of the Legal Chancellor performed an on-the-spot inspection of the establishment in February 2003. In a letter subsequently addressed to the Minister of the Interior, the Legal Chancellor recommended inter alia that improvements be made to lighting, and that at least one daily hour of outdoor exercise be offered to detainees; further, he indicated that the internal regulations violated Section 45 (1) of the Imprisonment Act of 2000, which relates to 'requirements of construction technology, health and hygiene', as well as lighting. It is clear from the delegation's findings that no action has been taken on the Legal Chancellor's recommendations.

...

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. ...

...

30. ... [A]t the end-of-visit talks on 30 September 2003, the delegation made an immediate observation concerning Kohtla-Järve and Narva Police Arrest Houses, as well as other arrest houses where similar conditions of detention prevail. It requested the Estonian authorities to take urgent steps to improve conditions of detention in police arrest houses and, in particular, to ensure that:

(i) all persons held overnight in an arrest house are immediately provided with a clean mattress and clean blankets as well as with personal hygiene products (toilet paper, soap, tooth brush and paste, towel, sanitary towels, etc.);

(ii) all persons who are detained for prolonged periods are granted at least one hour of outdoor exercise per day;

(iii) all cells are fitted with adequate artificial lighting.

31. In response to the above-mentioned immediate observation, the Estonian authorities acknowledged that the situation was not satisfactory, indicating that conditions in arrest houses remain an issue of concern to them and that 'the improvement of the situation is ongoing'.

Responding to item (i) above, the authorities indicated that 'a sufficient number of bedsheet sets have been provided ...; bedsheets are changed regularly'. It was further indicated that persons are provided with 'basic toiletries, if necessary'. The CPT wishes to receive confirmation that 'bedsheet sets' include clean mattresses and clean blankets.

With reference to item (ii), it was affirmed that, of the 17 arrest houses in Estonia, only four have 'appropriate walking yards', where 'persons have the possibility to stay in the open air for an hour a day'; in the remaining 13 establishments, construction or renovation of walking yards was envisaged for 2004.

As for item (iii), it was indicated that 'artificial lighting and ventilation have been improved' in six arrest houses and will be brought 'into compliance' in the remaining arrest houses in 2004.

...

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."

25. In their responses to the CPT report, published on 27 April 2005 (CPT/Inf (2005) 7), the Government submitted the following, in so far as relevant:

"By the end of 2003 the police authorities had eliminated the following problems outlined by the CPT: missing bed accessories and toilet articles were bought – to be given to those people who do not have them.

...

After the visit of the CPT delegation to the custodial institutions and arrest houses in September 2003 the Police Board issued on 18 November 2003 order No PA12-1.4/249 to the police prefects, 'The improvement of accommodation and health care conditions in arrest houses', which provided that police prefectures must buy a sufficient number of bed linen sets (mattress, blanket, sheet, pillow, pillow case) and arrange the regular changing and cleaning of these. Clean bed accessories must be given to each person detained in the arrest house, except those who have been brought in for detoxification.

All police authorities have implemented this order.

...

The Police Board has developed instructions for the initial medical examination to be performed at the time of admitting the person into the arrest house and for sanitary treatment. After these instructions enter into force each person admitted to a arrest house is granted a medical examination within a reasonable time. Medical examinations will be performed by a doctor or a medical assistant. At the latest on January 1, 2005 all police authorities will have signed agreements with a doctor or a medical assistant as regards the performance of initial medical examinations."

III. RELEVANT DOMESTIC LAW AND PRACTICE

26. Section 9 of the State Liability Act (*Riigivastutuse seadus*), as in force at the material time, provided:

> "(1) A natural person may claim financial compensation for non-pecuniary damage resulting from wrongful degradation of dignity, damage to health, deprivation of liberty, violation of the inviolability of the home or private life or of the confidentiality of correspondence, or defamation of the person's honour or good name.
>
> (2) Non-pecuniary damage shall be compensated for in proportion to the gravity of the offence, taking into account the form and gravity of the guilt."

27. In a judgment of 22 March 2006 the Administrative Law Chamber of the Supreme Court (case no. 3-3-1-2-06) quashed the judgment of 10 November 2005 of the Tartu Court of Appeal and upheld the Tartu Administrative Court's judgment of 19 May 2005 (case no. 3-637/04) whereby the complainant had been awarded EEK 10,000 (EUR 640) in respect of non-pecuniary damage. The case concerned a complaint by an inmate of a prison who had been placed in a punishment cell. The Supreme Court found that the complainant's dignity had been harmed by his unlawful placement in the punishment cell as well as by the conditions in the cell. The Supreme Court emphasised that it was an obligation of the prison administration to ensure that the conditions in the prison were in compliance with the applicable requirements and that the prison authorities were therefore responsible for the damage caused to the complainant. The Supreme Court relied on section 9 of the State Liability Act.

28. In a judgment of 28 March 2006 the Administrative Law Chamber of the Supreme Court (case no. 3-3-1-14-06) quashed the Tartu Administrative Court's judgment of 8 June 2005 and the Tartu Court of Appeal's judgment of 9 November 2005 and held that the unlawful keeping of a prisoner in a punishment cell had amounted to degradation of his dignity and that he had thereby sustained non-pecuniary damage. Relying on section 9 of the State Liability Act, the Supreme Court awarded the complainant EEK 3,000 (EUR 190).

29. In a judgment of 26 May 2006, the Tallinn Administrative Court (case no. 3-167/2004) awarded two complainants EEK 8,000 (EUR 510) each for non-pecuniary damage they had sustained as a result of the degradation of their dignity owing to the poor conditions of their detention. The court, *inter alia*, referred to the judgment of the European Court of Human Rights in the case of *Alver v. Estonia* (no. 64812/01, 8 November 2005). One of the complainants appealed against the judgment and on 25 January 2007 the Tallinn Court of Appeal increased the amount of his award to EEK 15,000 (EUR 960).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained that the conditions of his detention in Narva Arrest House had amounted to treatment contrary to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

31. The Government contested that argument.

A. Admissibility

32. The Court 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.

B. Merits

1. Submissions of the parties

33. The Government admitted that the conditions in several arrest houses were difficult but emphasised that the authorities had taken significant steps to reduce the number of detainees and had also built new prisons – in 2001 a new Tartu Prison and in 2008 a new Viru Prison had been opened. Viru Prison in Jõhvi included an arrest house for 150 detainees.

34. The Government pointed out that the applicant's placement in the arrest house had not been unlawful in itself and that the authorities had had no intention of treating him in an inhuman or degrading manner. The conditions in the arrest house had resulted purely from its poor general material state. In respect of the applicant's health, the Government noted that he had already had health problems before his detention; he had had an opportunity to consult the medical staff at the arrest house on three occasions during his 14-day stay there and had been provided with treatment. There was no evidence that the applicant's health had deteriorated during his detention in the arrest house, that the treatment had been of insufficient quality or that he should have been placed in a hospital. The Government emphasised that although the Administrative Court had found that the conditions of his detention had not been in conformity with the requirements of the law, it had not been proved that any damage had

been caused to the applicant's health during his stay in the arrest house. This had been an important reason why the applicant had not been awarded financial compensation.

35. The Government also emphasised that the duration of the applicant's stay in the arrest house had been relatively short. They considered that the inconveniences caused to the applicant had not attained the minimum level of severity required to fall within the scope of Article 3.

36. The applicant maintained his complaint. In respect of the detention conditions, he contested the Government's allegation that the toilet corner had been secluded and argued that it had been degrading to use the toilet, which was not separated from the rest of the room. Furthermore, he had had no practical possibility of complaining about smoking in the cell as most of his fellow detainees had been smokers and his opinion would have been suppressed. He also emphasised that there had been no possibility for outside walks.

37. As concerns his health, he admitted that he had not been feeling well on his arrival at Narva Arrest House. However, he argued that this fact had only increased the authorities' responsibility for placing him in such terrible conditions. He was dissatisfied with the medical treatment he had been given and that he had not been taken to hospital. As a result, he had developed a chronic pain in his throat, which had lasted for more than six months. He argued that the domestic courts had failed to properly establish the facts concerning his state of health.

38. In respect of the duration of his stay at Narva Arrest House, he noted that treatment did not have to last a long time in order to be degrading. Moreover, his health problems had lasted for half a year.

2. The Court's assessment

39. The Court reiterates that 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).

40. 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).

41. Turning to the present case, the Court notes that the applicant complained about the conditions in which he was detained between 19 April and 2 May 2005 in Narva Arrest House. The parties agreed that he was detained in two different cells measuring 12.5 sq. m and 12 sq. m and that these rooms had been designed for six and four persons respectively, whereas up to eight persons had been placed in the cells at the material time. Thus, the Court notes that at times the available floor area per person was limited to 1.5 sq. m. Moreover, part of the cells' floor surface, apart from the bunks, was taken up by the toilet corner and the sink; in the applicant's submission there were also a table and benches. The Court considers that such accommodation cannot be regarded as attaining acceptable standards. Severe overpopulation is something which in itself raises an issue under Article 3 of the Convention (see *Kalashnikov*, cited above, § 97). Moreover, unlike in the *Valašinas* case, in the present case the scarce amount of space was not compensated for by the detainees' enjoyment of a wide freedom of movement outside the cell (see *Valašinas*, cited above, § 107). Indeed, according to the CPT report, the detainees were locked up 24 hours a day with no outdoor exercise (see paragraph 24 above).

42. Furthermore, the Court notes that according to the applicant, he was given only bed sheets and a pillow case but no mattress, pillow or blanket. This description coincides with the CPT's finding that in many cases detainees were provided with no mattresses and blankets. In the light of the above and the fact that the number of persons placed in the cells was higher than the number of designated places, the Court concludes that the inmates did not have separate sleeping berths and that the applicant's allegation that he had to sleep on the floor appears plausible.

43. The Court further notes that the Government did not dispute the applicant's allegation concerning the shortage of dining utensils.

44. The Court observes that the parties' submissions differ as to whether or not the toilet corner was secluded from the rest of the cell. Their submissions also differ as to the quality of the air in the cells: according to the applicant, the cells were full of cigarette smoke and there was a lack of oxygen, whereas the Government contended that the ventilation system had been completely refurbished at Narva Arrest House after the CPT visit. The Court has no reason to call into question the Government's submissions as to the renovation work carried out at the arrest house. It notes, however, that according to the CPT report, in 2003 the lavatories had been unpartitioned and the ventilation very poor, rendering the already dank air nauseating (see paragraph 24 above). Having not been provided with the exact dates on which the renovation work was carried out, the Court considers that it can legitimately conclude that the improvements described by the Government were effected after the applicant's detention in the arrest house.

45. In respect of the applicant's health, the Court notes that the parties agreed that he had not been feeling well at the time of his arrival at Narva Arrest House and that he had been examined by a nurse and given medicines. The Court is unable to conclude on the basis of existing evidence that the applicant's situation required his admission to a hospital or that his health condition deteriorated because of the detention conditions.

46. 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).

47. The foregoing considerations are sufficient to enable the Court to conclude that the conditions of the applicant's detention, in particular the overcrowding, inadequate ventilation, impoverished regime and poor hygiene conditions, were sufficient to cause distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. The Court considers that the conditions of the applicant's detention in the present case were such that the above conclusion is not affected by the relative shortness of his detention in the arrest house. The Court will, however, take the duration of the detention into account in determining the applicant's just satisfaction claim.

48. There has accordingly been a violation of Article 3 of the Convention in respect of the conditions of the applicant's detention in Narva Arrest House.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicant complained that the courts had lacked impartiality and had wrongly assessed the evidence. He was dissatisfied that he had not been awarded compensation and with the outcome of the proceedings in general. He invoked Article 6 § 1. However, the Court considers that this complaint should be examined under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

50. The Government disagreed with the applicant's submission.

A. Admissibility

51. The Court 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.

B. Merits

1. Submissions of the parties

52. The Government noted that the applicant had brought his case before an administrative court. They emphasised that in order for a remedy to be effective it did not necessarily have to bring success to the applicant in a particular instance. In the present case the domestic courts had found that the conditions of detention at the arrest house had been inappropriate and incompatible with the requirements of law. The fact that the applicant had been awarded no compensation was not decisive for a finding as to whether an effective remedy existed or not. He had based his claim for compensation on the alleged deterioration of his health at the arrest house, but this had not been proved in court. The Government also referred to cases before the domestic courts in which complaints concerning the conditions in custodial institutions had been successful and financial compensation had been awarded to the complainants.

53. The applicant considered that it was irrelevant whether the authorities had purposefully created the degrading conditions of detention for him as he had been the person who had suffered inhuman treatment and had sustained damage to his health.

2. The Court's assessment

54. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła*, cited above, § 157).

55. The Court has held that the scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). It has also considered that the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Kudla*, cited above, § 157).

56. In the case of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, §§ 63 and 66, ECHR 2003-V; and *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V).

57. Turning to the present case, the Court notes that the applicant lodged a complaint concerning the conditions of his detention with the competent administrative courts and claimed compensation for the non-pecuniary damage he had sustained as a result of the deterioration of his health and the mental suffering caused by his degrading treatment at Narva Arrest House. The domestic courts established that the conditions at the arrest house had not been in compliance with the requirements under the applicable legislation. However, they found that the State Liability Act allowed monetary compensation for non-pecuniary damage only if it was established that certain officials had been at fault for consciously placing a person in degrading conditions or for taking actions aimed at torturing or degrading him.

58. Limiting its analysis to the conditions of detention generally – and not to the alleged deterioration of the applicant's health – and leaving aside the question whether the domestic courts can be said to have acknowledged that the conditions of the applicant's detention amounted to a violation of his rights under Article 3, the Court considers that the domestic courts, interpreting and applying the law as they did in the present case, put themselves in a position where they were not capable of providing an effective remedy for the applicant. In substance, they found that no redress could be afforded to the applicant in the absence of any fault or intention to

degrade him on the part of specific officials. The Court considers such an approach too restrictive. It reiterates in this context 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*, cited above, § 74; and *Kalashnikov*, cited above, § 101).

59. The Court takes note of the domestic cases referred to by the Government, in which the administrative courts awarded detainees monetary compensation for non-pecuniary damage in situations similar to the present one. However, the existence of such case-law does not change the fact that in the present case the domestic courts applied a requirement that compensation was only available where someone was found to have been at fault for degrading the person concerned.

60. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed EEK 250,000 kroons (EUR 16,000) in respect of the non-pecuniary damage caused by his detention in degrading conditions and the damage caused to his health.

63. The Government requested the Court to award the applicant a reasonable sum for non-pecuniary damage, should it find a violation of Article 3 and consider that the domestic courts' finding that the conditions of the applicant's detention had not been in compliance with the legal requirements did not constitute sufficient redress. They considered the applicant's claim excessive.

64. The Court finds that the applicant has suffered non-pecuniary damage as a result of the violations found. Deciding on an equitable basis, and having regard to the specific circumstances of the present case, which involved a relatively short period of detention in degrading conditions, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Default interest

65. 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 application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Estonian kroons 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President