CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 64812/01
by Rein ALVER
against Estonia

The European Court of Human Rights (Fourth Section), sitting on 9 March 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 5 June 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Rein Alver, is an Estonian national who was born in 1969 and lives in Mikitamäe, Põlva County. He was represented before the Court by Mr I. Kütt, a laywer practicing in Jõgeva. The respondent Government were represented by their Agents, Ms M. Hion and Mr E. Harremoes.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1) The criminal proceedings and appeals against pre-trial detention

On 22 May 1996 the applicant was taken into custody by the Jõgeva police on suspicion of having committed burglary. In a decision of the police investigator of 24 May 1994 applying the preventive custody measure it was considered that the applicant, who had prior convictions, could, if released, continue his criminal activity as well as evade and obstruct investigation. The decision was approved by a judge of the Jõgeva County Court (*Jõgeva Maakohus*) who authorised the applicant's detention for 10 days, i.e. until 3 June 1996.

On 3 June 1996 a judge of the County Court prolonged the applicant's detention until the end of the preliminary investigation, but not later than 24 November 1996. It was noted in the relevant decision that the applicant could, if released, evade investigation and commit new offences. The applicant's appeal against the prolongation was dismissed by the Tartu Court of Appeal (*Tartu Ringkonnakohus*) on 28 June 1996.

On 8 November 1996 the applicant was charged with fraud and three counts of burglary, committed in a group of persons.

On 14 November 1996 the preliminary investigation of the case was complete and the applicant was acquainted with the case-file.

Following the approval of the charges by the Jõgeva public prosecutor, the Jõgeva County Court, by a decision of 21 November 1996, committed the applicant for trial. The court left unchanged the preventive custody measure and scheduled a hearing for 12–14 May 1997.

By a judgment of 19 May 1997 the Jõgeva County Court convicted the applicant of the charges and sentenced him to 4 years' imprisonment.

On 8 October 1997 the Tartu Court of Appeal quashed the judgment of the County Court on procedural grounds and remitted the case to it for fresh

consideration with a differently constituted court. The applicant was ordered to remain in custody.

On 6 November 1997 the applicant was diagnosed with cirrhosis of the liver and was placed in the Tallinn Central Prison hospital (*Keskvanglahaigla*) until 20 November 1997.

On 17 and 21 November 1997 the applicant requested the Jõgeva County Court to release him from custody. He stated that his health had deteriorated and that he had already been in custody for 1.5 years. He repeated his request on 9 January 1998.

On 13 January 1998 the County Court replied to the applicant that it did not consider it possible to release him and that he could be treated for his medical condition in the prison hospital.

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.

On 3 March 1998 the applicant and his lawyer filed another request for release from custody. They pointed to the long period of detention and the deterioration of the applicant's health. The applicant was in need of specialised medical treatment which was not available in the prison hospital. It was also argued that the applicant could not interfere with the examination of his case while at liberty, since all evidence, including witness testimony, had already been collected.

On the same day the County Court sent a letter to the Central Prison with a request for information about the applicant's state of health.

On 5 March 1998 the prison hospital informed the County Court that the applicant was suffering from cirrhosis of the liver and that he had spent two periods in the hospital. Following his release from the hospital, the applicant's general state of health was satisfactory.

On 9 March 1998 the County Court refused the applicant's request for release since, according to a reply from the prison hospital, his general state of health was satisfactory and he could receive adequate treatment for his medical condition in the prison hospital.

At the hearing on 16 June 1998 the County Court rejected another request by the applicant for release from custody. It considered that the grounds for applying the preventive custody measure had not changed. In particular, the applicant could commit new offences if released.

On the same day the applicant applied for release on bail on health grounds. By a decision of 17 June 1998 the County Court allowed his request and set the bail at 36 000 Estonian kroons (approximately 2300 euros). It noted that the applicant had been in custody for over two years, that his health had deteriorated and that the failure of a co-defendant to appear had caused a delay in the proceedings.

As the applicant was unable to pay the required amount he remained in custody.

On 14 September 1998 the applicant was again hospitalised with cirrhosis of the liver until 1 October 1998. Later that month, until 6 November 1998, he spent another period in the hospital.

On 10 November 1998 the applicant unsuccessfully requested his release.

The same month 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.

At the hearing on 25 February 1999 the County Court refused the applicant's request for release from custody, considering again that there had been no change in the grounds for applying the preventive custody measure.

On 19 April 1999 the County Court refused the applicant's application for release on the same grounds. In his request the applicant had stated that he had been in custody for nearly 3 years, his health had deteriorated and he was in need of medical treatment. Furthermore, the offences with which he had been charged were not serious and the witnesses in the case had already been questioned.

On 17 May 1999 the applicant was hospitalised with tuberculosis. His stay in hospital continued until December 1999.

At the hearing on 11 August 1999 the applicant submitted that his health had further deteriorated and requested his release. The concrete walls of the prison had made him ill with tuberculosis for which he could be adequately treated only if he were at liberty. The applicant also requested that a police investigator be called as a witness to testify about the criminal case.

The court rejected the release request and also found that it was unnecessary to hear the witness.

In his final statement at the hearing on 20 September 1999 the applicant submitted that for 3 years and 4 months he had been detained without proof of his guilt between concrete walls without fresh air and sunlight. The unacceptable conditions in prison were responsible for his liver diseases and tuberculosis.

By a judgment of 28 September 1999 the County Court, having analysed the evidence in the case, including the testimonies of witnesses, convicted the applicant of all charges and sentenced him to 4 years and 6 months' imprisonment.

The applicant appealed against the judgment to the Tartu Court of Appeal submitting that he was convicted on the basis of insufficient evidence. He also referred to the length of his detention during which he contracted serious diseases. At the hearing before the court on 29 November 1999 the applicant requested that the police investigator whom the County Court had declined to hear be called to testify. His request was refused.

On 29 November 1999 the Court of Appeal acquitted the applicant of hooliganism, but confirmed the County Court judgment in respect of other

charges. Leave to appeal to the Supreme Court (*Riigikohus*) was refused on 19 January 2000.

In November 2001 the applicant was taken into custody on new charges. He was released on bail in May 2002, but was re-arrested in June 2002.

2) The conditions of detention

During his detention on remand as from 22 May 1996 the applicant was kept for the most part in Tallinn Central Prison (*Keskvangla*). From 17 May 1999 until 22 December 1999 he stayed in the prison hospital.

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

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

a) The applicant's submissions on the facts

As regards the Jõgeva arrest house, the applicant submits that his cell measured 9 m². It had no ventilation and only had a small window – 25 x 25 cm. There was no chair, table or proper bed. Inmates slept on a shared platform which was used by 4-5 persons. In the summer of 1998 he shared his cell with a person who was ill with tuberculosis in its contagious form.

The general conditions in Tallinn Central Prison were equally unsatisfactory. His 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.

b) The Government's submissions on the facts

(i) The Jõgeva Arrest House was built in 1984 and is located on the first floor of the police prefecture building, with windows facing south. There are eight cells in the arrest house which measure 7.55–11.32 m². On average, there are 2–4 inmates in a cell. The size of the windows is 1.10 x 3 m and each cell has one electric light. In the cells there is a lavatory and water for daily hygiene. Before 2002 the cells lacked ventilation. In 1999 the central heating radiators were replaced with floor heating. There is a courtyard for walking and, if possible, inmates can take walks for one hour a day. At least once a week inmates may use a shower. If medical aid is needed, it is called for from the town hospital.

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

(ii) Until 1994 the Central Prison was the only preliminary confinement prison 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 where around 650 inmates were transferred from the Central Prison allowing for an improvement of the conditions therein.

The Central Prison was housed in the building of the 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 2–16 persons. The outer wall of the castle was built of limestone and was about 1.5 meters thick. Windows of the prison were built in the place of former embrasures for cannons. Therefore, 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 was renovated.

In each cell there was a lavatory and access to drinking water where it was also possible to wash oneself if necessary. At least once a week all inmates went to the sauna. The walking time in fresh air was at least one hour every day. Inmates had an unlimited right to make appointments for meetings with the prison chaplain, social workers, doctors and the prison management.

Prisoners received three hot meals a day. The quality of the food was regularly checked by the prison doctor and administration. Persons with ill-health could follow a special diet prescribed by the doctor. All detainees had the right to buy additional foodstuffs at the prison shop and to receive parcels from visitors.

The prison hospital was in one of the wings of the Central Prison that was facing the land and 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.

All persons under custody had to pass health checks when admitted to prison, which included an X-ray examination. Examinations carried out by the medical staff have shown that more than half of the patients were infected before incarceration.

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

3) Medical records and an expert finding

According to the applicant's medical records, he was healthy in March 1997. In November 1997 cirrhosis of the liver arose as a complication of hepatitis B and C which he had suffered in 1994.

The applicant was hospitalised with liver damage from 6 to 20 November 1997, from 11 to 25 February 1998, from 14 September to 1 October 1998, from an unspecified date in October to 6 November 1998 and from 7 to 14 May 1999.

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

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

Following the applicant's release, in November 2000, from Murru prison where he was serving his sentence, the Tartu County Disabilities Expert Committee established, by a decision of 28 February 2001, that the applicant had lost 80% of his capacity to work. The cause of this loss of capacity 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 expertise 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.

B. Relevant domestic law and practice

1) Constitution of Estonia of 1992 (Eesti Vabariigi põhiseadus)

Article 15 of the Constitution guarantees everyone whose rights and freedoms are violated the right of recourse to the courts.

Article 18(1) of the Constitution stipulates that no one shall be subjected to degrading treatment.

Article 25 of the Constitution provides that everyone has the right to compensation for moral and material damage caused by the unlawful act of any person.

2) The Code of Enforcement Procedure of 1993 (Täitemenetluse seadustik)

According to Article 8-1 of the Code, which was in force at the material time, the public prosecutor supervised compliance with the laws in places of detention.

Article 150 of the Code provided that a detention facility had to meet the technical, sanitary and hygienic requirements set for dwellings and ensure the preservation of the detainees' health.

3) The Code of Administrative Court Procedure of 1993 (Halduskohtumenetluse seadustik) in force until January 2000

Article 4(1) of the Code provided that the Administrative Court was competent to deal with appeals against the organs of the executive State power or the legal acts or action by one of its officials.

Article 5(1) of the Code stipulated that everyone who considered that his or her rights had been violated by an administrative act or measure had the right to turn to the Administrative Court.

Pursuant to Article 20 of the Code the Administrative Court has the power to declare the impugned act or measure unlawful and to remit the matter to the respective body or official for a new decision or measure.

4) The new Code of Administrative Court Procedure (Halduskohtumenetluse seadustik) in effect as from 1 January 2000

According to Article 6 of the Code, the Administrative Court is empowered to award compensation for damage caused by an unlawful administrative act or measure. Under Article 9 of the Code an action for damages may be filed within three years after a person became aware of the damage, but no later than ten years after the impugned administrative act was issued or the contested measure was taken.

5) The State Liability Act (Riigivastutuse seadus), effective as from 1 January 2002

The Act lays down the grounds and procedure for the protection and restoration of rights violated upon the exercise of powers of public authority and performance of other public duties and compensation for damage caused.

According to its Article 7(1), a person whose rights are violated by the unlawful activities of a public authority in a public law relationship may claim compensation for damage caused to the person if that damage could not be prevented and cannot be eliminated by the protection or restoration of rights.

Under Article 9 a person may claim financial compensation for non-pecuniary damage for affront to his dignity and damage to health if the

defendant was at fault in causing them. Non-pecuniary damage will be awarded in proportion to the gravity of the offence.

6) General Principles of the Civil Code of 1994 (Tsiviilseadustiku üldosa seadus)

This Act establishes the general principles of civil law, including family law, law of succession, law of obligations and property law.

Sub-chapter 4 of Chapter 2 of the Code deals with the protection of personal rights. It cites specifically defamation (Article 23), protection of private life (Article 24) and protection of a person's name (Article 25).

Article 26 of the Code states that, in cases provided for by law, a person may also demand termination of the violation of his or her personal rights which are not specified in Articles 23 to 25 as well as compensation for moral and material damage caused thereby.

Article 172 of the Code provides that moral damage caused to a person shall be compensated for by the person who caused the damage. The latter person is released from the obligation to compensate for moral damage if the person proves that he or she is not at fault in causing the damage.

If there has been a violation of personal rights, a court will decide on the basis of the facts of the case whether the violation caused any moral damage. In determining the amount of compensation, a court shall take into account the extent and nature of the moral damage caused as well as the degree of fault of the person who caused the damage.

7) Court practice

In an administrative case the Supreme Court found that before the entry into force of the State Liability Act on 1 January 2002 compensation for non-pecuniary damage caused by a public authority was possible under Article 25 of the Constitution and the provisions of the General Principles of the Civil Code. In deciding on a compensation claim the court should consider the following: a) whether the claimant has suffered any non-pecuniary damage (such as humiliation, insult, fear, indignation, worry or physical suffering; b) whether the damage is the result of an unlawful act or measure; c) whether the public authority was guilty of causing the damage and d) whether the damage can be redressed by means other than compensation (decision of the Administrative Chamber of 6 June 2002, case no. 3-3-1-27-02).

There is an established court practice in Estonia concerning compensation for loss of capacity to work.

C. Findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

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 m^2 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."

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."

COMPLAINTS

1. The applicant complained that his prolonged detention on remand in poor conditions leading to liver disease and tuberculosis, amounted to treatment contrary to Article 3 of the Convention.

2. The applicant also complained that the length of his pre-trial detention violated Article 5 § 3 of the Convention.

3. Invoking Article 6 of the Convention the applicant further complained that the criminal charges against him were fabricated, that he was convicted of offences he did not commit, that there was not sufficient evidence justifying his conviction and that the courts did not hear certain witnesses.

THE LAW

1. The applicant complained about his conditions of detention. He relied on Article 3 of the Convention which reads as follows:

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

The Government first maintained that the applicant had not exhausted remedies available to him under Estonian law, as required by Article 35 § 1 of the Convention. First, the applicant could have complained about his conditions of detention to the prison administration who could have taken appropriate measures and transferred him, if necessary, to better conditions.

Second, the applicant had the possibility to complain to the public prosecutor who exercised control over compliance with laws in places of detention. The Government referred in this respect to Articles 8 and 105 of the Code of Enforcement Procedure.

Third, it was open to the applicant to file a complaint with the administrative court to challenge his conditions of detention as an administrative act or measure of the prison administration. The administrative court had the power to declare the impugned act or measure

unlawful following which the prison administration had to bring the conditions of detention into conformity with the law so as to not constitute degrading treatment. The Government relied on Article 15 of the Constitution and Articles 4, 5 and 20 of the Code of Administrative Court Procedure.

Furthermore, after the entry into force of the new Code of Administrative Court Procedure on 1 January 2000, it was possible for the applicant to file a claim for damages with the administrative court. The State Liability Act of 2002 also provided for compensation for damage caused by a public authority.

Fourth, the applicant could have brought proceedings before the civil courts claiming damages from the State for the alleged violation of his personal rights and damage to health on the basis of Article 25 of the Constitution and the provisions of the General Principles of the Civil Code. As shown by the Supreme Court decision of 6 June 2002 compensation for non-pecuniary damage caused by a public authority was possible under these laws also before the entry into force of the State Liability Act in 2002. If there was proof of damage to the applicant as a result of his conditions of detention and the defendant was at fault for causing it, the applicant would have been awarded compensation by a court.

The Government submitted that as the applicant had used none of the administrative and court remedies, the domestic authorities had no possibility to examine the alleged breach of Article 3 of the Convention.

As regards the substance of the complaint, 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. It was acknowledged however that the conditions were problematic for economic reasons, but 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 maintained that after the CPT visit in 1997 the conditions in the Central Prison improved significantly. Extensive refurbishment was carried out there, most of the heating system was replaced and the number of prisoners was reduced. The prison hospital, where the applicant spent a considerable part of his detention and where the conditions were significantly better than in the rest of the prison, was refurbished 1997–1998 and in 1999 new premises with 50 additional beds were added. It was stressed that the reform of the prison system which began in 1992 and included the construction of new establishments, could not be done overnight and required considerable resources.

As regards the applicant's health, the Government submitted that the applicant had access to professional care to treat liver diseases and tuberculosis from which he made a successful recovery. According to the medical records, the applicant's liver problems started before his

incarceration. The weakening of his health as a result made him probably more susceptible to tuberculosis. It is however unlikely that the applicant caught the disease from a fellow inmate as all detainees in the Central Prison have to undergo on admission an X-ray examination which is subsequently repeated twice a year.

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. In prison he received good treatment which improved his health. Moreover, the certificate of invalidity was effective from 28 February 2001 until 31 March 2002 and there was no information about the applicant's incapacity to work after the last date.

It was also submitted that the applicant had previously twice been sentenced to imprisonment. He served his second sentence from 1992 until March 1996.

As regards the question of non-exhaustion of domestic remedies, the applicant submitted that from November 1997 to November 1999 he repeatedly filed complaints with the authorities about the fabrication of his criminal case, his poor health and the conditions of detention. It was useless to file a civil claim for damages as it would have been impossible for the Government to find normal conditions for some 1200 remand prisoners who were being detained in the Central Prison.

As to the merits of his complaint, the applicant argued that the conditions in both the Central Prison and the Jõgeva Police Arrest House were unacceptable. He was kept in those conditions for 3 years and 7 months during which he developed major health problems. Until November 1997 he had been practically healthy. He could not prolong the certificate of invalidity issued to him after release from prison as at the date fixed for a new expert report he had again been taken into custody.

The Court recalls that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems (see, for example, *Remli v. France*, judgment of 23 April 1996, *Reports of Judgments and Decisions* 1996-II, p. 571, § 33, and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

However, the only remedies which must be tried under Article 35 § 1 of the Convention are those that relate to the breaches alleged and which at the same time are available and adequate. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they lack the requisite accessibility and effectiveness (see, among other authorities, the *Akdivar and Others v. Turkey* judgment of

16 September 1996, *Reports* 1996-IV, p. 1210, § 66, and *Selmouni,* cited above, § 75).

Furthermore, the Court recalls that in the area of exhaustion of domestic remedies the burden of proof is on the Government to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof is satisfied, it falls to the applicant to show that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see, for example, *Akdivar and Others*, cited above, p. 1211, § 68, and *Selmouni,* cited above, § 76).

In the present case, the Court notes that throughout his detention on remand the applicant repeatedly filed complaints with the trial court about the deterioration of his health. At the hearing on 20 September 1999 he submitted specifically that the conditions of his detention were unacceptable and that they were responsible for the serious diseases he had caught. It therefore cannot be said that the authorities were not made aware of the applicant's situation and that they had not had the opportunity to examine the conditions of his detention.

It is true that the applicant did not use the channels suggested by the Government by lodging separate complaints with the prison administration, the public prosecutor or a court. The Court will then examine whether these remedies satisfied the requirements of Article 35 of the Convention.

As regards a complaint to the prison administration which, according to the Government, would have enabled the administration to transfer the applicant to better conditions, the Court notes that the Central Prison was until 1996 the only remand prison for adult detainees. Although in 1996 and 1997 a number of inmates were transferred to the new sections built for prisoners on remand in the Tallinn Prison where the conditions were supposedly better, it has not been shown that requests or complaints by individual detainees were taken into account in arranging the transfer to the other facility. Nor has it been demonstrated that a transfer within the Central Prison would have improved the applicant's situation.

The Court next notes the Government's argument that the applicant could have complained to the public prosecutor who exercised supervision over compliance with the laws in detention facilities. It was also submitted that the applicant could have seized the administrative court which had the power to declare a prison administration act or measure unlawful following which the administration had to bring the conditions of detention into conformity with the laws. However, the Government have not demonstrated what redress these bodies could have afforded the applicant, given the

accepted economic difficulties facing the authorities. The problems in the Central Prison were obviously of a structural nature and did not only concern the applicant's personal situation.

As regards the possibility of filing a claim for damages against the State under the General Principles of the Civil Code and the State Liability Act, the Court observes that it appears from the provisions of these laws and the Supreme Court decision of 6 June 2002 that such a claim could succeed only when it was established that the public authority in question was at fault for causing the damage. Thus the element of intent or negligence was a condition for establishing the liability of a public authority. However, the Government argued that the authorities lacked the desire to cause any suffering to the applicant and that they made all efforts to improve the conditions of detention. In these circumstances, the Court is not convinced that the remedy offered the applicant reasonable prospects of success.

In the light of the above, the Court considers that it has not been established with sufficient certainty that recourse to the remedies suggested by the Government would have been capable of affording redress to the applicant in relation to his complaint concerning his conditions of detention. Accordingly, the complaint cannot be rejected for failure to exhaust domestic remedies.

As regards the substance of this part of the application, the Court considers, in the light of the parties' submissions, that it raises complex questions of fact and law under the Convention, the determination of which should depend on an examination of its merits. The Court concludes, therefore, that this part of the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

2. The applicant complained about the length of his pre-trial detention, relying on Article 5 § 3 of the Convention, which provides in the relevant part:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The Government submitted that the applicant had failed to comply with the six-month time-limit under Article 35 § 1 of the Convention. His detention on remand ended on 28 September 1999, when the Jõgeva County Court delivered its judgment, whereas the application was filed on 5 June 2000.

The applicant argued that the six-month period should be counted from the Court of Appeal judgment of 29 November 1999.

The Court reiterates that the end of the period referred to in Article 5 § 3 is "the day on which the charge is determined, even if only by a court of first instance" (see, among other authorities, *Wemhoff v. Germany*,

judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9). The applicant's detention pending trial for the purposes of Article 5 § 3 of the Convention therefore ended on 28 September 1999 when he was convicted and sentenced by the Jõgeva County Court.

According to Article 35 § 1 of the Convention, the Court may only deal with applications introduced within a period of six months after the final domestic decision. It recalls its established case-law according to which when there is no available remedy in national law, the six-month period runs from the end of the situation complained of (see, for example, *Demirel v. Turkey* (dec.), no. 30493/96, 9 March 1999).

In the present case, it has not been suggested by the parties that there was a remedy available to the applicant under Estonian law to challenge, after his conviction, the length of his detention on remand. The Court therefore agrees with the Government that the application was submitted out of time.

It follows that this part of the application must be rejected under Article 35 §1 of the Convention.

3. Invoking Article 6 of the Convention, the applicant further complained that the criminal charges against him were fabricated, that he was convicted of offences he did not commit, that there was not sufficient evidence justifying his conviction and that the courts did not hear a witness.

Article 6 of the Convention provides in the relevant part as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

The Court first recalls that its task is not to examine whether the applicant was guilty or innocent of the offences of which he was convicted. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among other authorities, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). However, the Court must ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities,

Van Mechelen and Others v. the Netherlands, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, § 50).

In the present case, the national courts found the applicant's guilt established on the basis of an analysis of the relevant evidence. The Court finds no indication that in the assessment of the evidence the authorities exceeded their margin of appreciation or that the assessment was in any way arbitrary. Nor does it consider that the outcome of the proceedings had in itself any bearing on the applicant's right to a fair trial.

The applicant also complained that his right to call witnesses was not respected because the courts deemed unnecessary to hear a witness he had proposed. In this respect, the Court recalls that it is normally for the national courts to decide whether it is necessary or advisable to call a witness. There are exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness was incompatible with Article 6 (see *Bricmont v. Belgium*, judgment of 7 July 1989, Series A-158, § 89). In the instant case, no such circumstances have been shown to exist.

As the Court has found nothing in the applicant's complaints to suggest that the criminal proceedings as a whole were not fair, contrary Article 6 §§ 1 and 3(d) of the Convention, it follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning his conditions of detention under Article 3 of the Convention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President