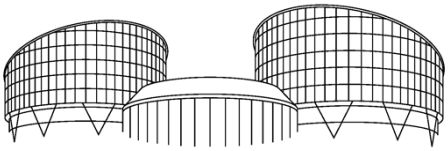

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF SVINARENKO AND SLYADNEV v. RUSSIA

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

JUDGMENT

STRASBOURG

17 July 2014

This judgment is final but may be subject to editorial revision.

In the case of Svinarenko and Slyadnev v. Russia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Josep Casadevall,
Guido Raimondi,
Ineta Ziemele,
Mark Villiger,
Peer Lorenzen,
Boštjan M. Zupančič,
Danutė Jočienė,
Ján Šikuta,
George Nicolaou,
Luis López Guerra,
Vincent A. de Gaetano,
Linos-Alexandre Sicilianos,
Helen Keller,
Helena Jäderblom,
Johannes Silvis,
Dmitry Dedov, *judges,*

and Michael O'Boyle, *Deputy Registrar,*

Having deliberated in private on 18 September 2013 and on 11 June 2014,

Delivers the following judgment, which was adopted on the last-mentioned 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 alleged, in particular, that keeping them in a "metal cage" in a courtroom had amounted to degrading treatment prohibited by Article 3 of the Convention and that the length of the criminal proceedings against them had been excessive, in breach of Article 6 § 1 of the Convention.

3. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 December 2012 a Chamber of that Section delivered its judgment. The Chamber decided to join the

applications (Rule 42 § 1), declared the complaints concerning the applicants' placement in a "metal cage" and the length of the proceedings against them admissible and the remainder of the applications inadmissible, and found unanimously that there had been violations of Articles 3 and 6 § 1 of the Convention. The Chamber was composed of the following judges: Isabelle Berro-Lefèvre, President, Elisabeth Steiner, Nina Vajić, Anatoly Kovler, Khanlar Hajiyev, Mirjana Lazarova Trajkovska and Julia Laffranque, and also of André Wampach, Deputy Section Registrar. On 7 March 2013 the Government of the Russian Federation ("the Government") requested that the case be referred to the Grand Chamber in accordance with Article 43 of the Convention, and the Panel of the Grand Chamber accepted that request on 29 April 2013.

4. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

5. The applicants and the Government each filed further written observations (Rule 59 § 1) on the merits.

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 18 September 2013 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr G. MATYUSHKIN, *Representative of the Russian Federation at the European Court of Human Rights*, *Agent*,
Mr N. MIKHAYLOV,
Mr P. SMIRNOV,
Ms O. OCHERETYANAYA, *Advisers*;

(b) *for the applicants*
Mr V. PALCHINSKII, *representative of Mr Svinarenko*, *Counsel*,
Mr E. PLOTNIKOV,
Ms V. TAYSAEVA, *representatives of Mr Slyadnev*. *Counsel.*

The Court heard addresses by Mr Palchinskii, Mr Plotnikov, Ms Taysaeva and Mr Matyushkin.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1968 and 1970 respectively. The first applicant, Mr Svinarenko, is currently serving a sentence of imprisonment in the Murmansk region. The second applicant, Mr Slyadnev, lives in the settlement of Sinegorye in the Yagodninskiy district of the Magadan region.

A. Preliminary investigation

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

9. 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.

10. 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 allegedly misappropriated from Mr V.B.) of substantial value by an organised group in October 2001 – under Article 191 § 2 of the CC;

(iv) extortion (against Mr V.B.) in October 2001 with the aim of obtaining a right to property under the threat of the use of violence, 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, 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 by an organised group in October 2001 – under Article 222 § 3 of the CC.

11. 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.

12. On 24 April 2003 the Magadan Town Court ordered the second applicant's remand in custody in the criminal proceedings at issue in the present case. 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 wilful infliction of grievous bodily harm and sentencing him conditionally to four years' imprisonment.

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

14. 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. Trial proceedings

1. First trial

15. On 19 September 2003 the case was sent for trial to the Magadan Regional Court, which 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.

16. 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.

17. On 13 February 2004 a jury was empanelled and sworn in.

18. 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.

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

20. 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.

21. The co-defendants and the prosecution appealed against the trial court's judgment. On 7 December 2004 the Supreme Court of the Russian Federation 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 to 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 failing to sum up the victims' and witnesses' statements. The Supreme Court remitted the case to the Magadan Regional Court for fresh examination.

2. Second trial

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 victims and 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 applicants' appeals against the detention order were dismissed by the Supreme Court of the Russian Federation in its decision of 22 February 2006. In upholding the Regional Court's detention order, the Supreme Court noted that one of the victims, Mr Ya.B., had asked for the case to be examined without his participation as he had been afraid to give evidence in open court. This fear constituted, according to the Supreme Court, a sufficient ground to consider that the defendants did not satisfy the condition of not obstructing the proceedings in order for them to remain free under the previously imposed undertaking not to leave their place of residence. The applicants' detention was subsequently extended for similar reasons.

28. On 9 December 2005 the jury was empanelled and sworn in 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 engage 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 requests seeking the replacement of the presiding judge and the prosecutor.

29. 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 under escort. The hearing was adjourned on 20 January until 27 January and on 26 February until 10 March 2006, pending the execution of that order.

30. 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' oral argument. It announced a break from 14 July until 3 October 2006 in view of the fact that several jurors were leaving for their summer holidays in central Russia.

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

32. 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 (against 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). He was acquitted on the remaining charges. His detention on remand was to continue until the judgment took effect.

33. On 6 June 2007 the Supreme Court examined the appeals against the judgment lodged by a co-defendant, one of the victims and the prosecution. It found that the defendants and their lawyers had breached the rules on criminal trials by committing an abuse of their rights, namely, by discussing in the jurors' presence, despite the presiding judge's warnings, issues which fell outside the scope of the jurors' competence. They had also 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 by the Supreme Court 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 to the questions put to them had been contradictory. The Supreme Court quashed the judgment and remitted the case to the Regional Court for a fresh examination. It also ordered that the second applicant remain in custody.

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

3. Third trial

35. 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.

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

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

38. A jury, composed of twelve jurors and two substitute jurors, was empanelled on 5 February 2008 from thirty-four candidate jurors who had appeared before the court, 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 the 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.

39. For about a month the trial was delayed because a co-defendant was ill. Some delay was caused by difficulties in ensuring the appearance of some of the victims and witnesses, who resided in remote settlements in Burkhala and Sinegorye, or who had moved to the central and other parts of the country.

40. On 13 February 2009 the Regional Court started hearing the parties' oral argument.

41. 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 on the remaining charges.

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

43. On 19 March 2009 it delivered its judgment, acquitting the first applicant and finding, in respect of the second applicant, that on 11 October 2001 he, Mr Grishin and Mr N.G. (against whom the criminal proceedings were terminated owing to his death) had requested Mr Ya.B. to repay a debt in the amount of 100,000 Russian roubles (RUB); following Mr Ya.B.'s refusal Mr Grishin and Mr N.G. had beaten him up; the second applicant had beaten up Mr S.K., who had witnessed Mr Ya.B.'s beating; they had then taken Mr Ya.B. to his home and Mr Grishin had taken money from him in the amount of RUB 247,000.

44. The Regional Court noted that there had been mixed references in the materials of the case about the second applicant, who had been characterised negatively by the local authority and by a district police officer at the place of his residence, and positively by the administration of a detention facility, in which he had been detained on remand, and by the administration of a prison in which he had served his sentence after a previous conviction.

45. The Regional Court convicted the second applicant, under Article 330 § 2 of the CC, of "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; it discharged him from serving the sentence in the part relating to the conviction under Article 330 § 2 as liability for the relevant offence 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 on the remaining charges.

46. As of 19 March 2009 the first applicant was still detained in connection with unrelated criminal proceedings against him (see paragraph 34 above).

47. On 23 July 2009 the Supreme Court dismissed an appeal by a co-defendant and the prosecution and upheld the judgment.

C. Conditions in the courtroom

48. 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 metal rods 10 millimetres in diameter. The enclosure was 255 centimetres long, 150 centimetres wide and 225 centimetres high, with a steel mesh ceiling and a door, also made of metal rods. The distance between the metal rods was 19 centimetres.

49. Armed police guards remained beside the caged dock. There were always two police guards per detainee – eight police guards in total during the first and second trials and six police guards for the applicants and one of their co-defendants during the third trial.

D. Compensation proceedings

50. After the first applicant's acquittal had become final he brought proceedings against the State for damage suffered as a result of the criminal proceedings against him.

51. On 23 October 2009 the Magadan Regional Court awarded him RUB 18,569 in respect of pecuniary damage, representing an unemployment allowance that had not been paid as a result of his detention on remand. On 17 December 2009 the Supreme Court of the Russian Federation upheld the Regional Court's judgment.

52. On 1 March 2010 the Magadan Town Court awarded the first applicant RUB 50,000 in respect of non-pecuniary damage incurred by him as a result of his criminal prosecution, the imposition on him of an undertaking not to leave his place of residence and his detention on remand from 9 October 2002 to the moment of his release, following the first "not guilty" jury verdict of 22 June 2004 and from 6 December 2005 until 17 November 2006. The applicant appealed against the judgment arguing, *inter alia*, that the amount awarded to him was not just or reasonable. On 30 March 2010 the Magadan Regional Court dismissed the applicant's appeal and upheld the Town Court's judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Prohibition of degrading treatment

53. Article 21 of the Constitution of the Russian Federation reads, in the relevant part, as follows:

> "1. Human dignity shall be protected by the State. Nothing may serve as a basis for derogation therefrom.
>
> 2. No one shall be subjected to torture, violence or other severe or degrading treatment or punishment ..."

54. Article 9 of the Code of Criminal Procedure of the Russian Federation prohibits, *inter alia*, the degrading treatment of participants in criminal proceedings.

B. Metal cages in courtrooms

1. Circular of the Ministry of Justice, the Supreme Court and the Ministry of the Interior

55. An unpublished circular of 3 February 1993 issued jointly by the Ministry of Justice of the Russian Federation (no. 5-63-96), the Supreme Court of the Russian Federation (no. 11-nk/7) and the Ministry of the

Interior of the Russian Federation (no. 1/483) contained "proposals on creating the proper conditions for courts' examination of criminal cases and the safety of trial participants and the guards of the internal troops and police escorts in the performance of their duties". It directed the presidents of courts of general jurisdiction "to ensure, before 1 January 1994, the fitting of all the courtrooms with special fixed metal barriers separating defendants in criminal cases from the court bench and the visitors attending the hearing". It also instructed prisoner escort officers to place behind those "barriers" any defendants who were in custody.

2. Orders of the Ministry of the Interior

(a) Order of 1996

56. The Directions on Guarding and Transferring Suspects and Accused, pre-approved by the Supreme Court of the Russian Federation, the Ministry of Justice and the Prosecutor General's Office, and approved by the Ministry of the Interior of the Russian Federation on 26 January 1996 by Order no. 41 (dsp) "for internal use only", provided for the placement of defendants behind the metal "barrier" in a courtroom.

(b) Order of 2006

57. A similar provision was included in the Directions on the Functioning of Temporary Detention Centres and Units for Guarding and Transferring Suspects and Accused, pre-approved by the Courts Administration Office at the Supreme Court of the Russian Federation on 8 February 2006 (no. CD-AG/269) and the Prosecutor General's Office of the Russian Federation on 16 February 2006 (no. 16-13-06), and approved on 7 March 2006 by order no. 140 (dsp) "for internal use only" of the Ministry of the Interior of the Russian Federation. Under the latter Directions, the transfer of suspects and accused to courtrooms which are not equipped with the "safety barrier" (*защитное ограждение*, *барьер*) is prohibited.

(c) The Supreme Court's review of the orders

58. Order no. 41 was challenged before the Supreme Court of the Russian Federation by a Mr Sh. on the ground that its provision on keeping defendants behind the metal "barrier" during their trials violated domestic law and the Convention in so far as both prohibited degrading treatment and guaranteed the right to a fair trial. He complained that he had actually been kept in a metal cage in a courtroom during his trial, and that it had made it impossible for him to communicate with his lawyer.

59. In its decision of 19 October 2004 the Supreme Court, in a single judge formation, 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; and that it was the responsibility of the police to guard and transfer them to a courthouse from their detention facilities (Article 10 § 16 of the Police Act). The court reiterated that detention on remand was to be carried out in accordance with the principles of legality, fairness, 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; furthermore such detention could 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). In view of the above, the Supreme Court was satisfied that the provision of the order for keeping defendants behind a metal "barrier" could not be regarded as impugning human honour and dignity or as violating the right to a fair trial.

60. Mr Sh. appealed against the Supreme Court's decision arguing, *inter alia*, that the decision had not been accompanied by reasons. On 23 December 2004 the appeals division of the Supreme Court in a three-judge formation dismissed his appeal and fully endorsed the findings at first instance. It noted that the disputed order had not set out the characteristics of the metal "barrier".

61. Applications challenging the legality of both orders (that of 1996 and that of 2006, see paragraphs 56 and 57 above) on the basis of their lack of official publication were dismissed by the Supreme Court of the Russian Federation, which stated that the orders should not be published as they contained confidential information and had been registered with the Ministry of Justice (decision of 2 December 2002, as upheld by the appeals division 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).

3. Construction rules

(a) The Rules at the time of the applicants' trial

62. On 2 December 1999 the Courts Administration Office at the Supreme Court of the Russian Federation approved, by order no. 154, the Rules on the Design and Construction of Courthouses for Courts of General Jurisdiction (SP 31-104-2000). The Rules were further approved by the Federal State Committee for Construction, Housing and Communal Services, and came into force on 1 August 2000. They were prepared by a group of experts including the President of the Supreme Court of the Russian Federation, the General Director of the Courts Administration Office at the Supreme Court of the Russian Federation and members of the Council of Judges of the Russian Federation. The Rules took account of the proposals set out in the joint circular of the Ministry of Justice, the Supreme

Court and the Ministry of the Interior of 3 February 1993 (see paragraph 55 above).

63. The Rules provided for a sub-zone for defendants in courtrooms for hearing criminal cases, enclosed on four sides with metal bars (*металлическая заградительная решетка*), consisting of metal rods of not less than 14 millimetres in diameter, 220 centimetres high with a steel-wire ceiling or extending up to the ceiling of the courtroom, and containing a door (paragraphs 5.4, 5.9 and 8.3 of the Rules).

64. Among other security arrangements the Rules provided for access from the defendants' cells in the courthouse to the courtroom through separate corridors and stairs and a separate entry to the courtroom. The public entrance to the courthouse and to the courtroom for hearing criminal cases had to provide for the installation of metal detectors. Metal bars had to be installed on the windows in the courtroom (paragraphs 5.11, 5.35, 8.1 and 8.2 of the Rules).

(b) The new Rules

65. Since 1 July 2013 the design and layout of courthouses for courts of general jurisdiction has been regulated by Rules prepared by a group of experts from the Courts Administration Office at the Supreme Court of the Russian Federation, architectural and construction organisations, and approved by the Federal Agency for Construction, Housing and Communal Services on 25 December 2012.

66. The new Rules provide for two types of "safety cabins" (*защитные кабины*) in courtrooms for persons in custody, notably a "safety cabin" made of metal bars with characteristics identical to those in the old Rules (see paragraph 63 above) and an "isolating transparent safety cabin" made of a steel carcass and bulletproof glass walls. Both cabins should be equipped with doors lockable from outside.

C. Detention on remand

67. Under the general provision in Article 108 of the Code of Criminal Procedure of the Russian Federation, detention on remand could be ordered by a court in respect of persons suspected or accused of having committed a criminal offence punishable by more than two years' imprisonment (three years' imprisonment since December 2012), provided that a less restrictive preventive measure, such as, for example, an undertaking not to leave one's place of residence, personal surety or bail, could not be applied. Persons suspected or accused of having committed a criminal offence punishable by lesser terms of imprisonment could still be remanded in custody in exceptional circumstances, notably if they had no permanent place of residence, their identity had not been established, or they had breached a previously imposed preventive measure or absconded.

68. A court was required to consider whether there were sufficient grounds to believe that the accused might abscond, reoffend or obstruct the proceedings (ibid., Article 97). Other circumstances, such as the seriousness of the charge, the accused's personality, his age, state of health, family status and occupation, also had to be taken into account (ibid., Article 99).

69. As a result of amendments to the Code of Criminal Procedure between December 2009 and November 2012, persons suspected or accused of some non-violent crimes against property and in the sphere of economic activity can no longer be detained on remand.

III. RELEVANT INTERNATIONAL MATERIALS AND PRACTICE

A. The United Nations Human Rights Committee

70. At its meeting on 20 March 2014, after consideration of communication No. 1405/2005, submitted by Mikhail Pustovoit against Ukraine, the UN Human Rights Committee adopted the Views that Mr Pustovoit's placement in a metal cage during his public trial, with his hands handcuffed behind his back, had violated Article 7 of the International Covenant on Civil and Political Rights taken separately, on account of the degrading treatment thereby inflicted on him, and in conjunction with Article 14 (1) of the Covenant, on account of the degrading treatment which had affected the fairness of his trial (paragraphs 9.3 and 10 of the Views).

B. The United Nations Standard Minimum Rules for the Treatment of Prisoners

71. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, include the following guiding principle concerning instruments of restraint:

> "33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:
>
> (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
>
> ..."

C. International criminal tribunals

72. The Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (Rule 83) and of the International Criminal Tribunal for Rwanda (Rule 83) provide that instruments of restraint, such as handcuffs, may be used only as a precaution against escape during transfer or for security reasons; however, once the accused appears before the court, instruments of restraint shall be removed.

73. Article 63 of the Rome Statute of the International Criminal Court provides as follows:

> "1. The accused shall be present during the trial.
>
> 2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required."

D. Amnesty International

74. The Amnesty International Fair Trials Manual states as follows:

> "15.3 Procedures impinging on the presumption of innocence
>
> ...
>
> Particular attention should be paid that no attributes of guilt are borne by the accused during the trial which might impact on the presumption of their innocence. Such attributes could include holding the accused in a cell within the courtroom ..."

E. Use of a "metal cage" in courtrooms in the member States of the Council of Europe

75. A "metal cage" has been used as a standard security measure in respect of suspects and accused appearing before a court while in custody in some member States of the Council of Europe, such as Armenia, Azerbaijan, Georgia, Moldova and Ukraine. Armenia and Georgia have abandoned its use (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 118, 15 June 2010, and the Council of Europe Committee of Ministers' Resolution CM/ResDH(2011)105). Moldova and Ukraine are in the process of doing so (see, in respect of Ukraine, the Transitional Provisions of the 2012 Code of Criminal Procedure of Ukraine, notably paragraph 21 of Section XI, which directed the Cabinet of Ministers to submit proposals to parliament to secure funding for replacement of the "metal screen cages" in courtrooms with "glass or organic glass screens"). In Azerbaijan, while in some courts "metal cages" have been replaced by "glass barriers" (see, for example, Section 3 "Developments in the Justice Sector" of the

Organization for Security and Co-operation in Europe 2011 Trial Monitoring Report on Azerbaijan), their continued use is provided for by the Instruction of the Ministry of Justice of Azerbaijan of 29 December 2012 on the Procedures for Escorting Arrested and Convicted Persons and the Instruction of the Ministry of Internal Affairs of Azerbaijan of 14 January 2013 on the Procedures for the Guarding and Escorting by the Police of Persons Kept in Temporary Detention Facilities.

76. Some other member States use "cages" for security reasons in certain circumstances or in certain courts. For example, in the Serious Crimes Court in Albania the accused may be placed in a dock enclosed by metal bars. There is one courtroom in Serbia – in the District (Central) Prison in Belgrade – as an auxiliary courtroom of the High Court in Belgrade, in which the dock is enclosed by metal bars and bulletproof glass. In France, some courts use glass docks, which in rare cases are reinforced with steel cables and used pursuant to a decision by the presiding judge of the court. In Latvia, although a minority of tribunals still have metal cages, that practice is falling into disuse. In Italy, metal cages installed in the 1980s for trials of alleged mafia or terrorist group members are no longer used.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

77. In their submissions before the Grand Chamber the Government argued that the first applicant could not claim to be a victim of the alleged violations of Article 3 (on account of his placement in a metal cage in the courtroom) and of Article 6 (on account of the length of the criminal proceedings against him) since he had been fully acquitted and awarded compensation in subsequent rehabilitation proceedings (see paragraphs 50-52 above).

78. The applicant disagreed, noting, in particular, the small amount of compensation and the lack of its connection with the length of the proceedings. He emphasised that a federal law of 30 April 2010, which introduced the possibility of obtaining compensation for a violation of the right to a hearing within a reasonable time, had come into force after the rehabilitation proceedings.

79. The Grand Chamber is not precluded from examining, where appropriate, questions concerning the admissibility of an application under Article 35 § 4 of the Convention, as that provision enables the Court to dismiss applications it considers inadmissible "at any stage of the proceedings" (see *Odièvre v. France* [GC], no. 42326/98, § 22, ECHR 2003-III). However, pursuant to Rule 55 of the Rules of Court, any plea of

inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rule 51 or 54, as the case may be. Where, in the course of the proceedings before the Court, a new legally relevant procedural event occurs which may influence the admissibility of the application, it is in the interests of the proper administration of justice that the Contracting Party should make any formal objection without delay (see, *mutatis mutandis*, *N.C. v. Italy* [GC], no. 24952/94, § 45, ECHR 2002-X, and *Lebedev v. Russia*, no. 4493/04, §§ 39-40, 25 October 2007).

80. In the present case, no such plea of inadmissibility had been made by the Government in their observations before the Chamber took its decision as to the admissibility of the application. The Government submitted their observations on the admissibility of the application on 18 February 2009. The rehabilitation proceedings came to an end on 30 March 2010 (see paragraph 52 above). There was nothing to prevent the Government from raising their plea of inadmissibility, prompted by the outcome of the rehabilitation proceedings, before the Chamber, which ruled on the admissibility and merits of the application more than two years and eight months later on 11 December 2012.

81. Furthermore, in his letter of 10 February 2011, received by the Court on 2 March 2011, the first applicant informed the Court of the outcome of the rehabilitation proceedings and enclosed a copy of the relevant court judgments. The President of the Section decided, pursuant to Rule 38 § 1 of the Rules of Court, that the applicant's submissions should be included in the case file for the consideration of the Court, and transmitted them to the Government for information on 10 March 2011, well before the Chamber's examination of the admissibility of the application.

82. In the absence of any exceptional circumstances that could have dispensed the Government from raising this objection in a timely manner, the Court holds that the Government are estopped from raising their preliminary objection concerning the first applicant's victim status (see *Sejdovic v. Italy* [GC], no. 56581/00, § 41, ECHR 2006-II; *Prokopovich v. Russia*, no. 58255/00, § 29, ECHR 2004-XI (extracts); and *Andrejeva v. Latvia* [GC], no. 55707/00, § 49, ECHR 2009).

83. The Government's preliminary objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

84. The applicants complained about their confinement in a metal cage in the courtroom before their trial court. They alleged that such confinement amounted to degrading treatment prohibited by Article 3 of the Convention, which provides as follows:

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

A. The six-month rule and the scope of the Court's examination

85. The Court observes that the Government did not raise the issue of the applicants' compliance with the six-month rule either before the Chamber or before the Grand Chamber. The Chamber did not examine that issue in its judgment either but declared the applicants' complaint about their confinement in a cage admissible and found – in the light of the circumstances pertaining to the third trial – a violation of Article 3. Having jurisdiction to apply the six-month rule of its own motion (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012), the Court considers it appropriate to address this issue in the present case.

86. The Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009). Where the alleged violation constitutes a continuing situation against which no domestic remedy is available, the six-month period starts to run from the end of the continuing situation (see *Ülke v. Turkey* (dec.), no. 39437/98, 1 June 2004). As long as the situation continues, the six-month rule is not applicable (see *Iordache v. Romania*, no. 6817/02, § 50, 14 October 2008). The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicant a victim (see *Petkov and Others v. Bulgaria* (dec.), nos. 77568/01, 178/02 and 505/02, 4 December 2007). The Court found previously that in the situation of a repetition of the same events, such as, for example, an applicant's transport between the remand prison and the courthouse, even though the applicant was transported on specific days rather than continuously, the absence of any marked variation in the conditions of transport to which he had been routinely subjected created, in the Court's view, a "continuing situation" which brought the entire period complained of within the Court's competence (see *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 75, 17 January 2012). The same is true where applicants in custody, as in the present case, are routinely confined in a metal cage in the courtroom each time they are brought from their detention facility to the courthouse for examination of their case.

87. The Court notes that the applicants did not raise their complaint before any domestic authority, alleging that confinement in a metal cage in the courtroom was a standard practice applicable to each and every suspect or accused detained on remand, an allegation that has not been disputed by the Government. The applicants, who have implied that as a consequence of that situation there were no domestic remedies to be exhausted, ought therefore to have lodged their applications with the Court no later than six months from the cessation of the situation complained of, in order to comply with the six-month rule. By lodging their applications on 5 May 2008 and 2 July 2008, respectively, at the time when the third trial was pending, the applicants complied with that rule in relation to their confinement in a cage during the third trial only. The Court will therefore disregard their confinement in a cage during the first and second trials which ended in 2004 and 2006 – more than six months before the dates on which the applications were introduced – as falling outside the scope of its examination (see*, mutatis mutandis, Cyprus v. Turkey* [GC], no. 25781/94, § 104, ECHR 2001-IV).

B. The parties' submissions to the Grand Chamber

1. The Government

88. The Government submitted that in the Soviet Union a dock for a criminal defendant in a courtroom resembled a rostrum. A metal "grid" was first used during the trial of notorious serial killer A. Chikatilo in 1992 in order to protect the defendant from the relatives of his many victims.

89. The "metal barriers" in courtrooms had been introduced in Russia in 1994, in accordance with a joint circular of 3 February 1993 issued by the Ministry of Justice of the Russian Federation, the Supreme Court of the Russian Federation and the Ministry of the Interior of the Russian Federation (see paragraph 55 above), as a response to a crime wave in the aftermath of the break-up of the Soviet Union and at the time of the reorganisation of the State system. The measure had pursued the purpose of preventing defendants in criminal proceedings from absconding or attacking escort officers, judges, witnesses and victims, since the number of such incidents had risen, as well as ensuring the safety of visitors in courtrooms.

90. According to the official statistics of the Ministry of the Interior of the Russian Federation, the Ministry of Justice of the Russian Federation and the CIS (Community of Independent States) Statistical Committee, the crime rate in Russia and the CIS in 1992, compared to the previous year, was up 27% and 24%, respectively. In the same period in Russia the number of grave crimes increased by more than 30%, crimes committed by a group by 30% and robberies by 66%. In 1994 the total number of persons

convicted by final judgments was up 16.7% on the previous year and totalled 924,574.

91. The Government argued that, although the situation had since improved, the use of "security barriers" remained justified as a means to prevent escapes, to allow judges and prosecutors not to be distracted from their primary duties, to allow victims, witnesses and other participants in proceedings to feel more secure, and to ensure that defendants were protected from the rage of their victims. In addition, defendants were not restricted in their movements by wrist or ankle shackles and were free to take more comfortable postures. The Government stated that preventing any escape attempt on the part of a defendant in custody was safer than arresting him after escape. They submitted that there were no international instruments which prohibited the placement of detained defendants behind "security barriers" in courtrooms or which set requirements for the use of such "barriers".

92. According to statistical material of the Ministry of the Interior of the Russian Federation, during the period from 2009 to 2013 the total number of escapes from courtrooms in Russia was 0, 4, 5, 2 and 3 per year, respectively; the total number of attacks by suspects and accused in custody on State agents in courtrooms was 1, 1, 7, 0 and 7 per year, respectively; and the total number of incidents of self-mutilation by persons in custody in courtrooms was 4, 14, 20, 16 and 18 per year, respectively. The Government submitted that those numbers would have been higher had suspects and defendants in custody not been held behind the "security barriers".

93. The Government submitted that placement behind the "security barrier" was used in respect of all suspects and accused detained on remand. However, the procedure for the imposition and extension of detention on remand served as a guarantee against arbitrariness and indiscriminate use of the security measure in question. They referred to the domestic legal framework for detention on remand, which was meant to be an extraordinary preventive measure to be ordered as a result of the assessment by a judicial authority of individual circumstances showing the existence of a danger of absconding, reoffending or obstructing the administration of justice, and only in respect of persons suspected or accused of having committed the most serious crimes and posing significant danger to society (see paragraphs 67-69 above).

94. According to the annual statistical reports of the Courts Administration Office at the Supreme Court of the Russian Federation, the percentage of defendants detained on remand out of the total number of defendants on trial before first-instance courts fell from 17.7% or 241,111 persons in 2007 (excluding military courts) to 12.8% or 134,937 persons in 2012.

95. The Government argued that the applicants in the present case had been kept in a cage in the courtroom in the interests of public safety and in strict accordance with the domestic legislation. There had been no evidence that their state of health had been poor or required constant medical assistance during the hearings. The applicants had not been well-known public figures whose appearance in the courtroom behind a "security barrier" could have seriously affected their reputation. Their trial had not been of a high-profile nature and there was no evidence that, apart from certain local media coverage, it had been widely reported by the media or had been attended by the general public. Moreover, the witnesses and the victims had refused to take part in the hearings out of fear of the applicants' revenge. The Government expressed doubts that the applicants' relatives or acquaintances had been present at any of the hearings, especially since the trial had taken place in Magadan while the applicants came from Sinegorye, 500 km away, from where there had been no regular public transport.

96. The Government argued that the Chamber had clearly underestimated the applicants' previous convictions (see paragraphs 9, 10 and 12 above). They had a history of violent crimes committed in organised groups, a fact which, in the Government's view, even taken alone, was sufficient to confirm the applicants' predisposition to violence and the existence of real security risks. In addition to the first applicant's conviction for theft, the Government referred to his conviction for attempted rape of a minor in 1990, robbery in 2001, and his conviction by the Magadan Regional Court in 2011 for being a member of a long-standing large-scale organised criminal group operating since 1990. Both applicants had also had negative references from the head of the local authority and a district police officer at their places of residence describing them as individuals who led an antisocial way of life which manifested itself in abuse of alcohol, lack of employment, links to persons with criminal records and behaviour disrespectful of others. Furthermore, the applicants were charged with violent crimes.

97. The Government further contended that the references in the detention orders to witnesses' fears had been supported by ample evidence, notably witness statements from the preliminary investigation in 2002-2003 and from the second trial in 2005-2006. In the Government's view, the fears of witnesses and victims had related to all four defendants on trial since they had been acting in an organised group.

98. The Government noted that the applicants had freely and actively participated in the proceedings without any signs of fear or embarrassment.

99. On the basis of the above elements, the Government distinguished the present case from those concerning the use of a metal cage in a courtroom in which a violation of Article 3 had been found by the Court (they referred to *Sarban v. Moldova*, no. 3456/05, 4 October 2005; *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, 27 January 2009;

Ashot Harutyunyan, cited above; *Khodorkovskiy v. Russia*, no. 5829/04, 31 May 2011; and *Piruzyan v. Armenia*, no. 33376/07, 26 June 2012), and drew similarities with a case in which no violation on account of the use of a cage had been found, namely, *Titarenko v. Ukraine*, no. 31720/02, §§ 58-64, 20 September 2012.

100. The Government concluded that the applicants' placement behind a "security barrier" had been justified by security considerations. Such treatment had clearly not reached the minimum level of severity necessary for this treatment to be in breach of Article 3 and its effect on the applicants had not gone beyond the inevitable element of suffering or humiliation connected with the justified use of a legitimate security measure.

101. The Government noted that the new Rules on the design of courthouses, in force since 1 July 2013, provided, in addition to the already existing "metal grid barriers", for a bulletproof "glass cabin" (see paragraph 66 above). The replacement of "metal grid barriers" with "glass cabins" was not obligatory and no deadlines for that process had been set. At the same time, some courts had already replaced, on their own initiative, "metal grid barriers" with "glass cabins" and that process had started in 2004. The Government submitted that courts were not prevented from defining more specific requirements for the design of the "safety cabins".

102. The Government submitted that being an ordinary measure introduced about twenty years ago and applied to all defendants in custody, the "security barrier" used in the applicants' case could not have influenced the jury at their trial or undermined the presumption of innocence. Besides, the presiding judge had drawn the jurors' attention to the fact that the applicants' remand in custody did not constitute evidence of their guilt. Furthermore, the first applicant had been acquitted on all the charges and the second applicant on most of the charges brought against him.

2. The applicants

103. The applicants submitted that the keeping of suspects and accused detained on remand in a metal cage in a courtroom had been a blanket practice applied irrespective of individual circumstances or the nature of the offences involved, be it economic crime, murder, theft or a petty offence, in proceedings before courts of general jurisdiction or Justices of the Peace, and irrespective of whether or not a person had a criminal record.

104. According to the applicants, that practice was illegal. They explained that the orders of the Ministry of the Interior, which provided for the use of a cage in a courtroom (see paragraphs 56-57 above), had never been published. By virtue of Article 15 of the Constitution of the Russian Federation, which prohibited the application of any normative instruments touching upon human rights and freedoms unless they were published, those orders should not have been applicable or relied upon by the Government before the Court. The construction rules of 2000 and 2013 (see

paragraphs 62-66 above) were not laws adopted by the legislative authority and could not, therefore, impose limitations on the exercise of human rights. The relevant domestic law for the assessment of the legality of the use of a cage during court proceedings was the Constitution and the Code of Criminal Procedure. Neither provided for the possibility of keeping persons in a cage in the courtroom.

105. The applicants emphasised that human dignity was an absolute value which could not be undermined for any reason and should be protected by the State irrespective of a person's background, criminal record or any other characteristics. Therefore, in their opinion, the Government had erred in asserting that the applicants' placement in a cage had not amounted to degrading treatment because they were not public figures or well-known persons, and because their trial had not attracted significant public attention or extensive media coverage.

106. The applicants further submitted that the Government had also erred in stating that there were no international instruments prohibiting the placement of defendants in cages. Such a prohibition had been provided for in the UN Human Rights Committee's General Comment no. 32 on Article 14 of the International Covenant on Civil and Political Rights, published on 23 August 2007.

107. The applicants' confinement in a cage, as if they were dangerous criminals who had already been found guilty, had served as an instrument of unlawful influence upon the jury, in breach of the rules governing jury trials, which prohibited any actions capable of undermining the presumption of innocence and, in particular, any submissions which might cause jurors to be prejudiced against defendants, by referring for example to defendants' previous convictions or to the fact that they were chronic alcoholics or drug addicts, unless that information was necessary for establishing the elements of the offences of which they were accused. In view of the foregoing, the applicants could not have a fair trial respecting the principle of the presumption of innocence. They had never pleaded guilty and it had been necessary to overcome the jury's prejudice in order to prove their innocence. Being held in a cage before their judges who were to decide their fate, the applicants had felt helplessness, inferiority and anxiety during the entire trial. Such harsh treatment had had an impact on their power of concentration and mental alertness during the proceedings concerning as they did such an important issue as their liberty.

108. The applicants, like "monkeys in a zoo", had been exposed in a cage to the general public, including the large number of candidate jurors and witnesses from the same settlement, and the applicants' family members and acquaintances who had attended the hearings. Contrary to the Government's submissions, there had been a regular bus service between the applicants' settlement and Magadan where the trial took place. The applicants' trial had been reported by the local television in 2002-2004.

109. As regards the Government's argument that the accusation of violent crimes had justified the applicants' placement in a cage, the first applicant's three acquittals confirmed that the charges against him had been unfounded. The second applicant had been acquitted on most of the charges including banditry and robbery. In any event, this could not be a relevant argument in view of the principle of the presumption of innocence.

110. As to the applicants' criminal records, in imposing on the first applicant a conditional sentence in the judgment of 15 June 2001 and thereby not depriving him of liberty, the court had acknowledged that he had not represented a danger to society. As to the first applicant's conviction in 2011, it was unclear how it could have justified his placement in a cage several years earlier.

111. As regards the witnesses' fears referred to by the Government, the grounds for those alleged fears and the circumstances in which the statements submitted by the Government had been taken had never been the subject of any examination. Furthermore, before being rearrested on 6 December 2005 Mr Slyadnev had been free for one year and five months following his acquittal on 22 June 2004. During that period there had been nothing to justify those fears, that is, nothing to suggest that he had threatened the victims and witnesses or committed any other unlawful acts against them. In the decision of 8 February 2005 the Magadan Regional Court had imposed on the applicants an undertaking not to leave their place of residence as a preventive measure, which restriction had lasted ten months. The court and the prosecution, which had not appealed against that decision, had not considered that the applicants posed a danger to society. There had been no grounds on which to change that preventive measure to detention on remand on 6 December 2005. Mr Slyadnev had been detained on the same grounds as his co-defendant Mr Grishin. The Court's finding of a violation of Article 5 § 3 of the Convention in the case brought by Mr Grishin and, in particular, the finding of the lack of grounds for the witnesses' fears, were applicable to the present case (see *Mikhail Grishin v. Russia*, no. 14807/08, §§ 147-156, 24 July 2012). If the detention on remand lacked "relevant and sufficient" reasons and, therefore, could not be considered lawful, the placement in the cage could not be considered lawful either, following the Government's logic. Nothing pointed to improper behaviour on the part of the applicants during the trial in question.

112. The applicants concluded that the Government had failed to submit evidence that the security risks invoked by them had actually existed and that the applicants might have absconded or resorted to violence. There had been no serious grounds to fear unlawful behaviour on their part in the courtroom. Their placement in a metal cage during the hearing of their case by the Magadan Regional Court had therefore not been justified by security considerations and had amounted to degrading treatment in breach of Article 3. Such treatment, comparable to the treatment of wild animals kept

in metal cages in a circus or zoo, had intimidated the applicants and humiliated them in their own eyes and in those of the public and aroused in them a sense of fear, anguish and inferiority; it had also undermined the principle of the presumption of innocence. The recently initiated process of replacing metal cages in courtrooms with glass cabins showed in itself Russia's acknowledgment that the use of metal cages had constituted a breach of human rights.

C. The Court's assessment

1. Relevant principles

113. As the Court has repeatedly stated, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

114. 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 relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

115. Treatment is considered to be "degrading" within the meaning of Article 3 when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 220, ECHR 2011, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 202, ECHR 2012). The public nature of the treatment may be a relevant or aggravating factor in assessing whether it is "degrading" within the meaning of Article 3 (see, *inter alia*, *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26; *Erdoğan Yağız v. Turkey*, no. 27473/02, § 37, 6 March 2007; and *Kummer v. the Czech Republic*, no. 32133/11, § 64, 25 July 2013).

116. In order for treatment to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment (see *V. v. the United Kingdom*, cited above, § 71). Measures depriving a

person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

117. As regards measures of restraint such as handcuffing, these do not normally give rise to an issue under Article 3 of the Convention where they have been imposed in connection with lawful arrest or detention and do not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII; *Öcalan v. Turkey* [GC], no. 46221/99, § 182, ECHR 2005-IV; and *Gorodnitchev v. Russia*, no. 52058/99, §§ 101, 102, 105 and 108, 24 May 2007; see also *Mirosław Garlicki v. Poland*, no. 36921/07, §§ 73-75, 14 June 2011).

118. Respect for human dignity forms part of the very essence of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III). The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. Any interpretation of the rights and freedoms guaranteed has to be consistent with the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society (see *Soering v. the United Kingdom*, 7 July 1989, § 87, Series A no. 161).

2. Approach in previous similar cases

119. The Court has examined in recent years several cases concerning the use of metal cages in the courtroom from the standpoint of Article 3. The Court viewed the treatment in question as "stringent" and "humiliating" (see *Ramishvili and Kokhreidze*, cited above, § 102; *Ashot Harutyunyan*, cited above, §§ 128-129; and *Piruzyan*, cited above, §§ 73-74). It assessed whether such treatment could be justified by security considerations in the circumstances of a particular case, such as the applicant's personality (see *Ramishvili and Kokhreidze*, cited above, § 101), the nature of the offences with which he was charged, though this factor alone was not considered sufficient justification (see *Piruzyan*, cited above, § 71), his criminal record (see *Khodorkovskiy*, cited above, § 125, and *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 485-486, 25 July 2013), his behaviour (see *Ashot Harutyunyan*, cited above, § 127) or other evidence of

the risk to safety in the courtroom or the risk of the applicant's absconding (ibid.). It also took into account such additional factors as the presence of the public and media coverage of the proceedings (see *Sarban*, cited above, § 89, and *Khodorkovskiy*, cited above, § 125).

120. It was the unjustified or "excessive" use of such a measure of restraint in particular circumstances which led the Court to conclude, in the above cases, that the placement in a metal cage in the courtroom amounted to degrading treatment. However, in one case the Court found by a majority that there had been no violation of Article 3 (see *Titarenko,* cited above, §§ 58-64).

3. The Chamber judgment

121. The Chamber followed the approach that had been adopted in the above-cited cases (see paragraph 119 above). Having found no evidence capable of giving serious grounds for the fear that the applicants would pose a danger to order and security in the courtroom, or a danger that they would resort to violence or abscond, or that there was a risk for their own safety, it held that their placement in a metal cage in the courtroom had not been justified and, therefore, amounted to degrading treatment (see paragraph 70 of the Chamber judgment).

4. The Grand Chamber's assessment

122. The Court is confronted in the present case with a practice of placing defendants in metal cages when they appear before a court in criminal proceedings while remanded in custody. This practice was once standard after the break-up of the Soviet Union in some of the Contracting States which had previously been Republics of the latter, but it has since largely been abandoned. Even those few Contracting States which retain that practice, including the respondent State, have started the process of removing metal cages from courtrooms (see paragraphs 75 and 101 above).

123. Recourse to metal cages in courtrooms applied to each and every suspect and accused detained on remand in Russia (see paragraphs 57 and 93 above). It remains an approved practice in today's Russia without any commitment on the part of the State to abandon the use of metal cages (see paragraphs 65-66 and 101 above). The conditions for remanding persons in custody (see paragraphs 67-69 above) and the Government's statistics – 17.7% or 241,111 defendants in custody in 2007 and 12.8% or 134,937 defendants in custody in 2012 (see paragraph 94 above) – illustrate the scale of that practice.

124. The Court notes, in particular, that such practice was regulated by an unpublished ministerial order (see paragraphs 57 and 61 above). Such fact is highly problematic in itself, given the fundamental importance of the rule of law in a democratic society which presupposes the accessibility of

legal rules (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, §§ 86-87, Series A no. 61).

125. The Court observes, on the basis of photographs of a courtroom at the Magadan Regional Court, that the applicants were confined in an enclosure formed by metal rods on four sides and a wire ceiling (see paragraph 48 above), which can be described as a cage. The applicants were guarded by armed police guards who remained beside the cage (see paragraph 49 above).

126. The applicants were kept in a cage in the context of their jury trial held by the Magadan Regional Court in 2008-2009 on indictment for robberies with violence as members of a gang and other offences allegedly committed in 2001-2002 (see paragraphs 9, 10 and 19 above). The Government argued that the violent nature of the crimes with which the applicants had been charged, together with their criminal records, negative references from the places of their residence and the witnesses' fears of the applicants' unlawful behaviour, were sufficient to confirm their predisposition to violence and the existence of real security risks in the courtroom such as to justify recourse to a cage for ensuring the proper conditions for holding the trial. The applicants disagreed, arguing, in particular, that the first applicant's full acquittal and the second applicant's acquittal on most of the charges, including banditry and robbery, had confirmed that the charges against them had been unfounded, and that this in any event could not be a relevant argument in view of the principle of the presumption of innocence.

127. The Court agrees with the Government that order and security in the courtroom are of great importance and can be seen as indispensable for the proper administration of justice. It is not the Court's task to discuss questions concerning the architecture of the courtroom, nor to give indications as to what specific measures of physical restraint may be necessary. However, the means chosen for ensuring such order and security must not involve measures of restraint which by virtue of their level of severity (see paragraph 114 above) or by their very nature would bring them within the scope of Article 3. For, as the Court has repeatedly stated, Article 3 prohibits in absolute terms torture and inhuman or degrading treatment or punishment, which is why there can be no justification for any such treatment.

128. The Court will therefore first examine whether the minimum level of severity referred to in paragraph 127 above has been reached in the circumstances. In doing so, it will have regard to the effects which the impugned measure of restraint had on the applicants.

129. In this respect, the Court observes that the applicants' case was tried by a court composed of twelve jurors, with two further substitute jurors present, and the presiding judge. It also notes the presence in the courtroom of other participants in the proceedings, including a large number of

witnesses – more than seventy gave testimony at the trial – and candidate jurors who appeared before the court for the empanelling process (see paragraph 38 above), as well as the fact that the hearings were open to the general public. It considers that the applicants' exposure to the public eye in a cage must have undermined their image and must have aroused in them feelings of humiliation, helplessness, fear, anguish and inferiority.

130. The Court further observes that the applicants were subjected to the impugned treatment during the entire jury trial before the Magadan Regional Court which lasted more than a year with several hearings held almost every month.

131. Moreover, the fact that the impugned treatment took place in the courtroom in the context of the applicant's trial brings into play the principle of the presumption of innocence in criminal proceedings as one of the elements of a fair trial (see, *mutatis mutandis*, *Allen v. the United Kingdom* [GC], no. 25424/09, § 94, ECHR 2013) and the importance of the appearance of the fair administration of justice (see *Borgers v. Belgium*, 30 October 1991, § 24, Series A no. 214-B; *Zhuk v. Ukraine*, no. 45783/05, § 27, 21 October 2010; and *Atanasov v. the former Yugoslav Republic of Macedonia*, no. 22745/06, § 31, 17 February 2011). What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused (see, *mutatis mutandis*, *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86).

132. The Court notes that the United Nations Human Rights Committee found recently that keeping a handcuffed defendant in a metal cage during his public trial amounted to his degrading treatment, which also affected the fairness of his trial (see paragraph 70 above). The United Nations Standard Minimum Rules for the Treatment of Prisoners and the Rules of Procedure of international criminal tribunals provide, with regard to certain instruments of restraint, that they may be used only as a precaution against escape during a transfer, provided that they are removed once the accused appears before a court (see paragraphs 71 and 72 above). The Amnesty International Fair Trials Manual provides that holding the accused in "a cell within the courtroom" might impact upon the presumption of innocence (see paragraph 74 above).

133. The Court takes the view that the applicants must have had objectively justified fears that their exposure in a cage during hearings in their case would convey to their judges, who were to take decisions on the issues concerning their criminal liability and liberty, a negative image of them as being dangerous to the point of requiring such an extreme physical restraint, thus undermining the presumption of innocence. This must have caused them anxiety and distress, given the seriousness of what was at stake for them in the proceedings in question.

134. The Court would note that other fair trial considerations may also be relevant in the context of a measure of confinement in the courtroom (albeit not matters of concern in the present case), notably an accused's rights to participate effectively in the proceedings (see *Stanford v. the United Kingdom*, 23 February 1994, §§ 27-32, Series A no. 282-A) and to receive practical and effective legal assistance (see *Insanov v. Azerbaijan*, no. 16133/08, §§ 168-170, 14 March 2013, and *Khodorkovskiy and Lebedev*, cited above, §§ 642-648).

135. Lastly, the Court finds no convincing arguments to the effect that, in present-day circumstances, holding a defendant in a cage (as described in paragraph 125, above) during a trial is a necessary means of physically restraining him, preventing his escape, dealing with disorderly or aggressive behaviour, or protecting him against aggression from outside. Its continued practice can therefore hardly be understood otherwise than as a means of degrading and humiliating the caged person. The object of humiliating and debasing the person held in a cage during a trial is thus apparent.

136. Against this background, the Court finds that the applicants' confinement in a cage in the courtroom during their trial must inevitably have subjected them to distress of an intensity exceeding the unavoidable level of suffering inherent in their detention during a court appearance, and that the impugned treatment has attained the minimum level of severity to bring it within the scope of Article 3.

137. The Court does not consider that the use of cages (as described above) in this context can ever be justified under Article 3 (see paragraph 138 below) as the Government have sought to show in their submissions with reference to an alleged threat to security (see paragraph 126 above). On this latter point, in any event, the Court does not accept that such a threat has been substantiated. It observes that the Magadan Regional Court never assessed whether the applicants' physical restraint was at all necessary during the hearings. Moreover no reasons were given for keeping the applicants in a cage. Nor can those reasons be found in court detention orders, contrary to the Government's submissions that the applicants posed a threat to witnesses, and that it was this threat that warranted their detention on remand. The first applicant was not remanded in custody for the duration of the third trial. He was detained on remand in unrelated proceedings for reasons that are not known (see paragraphs 34 and 46 above). The second applicant's detention was ordered by the same court decisions as those which the Court has examined in the case of the applicants' co-defendant and found to lack "relevant and sufficient" reasons for detention on remand to be compatible with Article 5 § 3 of the Convention, and, in particular, to lack reasons which would show the risk of retaliation against, or pressure on, the witnesses now alleged by the Government (see *Mikhail Grishin*, cited above, §§ 149-150). That conclusion is fully applicable to the present case, and there is nothing in the

Government's submissions to the Grand Chamber which would warrant departing from it. Nor can the accusations that the applicants had committed violent crimes or their previous convictions – some of them with conditional sentences – six or more years before the trial in question, or the first applicant's subsequent conviction, be reasonably considered to support the Government's submissions in this respect. As to the negative references referred to by the Government (see paragraph 96 above), they do not suggest that the applicants' personalities were such as to require their physical restraint during their trial; and the second applicant also had positive references from the administrations of his remand centre and prison (see paragraph 44 above).

138. Regardless of the concrete circumstances in the present case, the Court reiterates that the very essence of the Convention is respect for human dignity and that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. It is therefore of the view that holding a person in a metal cage during a trial constitutes in itself – having regard to its objectively degrading nature which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3.

139. Consequently, the applicants' confinement in a metal cage in the courtroom amounted to degrading treatment prohibited by Article 3. There has accordingly been a violation of that provision.

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

140. The applicants also complained that the length of the criminal proceedings against them had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads in the relevant part as follows:

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

141. The Government stated that they did not contest the Court's findings in its final judgment in the case of *Mikhail Grishin* in respect of the length of the same criminal proceedings (see *Mikhail Grishin*, cited above, §§ 170-184).

142. 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.

143. In its judgment the Chamber came to the conclusion that the length of the proceedings against the applicants had been excessive and failed to meet the "reasonable time" requirement, in breach of Article 6 § 1 (see paragraphs 89-90 of the Chamber judgment). It held as follows:

> "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...
>
> 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)."

144. The Grand Chamber does not see any reason to depart from the Chamber's findings, which are consistent with the Court's judgment in the case of *Mikhail Grishin* (cited above). Accordingly, it concludes that the length of the criminal proceedings against the applicants failed to meet the "reasonable time" requirement.

145. There has, therefore, been a violation of Article 6 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. 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

147. The first applicant 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. The second applicant claimed EUR 15,000 in respect of non-pecuniary damage and 2,000,000 Russian roubles (RUB), that is about EUR 44,000, representing the alleged loss of employment income during his detention on remand, in respect of pecuniary damage.

148. The Government contested the claims.

149. The Court notes that the applicants' claims in respect of pecuniary damage must have been connected with the length of the criminal proceedings against them, which it found to have been excessive, in breach of Article 6 § 1 of the Convention. However, in view of the claims as submitted by the applicants, the Court cannot speculate as to whether or not they would have been employed or what income they would have received had the length of the proceedings against them not been excessive. It therefore does not discern any causal link between the violations found and the pecuniary damage claimed and rejects those claims.

150. As to non-pecuniary damage, having regard to the violations of the Convention found and making its assessment on an equitable basis, the Court awards each applicant EUR 10,000 under this head.

B. Costs and expenses

151. The second applicant claimed RUB 317,476 for his legal representation in the domestic criminal proceedings against him. Both applicants also claimed a total of RUB 600,000 for the costs of their legal representation before the Grand Chamber. That sum is comprised of fees for three lawyers of the Magadan Regional Bar Association, Mr V. Palchinskii, Mr E. Plotnikov and Ms V. Taysaeva, in the amount of RUB 200,000 for each lawyer's work, including fees for the written and oral submissions before the Grand Chamber and the costs of attending the hearing. They did not submit any separate documentary evidence in support of their claims in respect of Mr Palchinskii, who represented the first applicant, or of Ms Taysaeva, who represented the second applicant. They stated that the first applicant was serving a sentence of imprisonment and had no means to pay for his lawyer's representation, and that the second applicant had a difficult financial situation.

152. The Government contested these claims.

153. According to the Court's case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, *Jalloh*, cited above, § 133).

154. Having regard to the criteria in the Court's case-law, the violations of the Convention found and the documents in its possession, the Court rejects the second applicant's claim for costs and expenses in the domestic proceedings. The Court is further satisfied that the costs of legal representation in the Convention proceedings before the Grand Chamber were incurred in order to establish and redress a violation of the applicants' Convention rights. It notes, in particular, that the applicants' written and oral submissions to the Grand Chamber were not merely a repetition of their submissions to the Chamber but required additional research and legal argument; and that all three lawyers attended and gave addresses at the hearing.

155. Having regard also to the fact that legal aid has been granted to the applicants, and making its own assessment, the Court considers it reasonable to award, in respect of the proceedings before it, the amount of EUR 2,000 for each of three lawyers' work, namely EUR 2,000 to the first applicant and EUR 4,000 to the second applicant, plus any tax that may be chargeable to them.

C. Default interest

156. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that the situations concerning the applicants' confinement in a cage during the first and second trials fall outside the scope of its examination;

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

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*

(a) that the respondent State is to pay, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) to the first applicant and EUR 4,000 (four thousand euros) to the second applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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 in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 17 July 2014.

Michael O'Boyle	Dean Spielmann
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Joint concurring opinion of Judges Raimondi and Sicilianos;
(b) Joint concurring opinion of Judges Nicolaou and Keller;
(c) Concurring opinion of Judge Silvis.

D.S.
M.O'B.

JOINT CONCURRING OPINION OF JUDGES RAIMONDI AND SICILIANOS

(Translation)

1. We unreservedly share all the decisions taken by the Court's Grand Chamber in this important case. We nevertheless feel the need to append a short concurring opinion to the judgment as a result of our hesitations concerning the Court's reasoning in dismissing the Government's preliminary objection that the first applicant lacked victim status (see paragraphs 77-83 of the judgment).

2. In their observations before the Grand Chamber, the Government had argued that the first applicant, as he had been acquitted on all the charges and had received compensation following a subsequent rehabilitation procedure, could no longer claim to be a victim of the violations which he alleged, under Article 3, on account of his placement in a metal cage in the courtroom, and under Article 6, on account of the length of the proceedings against him (see paragraphs 50-52).

3. It is quite clear, however, that neither the compensation for pecuniary damage awarded to the first applicant by the Regional Court (see paragraph 51), nor that awarded to the same applicant in respect of non-pecuniary damage by Madagan Town Court in a decision upheld by the Regional Court (see paragraph 52), imply any recognition of the violation by the Russian Federation of Articles 3 and 6 § 1 (length of proceedings) which the Court was called upon to examine.

4. Consequently, the criteria laid down in the Court's case-law for it to recognise a loss of victim status, namely, that the national authorities must have acknowledged, and then afforded sufficient redress for, the breach of the Convention (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51), are not satisfied in the present case. The objection was thus ill-founded.

5. The Court has in fact preferred to dismiss the objection on the basis that it was out of time, thus relying on Rule 55 of the Rules of Court, whereby any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rule 51 or 54, as the case may be.

6. In particular, the Court noted that in the present case the Government had failed to include this preliminary objection in their observations prior to the Chamber's ruling on the admissibility of the application. They had submitted their observations on this question on 18 February 2009. Moreover, the rehabilitation procedure had ended on 30 March 2010 (see paragraph 52). There had been nothing to prevent the Government, in the light of the outcome of that procedure, from raising their plea of inadmissibility before the Chamber, which had ruled on the admissibility

and merits of the application on 11 December 2012, over two years and eight months later.

7. The Court found that, in the absence of any exceptional circumstances that could have dispensed the Government from raising this objection in a timely manner, they were estopped from arguing at that stage that the first applicant lacked victim status. Three authorities are cited in this context (*Sejdovic v. Italy* [GC], no. 56581/00, § 41, ECHR 2006-II; *Prokopovich v. Russia*, no. 58255/00, § 29, ECHR 2004-XI; and *Andrejeva v. Latvia* [GC], no. 55707/00, § 49, ECHR 2009).

8. In citing those three judgments, the Grand Chamber appears to place the analysis of the question of the possible loss of victim status on the same plane as the analysis of another ground of inadmissibility – a failure to exhaust domestic remedies. Two of the three judgments cited, namely *Sejdovic* and *Prokopovitch*, concern the latter question, whereas *Andrejeva* does concern the question of the possible loss of victim status.

9. These two grounds of inadmissibility do not follow the same rule as regards the Court's power to act of its own motion.

10. With regard to victim status, there is no doubt that, notwithstanding Rule 55, the Court may at any time raise that question of its own motion, regardless of whether the respondent Government have filed such an objection (see *Micallef v. Malta* [GC], no. 17056/06, § 36, ECHR 2009; *Konstantin Markin v. Russia* [GC], no. 30078/06, § 79, ECHR 2012; and *M.A. v. Cyprus*, no. 41872/10, § 115, ECHR 2013), because it is a question of *ordre public* which relates to the Court's jurisdiction.

11. By contrast, with regard to a failure to exhaust domestic remedies, the Court's power to act of its own motion is more limited. If the respondent Government are late in making such a plea of inadmissibility, the Court will examine this question only if there are special circumstances capable of dispensing them from raising this objection in a timely manner (see *Assanidze v. Georgia* [GC], no. 71503/01, § 126, ECHR 2004-II).

12. These are the reasons why we would have preferred the Court to dismiss the objection as to victim status for being ill-founded, or at least to differentiate in its reasoning the situation at hand from that of an alleged failure to exhaust domestic remedies.

JOINT CONCURRING OPINION OF JUDGES NICOLAOU AND KELLER

1. We wholeheartedly agree with the majority's finding that Article 3 has been violated in this case. We would, however, respectfully clarify the reasoning by which we arrive at this conclusion.

2. First, we would like to comment on the concept of cage. The Grand Chamber judgment is limited to the use of a metal cage as described in paragraphs 48 and 125. We would note that Russia and other countries that have used metal cages in courtrooms are developing a tendency to replace them with glass enclosures or "organic glass screens" (see paragraph 75 of the judgment). The present judgment does not apply to such security measures. However, we would stress that such "cages" might raise issues under the requirement of procedural fairness in Article 6 § 1 and the presumption of innocence in Article 6 § 2 of the Convention (compare the Views of the Human Rights Committee in *Kovaleva and Kozyar v. Belarus*, Communication No. 2120/2011, Views of 29 October 2012, CCPR/C/106/D/2120/2011, § 11.4).

3. Second, we consider it necessary to address the absolute nature of Article 3, in the light of which paragraph 124 of the present judgment should be read. It is the Court's established case-law that Article 3 enshrines an absolute right.[1] Hence, the provision is not only non-derogable, as is evident from Article 15 § 2 of the Convention, but it also does not permit exceptions, regardless of the conduct of the victim or the circumstances (see *Gäfgen v. Germany* [GC], no. 22978/05, § 87, ECHR 2010). Accordingly, while the context of a given treatment or punishment may be taken into consideration in determining whether the threshold of severity required for a violation of Article 3 has been reached, it cannot provide a justification for those acts or omissions that reach this threshold (see *Ireland v. the United Kingdom*, 18 January 1978, § 163, Series A no. 25, and *Saadi v. Italy* [GC], no. 37201/06, § 127, ECHR 2008). There is, in short, no room for a margin of appreciation or a justification for ill-treatment reaching the threshold of Article 3. There is room for relativity only on the question whether the threshold of severity has been reached for a violation of Article 3, not whether treatment or punishment that reach this threshold constitute a violation of the Convention (see *Ireland v. the United Kingdom*, cited above, § 162).[2]

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1. Natasa Mavronicola and Francesco Messineo, "Relatively Absolute? The Undermining of Article 3 ECHR in *Ahmad v UK*", (2013) 76(3) *Modern Law Review* 589-603, at 592; David J. Harris, Michael O'Boyle, Ed P. Bates and Carla M. Buckley, *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights* (Oxford: Oxford University Press 2009), at 69.

2. Natasa Mavronicola and Francesco Messineo, cited above, at 593 *et seq*.

4. Given the impossibility of justifying ill-treatment that reaches the threshold of severity required for a violation of Article 3, we consider it unfortunate that the judgment, in paragraph 124, pays so much attention to the legal basis for the use of the cage in courtrooms and suggests that its insufficiency is, in the present case, a relevant factor. This paragraph could be misunderstood, *a contrario*, as suggesting that a sufficient legal basis could have somehow justified the alleged violation of Article 3. We consider it essential that no such impression be conveyed. The existence of a sufficient legal basis is one condition of justifying an interference with Articles 8–11 of the Convention, which explicitly permit such justifications in their respective second paragraphs. As no justification is possible under Article 3, paragraph 124 of the present judgment must be read as an argument *ad abundantiam*. In other words, it must be taken as a passing comment on the problematic nature of regulating court proceedings by unpublished orders of a general nature. In no event should this paragraph be read as meaning that a sufficient legal basis could ever legitimise acts otherwise contrary to Article 3 of the Convention (compare, in the same vein, the Concurring Opinion of Judge Bratza in the case of *Jalloh v. Germany* [GC], no. 54810/00, ECHR 2006-IX, arguing that the majority's consideration of whether the forced administration of emetics was "necessary" detracted from the absolute nature of Article 3).

5. In paragraph 128 of the judgment, the Court begins the analysis under Article 3 by correctly asking whether the minimum threshold of severity required under that provision has been reached. However, it then brings into play the presumption of innocence and the fairness of the proceedings in paragraphs 131–134. Whilst acknowledging that these issues might be serious (see paragraph 2, above), we regard their inclusion in the examination under Article 3 to be misplaced.

6. As to security in the courtroom, paragraph 137 should not be read as maintaining the possibility, however small, of justifying the use of metal cages in courtrooms. Other means, consistent with the dignity of the accused, are possible and should be used instead. We draw attention to the principal finding of the Court, which is made very clear in paragraph 138 of its judgment: the use of metal cages in the courtroom is *per se* incompatible with Article 3.

7. The Court's emphasis on the presumption of innocence in paragraphs 131–134 of the present judgment represents yet another argument *ad abundantiam*: while only Article 3 was invoked in the present case, the placement of accused individuals in cages for trial could conceivably, in certain circumstances, raise an issue under Article 6 § 2 of the Convention. The fact that the Court has noted this possible problem, however, does not mean that paragraphs 131–134 are relevant to its finding of a violation under Article 3. The examination of alleged violations of

Article 6 § 2 is different from that under Article 3, and the two should be meticulously kept separate.

8. To conclude, while agreeing with the Court's finding in this case, we are of the opinion that the present judgment must be understood in the light of the considerations set out above. In particular, no part of this judgment should be understood as undermining the absolute nature of Article 3 by permitting exceptions from that provision. It is essential that there be no doubt about the fact that Article 3 is violated in all instances in which the severity of ill-treatment inflicted reaches the level of severity that constitutes the threshold for its application.

CONCURRING OPINION OF JUDGE SILVIS

Holding defendants in metal cages before the court during trial amounts to degrading treatment in violation of Article 3 of the Convention. I certainly agree with the Court's judgment. Modern developments in courtroom safety have eroded old justifications for using cages. While such "caging" persists, despite the lack of manifest functional necessity, a latent function has thus become apparent. By presenting defendants in a cage, they are symbolically humiliated and portrayed as members of an inferior breed compared to ordinary humans. Therefore human dignity is at the heart of the matter, as the Court well recognises.

Although I share the opinion that this is a just judgment in essence, I have some difficulty following all of its wording. My concern is that the Court's reasoning could be understood as allowing in principle some possible justification within the scope of absolute rights. A similar concern is very well expressed in the concurring opinion of Judges Keller and Nicolaou. I would like to draw attention to the sequence in the Court's reasoning. The Court first, clearly and unsurprisingly, holds in paragraph 127 that Article 3 prohibits in absolute terms torture and inhuman or degrading treatment or punishment, which is why there can be no justification for any such treatment. In paragraph 136 the Court concludes that the minimum level of severity has been reached. In the light of this assessment I find it confusing that the Court then holds in paragraph 137 that the use of metal cages can never be justified under Article 3 of the Convention. How could it be? This message is either void and should therefore have been omitted or it is otherwise worrisome at this stage in the Court's reasoning. Article 3 guarantees absolute rights. Does it then make sense even to raise the possibility of justification once the measure has entered its scope? To reconsider such a possibility at that stage of the reasoning, even though the Court answers in the negative here, could weaken the understanding of its concept of absolute rights.[1]

The fact that some relativity is allowed for in assessing the severity of dysfunctions in treatment, before they are found to be within the scope of an absolute right, is a different matter. That would not be contrary to the concept of absolute rights, provided the assessment is faithfully performed in view of the underlying values. It has been observed, however, that there

1. See Alan Gewirth, "Are There Any Absolute Rights?" (1981) 31 *The Philosophical Quarterly*; Michael K. Addo and Nicholas Grief, "Does Article 3 of The European Convention on Human Rights Enshrine Absolute Rights?", in *European Journal of International Law* 9 (1998), 510-524; Natasa Mavronicola, "What is an 'absolute right'? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights", in *Human Rights Law Review* (30 November 2012); Yukata Arai-Yokoi, "Grading Scale of Degradation: Identifying the Threshold of degrading Treatment under Article 3 ECHR", in *Netherlands Quarterly of Human Rights*, Vol. 21/3, 385-421, 2003.

is seemingly a subtle but new shift with regard to the application of the principle of proportionality and Article 3.[2] That conclusion might be drawn because there is no clear line observed between what is allowed for in the assessment and what is out of the question after the threshold of Article 3 has been reached. The reference to forms of "unjustifiable" ill-treatment would indicate that subjective processes are involved in the application of Article 3, going beyond the assessment of sufficient severity for the measure to fall within the scope of that Article. This may cause understandable concern in that it creates an impression, albeit false and unintended, that certain breaches of Article 3 could on occasion be justified.

I have a further point for consideration. In the assessment as to whether the threshold of ill-treatment has been reached, it is common for subjective as well as objective factors to play a role. By generalising the finding that holding defendants in metal cages before the court during trial is a prohibited form of degrading treatment, subjective factors for the assessment of such a violation of Article 3 have become less relevant. I welcome such a generalisation, making clear what standards should be met. In the light of this understanding, I would have welcomed an even lesser focus on whether the applicants must have suffered from being caged before the court. They may have suffered intensely. But suppose they had not, being blessed perhaps with extraordinary mental coping capacities or owing to a sheer lack of sensitivity.[3] Would that have made a difference? I do not think it should have done. Holding a defendant in a metal cage has a strong theatrical dimension, staging a ritual of humiliation.[4] Where it is the State's obligation to set the scene for a fair trial, such humiliating exposure of defendants before the court constitutes degrading treatment within the meaning of Article 3.

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2. See Martin Curtice, *Advances in psychiatric treatment* (2010), vol. 16, 199–206, doi: 10.1192/apt.bp.109.006825, p. 204, BOX II.

3. Compare the Commission Report in the "Greek case" (applications nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook 12, p. 501): "It appears from the testimony of a number of witnesses that a certain roughness of treatment of detainees by both police and military authorities is tolerated by most detainees and even taken for granted. Such roughness may take the form of slaps or blows of the hand on the head or face. This underlies the fact that the point up to which prisoners and the public may accept physical violence as being neither cruel nor excessive, varies between different societies and even between different sections of them."

4. See Hannes Kuch, "The Rituality of Humiliation: Exploring Symbolic Vulnerability", in P. Kaufmann et.al. (eds), *Humiliation, Degradation, Dehumanization*, Library of Ethics and Applied Philosophy, 24 (Springer 2011), Ch. 4.