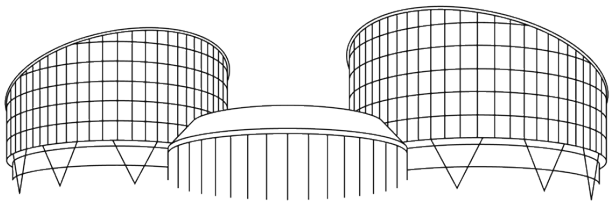

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SVINARENKO AND SLYADNEV v. RUSSIA

(Applications nos. 32541/08 and 43441/08)

JUDGMENT

STRASBOURG

11 December 2012

THIS CASE WAS REFERRED TO THE GRAND CHAMBER WHICH DELIVERED JUDGMENT IN THE CASE ON 17/07/2014

This judgment may be subject to editorial revision.

In the case of Svinarenko and Slyadnev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 20 November 2012,

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

PROCEDURE

1. The case originated in two applications (nos. 32541/08 and 43441/08) 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 two Russian nationals, Mr Aleksandr Sergeyevich Svinarenko and Mr Valentin Alekseyevich Slyadnev ("the applicants"), on 5 May 2008 and 2 July 2008 respectively.

2. The applicants were represented by Mr V.G. Palchinskiy and Mr Ye.F. Plotnikov respectively, lawyers practising in Magadan. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that their placement in a metal cage in the courtroom had been contrary to Article 3 of the Convention and that the length of the criminal proceedings against them had been excessive.

4. On 23 October 2008 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1968 and 1970 respectively and live in the settlement of Sinegorye in the Yagodninskiy District of the Magadan Region.

A. Preliminary investigation

6. In 2002 the Far Eastern Federal Circuit Investigation Department of the Investigation Committee at the Ministry of the Interior brought a number of sets of criminal proceedings against a Mr Grishin.

7. On 24 September 2002 the first applicant was questioned as one of the suspects in those proceedings. On 9 October 2002 he was arrested. In a decision of 12 November 2002 ordering his detention on remand, the Magadan Town Court noted that the crimes he was charged with had been committed during a three-year probation period under a judgment of the Magadan Region Yagodninskiy District Court of 13 April 2001 convicting him of theft and imposing on him a conditional sentence of five years' imprisonment. It also noted that he had negative references from his place of residence and that he had breached his undertaking to appear before the investigating authority. According to the final charges against the first applicant, he was accused of robbery with violence against Mr A.S. and Mrs T.S. in September 2002 as a member of a gang led by Mr Grishin, and of the illegal acquisition, storage, transportation and carrying of ammunition.

8. On 20 January 2003 the second applicant, who was serving a sentence of imprisonment after his conviction by the Magadan Region Yagodninskiy District Court on 26 July 2002 for negligent infliction of death under Article 109 § 1 of the Criminal Code of the Russian Federation ("the CC"), was questioned as one of the suspects in the proceedings brought against Mr Grishin. On 22 January 2003 he was charged with the following crimes:

(i) establishing an armed gang under Mr Grishin's leadership and participating in the gang's attacks on citizens from October 2001 to September 2002 – under Article 209 § 1 of the CC;

(ii) the robbery in October 2001 of Mr V.B., the director of a private gold-refining company, with the use of weapons and violence endangering life and health and a threat to use such violence, by an organised group, with the aim of misappropriating another's property of substantial value – under Article 162 § 3 of the CC;

(iii) illegal storage and transportation of precious metals (industrial gold stolen from Mr V.B.) of substantial value by an organised group in October 2001 – under Article 191 § 2 of the CC;

(iv) extortion (from Mr V.B.) in October 2001 with the aim of obtaining a right to property under the threat of the use of violence, repeatedly, by an organised group – under Article 163 § 3 of the CC;

(v) the robbery of Mr Ya.B. in October 2001 with the use of weapons and violence endangering life and health and the threat to use such violence, by a group of persons according to a premeditated plan, repeatedly, by means of illegal entry into a dwelling with the aim of misappropriating another's property of substantial value – under Article 162 § 3 of the CC; and

(vi) illegal acquisition, storage, transfer, transportation and carrying of firearms, repeatedly, by an organised group in October 2001 – under Article 222 § 3 of the CC.

9. On 11 April 2003 the Magadan Region Khasynskiy District Court found the second applicant to be eligible, in view of his orderly behaviour and positive references, for early conditional release one year and three months ahead of the term of two years and three months to which he had been sentenced under the Yagodninskiy District Court's judgment of 26 July 2002.

10. On 24 April 2003 the Magadan Town Court ordered the second applicant's remand in custody pending the current criminal proceedings against him. It noted, *inter alia*, that he was accused of grave crimes which had been committed during a three-year probation period under the Yagodninskiy District Court's judgment of 15 June 2001 convicting him of hooliganism and infliction of bodily harm and sentencing him conditionally to four years' imprisonment.

11. On 20 May 2003 the investigation was completed and the defence received access to the case file.

12. On 13 August 2003 the Magadan Town Court found that the second applicant had been deliberately delaying the examination of the case file and set a time-limit for the examination at 5 September 2003.

B. Jury trial

1. First set of proceedings

13. On 19 September 2003 the case was sent for trial to the Magadan Regional Court, which scheduled for 2 October 2003 and held from 16 October to 26 December 2003 a preliminary hearing to decide on numerous requests by the applicants and their two co-defendants concerning the admissibility of the evidence and other procedural issues, as well as to

prepare the jury trial requested by the defendants. During this period the hearing was postponed for about four weeks at the co-defendants' request.

14. As a result of the preliminary hearing, on 26 December 2003 the Regional Court ordered that the case be examined at an open hearing by a jury on 23 January 2004. On that day fewer than twenty candidate jurors appeared before the court instead of the fifty invited and the court, therefore, ordered that another 100 candidate jurors be summoned.

15. On 13 February 2004 a jury was formed and the jurors were sworn in.

16. The Regional Court held about thirty court sessions, during which it decided various procedural issues, such as the replacement of some jurors, the exclusion or examination of certain evidence and the ordering of expert opinions. It examined the evidence, including the testimony of the victims, witnesses and experts, and heard the defendants. The hearing was adjourned for two weeks as one of the defence lawyers could not attend.

17. On 15 June 2004 the prosecution amended one of the robbery charges against the second applicant (concerning Mr Ya.B.) to the milder charge of "arbitrary unlawful acts with the use of violence", under Article 330 § 2 of the CC.

18. On 22 June 2004 the jury found the applicants not guilty. They were released in the courtroom. On 29 June 2004 the Magadan Regional Court delivered a judgment in which they were acquitted and their right to rehabilitation was acknowledged.

19. The co-defendants and the prosecution appealed against the trial court's judgment. On 7 December 2004 the Supreme Court examined the case on appeal and quashed the judgment on the grounds, *inter alia*, that some of the jurors had concealed information about their family members' criminal records although they had been obliged to disclose such information to the parties and the court at the time of their selection, and that the presiding judge had failed to sum up all the evidence in his directions to the jury, in particular the victims' and witnesses' statements. It remitted the case to the Magadan Regional Court for fresh examination.

2. Second set of proceedings

20. On 21 December 2004 the Regional Court received the case file. It adjourned its hearing twice, on 31 January and 7 February 2005, as the second applicant's lawyer had failed to appear.

21. In a decision of 8 February 2005 the Regional Court imposed on the defendants an undertaking not to leave their place of residence without its authorisation, to appear before it when summoned, and not to obstruct the proceedings.

22. The Regional Court's decision of the same date to remit the case to the Magadan Regional Prosecutor for the rectification of errors in the

indictment was appealed against by the defence and quashed as erroneous by the Supreme Court on 26 April 2005.

23. The hearing before the Regional Court was adjourned on 17 June 2005 as a result of the first applicant's and a co-defendant's failure to appear, for unknown reasons. It was adjourned again on 21 June 2005 owing to a co-defendant's hospitalisation and the impossibility of examining the case in respect of the others in separate proceedings.

24. The hearing resumed on 22 November 2005. On that day, however, fewer than twenty candidate jurors appeared before the court instead of the thirty invited and the court, therefore, ordered that another 100 candidate jurors be summoned.

25. On 6 December 2005 the Regional Court ordered that the applicants and the other two defendants be detained on remand. It noted the applicants' previous convictions, the serious charges against them, and the fact that during the preliminary investigation and the current trial some of the witnesses had expressed fears of unlawful behaviour by the defendants. In its decision it did not give any details concerning the fears referred to, or the names of the defendants concerned. The first applicant's appeal against the detention order, in which he argued, *inter alia*, that the witnesses' fears did not relate to him, was dismissed. The applicants' detention was subsequently extended for similar reasons.

26. On 9 December 2005 the jury was formed and the court held hearings on 12, 20 and 23 December 2005. On the last-mentioned date one of the co-defendants was granted leave to retain a new lawyer. On 27 December his new lawyer failed to appear and the hearing was adjourned until 10 January 2006, 1-9 January being non-working days. The Regional Court continued the examination of the case in January. It ruled on numerous procedural requests by the defence, in particular, challenges to the presiding judge and the prosecutor.

27. As the witnesses and victims who lived in Sinegorye had failed to appear at the hearings several times, on 17 January the court ordered them to be brought before it by force. The hearing was adjourned on 20 January until 27 January and on 26 February until 10 March 2006 pending the execution of that order.

28. The examination of the case continued in February, March, April and May 2006. During this time the hearing was adjourned on a number of occasions for about four weeks in total at the request of jurors who could not participate, and for about a week at the request of one of the defence lawyers, who was ill. On 2 June 2006 the presiding judge declared the examination of the evidence closed. In five sessions in June 2006 the Regional Court heard the parties' pleadings. It announced a break from 14 July until 3 October 2006 in view of the fact that several jurors were leaving for summer holidays in central Russia.

29. The hearing resumed on 3 October 2006. Having consulted the parties, the court decided that they would repeat their pleadings. They did so on 6, 12 and 19 October and 2 November 2006. The preparation of questions to be put to the jury followed. The jury delivered its verdict on 17 November 2006. The first applicant was found not guilty and was released in the courtroom.

30. On 5 December 2006, after an examination of the legal issues during the sessions held in November and December, the Regional Court delivered its judgment. The first applicant was acquitted and his right to rehabilitation was acknowledged. The second applicant was convicted of extortion (from Mr V.B.), and arbitrary unlawful acts with the use of violence (in respect of Mr Ya.B.), and was sentenced to seven years' imprisonment, which took into account his 2001 conviction, in respect of which the conditional sentence was revoked, and acquitted on the remaining charges. His detention on remand was to continue until the judgment took effect.

31. On 6 June 2007 the Supreme Court examined the appeals against the judgment lodged by Mr Grishin, one of the victims and the prosecution. It found a violation of the rules pertaining to a criminal trial by the defendants and their lawyers, who had abused their rights and, despite the presiding judge's warnings, discussed, in the jurors' presence, issues which fell outside the scope of their competence, such as the alleged falsification of evidence, alleged violations of the law when obtaining evidence, for example, by the torturing one of the defendants, and the allegation that a certain victim had given statements on the investigators' instructions. They had made remarks which did not concern the issues to be decided by the jury and which had been aimed at discrediting the evidence against them, thus creating a negative impression of the victims and the presiding judge, and a positive one of themselves. This was held to have unlawfully influenced the jury's verdict. It was also noted that the jury's verdict had not been entirely clear as some of the answers had been contradictory. The Supreme Court quashed the judgment and remitted the case to the Regional Court for fresh examination. It also ordered that the second applicant should remain in custody.

32. In August 2007 the first applicant was detained on remand in connection with another set of criminal proceedings brought against him on suspicion of extortion allegedly committed in 2002.

3. Third set of proceedings

33. On 4 September 2007 the Magadan Regional Court received the case file and opened the proceedings. On 5 October 2007 fewer than twenty candidate jurors appeared before the Regional Court instead of the 100 invited and the court, therefore, ordered that another 150 candidate jurors be summoned.

34. On 2 November 2007 the selection of the jurors began. However, after a number of candidate jurors refused sit in the case, their number was still insufficient and the court ordered that another 150 candidate jurors be summoned. The same situation occurred on 22 November 2007.

35. The number of candidate jurors who appeared before the Regional Court was again insufficient on 11 December 2007 and 17 January 2008, which necessitated the summoning of an additional 200 and 250 persons respectively.

36. The jury was formed on 5 February 2008 and the trial commenced. The court held five or six sessions monthly from February to June 2008, two sessions in July, four in August (after a break for jurors' holidays from 1 July to 18 August), eleven in September, six in October, ten in November and four in December 2008. Some of the sessions were held without the jury as they concerned various procedural issues, including the admissibility of evidence and requests for the examination of the evidence before the jury. The court examined the vast body of evidence, including the testimony of more than seventy victims and witnesses, and numerous expert reports.

37. For about a month the trial was delayed because Mr Grishin was ill. Some delay was due to difficulties in ensuring the appearance of a number of the victims and witnesses, who resided in remote settlements in Burkhala and Sinegorye or had moved to the central and other parts of the country.

38. On 13 February 2009 the Regional Court started hearing the parties' pleadings.

39. On 7 March 2009 the jury returned a not guilty verdict in respect of the first applicant. It found the second applicant guilty of arbitrary unlawful acts and not guilty of the remaining charges.

40. On 12 March 2009 the Regional Court ordered the second applicant's release on an undertaking not to leave his place of residence and that he would behave in a law-abiding manner.

41. On 19 March 2009 it delivered its judgment, acquitting the first applicant and finding as follows in respect of the second applicant:

On 11 October 2001 Grishin, Slyadnev and N.G., against whom the criminal proceedings were terminated owing to his death, had requested Ya.B. to repay a debt in the amount of 100,000 Russian roubles (RUB). Following his refusal, Grishin and N.G. had beaten him up. Slyadnev had beaten up S.K., who had witnessed Ya.B.'s beating. They had then taken Ya.B. to his home and Grishin had taken money from him in the amount of RUB 247,000.

42. The Regional Court considered that, given the gravity of the acts committed by Mr Grishin and the second applicant, as well as the specific circumstances, which characterised the crimes committed by them as brazen attacks on citizens using violence, threats and weapons, the deprivation of their liberty was the only proper punishment for each of them. The Regional Court convicted the second applicant under Article 330 § 2 of the CC for

arbitrary unlawful acts with the use of violence, sentenced him to two years and ten months' imprisonment, revoked the conditional sentence under his 2001 conviction as the new crime had been committed during the probation period, and, after adding the revoked conditional sentence, sentenced him to a total of four years and five months' imprisonment, discharged him from serving the sentence in the part relating to the conviction under Article 330 § 2 as criminal liability had become time-barred, and found that he had served his sentence in the remaining part in view of his detention on remand from 24 April 2003 to 22 June 2004 and from 6 December 2005 to 12 March 2009, which amounted to four years, five months and six days in total. It acquitted him of the remaining charges.

43. On 23 July 2009 the Supreme Court dismissed an appeal by Mr Grishin and the prosecution and upheld the judgment.

C. Conditions in the courtroom

44. During the applicants' detention on remand they were taken to the Magadan Regional Court from their detention facility by police guards. During the hearings they sat on a bench enclosed on four sides by a metal railing. The enclosure was 255 centimetres long, 150 centimetres wide and 225 centimetres high, with a doorway. The distance between the railing rods, which were 10 millimetres in diameter, was 19 centimetres.

45. According to the first applicant's additional information, armed policemen were on guard near the caged dock. There were always two policemen per each detainee - eight policemen in total during the first two sets of proceedings and six policemen during the third set of trial proceedings.

D. Compensation proceedings

46. On 25 August 2009 the first applicant, who had been acquitted of all charges, brought proceedings for compensation in respect of pecuniary and non-pecuniary damage incurred as a result of the criminal proceedings against him, in particular, his detention on remand. On 23 October 2009 the Magadan Regional Court awarded him RUB 18,569 by way of damages. On 1 March 2010 the Magadan Town Court awarded him RUB 50,000 in respect of non-pecuniary damage, to be paid by the Ministry of Finance.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Proceedings

47. Article 9 of the Code of Criminal Procedure of the Russian Federation prohibits torture and inhuman or degrading treatment of a defendant or other participants in criminal proceedings.

B. Construction rules

48. Under the Rules on the Design and Construction of Courthouses, in force since 1 August 2000, courtrooms for the hearing of criminal cases must have a subzone for defendants and guards, which must be enclosed on four sides with a railing made of metal rods 14 millimetres in diameter, 220 centimetres high or extending up to the ceiling, with a doorway and a steel-wire ceiling (paragraphs 5.4, 5.9 and 8.3 of the Rules *СП 31-104-2000*, as approved by the Courts Administration Office at the Russian Federation Supreme Court on 2 December 1999). Access from the defendants' cells in the courthouse to the courtroom must be through separate corridors and stairs and a separate entry to the courtroom. There must be metal detectors at the public entrance to the courthouse and metal bars on the windows in the courtroom (paragraphs 5.11, 8.1, 8.2 and 5.35 of the Rules).

C. The Ministry of the Interior internal regulations and their review by the Supreme Court

49. Under the Directions on the Functioning of Temporary Detention Centres and Police Guard and Convoy units, approved by Order no. 140 of Ministry of the Interior of the Russian Federation on 7 March 2006 ("Order no. 140"), suspects and accused are taken from their detention facility to the courthouse by police guards and are placed in the courtroom in a dock behind a barrier ("metal railing"). It is prohibited to take them to a courtroom which is not equipped with a barrier ("metal railing"). The same rules were contained in directions approved by Order no. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996, which was in force before Order no. 140.

50. Both Orders were issued for internal use only. Applications challenging their legality on the basis of lack of official publication were dismissed by the Supreme Court of the Russian Federation, which found that they contained confidential information and had been registered with the Ministry of Justice of Russia (decision of 2 December 2002, as upheld

by the appeal section of the Supreme Court on 24 April 2003 in respect of Order no. 41, and decision of 7 December 2011 in respect of Order no. 140).

51. Order no. 41 was also challenged before the Supreme Court by a Mr Sh. on the ground that its provision on keeping defendants behind a "metal railing" during their trials violated domestic law and the Convention in so far as they prohibited degrading treatment and guaranteed the right to a fair trial. The Supreme Court dismissed that appeal in a decision of 19 October 2004. It noted that the impugned provision concerned persons detained on remand by a court decision in accordance with the requirements of the Code of Criminal Procedure. The police were responsible for guarding and taking them to a courthouse from their detention facilities (Article 10 § 16 of the Law on Militia). The Rules on the Design and Construction of Courthouses provided for the installation of "metal railings" for defendants as one of the security requirements. Detention on remand was to be carried out in accordance with the principles of legality, fairness, the presumption of innocence, equality before the law, humanism, and respect for human dignity, and in accordance with the Constitution, the principles and norms of international law, and the international agreements of the Russian Federation, and must not be accompanied by torture or other acts aimed at the infliction of physical or moral suffering (the Federal Law on the Detention of Suspects and Defendants charged with Criminal Offences).

52. On 23 December 2004 the decision was upheld on appeal by the appeal section of the Supreme Court, which noted that, in so far as Mr Sh. had argued that he had actually been held in a "metal cage", the disputed Order had not set out the technical characteristics of the "barrier (metal railing)".

THE LAW

I. JOINDER OF APPLICATIONS

53. Given that the applications at hand concern similar facts and complaints and raise identical issues under the Convention, the Court decides to join them pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicants complained that during their detention on remand they had appeared before the jury court in a metal cage, like "monkeys in a zoo", and had thereby been subjected to humiliating treatment injuring their

honour and dignity. They relied on Article 3 of the Convention, which provides:

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

55. The Government submitted that keeping defendants in a metal cage in the courtroom was an ordinary security measure. Cages were permanently installed in courtrooms for hearing criminal cases in accordance with the detailed design contained in the Rules for the Construction and Design of Courthouses, approved by the Supreme Court of the Russian Federation in 1999 (see paragraph 48 above). By Order no. 140, issued in 2006, the Ministry of Interior prohibited its convoy guards from taking suspects and accused to courtrooms which were not equipped with the cages (see paragraph 49 above).

56. The Government argued that it had not been the intention of the authorities to inflict any harm, subject the applicants to torture, humiliate them, make them endure physical or moral suffering, or cause them to feel like "monkeys in a zoo". The applicants had failed to submit any information as to the physical or mental effect their placement in the "metal cage" had had on them, if there had been any such effect at all.

57. The first applicant submitted that his exposure to the public – the inhabitants of Sinegorye, where he lived, and Magadan, as well as the jury – in a metal cage, like a dangerous "animal" requiring high security measures, had humiliated him and caused him suffering. The second applicant added that it had prejudiced the jury against him.

1. Admissibility

58. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes, therefore, that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. Merits

59. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

60. 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 is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of

its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

61. Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III). 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 (see *Kudła*, cited above, § 92).

62. The question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX). The public nature of the treatment may be a relevant factor, although it may be sufficient that the victim is humiliated in his or her own eyes (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26).

63. A measure of restraint does not normally give rise to an issue under Article 3 where the measure has been imposed in connection with a lawful detention and does not entail a use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, whether there is a danger that the person concerned might abscond or cause injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII). In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Labita*, cited above, § 120).

64. In applying the above principles to the case of *Sarban v. Moldova*, the Court found that keeping the applicant, who was ill, wore a surgical collar, was handcuffed and under guard, in a cage during hearings which were given much publicity, so that a doctor had to measure his blood pressure through the bars of the cage in front of the public, was a factor contributing to its finding that the applicant had been subjected to degrading treatment contrary to Article 3 (see *Sarban v. Moldova,* no. 3456/05, §§ 88-90, 4 October 2005). In the case of *Ramishvili and Kokhreidze v. Georgia*, in which the applicants, who were public figures, were held in a cage and guarded by heavily armed men wearing black hood-like masks during the judicial review of their detention while the hearing was broadcast live throughout the country, the Court also found such treatment to have been degrading (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06,

§ 101, 27 January 2009). It found likewise in two other cases in which applicants were kept in a cage during appeal proceedings (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 126-129, 15 June 2010), or the entire trial (see *Khodorkovskiy v. Russia*, no. 5829/04, §§ 125-126, 31 May 2011). The fact that the applicants were accused of non-violent crimes and had no previous convictions, together with their orderly behaviour and the absence of any evidence giving serious grounds for fears that they would resort to violence, abscond, or that their own safety would be at risk, were factors taken into account by the Court.

65. In the above cases it was not the placement in a cage as such but its unjustified or disproportionate use in the individual circumstances that led the Court to conclude that it was degrading. Similar considerations applied to the finding of a violation of Article 3 in the case of *Gorodnitchev*, where the applicant appeared at public hearings in handcuffs (see *Gorodnitchev v. Russia*, no. 52058/99, §§ 103-109, 24 May 2007) and, most recently, in the case of *Piruzyan* (see *Piruzyan v. Armenia*, no. 33376/07, §§ 69-74, ECHR 2012 (extracts).

66. The Court notes that Armenia and Georgia, for example, have removed the cages from their courtrooms as a result of reforms (see *Ashot Harutyunyan*, cited above, § 118, and the Council of Europe Committee of Ministers' Resolution CM/ResDH(2011)105). In Russia the cages are still used in many regions and, as the Government explained, this is a usual security measure applicable to any accused detained on remand. It can be seen from the Government's submissions that the legal basis for such common practice is to be found in the construction rules for courthouses, and the Ministry of the Interior's unpublished internal regulations (see paragraphs 49-53 and 55 above). In their submissions to the Court the Government did not mention any alternative practices for the arrangement of courtrooms.

67. The applicants complained about their placement in a metal cage in the courtroom during the third round of their jury trial, when the first applicant was detained on remand in connection with another set of criminal proceedings brought against him and the second applicant was detained on remand pending the trial in question. No reasons were given by the trial court for subjecting them to such treatment.

68. The Court notes that the applicants were accused of violent crimes such as robbery (both applicants) and banditry (second applicant). They had previous convictions for theft (first applicant) and hooliganism, infliction of bodily harm and negligent infliction of death (second applicant). Furthermore, the witnesses' fear of the defendants' unlawful behaviour was cited among the grounds for their detention on remand.

69. At the same time, the Court notes that although the vague reference to witnesses' fears appears in some of the detention orders, it is unclear, in the absence of any details or the names of the defendants concerned, given

that there were four defendants on trial, whether those fears related to the applicants and whether they were justified (see paragraph 25 above). It further notes that shortly before the second applicant's detention on remand the court had granted him early release from serving his sentence after his previous conviction in view of his orderly behaviour and positive references (see paragraph 9 above). There is nothing in the materials before the Court which would point to the applicants' improper or violent behaviour during their trial. No arguments to the contrary have been advanced by the Government.

70. Noting that the applicants were constantly guarded by armed police officers, and that other security measures had also to be taken in the courtroom (see paragraphs 45 and 48 above), and having regard to the absence of any evidence capable of giving serious grounds for the fear that the applicants posed a danger to order and security in the courtroom, or would resort to violence or abscond, or that there was a risk to their own safety, the Court finds that their placement in the cage, where they were exposed to the public in the courtroom, was not justified. The Court considers that the impugned treatment humiliated the applicants in their own eyes and in those of the public and aroused in them feelings of anguish and inferiority amounting to degrading treatment.

71. There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

72. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

73. The Government contested the applicants' argument.

74. The period to be taken into consideration began on 24 September 2002 in respect of the first applicant and on 20 January 2003 in respect of the second applicant. On those dates they were questioned as suspects in the case. It ended on 23 July 2009, when the trial court's judgment was upheld on appeal. It thus lasted six years and ten months for the first applicant and six and a half years for the second applicant, with two levels of jurisdiction involved.

A. Admissibility

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

B. Merits

76. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

77. The Court observes that the case was very complex. It comprised more than ten counts of serious crimes and four accused. It involved more than seventy victims and witnesses, many of whom resided in remote settlements situated more than 500 kilometres away from Magadan where the trial was held. Numerous expert reports were ordered and examined in the course of the trial.

78. The preliminary investigation in the case lasted less than a year. During that time the second applicant deliberately delayed the examination of the case file between 20 May and 13 August 2003 (see paragraphs 11-12 above).

79. The applicants and their co-defendants, who were all represented by lawyers, chose a jury trial. The case was considered by a jury court three times, as the Magadan Regional Court's judgment was twice set aside on appeal by the Supreme Court of the Russian Federation.

80. On the first occasion it took the Regional Court nine months to hold the jury trial and deliver its judgment in June 2004, when the applicants, who had been detained on remand, were acquitted and released. During that time the hearing was adjourned for about four weeks at the request of the co-defendants, and for two weeks when one of the defence lawyers could not attend. It then took the Supreme Court six months to examine the case on appeal.

81. The Court considers that up to that point there had been no delays attributable to the authorities.

82. On the second occasion, the case was pending before the Regional Court for two years after its first judgment had been quashed by the Supreme Court on 7 December 2004 on the ground that some of the jurors had concealed their family members' criminal records at the time of their selection and that the presiding judge had failed to sum up the evidence properly.

83. During the first year it took the Supreme Court three months to quash on appeal the Regional Court's erroneous decision to remit the case to the investigating authority.

84. The hearing was adjourned for five months owing to the illness of one of the co-defendants and the impossibility of examining the charges against the applicants in separate proceedings. An additional delay was caused by the failure of the defendants and their lawyers to appear before the court. The State cannot be held responsible for that delay.

85. The trial finally started in December 2005, when the applicants were again detained on remand, and it ended a year later. During this time the hearing was adjourned for two months and twenty days for the jurors' summer holidays, after which the parties had to repeat their pleadings, which took an additional month. The Court notes that the reason for the jurors' summer holidays was given as the particularity of working in the conditions of the Extreme North of the country, a situation of which the applicants' lawyers should have been aware, and of which the jurors had warned the parties and the court at the time of their selection. The Court further notes that in the third set of proceedings the hearing was adjourned for a similar break for a shorter period of time – one month and a half – and thus finds no evidence in the case file that the first delay was entirely justified.

86. The appeal against the Regional Court's second judgment was examined in six months, and on 6 June 2007 the judgment was quashed, this time on the ground, in particular, that the defendants and their lawyers had abused their rights and violated the jury trial procedure in an attempt to influence the jurors' verdict. They thereby contributed to the resultant delay in the proceedings.

87. For a year and nine months, until the third judgment was delivered, and while the second applicant continued to be held on remand, the case lay dormant for three months before the Regional Court opened the proceedings in September 2007. Another five months passed before the jury was formed and the trial could begin, which then lasted for more than a year. The hearing was adjourned for about a month owing to a co-defendant's illness. The appeal against the third judgment was examined in four months; on 23 July 2009 the appeal was rejected and the judgment was upheld.

88. Even though there were some delays for which the applicants or their co-defendants were responsible, and which do not engage the State's responsibility, there were significant delays attributable to the State during the period when the case was pending before the trial court for the second and the third time which amounted to at least a year, and during that time the applicants were detained on remand, so that particular diligence was required on the part of the domestic courts to administer justice expeditiously (see *Kalashnikov*, cited above, § 132). While taking into account the complexity of the case and the difficulties which the Magadan

Regional Court faced, the Court reiterates that the State remains responsible for the efficiency of its system, and the manner in which it provides for mechanisms to comply with the "reasonable time" requirement – whether by automatic time-limits and directions or some other method – is for it to decide. If a State allows proceedings to continue beyond the "reasonable time" prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Blake v. the United Kingdom*, no. 68890/01, § 45, 26 September 2006).

89. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

90. There has accordingly been a breach of Article 6 § 1.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

91. As regards the applicants' remaining complaints concerning, in particular, the appeal court's quashing of their acquittal, the first applicant's detention on remand, and the second applicant's conviction and his claim that he was discriminated against compared to one of his co-defendants who remained at liberty while he was detained on remand, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

92. It follows that these parts of the applications are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. Mr Svinarenko claimed 78,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000, representing the alleged loss of an unemployment allowance during the criminal proceedings against him, in respect of pecuniary damage. Mr Slyadnev claimed EUR 15,000 in respect of non-pecuniary damage and 2,000,000 Russian roubles (RUB),

representing the alleged loss of income during his detention on remand, in respect of pecuniary damage.

95. The Government contested the claims.

96. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects these claims. On the other hand, it awards EUR 7,500 to each applicant in respect of non-pecuniary damage.

B. Costs and expenses

97. Mr Slyadnev also claimed RUB 317,476 which he had allegedly been ordered to pay by a domestic court for his legal representation in the domestic criminal proceedings against him.

98. The Government stated that the applicant had been ordered to pay RUB 175,000 to the federal budget in partial compensation for the legal costs borne by the State.

99. 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. In the present case, regard being had to the violations of the Convention found, the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

100. The Court considers it appropriate that the default interest rate 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. *Decides* to join the applications;

2. *Declares* the complaints concerning the applicants' placement in a "metal cage" and the length of the criminal proceedings against them admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicants' placement in a metal cage in the courtroom;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicants;

5. *Holds*
(a) that the respondent State is to pay each applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred 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;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 11 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President