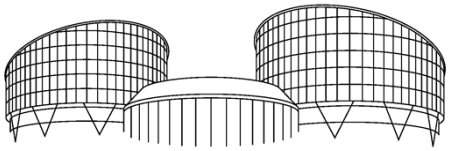

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF NIKITIN AND OTHERS v. ESTONIA

*(Applications nos. 23226/16 and 6 others)*

JUDGMENT

STRASBOURG

29 January 2019

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Nikitin and others v. Estonia**,

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

Robert Spano, *President,*
Paul Lemmens,
Ledi Bianku,
Julia Laffranque,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Ivana Jelić, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 11 December 2018,

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

# PROCEDURE

1. The case originated in seven applications (nos. 23226/16, 43059/16, 57738/16, 59152/16, 60178/16, 63211/16 and 75362/16) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Estonian nationals, Mr Vladimir Nikitin, Mr Martin Villems, Mr Igor Karp, Mr Peeter Jeret, Mr Aleksei Savva, Mr Guntars Kaziks and Mr Vitali Tarasovski ("the applicants"), on 19 April 2016, 8 July 2016, 28 September 2016, 4 October 2016, 12 October 2016, 30 October 2016 and 30 November 2016 respectively.

2. The applicant Mr Jeret was represented by Mr Risto Käbi; the applicants Mr Nikitin, Mr Villems, Mr Kaziks and Mr Savva were represented by Mr Denis Piskunov; the applicant Mr Karp was represented by Mr Leonid Olovyanishnikov; and the applicant Mr Tarasovski was represented by Mr Janek Valdma, all lawyers practising in Tallinn. Mr Nikitin, Mr Jeret, Mr Kaziks and Mr Tarasovski were granted legal aid. As Mr Nikitin failed to respond to the Registry's letters of 19 October 2017 and 9 January 2018 requesting that he return to the Court a duly completed claim form for fees and expenses and a bank transfer payment form, he was not reimbursed through the legal aid scheme.

3. The Estonian Government ("the Government") were represented by their Agent, Ms Maris Kuurberg, of the Ministry of Foreign Affairs.

4. The applicants alleged, in particular, that they had been detained in inhuman and degrading conditions. Mr Nikitin, Mr Villems, Mr Jeret, Mr Kaziks and Mr Tarasovski also complained that they had not had effective domestic remedies at their disposal. Mr Savva also complained of limited contact with his family.

5. On 16 May 2017 the Government were given notification of the applications of Mr Nikitin, Mr Villems, Mr Jeret, Mr Kaziks and Mr Tarasovski concerning the complaints under Articles 3 and 13 of the Convention and the remainder of application no. 59152/16 lodged by Mr Jeret was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. On 11 July 2017 the Government were given notification of the applications of Mr Karp and Mr Savva concerning the complaints under Article 3 and Mr Savva's complaint under Article 8 of the Convention.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. All seven applicants were detained in Tallinn Prison in Estonia. Their individual circumstances are detailed below.

### A. The case of Mr Nikitin

7. The applicant was born in 1968 and is serving a life sentence. He was detained in Tallinn Prison from 27 November 2007 to 22 October 2013. Subsequently, he was transferred to Viru Prison, where he is currently serving his sentence.

8. According to the applicant, during his stay in Tallinn Prison he was detained in inadequate conditions of detention. In particular, the cells in which he was placed were overcrowded, providing less than 3 square metres of personal space throughout his confinement.

9. According to the Government, during the material time, the applicant was held in different cells which provided less than 3 square metres of personal space for 1,023 days. Out of that time, the applicant spent 898 days in open-section cells with no in-cell lavatory, and 125 days in locked cells with an in-cell lavatory. The Government also submitted that in the period from 2008-13 the applicant had been engaged in employment. In particular, he had worked from February to July 2008 for an average of 140 hours per month; from February to December 2009 for an average of 165 hours per month; every month in 2010 for an average of 168 hours per month; every month in 2011 for an average of 169 hours per month; every month in 2012 for an average of 168 hours per month; and from January to April 2013 for an average of 147 hours per month. He had also participated in social programmes from May 2007 to April 2009, had been on two short-term visits and five long-term visits, and on three occasions had attended court hearings.

10. According to data provided by the Government, during the relevant period the applicant was detained in twelve different cells under different prison regimes, as follows:

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 1 | 27.11.2007-30.01.2008 | 410 | 4.86 $m^2$ | Semi-open section | Cell doors open at least four hours a day, right to a walk and use of gym |
| | 31.01.2008-22.07.2008 | 15 | 2.75-3.21 $m^2$ | Open section | Cell doors open the whole day, right to a walk and use of gym |
| | 23.02.2008-24.02.2008 | 1 | 14.80 $m^2$ | Semi-open section | Cell doors open at least four hours a day, right to a walk and use of gym |
| | 26.02.2008-25.07.2008 | 15 | 2.75-3.21 $m^2$ | Open section | Cell doors open the whole day, right to a walk and use of gym |
| | 26.07.2008-25.01.2009 | 312, 446, 147, 450 | 2.42-7.61 $m^2$ | Closed cell | Right to a one-hour walk |
| | 26.01.2009-09.02.2009 | 34, 39 | 2.7-3.46 $m^2$ | Semi-open section | Cell doors open at least four hours a day, right to a walk and use of gym |

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| | 10.02.2009-26.03.2009 | 15 | 2.75 $m^2$ | Open section | Cell doors open the whole day, right to a walk and use of gym |
| | 27.03.2009-28.03.2009 | 6 | 14.57 $m^2$ | Semi-open section | Cell doors open at least four hours a day, right to a walk and use of gym |
| | 30.03.2009-25.04.2013 | 15 | 2.75-4.82 $m^2$ | Open section | Cell doors open the whole day, right to a walk and use of gym |
| | 26.04.2013-22.10.2013 | 119, 145, 208, 210 | 2.5-13.70 $m^2$ | Closed cell | Right to a one-hour walk |

11. The applicant did not contest those data.

*The applicant's complaints about the prison conditions*

12. On 27 April 2014 the applicant lodged a complaint with Tallinn Prison, seeking compensation for non-pecuniary damage resulting from inadequate conditions of detention. Tallinn Prison did not respond to his complaint.

13. On 6 July 2014 the applicant lodged a complaint against Tallinn Prison with the Tartu Administrative Court, seeking compensation in the amount of 40,000 euros (EUR) for non-pecuniary damage resulting from inadequate conditions of detention. On 6 January 2015 the Tartu Administrative Court partially granted the applicant's claim and awarded him EUR 250 (administrative case no. 3-14-51413). The first-instance court held, *inter alia*, that the applicant's failure to use preventive remedies under section 7(1) of the State Liability Act did not hinder granting the claim because the overcrowding in Tallinn Prison was a well-known problem. The

applicant and Tallinn Prison challenged the first-instance judgment by lodging appeals before the Tartu Court of Appeal.

14. By a judgment of 1 October 2015 the Court of Appeal quashed the first-instance judgment in part. The court applied the statutory time-limit separately with regard to the periods the applicant had spent in each different cell and held that the time-limit had therefore started to run after each transfer to a new cell. The court thus refused to examine the applicant's complaint with regard to the period from 27 November 2007 to 9 February 2009 on the grounds that he had not complied with the mandatory pre-action procedure as required under Article 47 § 1 of the Code of Administrative Court Procedure, namely because the complaint had been lodged outside the time-limit provided for under section 17(3) of the State Liability Act. The Court of Appeal reasoned its refusal to examine part of the claim as follows:

> "15. In order to establish whether the applicant has met the pre-action procedure requirements, in the instant case the three-year statutory time-limit, the Court of Appeal will consider the change in the relevant conditions of the applicant's detention which occurred in connection with his transfer from one cell to another. In these circumstances, the time-limit started running each time a change occurred."

The court also refused to examine the complaint with regard to the period after 23 October 2013 as by that date he had already been transferred to Viru Prison.

15. With regard to the period from 10 February 2009 to 22 October 2013, the Court of Appeal found that the applicant had had less than 3 square metres of personal space for 815 days and more than 3 square metres for 895 days. The court also found that he had not been kept in less than 2.5 square metres of personal space, which had been the minimum requirement under domestic law at the material time. The court was of the view that the applicant's detention in cells with less than 3 square metres of personal space had been degrading within the meaning of Article 3 of the Convention. However, the applicant had had the right to a walk for an hour a day and the use of a gym once a week. Moreover, for most of the period under consideration (720 days) he had been in an open section (cell no. 15), where he had been required to stay in the cell only at night. He had therefore been able to move freely around the section during the day. He had spent nineteen days in a punishment cell, and had also been engaged in several social programmes. Taking the above factors into consideration, the court dismissed the applicant's claim for damages as unfounded because the violation of his rights had not reached the minimum level of severity to justify monetary compensation.

16. The applicant lodged an appeal on points of law with the Supreme Court, which refused leave to appeal on 28 March 2016.

## B. The case of Mr Villems

17. The applicant was born in 1971. He was detained in Tallinn Prison from 7 July 2011 to 6 March 2013 as a remand prisoner and from 7 March 2013 to 17 April 2013 as a convicted prisoner. Subsequently, he was transferred to Tartu Prison where he is currently serving his sentence.

18. According to the applicant, during his stay in Tallinn Prison he was detained in inadequate conditions of detention. In particular, the cells in which he was placed were overcrowded and lacked basic hygiene and sanitary requirements. Throughout his confinement he had less than 3 square metres of personal space at his disposal. Moreover, he was locked in the cell day and night except for one hour of outdoor exercise daily. The outdoor exercise yard did not exceed the measurements of the cell and was used together with other inmates. However, as the applicant was not separated from smokers, he could not go to the outdoor exercise yard for six months. The shower could only be used once a week for twenty minutes, while the detainees also had to wash their clothes there because there was no hot water in the cells. There was also no privacy in the shower room.

19. According to the information submitted by the Government, from 9 October to 27 November 2012 the applicant attended a training course on communication skills (seven sessions lasting 1.5 to 2 hours each). He was also able to spend time outside the cell during meetings with his lawyer and while attending court hearings (on eleven occasions from September 2011 to March 2013).

20. According to the data provided by the Government, the applicant was detained in different cells in a closed section:

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 1 | 06.07.2011-17.04.2013 | 89, 130, 314, 319, 324, 328, 347, 413, 417, 419, 428, 438, 443, 446, 453 | 2.45-15.36 $m^2$ | Closed cell | Right to a one-hour walk |

*The applicant's complaints about the prison conditions*

21. On 9 May 2013 the applicant lodged a complaint with Tallinn Prison, seeking compensation for non-pecuniary damage resulting from inadequate conditions of detention. On 2 July 2013 Tallinn Prison dismissed his complaint as unfounded.

22. On 25 July 2013 the applicant lodged a complaint against Tallinn Prison with the Tartu Administrative Court, seeking fair compensation at the discretion of the court for non-pecuniary damage resulting from

inadequate conditions of detention. On 12 February 2014 the Tartu Administrative Court granted the applicant's claim in the amount of EUR 1,700 (administrative case no. 3-13-1589).

23. On 14 January 2014 the applicant lodged a further complaint with Tallinn Prison, seeking compensation for non-pecuniary damage resulting from the fact that he had not been separated from smokers during his out-of-cell walks from 22 March to 17 October 2012. On 13 March 2014 Tallinn Prison dismissed his complaint.

24. On 25 March 2014 the applicant lodged another complaint against Tallinn Prison with the Tartu Administrative Court, seeking compensation in the amount of EUR 2,000 for non-pecuniary damage resulting from the fact that he had not been permitted to take walks separately from smokers. By a judgment of 15 September 2014 the Tartu Administrative Court dismissed the applicant's complaint (administrative case no. 3-14-344).

25. The applicant and Tallinn Prison challenged the first-instance judgment of 12 February 2014 (administrative case no. 3-13-1589). The prison administration explained in its appeal that at the material time it had in any event been unable to provide the applicant with more than 2.7 square metres of personal space and that transferring him to another prison would probably not have solved the issue of over-crowding. The applicant also challenged the first-instance judgment of 15 September 2014 (administrative case no. 3-14-344). On 1 October 2015 the Tartu Court of Appeal joined the cases.

26. By its judgment of 3 November 2015 the Tartu Court of Appeal quashed the first-instance judgments and upheld the applicant's complaint, partially awarding him compensation in the amount of EUR 100 for non-pecuniary damage resulting from not being permitted to take walks without smokers. The second-instance court dismissed the remainder of the applicant's complaints on the grounds, *inter alia*, that he had no right to claim compensation for damage because he had failed to use the preventive remedies under section 7(1) of the State Liability Act, as he had not submitted a request for transfer to another prison or cell.

27. The applicant then lodged an appeal on points of law with the Supreme Court, which refused leave to appeal on 14 January 2016.

### C. The case of Mr Karp

28. The applicant was born in 1970. He was detained in Tallinn Prison on five occasions: from April to October 2008; from September to October 2009; from January to February 2010; from 23 February to 9 November 2012; and from 27 December 2012 to 31 October 2013. Subsequently, he was transferred to Viru Prison. He was released on 29 September 2017.

29. The applicant alleged that during his stay in Tallinn Prison, he had been detained in inadequate conditions of detention. In particular, the cells in which he had been placed were overcrowded. Throughout his confinement he had had at his disposal less than 3 square metres of personal space. The cell had had poor lighting and lacked ventilation, and the walls had been covered with thick mould as the prisoners had had to wash and dry their clothes there.

30. According to the data provided by the Government, the applicant was detained in Tallinn Prison in five different periods under different prison regimes as follows:

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 1 | 11.04.2008-10.10.2008 | 140, 347, 441 | 2.06-3.10 $m^2$ | Closed cell | Right to a one-hour walk |
| 2 | 10.09.2009-21.10.2009 | 314 | 2.46-3.69 $m^2$ | Closed cell | Right to a one-hour walk |
| 3 | 13.01.2010-17.02.2010 | 144, 454, 463 | 2.44-7.30 $m^2$ | Closed cell | Right to a one-hour walk |
| 4 | 23.02.2012-18.09.2012 | 140, 433, 456 | 2.35-3.41 $m^2$ | Closed cell | Right to a one-hour walk |
| | 19.09.2012-09.11.2012 | 34 | 3.02-3.78 $m^2$ | Open section | Cell doors open the whole day, right to a walk and use of gym |
| 5 | 27.12.2012-31.10.2013 | 208, 316, 321, 322, 415, 424, 448, 450 | 2.40-8.06 $m^2$ | Closed cell | Right to a one-hour walk |

31. The applicant did not contest those data.

*The applicant's complaints about the prison conditions*

32. On 7 April 2014 the applicant lodged a complaint with Tallinn Prison, seeking compensation for non-pecuniary damage resulting from inadequate conditions of detention. The prison did not respond to his complaint.

33. On 17 June 2014 the applicant lodged a complaint against Tallinn Prison with the Tartu Administrative Court, seeking compensation in the amount of EUR 500 per month or EUR 17 per day for twenty-six months for non-pecuniary damage resulting from inadequate conditions of detention. The prison administration explained in its reply with regard to out-of-cell-activities that, owing to statutory requirements and restrictions placed on remand prisoners, it could not permit the applicant to use the gym or participate in other recreational activities.

34. On 15 December 2014 the Tartu Administrative Court refused to examine the applicant's complaint with regard to the periods from April to September 2008, from September to October 2009, and from January to February 2010, on the grounds that he had not complied with the mandatory pre-action procedure as required under Article 47 § 1 of the Code of Administrative Court Procedure as the complaint had been lodged outside the time-limit provided for under section 17(3) of the State Liability Act. With regard to the periods from 23 February to 9 November 2012 and from 27 December 2012 to 31 October 2013, the first-instance court dismissed the complaint as unfounded. The applicant challenged the first-instance judgment by lodging an appeal before the Tartu Court of Appeal.

35. In its judgment of 1 December 2015 the Court of Appeal dismissed the applicant's appeal on the grounds that he had no right to claim compensation because he had failed to make use of the preventive remedies provided for under section 7(1) of the State Liability Act, since he had not submitted a request for transfer to another prison or cell. Although the in-cell sanitary facility had not been deducted from the measurements of the cell, previous domestic case-law showed that prisoners had not generally had less than 3 or 2.5 square metres of personal space at their disposal in Tallinn Prison. The second-instance court noted that in his appeal the applicant had not complained either about the court's refusal to examine his complaints regarding the periods from April to September 2008, from September to October 2009, and from January to February 2010, or about the other conditions of detention allegedly constituting violations, with the exception of overcrowding.

36. The applicant then lodged an appeal on points of law with the Supreme Court, which refused him leave to appeal on 28 March 2016.

## D. The case of Mr Jeret

37. The applicant was born in 1959. He was placed in Tallinn Prison on 25 February 2011. From 25 February to 17 May 2011 he was in pre-trial custody; he was then subjected to the reception regime (*vastuvõturežiim*) and from 12 July 2011 was detained as a convicted prisoner. On an unspecified date he was transferred to Viru Prison, where he is currently serving his sentence.

38. According to the applicant, during his stay in Tallinn Prison he was detained in inadequate conditions of detention. In particular, the cells in which he was placed were overcrowded and lacked basic hygiene and sanitary requirements. Throughout his confinement he had less than 3 square metres of personal space at his disposal. He had to tolerate high temperatures and rodents in the cell. Moreover, he was not provided with a lactose-free diet from 25 February 2011 to 21 November 2013, even though it had been prescribed by a doctor. He suffered back pain because he did not have sufficient opportunity to do physical exercise. His eyes hurt because of the poor lighting in the cell. He was also not given adequate medical treatment for a foot and nail infection.

39. According to the Government, during the material time, the applicant was held for 416 days in different cells which provided less than 3 square metres of personal space. For most of that time he was held in a semi-open unit for convicted prisoners. In 2012, 2013 and 2014 the applicant was engaged in employment working one hour a day. In particular, in October, November and December 2012 he worked a total of eighteen, sixteen and fifteen hours respectively; in November and December 2013, a total of five and thirteen hours; and in January and February 2014, eleven and five hours respectively. He was also able to spend time outside the cell to attend eight short meetings and six court hearings.

40. According to data provided by the Government, the applicant was detained in Tallinn Prison under different regimes as follows:

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 1 | 25.02.2011-11.07.2011 | 217, 218, 236, 247, 340, 463, | 2.46-3.72 $m^2$ | Closed cell | Right to a one-hour walk |

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| | 12.07.2011-22.01.2013 | 138, 214, 218, 219, 221, 231, 245 | 2.41-5 $m^2$ | Semi-open section | Cell doors opened at least four hours a day, right to a walk and use of gym |
| | 23.01.2013-24.01.2013 | 78 | 9 $m^2$ | Punishment cell | Right to a one-hour walk |
| | 25.01.2013-22.10.2013 | 121, 138, 140, 147, 402 | 2.82-13.19 $m^2$ | Closed cell | Right to a one-hour walk |
| | 23.10.2013-25.10.2013 | 218 | 2.97-3.71 $m^2$ | Semi-open section | Cell doors opened at least four hours a day, right to a walk and use of gym |
| | 26.10.2013-30.10.2013 | 80 | 7.51$m^2$ | Punishment cell | Right to a one-hour walk |
| | 31.10.2013-21.11.2013 | 218 | 2.97-3.71 $m^2$ | Semi-open section | Cell doors opened at least four hours a day, right to a walk and use of gym |

41. The applicant did not contest those data.

*The applicant's complaints about the prison conditions*

42. On 21 January 2014, while still serving his sentence in Tallinn Prison, the applicant lodged a complaint with the prison administration, seeking compensation for non-pecuniary damage suffered as a result of being held in inadequate conditions of detention from 25 February 2011 to 21 November 2013. Tallinn Prison did not decide on his complaint in due time.

43. On 27 May 2014 the applicant lodged a complaint against Tallinn Prison with the Tallinn Administrative Court, seeking compensation in the amount of EUR 87,600 euros for non-pecuniary damage resulting from inadequate conditions of detention. On 19 March 2015 the Tallinn Administrative Court partially granted the applicant's claim and awarded him EUR 1,100 (administrative case no. 3-14-50937). The applicant and Tallinn Prison challenged the first-instance judgment by lodging appeals before the Tallinn Court of Appeal.

44. By its judgment of 17 February 2016 the Court of Appeal dismissed the appeals but changed the reasoning of the first-instance judgement. The court granted the applicant EUR1100 on the grounds that he had been in inadequate conditions of detention and had not been provided with a lactose-free diet for two years, even though it had been prescribed by a doctor. The court held, *inter alia*, that it was a well-known fact that in Tallinn Prison the sanitary conditions and the conditions of the cells were poor.

45. The applicant then lodged an appeal on points of law with the Supreme Court, which refused leave to appeal on 25 April 2016.

## E. The case of Mr Savva

46. The applicant was born in 1973. He was detained in Tallinn Prison on four occasions: from 25 August to 23 September 2004, from 28 February to 4 October 2007, from 28 October 2008 to 2 June 2009, and from 20 May 2010 to 14 July 2011.

47. According to the applicant, during his stay in Tallinn Prison, he was detained in inadequate conditions of detention. In particular, the cells in which he was placed were overcrowded and he had less than 3 square metres of personal space at his disposal. Moreover, throughout his confinement, except from 28 October 2008 to 2 June 2009, he was locked in the cell day and night, except for one hour of outdoor exercise per day. The outdoor exercise yard measured 15 square metres and was used by his cellmates at the same time. He had no access to a gym. His eyes hurt and his vision was impaired because of the poor lighting in the cell. The cell lacked fresh air and ventilation. The walls were covered with mould because the prisoners had to wash and dry their clothes there. The applicant contracted a

skin infection due to the excessive moisture in the cells. The shower could be used only once a week. Music was played all day at a high volume. Meetings and phone calls with his family were limited. From 28 October 2008 to 2 June 2009, when the applicant was in the open section, the conditions of detention were no better. The cells were small, damp and cold. As there was no toilet in the cell, he sometimes had to wait for an hour until the guard let him use the communal toilet.

48. According to the data provided by the Government, the applicant was detained in Tallinn Prison during four different periods under different prison regimes, as follows:

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 1 | 28.02.2007-04.10.2007 | 147, 414, 432, 336 | 2.42-2.98 $m^2$ | Closed cell | Right to a one-hour walk |
| 2 | 28.10.2007-30.10.2008 | 129 | 2.48-7.45 $m^2$ | Closed cell | Right to a one-hour walk |
| | 31.10.2008-26.01.2009 | 44 | 2.53-3.09 $m^2$ | Open section | Cell doors opened the whole day, right to a walk and use of gym |
| 3 | 03.03.2009 | 138 | 4.82 $m^2$ | Closed cell | Right to a one-hour walk |
| | 04.03.2009-02.06.2009 | 44 | 2.53-3.97 $m^2$ | Open section | Cell doors opened the whole day, right to a walk and use of gym |

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 4 | 20.05.2010-14.07.2011 | 147, 214, 219, 246, 253, 359, 441 | 2.42-4.03 $m^2$ | Closed cell | Right to a one-hour walk |

49. The applicant did not contest those data.

*The applicant's complaints about the prison conditions*

50. On 30 January and 13 March 2014 the applicant lodged complaints with Tallinn Prison, seeking compensation for non-pecuniary damage resulting from the inadequate conditions of detention. Tallinn Prison did not respond to his complaints.

51. On 21 May 2014 the applicant lodged a complaint against Tallinn Prison with the Tartu Administrative Court, seeking compensation in the amount of EUR 20,000 for non-pecuniary damage resulting from inadequate conditions of detention.

52. On 21 May 2015 the Tartu Administrative Court granted the applicant's claim and awarded him EUR 750 with regard to the period from 20 May 2010 to 14 July 2011. It dismissed the complaint with regard to the periods from 28 February to 4 October 2007 and from 28 October 2008 to 2 June 2009 on the grounds that it had been lodged outside the time-limit provided for under section 17(3) of the State Liability Act. The court of first instance refused to examine his complaints with regard to restrictions on communication with his family, infrequent access to a shower, and the playing of loud music in the prison, because the applicant had not raised those issues with the prison administration. The applicant and Tallinn Prison challenged the first-instance judgment by lodging appeals with the Tartu Court of Appeal.

53. In its judgment of 23 February 2016 the Court of Appeal quashed the first-instance judgment with regard to both the period from 20 May 2010 to 29 January 2011 and the amount of money the applicant had been awarded. It refused to examine the applicant's complaint with regard to the impugned period on the grounds that he had not complied with the mandatory pre-action procedure as required under Article 47 § 1 of the Code of Administrative Court Procedure as the complaint had been lodged outside the time-limit provided for under section 17(3) of the State Liability Act. The Court of Appeal reasoned the refusal to examine part of the claim as follows:

> "14. According to the appeal Mr Savva had repeatedly been detained in Tallinn Prison already before May 2010. Therefore, he should have immediately perceived the lack of personal space and the impact of it ...
>
> 15. The argument by Tallinn Prison, that the claim can be seen as [having been lodged] in due time only for the period of three years before the complaint was lodged, i.e. from 30.01.2011 to 14.07.2011, is correct. ...
>
> 17. The Court of Appeal is of the opinion that a person who is (allegedly) detained in degrading conditions for a long period has to realise the unlawfulness of those conditions and the damage sustained already when he is being kept in those conditions ..."

54. With regard to the period from 30 January to 14 July 2011, the Court of Appeal granted the applicant's claim and awarded him EUR 50 on the grounds that for nineteen days the personal space available to him had fallen below 3 square metres of floor surface in the cell and he had been locked in the cell for twenty-three hours per day.

55. The applicant then lodged an appeal on points of law with the Supreme Court, which refused him leave to appeal on 14 April 2016.

### F. The case of Mr Kaziks

56. The applicant was born in 1967. From 28 December 2009 to 9 November 2011 and from 7 to 21 December 2011 he was detained in Tallinn Prison. Until 20 October 2011 he was held in pre-trial custody and for the remaining period he was detained as a convicted prisoner under the reception regime.

57. According to the applicant, during his stay in Tallinn Prison, he was detained in inadequate conditions of detention. In particular, the cells in which he was placed were overcrowded and lacked basic hygiene and sanitary requirements. Throughout his confinement he had less than 3 square metres of personal space at his disposal. Moreover, he was locked in the cell day and night except for one hour of outdoor exercise per day. The cell had poor lighting and lacked ventilation, which could be felt especially in summer when there was not enough fresh air and it was too hot. He had to wash the dishes with cold water and without dishwashing liquid.

58. According to data provided by the Government, the applicant was detained in Tallinn Prison in two different periods as follows:

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 1 | 28.12.2009-09.11.2011 | 87, 140, 335, 354, 357, 410, 413, 418, 424, 425 | 2.35-14.60 $m^2$ | Closed cell | Right to a one-hour walk |
| 2 | 07.12.2011-21.12.2011 | 421 | 2.40-2.88 $m^2$ | Closed cell | Right to a one-hour walk |

59. The applicant did not contest those data.

*The applicant's complaints about the prison conditions*

60. On 21 January 2014 the applicant lodged a complaint with Tallinn Prison, seeking compensation for non-pecuniary damage for inadequate conditions of detention. Tallinn Prison did not decide on his complaint in due time.

61. On 29 May 2014 the applicant lodged a complaint against Tallinn Prison with the Tartu Administrative Court, seeking compensation in the amount of EUR 11,954 for non-pecuniary damage resulting from inadequate conditions of detention.

62. On 29 September 2015 the Tartu Administrative Court partially granted the applicant's claim and awarded him EUR 315 (administrative case no. 3-14-50997). The applicant and Tallinn Prison challenged the first-instance judgment by lodging appeals before the Tartu Court of Appeal.

63. By its judgment of 10 March 2016 the Court of Appeal dismissed the applicant's appeal, allowed the appeal of Tallinn Prison and quashed the first-instance judgment. It refused to examine the applicant's complaint with regard to the period from 28 December 2009 to 20 January 2011 on the grounds that he had not complied with the mandatory pre-action procedure requirements under Article 47 § 1 of the Code of Administrative Court Procedure as the complaint had been lodged outside the time-limit provided for under section 17(3) of the State Liability Act. The Court of Appeal reasoned the refusal to examine part of the claim as follows:

> "17. The Court of Appeal is of the opinion that given the nature of the suffering described by the applicant, he should have realised the impact of the relevant circumstances practically from the first day of his detention in Tallinn Prison ...
>
> 18. The Court of Appeal is of the opinion that the applicant, who was allegedly living in degrading conditions for nearly two years, should have realised the

> unlawfulness of such conditions and the damage that was being caused to him already when he was living in those conditions and [the fact that] the time-limit for lodging a complaint had also started running. It follows from the nature of non-pecuniary damage that the damage occurs as soon as the relevant action takes place and the person is therefore immediately aware of the damage. Therefore, the applicant became aware of the damage and the body [responsible for] causing that damage already while he was living in the relevant conditions and thus did not abide by the three-year statutory time-limit when lodging his complaint with the prison administration with regard to the period from 28.12.2009 to 20.01.2011."

64. With regard to the periods from 21 January to 9 November 2011 and from 7 December to 21 December 2011, the Court of Appeal dismissed the complaint as unfounded. It reasoned that the general conditions of the applicant's detention had been appropriate. Considering also the short period, namely thirteen days spent in a cell affording less than 3 square metres of personal space, the conditions of his detention had not attained the minimum level of severity to amount to degrading treatment.

65. The applicant then lodged an appeal on points of law with the Supreme Court, which refused him leave to appeal on 28 April 2016.

### G. The case of Mr Tarasovski

66. The applicant was born in 1978. From 24 October 2008 to 26 July 2011 and from 23 April to 7 May 2013 the applicant was detained in Tallinn Prison. He was in pre-trial detention until 30 July 2010, under the reception regime until 18 August 2010 and was detained as a convicted person from 19 August 2010. Subsequently he was transferred to Viru Prison where he is currently serving his sentence.

67. According to the applicant, he was detained in inadequate conditions of detention in Tallinn Prison. In particular, the cells in which he was placed were overcrowded. Throughout his confinement he had less than 3 square metres of personal space at his disposal. Moreover, he was locked in the cell day and night except for one hour of outdoor exercise per day. The outdoor exercise yard measured 15 square metres and was used together with other inmates. He had no access to a gym.

68. According to the data provided by the Government, the applicant was detained in Tallinn Prison in two different periods under different regimes as follows:

| | Period | Cell No. | Personal space | Regime | |
|---|---|---|---|---|---|
| 1 | 24.10.2008-18.08.2010 | 208, 210, 214, 216, 217, 319, 333, 416 | 2.46-12 $m^2$ | Closed cell | Right to a one-hour walk |
| | 19.08.2010-22.10.2010 | 42, 48 | 2.67-5.10 $m^2$ | Open section | Cell doors opened the whole day, right to a walk and use of gym |
| | 23.10.2010-26.07.2011 | 229 | 2.52-5.04 $m^2$ | Semi-open section | Cell doors opened at least four hours a day, right to a walk and use of gym |
| 2 | 23.04.2013-07.05.2013 | 143 | 2.36-3.54 $m^2$ | Closed cell | Right to a one-hour walk |

69. The applicant did not contest those data.

*The applicant's complaints about the prison conditions*

70. On 9 June 2013 the applicant lodged a complaint with Tallinn Prison, seeking compensation for non-pecuniary damage resulting from inadequate conditions of detention. On 8 August 2013 Tallinn Prison refused to examine his complaint with regard to the period from 24 October 2008 to 10 June 2010 and dismissed the rest of his complaint as unfounded.

71. On 8 September 2013 the applicant lodged a complaint against Tallinn Prison with the Tartu Administrative Court, seeking compensation in the amount of EUR 10,000 for non-pecuniary damage resulting from inadequate conditions of detention. On 11 March 2014 the Tartu Administrative Court partially granted the applicant's claim in the amount of EUR 7,061 (administrative case no. 3-13-1885). The prison administration explained in those proceedings that it was not able to place

the applicant in a cell which would afford him personal space of more than 3 square metres and it was not possible to transfer him to another prison for the same reason. The court of first instance refused to examine the applicant's complaints with regard to alleged physical suffering, lack of privacy and lack of sports facilities. The applicant and Tallinn Prison challenged the first-instance judgment by lodging appeals before the Tartu Court of Appeal.

72. By a judgment of 16 December 2015 the Court of Appeal dismissed the applicant's appeal, partially upheld the appeal of Tallinn Prison and quashed the first-instance judgment. It refused to examine the applicant's complaint with regard to the period from 24 October 2008 to 10 June 2010 on the grounds that he had not complied with the mandatory pre-action procedure as required under Article 47 § 1 of the Code of Administrative Court Procedure as the complaint had been lodged outside the time-limit provided for under section 17(3) of the State Liability Act. The Court of Appeal reasoned the refusal to examine part of the claim as follows:

> "Given the nature of the suffering described by V. Tarasovski, he should have realised the impact of the relevant circumstances practically from the first day of his detention in Tallinn Prison. The prison [administration] explained that in 2008 when he had arrived in Tallinn Prison, he had been placed in cell no. 216 together with five other detainees. If the space of a toilet is excluded, the personal space afforded to one person was 2.55 square metres. Therefore, V. Tarasovski must have perceived the scarcity of space and realised its impact right away."

73. The Court of Appeal granted the remainder of the applicant's complaint and awarded him EUR 200, taking into account the different periods when he had been detained on remand and as a prisoner. The court held, *inter alia*, that the applicant's failure to use preventive remedies under section 7(1) of the State Liability Act did not hinder granting the claim because a complaint by the applicant could not have alleviated the damage he had suffered.

74. The applicant then lodged an appeal on points of law with the Supreme Court, which refused him leave to appeal on 30 May 2016.

### H. General conditions of detention in Tallinn Prison

75. According to the Government, the general conditions of detention in Tallinn Prison were adequate. In particular, all prisoners had their own bed. Whether there was an in-cell lavatory depended on the particular unit of the prison. In the newer buildings, the cells had a lavatory and a washbasin with a cold water supply. Prisoners could get hot water by using a kettle or by contacting an officer with such a request. For washing dishes and clothes, the prison would lend a kettle. In older buildings accommodating convicted prisoners who were free to move around the section throughout the day, prisoners could use common rooms which had lavatories and washbasins

with a hot water supply. All prisoners were ensured access to a shower at least once a week; additional opportunities were provided after use of the sports hall and, for prisoners engaged in employment, at the end of each working day.

76. Air circulation in the cells was ensured by natural ventilation. All cells had windows which could be opened either fully or in part. Cells were heated through a central heating system. The heating was automatically regulated in accordance with the outside temperature. During the summer, prisoners were allowed to take additional walks and since 2012 additional showers, and drinking water and fans were provided in each cell. Sufficient natural light was provided by means of windows. Artificial light was dependent on the size of the cell and the need, and was provided by means of two to three 75W lightbulbs. Additional lamps could be bought from the prison shop if needed.

77. All prisoners had the right to walk in the fresh air. Prisoners on remand and under the reception regime were ensured a one-hour daily walk. Exercise yards for prisoners on remand measured 14 to 15 square metres. The yards were furnished with benches; they had an open roof and a canopy. Since 2014 smokers and non-smokers could use separate yards. Convicted prisoners had an exercise yard measuring 152.93 to 270.47 square metres. Yards were furnished with benches and permanent equipment for exercises. Convicted prisoners were ensured at least four hours' walk per day. They also had the opportunity to engage in sports (various ball games, running, table tennis and general physical activities) at the prison gym. Since 2014 smokers and non-smokers were allowed to walk in separate exercise yards upon request.

78. The prison organised basic and general secondary education for prisoners who wished to continue learning. Prisoners also had the opportunity to learn the national language. Upon request a prisoner was allowed to study in an educational establishment outside the prison. Prisoners could participate in further professional development and various social programmes, and attend recreational art, handicraft or music groups. All prisoners could use the library at least twice a month and subscribe to publications. The prison provided daily newspapers and the opportunity to listen to the radio.

79. The prison provided hot meals three times a day. The menu was based on the energy and nutritional needs of a person of average weight and height. Additional food could be bought from the prison shop. Personal dietary needs were reviewed during a health check by the prison doctor. The medical personnel were always present. General and specialist healthcare services were available at the prison and, if necessary, outside the prison.

80. The Government stressed that the current premises of Tallinn Prison would be closed on completion of the construction of a new prison facility

at the end of 2018. According to the Government, the new prison would not raise any issues of inadequate conditions of detention under the Convention.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Relevant domestic procedural law

#### 1. *Code of Administrative Court Procedure* (Halduskohtumenetluse seadustik)

81. Article 46 § 4 of the Code of Administrative Court Procedure provides that an action for compensation or reparation may be lodged within three years of the date on which the applicant became aware, or should have become aware, of the harm and of the physical or legal person causing the harm, or of the consequences of the administrative decision or measure the elimination of which the applicant seeks. Nevertheless, the action must be lodged no later than ten years after the issuance of the administrative decision or legislative act, the taking of the administrative measure or notification of the decision in relation to the administration of justice which caused the damage or gave rise to the consequences.

82. Article 47 § 1 describes the mandatory pre-action procedure as follows:

> "The law may prescribe mandatory challenge proceedings or other mandatory pre-action procedures for resolving certain types of claims. In that case, an action may be lodged only if the person has complied with the pre-action procedure prescribed for dealing with the claim and only to the extent that the person's claim has not been allowed in the pre-action proceedings in due time."

#### 2. *Imprisonment Act* (Vangistusseadus)

83. Section 1-1(5) and (8) of the Imprisonment Act provides:

> "(5) Convicted and remand prisoners have the right to lodge complaints with an administrative court against administrative decisions issued or measures taken by a prison on the basis of and pursuant to the procedure provided for in the Code of Administrative Court Procedure, provided that the prisoner has previously lodged a complaint with the prison administration or the Ministry of Justice and that they have rejected the claim, granted the claim in part, dismissed the claim or failed to adjudicate in due time."

> "(8) A convicted or remand prisoner has the right of recourse to an administrative court to seek compensation for damage caused by a prison if the prisoner has previously applied to the prison for compensation for damage pursuant to the procedure provided for in the State Liability Act and the prison has refused to hear or dismissed the claim or failed to adjudicate in due time."

84. Under section 1-1(7) such complaint must be resolved within thirty days of the date on which it was lodged with the authority responsible for reviewing the complaint. Section 1-1(1) provides that administrative

proceedings are conducted in accordance with the provisions of the Administrative Procedure Act.

*3. Administrative Procedure Act* (Haldusmenetluse seadus)

85. Section 85 of the Administrative Procedure Act provides that when adjudicating a matter on the merits, the authorities are empowered to allow the complaint, revoke an administrative decision either wholly or partially and eliminate its factual consequences; instruct that an administrative decision be issued for a measure to be taken or for fresh resolution of the matter; instruct the reversal of a measure; or dismiss the complaint.

*4. State Liability Act* (Riigivastutuse seadus)*, as in force since 31 August 2011*

86. Section 7(1) of the State Liability Act provides:

> "(1) A person whose rights have been violated by unlawful actions of a public authority in a public-law relationship (hereinafter 'the injured party') may claim compensation for damage caused to the person if the damage could not have been prevented and cannot be eliminated by the protection or restoration of rights in the manner provided for in sections 3, 4 and 6 of this Act."

87. Sections 3, 4 and 6 provide that a person has the right to request the revocation of an administrative decision which is in violation of his or her rights. A person may request the termination of a violation of his or her rights resulting from a continuing administrative measure if the termination is possible without excessive costs. A person also has the right to request that an administrative decision be issued or a measure taken if the public authority is required to issue the administrative decision or take the measure and that decision or measure concerns the rights of that person.

88. Section 9 of the State Liability Act sets out the rules concerning compensation for non-pecuniary damage:

> "(1) A person may claim financial compensation for non-pecuniary damage resulting from wrongful undermining of dignity, damage to health, deprivation of liberty, violation of the inviolability of the person's home or private life or of the confidentiality of their correspondence, or defamation of the person's honour or good name.
>
> (2) Non-pecuniary damage shall be compensated for in proportion to the gravity of the violation, taking into account the form and gravity of the fault (*süü vorm ja raskus*).
>
> (3) Fault for causing damage is not taken into consideration if compensation for non-pecuniary damage is claimed on the basis of a decision by the European Court of Human Rights establishing a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or any of its protocols by a public authority."

89. Section 17(3) of the State Liability Act provides procedural rules for lodging a claim for damages:

> "(1) In order to claim compensation for damage, an application may be lodged with the administrative authority which caused the damage or an action may be lodged with an administrative court. Applications for compensation for damage caused by the courts shall be lodged with the Ministry of Justice."

> "(3) An application or action shall be lodged within three years of the date on which the injured party became aware or should have become aware of the damage and of the physical or legal person who caused it, but no later than ten years after the causing of damage or the event which caused the damage, regardless of whether the injured party became aware of the damage and of the person who caused it."

*5. Treatment Plan* (Täitmisplaan) *as in force until 15 October 2012*

90. Sections 8 and 16 of the Treatment Plan provide that a prisoner will be relocated at the request of the director of the prison in which the prisoner is detained. Section 2(2) provides that the Ministry of Justice will decide whether to grant the request.

## B. Relevant domestic law on conditions of detention

*1. Imprisonment Act* (Vangistusseadus)

91. Section 6(2) provides that prisoners will be held in closed or open prisons. Section 8(1) provides for the general conditions of a closed prison as follows:

> "(1) Prisoners shall be permitted to move about within the grounds of a closed prison at the locations and times provided for in the prison's internal rules and rules of procedure. Prisoners shall be separated in locked cells allocated to them from lights-out until wake-up and at other times, as provided for in the prison's internal rules and rules of procedure."

92. The general conditions of open prisons are set out in section 10(1) and (2):

> "(1) Prisoners are permitted to move about freely within the grounds of an open prison from wake-up until lights-out. With the permission of the prison administration, prisoners are also permitted to go outside the grounds of an open prison in connection with their studies, work or to receive healthcare services."

> "(2) From lights-out until wake-up, prisoners shall be separated in the cells allocated to them, which shall be locked, if necessary. With the permission of a prison officer, prisoners shall be permitted to stay from lights-out until wake-up within or outside the grounds of an open prison in connection with their work."

93. Section 90(3) sets out the general conditions for remand prisoners as follows:

> "Remand prisoners shall be kept in locked cells twenty-four hours a day, except when they are working or studying. Remand prisoners who are accused in the same criminal case shall be kept separately."

94. Under section 93(5), a remand prisoner is allowed to be in the open air for at least one hour daily, if he or she so wishes. Under section 37 working is mandatory for convicted prisoners.

95. Under section 45 prison cells have to meet the general requirements established for dwellings on the basis of the Building Code. Cells must be well ventilated and light, and have an ambient temperature. They must have a window and sufficient artificial lighting. The Minister of Justice is responsible for the internal rules of prisons, establishing the size of cells and listing the items of furniture. Prisoners are required to clean their cells and the furnishings and keep them in order.

96. Section 19(1) and (2) of the Imprisonment Act provides for a prisoner's transfer as follows:

> "A prisoner may be transferred from one closed prison to another or from one open prison to another if such transfer is necessary for the implementation of the individual treatment plan of the prisoner, to achieve the objectives of the prison sentence or for reasons of security. The minister responsible shall approve the procedure for transfer of prisoners."

#### 2. *Regulation no. 72 of the Minister of Justice on the Internal Prison Rules* (Vangla sisekorraeeskiri)

97. Section 8 of the Internal Prison Rules deals with restrictions on convicted prisoners' movement and provides as follows:

> "(1) Convicted prisoners, except those in an open prison, are not obliged to stay in their cell if they are engaged in social reintegration activities. Convicted prisoners are allowed to spend time outside their cell within the section in accordance with the relevant prison house rules. Prisoners must be provided with at least 4 hours of free time to move around within their section."

98. The Internal Prison Rules, in force until 31 December 2013, provided that there had to be at least 2.5 square metres of floor space per prisoner in a room or cell. Since 1 January 2014 the Rules provide that there has to be at least 2.5 square metres of floor space in a room and at least 3 square metres in a cell per prisoner.

### C. Relevant domestic practice

99. In a judgment of 11 November 2008 (no. 3-3-1-68-08) the Supreme Court explained that section 1-1(8) of the Imprisonment Act provided that the court may only examine a claim for damages lodged by a prisoner insofar as he or she had complied with the mandatory pre-action procedure. In its judgment of 3 March 2004 (no. 3-4-1-5-04) the Supreme Court's Constitutional Review Chamber held that the mandatory pre-action procedure was in conformity with the right to effective legal protection and fair administration of justice, provided that it was not excessively long and the right to appeal to a court was guaranteed.

100. The Supreme Court has repeatedly explained that section 7(1) of the State Liability Act gives rise to the principle that, if possible, an injured party must try to prevent any damage by lodging a timely complaint about the actions of a public authority causing the damage. In a judgment of 11 March 2004 (no. 3-3-1-8-04) the court explained as follows:

> "Section 7(1) of the State Liability Act reflects the principle that a claim for damages is dismissed if the person could have avoided suffering the damage by lodging, either in challenge proceedings or in administrative court proceedings, an application for annulment of an administrative decision, termination of a measure, the issuing of an administrative decision, or the taking of a measure."

101. The court further explained that failing to use those preventive remedies would exclude the granting of damages if it had been clear to the injured party that they could have used a preventive remedy to avoid the damage and the person had no good reasons for failing to lodge the relevant complaint. The court then noted:

> "Failing to use preventive remedies does not therefore always give grounds to dismiss a claim for damages."

102. In a judgment of 27 May 2016 (case no. 3-3-1-21-16) the Supreme Court explained that the failure to use preliminary remedies could not be imputed to an applicant if using it would not have prevented or eliminated the damage or restricted its extent. According to the reasoning of the Supreme Court, the prison administration itself had confirmed in many domestic proceedings that lack of personal space was a result of a general problem of overcrowding in prisons and it was not in the prison administration's power to resolve the issue. If a prison administration had any remedies to reduce the impact of overcrowding, it was obliged to use them on its own motion. It had not been shown that this had been done. Using preventive remedies would therefore not have had any reasonable prospect of success. Failure to use such remedies could not be held as grounds for refusing to award compensation for non-pecuniary damage. The Supreme Court maintained that position in subsequent judgments. In its decision of 15 June 2016 (case no. 3-3-1-16-16) it reiterated that as the prison administration itself had explained, it did not have the means to afford prisoners more personal space, and allocating prisoners to other prison facilities was impeded. Therefore, failure to use the preventive remedies did not give grounds to dismiss an applicant's claim for damages.

103. In a judgment of 6 March 2014 (in case no. 3-3-1-93-13) the Supreme Court explained how the statutory time-limit for lodging a claim for damages was calculated, as set out in section 17(3) of the State Liability Act, in cases concerning inadequate conditions of detention. The Supreme Court stated that the running of the time-limit in the event of a continuous situation may start at a different time depending on when the injured person became aware or should have become aware of the damage and of the

physical or legal person causing it. In the event of inhuman or degrading conditions of detention, a claim for damages was inseparably related to the duration of such treatment. Both the overall duration of the detention and the duration of particular periods of time had to be taken into account, as the conditions in different periods might differ and have different effects on the detainee. Lastly, the particular circumstances of each case, the gravity of the violation and its cumulative effect had to be taken into account. Detention was a continuous action during which circumstances might change. It was therefore not always possible to determine when the detainee had become or ought to have become aware of the damage caused.

104. The court further explained that in the event of a continuous situation, the time-limit usually started running after the situation had ended:

> "14. The applicant's detention in degrading conditions in the period from 31 August 2007 to 15 February 2008 was a continuous administrative action. When establishing the damage that is caused by degrading conditions of detention, the cumulative effect of the circumstances, their intensity and gravity, and the duration of the detention have to be taken into account. Damage was caused to the applicant throughout this period and the final extent of the damage appeared only after the end of the continuous action. In these circumstances, the time a person becomes aware of the damage caused, within the meaning of section 17(3) of the State Liability Act and section 9(4) of the Administrative Procedure Act, occurs after the end of the continuous action causing the damage, and the preconditions of section 17(3) of the State Liability Act are fulfilled. Therefore, in the case of continuous action, the time-limit for lodging a claim for damage usually starts running when the continuous action ends. The time-limit may start running before the end of the continuous action in exceptional circumstances if it is clear that the person already became aware or should have become aware of the final extent of the damage.
>
> The applicant lodged his claim (on 15 February 2011) within three years of the date of the end of his detention in degrading conditions (on 15 February 2008). In the instant case the applicant was held in these conditions continuously for approximately six months. His claim for damages for the period from 31 August 2007 to 15 February 2008 was therefore lodged in due time."

105. The Supreme Court reiterated those criteria in its judgments of 15 June 2015 (case no. 3-3-1-20-15) and 27 April 2016 (no. 3-3-1-68-15). It held that if the conditions of an applicant's detention significantly changed, his detention in different conditions must be regarded as separate actions and he therefore had to have become aware of the damage after the end of such action. The court also explained:

> "12. The longer the alleged period of action causing the damage that exceeds the three-year time-limit, the more significant the arguments have to be as to why the applicant could not and should not have become aware of the damage before the end of the continuous situation. Otherwise the time-limit set out in section 17 of the State Liability Act would become illusory and considerable accumulation of damage may occur as a result of delay with lodging the claim. Delaying the lodging of a complaint must not be motivated by an aim to obtain greater compensation."

106. In its judgments of 12 May 2017 (case no. 3-3-1-68-15) and 17 March 2017 (case no. 3-3-1-89-16) the Supreme Court did not find it credible that the applicants had not understood, within a reasonable time, the unlawfulness of the conditions of their detention. In its judgment of 12 May 2017 (case no. 3-3-1-98-16) the Supreme Court, referring to its previous case-law, reiterated that the time-limit for lodging a claim for damages usually started running when the continuous act ended, unless it was clear that the person had become or should have become aware of the damage at an earlier stage. The Supreme Court explained:

> "12. Even if the applicant realised immediately after his placement in the prison that the scarcity of personal space might violate his human dignity, the time-limit for lodging a claim starts running after he realises that he is suffering damage. The case-law does not consider a short allocation to scarce personal space to be such a serious violation of human rights that it would justify awarding compensation. Similarly, the time-limit for lodging a claim for compensation does not start running when the person is placed in such conditions and each day in inadequate conditions does not constitute a separate action."

## III. RELEVANT INTERNATIONAL MATERIAL

### A. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT")

107. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, a delegation of the CPT carried out a periodic visit to Estonia from 30 May to 6 June 2012. It was the Committee's fifth visit to Estonia. The Committee adopted its report at its 79th meeting, held from 5 to 9 November 2012.

108. The relevant parts of the report (CPT/Inf (2014) 1) read as follows:

> **"Preliminary remarks**
>
> 41. ...
>
> Tallinn Prison has been visited by the Committee on several occasions. This establishment is one of the last vestiges of a previous era remaining to be removed from the prison estate. Its replacement by a new prison in the Tallinn area has long been planned. However, the delegation was informed that the completion of the new prison – previously announced for 2011 – was not now envisaged before 2017 due to planning difficulties and budgetary constraints.
>
> The prison has an official capacity of 1,179 places and at the time of the visit was accommodating 1,094 inmates, 664 sentenced and 430 on remand. The inmates included eight persons serving a life sentence, and the CPT is pleased to note that these prisoners were not held separately but instead had been integrated into the general sentenced inmate population. This is an example that certain other countries could usefully follow.
>
> ...

43. Representatives of the Ministry of Justice indicated that prisoners in multi-occupancy cells had at least 4 m² of living space in the recently opened prisons of Tartu and Viru. However, the minimum legal standard of 2.5 m² of living space per prisoner as laid down in the Internal Prison Rules of the Ministry of Justice remained unchanged and was still applied in the other prisons. As the CPT has repeatedly made clear, this standard is too low. The authorities indicated that they intended to raise the minimum standard to 4 m² when the new Tallinn Prison became operational.

44. Section $11^1$ of the Imprisonment Act – entitled "Prohibition of overcrowding" – provides that "the number of prisoners in a prison shall not exceed the maximum number of prisoners established for the prison by the Minister of Justice". The Ministry should determine this maximum number, based on the individual prison's capacity to organise the living conditions, work, study and leisure activities of its prisoners. Section $11^1$ will enter into force on 1 January 2015 and to implement this provision, the authorities intend – if necessary – to establish a waiting list of prisoners.

...

**Tallinn Prison**

a. general conditions of detention

50. Material conditions at Tallinn Prison have been described in detail in previous CPT reports and there has been no fundamental change since the last visit in 2007. The conditions were substandard, a fact acknowledged by both the management of the prison and the national authorities.

The occupancy levels in all areas of the prison remained high. For example in the two main accommodation blocks, E1 and E2, many 15 m² cells were accommodating six persons. Such a rate of occupancy may be in accordance with the current internal prison rules, but for the CPT it amounts to serious overcrowding (see paragraph 43).

Further, most of the cells were dilapidated, poorly ventilated and in a poor state of hygiene (leaking pipes, mould in the sanitary facilities, etc.). One of the few positive points was that the incell sanitary facilities were fully partitioned.

...

52. As for the regime, it remained impoverished for all remand prisoners as well as for a large proportion of the convicted population. The vast majority of remand prisoners spent 23 hours a day confined to their poorly equipped and often overpopulated cells; their only regular out-of-cell activity was one hour of daily outdoor exercise which was taken in small yards (14 m²) of oppressive design. The delegation was informed that remand prisoners were allowed to follow a limited number of programmes (anger management, life style education, social skills, Estonian language course and stop smoking programmes) as well as to have access to the sports hall one hour every week. However, many remand prisoners interviewed were apparently not aware of the programmes available; steps should be taken to remedy this situation.

As regards the convicted population, only 138 out of 664 prisoners had work; they were involved in domestic duties including cleaning, cooking and food distribution. The Director expressed his regret that no further work could be provided to prisoners. In addition to the programmes available to remand prisoners, sentenced inmates were offered further activities including 'aggressiveness replacement' training, traffic safety or pre-release programmes. However, as far as the delegation could ascertain, only a small number of inmates benefited from them.

53. The CPT has already recommended that in the context of the entry into force of Section 11[1] of the Imprisonment Act in January 2015, the maximum authorised number of prisoners per establishment should be calculated on the basis of 4 m² of living space per prisoner (not counting the area taken up by any in-cell toilet facility). Obviously, this recommendation should apply to Tallinn Prison if it is still in service at that time.

Further, the CPT calls upon the Estonian authorities to ensure that the detention areas, related sanitary/washing facilities and outdoor exercise areas are maintained in – and as necessary restored to – a satisfactory state of repair and hygiene. This constitutes a basic obligation of the State *vis-à-vis* persons who it deprives of their liberty.

The Committee also invites the Estonian authorities to allow more frequent access to shower facilities, taking into account Rule 19.4 of the European Prison Rules. At the time of the visit, prisoners were entitled to shower only once a week.

54. The cells in units III and IV, which were used to accommodate sentenced prisoners including those with a job, did not have in-cell sanitation. A number of prisoners complained about delays – on occasion, for up to one hour – in gaining access to the toilet during the night. Recently, the NPM drew similar conclusions. The CPT recommends that steps be taken to ensure that all prisoners held in the establishment who need to use a toilet facility are able to do so without delay at all times, including at night.

55. It is clearly unrealistic in the present premises of the Tallinn Prison to offer a satisfactory programme of out-of-cell activities (education, sports and recreational activities) to remand prisoners. However, the introduction of association periods with prisoners from other cells for some hours per day should certainly be feasible from a practical standpoint. The CPT recommends that such periods be introduced; if necessary, the relevant provisions of the Imprisonment Act should be amended.

As regards sentenced inmates, the CPT recommends that efforts be made to enhance the programme of out-of-cell activities and in particular to provide work (preferably of a vocational value) to a larger number of prisoners.

...

Recommendations

– the minimum standard of living space per prisoner to be raised to 4 m² (not counting the area taken up by any in-cell toilet facility) at Tallinn Prison by 1 January 2015, if the establishment is still in service at that time (paragraph 53);

– the Estonian authorities to ensure that the detention areas, related sanitary/washing facilities and outdoor exercise areas are maintained in – and as necessary restored to – a satisfactory state of repair and hygiene (paragraph 53);

– steps to be taken to ensure that all prisoners who need to use a toilet facility are able to do so without delay at all times, including at night (paragraph 54);

– association periods with prisoners from other cells to be introduced for remand prisoners; if necessary, the relevant provisions of the Imprisonment Act should be amended (paragraph 55);

– efforts to be made to enhance the programme of out-of-cell activities for sentenced prisoners and in particular to provide work (preferably of a vocational value) to a larger number of them (paragraph 55);

– the Estonian authorities to take Block K1 out of service without delay (paragraph 57);

– juveniles temporarily placed at Tallinn Prison to be accommodated in facilities which fully respect their physical and mental integrity (paragraph 58);

– the Estonian authorities to take steps to ensure that female prisoners are held in accommodation which is physically separated from that occupied by male prisoners (paragraph 59);

– association periods with prisoners from other cells to be introduced for the female remand prisoners (paragraph 59);

– the Estonian authorities to ensure that female prisoners have access to adequate quantities of essential hygiene products (paragraph 60).

Comments

– steps should be taken to ensure that remand prisoners at Tallinn Prison are aware of the programmes available (paragraph 52);

– the Estonian authorities are invited to allow prisoners more frequent access to shower facilities, taking into account Rule 19.4 of the European Prison Rules (paragraphs 53 and 60).”

## B. European Prison Rules

109. On 11 January 20016 the Committee of Ministers of the Counsil of Europe noted that the European Prison Rules, adopted on 12 February 1987 to establish the minimum standards to be applied in prisons, “needed to be substantively revised and updated in order to reflect the developments which ha[d] occurred in penal policy, sentencing practice and the overall management of prisons in Europe”, adopted Recommendation Rec(2006)2 on the European Prison Rules. The new, 2006 version of the Rules featured as an appendix to that Recommendation. It reads, in so far as relevant, as follows:

“**Part I**

*Basic principles*

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3 Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners’ human rights are not justified by lack of resources.

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

...

*Scope and application*

10.1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

10.2. In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3 The Rules also apply to persons:

a. who may be detained for any other reason in a prison; or

b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

...

**Part II**

*Conditions of imprisonment*

...

*Allocation and accommodation*

...

18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3. Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6. Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7. As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

18.8. In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

a. untried prisoners separately from sentenced prisoners;

b. male prisoners separately from females; and

c. young adult prisoners separately from older prisoners.

18.9. Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10. Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

...

*Hygiene*

19.1 All parts of every prison shall be properly maintained and kept clean at all times.

19.2 When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4 Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5 Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6 The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

...

*Clothing and bedding*

...

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

*Nutrition*

22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

...

*Prison regime*

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

...

*Work*

26.1 Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.

26.2 Prison authorities shall strive to provide sufficient work of a useful nature.

...

*Exercise and recreation*

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

*Education*

28.1 Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

...

**Part VIII**

*Sentenced prisoners*

*Objective of the regime for sentenced prisoners*

102.1 In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.

102.2 Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.

*Implementation of the regime for sentenced prisoners*

103.1 The regime for sentenced prisoners shall commence as soon as someone has been admitted to prison with the status of a sentenced prisoner, unless it has commenced before.

103.2 As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release.

103.3 Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans.

103.4 Such plans shall as far as is practicable include:

a. work;

b. education;

c. other activities; and

d. preparation for release.

...

*Work by sentenced prisoners*

105.1 A systematic programme of work shall seek to contribute to meeting the objective of the regime for sentenced prisoners.

...

*Education of sentenced prisoners*

106.1 A systematic programme of education, including skills training, with the objective of improving prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners.

..."

# THE LAW

## I. JOINDER OF THE APPLICATIONS

110. The Court notes at the outset that all the applicants complained of the inhuman conditions of their detention in Tallinn Prison. All of the applications also raised the issue of the effectiveness of the domestic remedy in that respect. Having regard to the similarity of the applicants' grievances, the Court is of the view that, in the interests of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

111. All seven applicants complained that the conditions of their detention in Tallinn Prison, where they had been held in different periods between 2004 and 2013, had been inhuman and degrading.

112. They relied on Article 3 of the Convention, which reads as follows:

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

### A. Admissibility

113. The Government were of the view that part of the complaints were inadmissible for non-exhaustion of domestic remedies or loss of victim status.

114. The Court will therefore begin its examination with a verification of whether the admissibility criteria in Articles 34 and 35 of the Convention have been met in each individual case. Article 34 reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Paragraph 1 of Article 35 provides as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

#### *1. Preliminary remarks*

115. The Court observes that the crux of the applicants' complaints concerns their placement in overcrowded cells in Tallinn Prison. The applicants raised further complaints concerning other material conditions of detention, such as ventilation, hygiene, nutrition, insufficiency of light and daily walks in fresh air, as well as the general deficiencies of the prison building. The Court notes that it has already found in a case similar to the ones in hand that a remand prisoner's material conditions in Tallinn Prison were inadequate due to overcrowding (see *Tunis v. Estonia*, no. 429/12, 19 December 2013). However, given the divergent domestic case-law in respect of both domestic procedural and material rules in cases of prison overcrowding, the Court will first establish the admissibility of the complaints before the Court, having regard to the domestic rules and practices governing compensatory and preventive remedies, as well as the mandatory pre-action procedure.

116. For the admissible parts of the applicants' complaints, the Court will first reiterate the criteria for calculating the required personal space in

multi-occupancy accommodation and the criteria to be taken into account when deciding whether the level of severity of the conditions reached the threshold required under Article 3 of the Convention in cases of prison overcrowding. It will then examine each case in hand in the light of those criteria. It will also assess the effect of the domestic courts' interpretation of domestic procedural rules on its findings under Article 3 of the Convention. Lastly, the Court will establish whether the applicants can still claim to be victims of a violation under Article 3 of the Convention in the light of the redress awarded to them by the domestic courts, and assess the complaints with regard to the effectiveness of the domestic compensatory remedy.

*2. Exhaustion of domestic remedies*

117. The Government submitted that the applicants had failed to lodge all their complaints with the domestic authorities within the statutory time-limit. Moreover, they had not raised their complaints before the prison administration by way of the mandatory pre-action procedure and/or had failed to raise them in their appeals. The Government concluded that as the domestic courts had therefore been unable to examine those complaints, the applicants' complaints before the Court were partially inadmissible.

118. The applicants contested the Governments' arguments, explaining that when applying the statutory time-limit, the domestic courts had failed to take into account the continuous nature of their detention. Mr Villems, Mr Kaziks, Mr Karp and Mr Savva maintained that even if they had not raised all their complaints before the domestic courts, the courts had nevertheless examined their arguments and those facts could in any event not be disregarded. Mr Tarasovski did not contest the Government's submissions.

**(a) General principles**

119. The Court reiterates that it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as

concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-71, 25 March 2014).

120. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others,* cited above, § 77).

121. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed, it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means, amongst other things, that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicant's case (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

**(b) Analysis of the existing remedies**

*(i) Mandatory pre-action procedure*

122. The Court observes that under domestic procedural rules (see paragraph 81 and following paragraphs), any complaints by prisoners concerning actions or measures taken by the prison administration, including claims for compensation, must first be lodged with the prison

administration. The administration has full capacity to adjudicate on the matter and if appropriate, award redress. It is required to decide on the matter within thirty days. In the event of an unfavourable outcome, the applicant can pursue his complaints before three levels of jurisdiction in the domestic courts. In accordance with domestic case-law (see paragraph 99), the courts may examine a claim for damages lodged by a prisoner only insofar as the applicant has undergone the mandatory pre-action procedure before the prison administration. Therefore, when deciding whether to hear a claim, the court first verifies whether the application for damages lodged with the prison administration is compatible with the claim lodged with the court.

123. Having regard to the foregoing, the Court is convinced that the mandatory pre-action procedure, as provided for in the domestic procedural rules, is an acceptable preliminary requirement. It is noteworthy that the prison administration is capable of adjudicating on the matter and providing redress in a speedy and diligent manner by decisions that are binding and enforceable. Even though lodging a complaint with the prison administration does not meet all the requirements of an independent tribunal, the Court is satisfied that both the factual and the legal elements of the prison administration's decisions are subjected to a full judicial review at three levels of jurisdiction by independent courts, including in situations where the administration is unable or unwilling to decide on the matter.

*(ii) Preventive remedies*

124. The domestic law provides for the principle that, if possible, an injured party must try to prevent any damage by challenging the actions of a public authority allegedly causing the damage (see paragraph 86). For these purposes, the injured party is required, depending on the circumstances of the particular case, to apply to the relevant authority either to revoke or issue an administrative decision or to terminate or take a measure. The Court reiterates that for a person held in inadequate conditions of detention, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 181, 27 January 2015).

125. The Government suggested in their observations that if the applicants had applied for a transfer, their placement in a larger cell could not have been ruled out and the prison would also have been able to afford them additional walks or engagement in various activities to relieve the effects of overcrowding. However, the Government have failed to demonstrate convincingly that, apart from the general right to complain, prisoners had a statutory right to request that those particular measures be taken in response to their complaints. Nor have they proved the remedy's preventive capacity in practice in cases of inadequate conditions of detention in Tallinn Prison.

126. The Court observes that the domestic courts have held in several cases, including those in hand, that such preventive remedies would not have had any reasonable prospect of success. Also, the prison administration itself conceded in the domestic proceedings that at the material time it had lacked the capacity to resolve the issue of overcrowding. Moreover, the same was confirmed by the Estonian Supreme Court, which also held that failing to use preventive remedies in such a situation did not provide grounds for dismissing claims for damages (see paragraph 102). The Court has no reason to depart from the domestic courts' findings.

127. The Court also observes that in accordance with the Treatment Plan (see paragraph 90), a request for the transfer of a prisoner to another prison facility could only have been made by the director of the prison and decided by the Ministry of Justice. That remedy was therefore not directly accessible to the applicants, nor did the prison administration have the discretion to relocate inmates (see, *mutatis mutantis*, *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, § 110, 20 October 2011, and *Neshkov and Others*, cited above, § 211).

128. It follows from the above findings that the prison administration did not have at its disposal the necessary legal or material tools for eradicating the problems, and a request for improvement of prison conditions would not have had any reasonable prospect of success. Failure to use such a remedy cannot therefore be held against the applicants, as it unjustifiably restricts their rights under the Convention.

129. The Court reiterates that while the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant, the lack of any prospect of obtaining adequate redress raises an issue under Article 13 (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 394, ECHR 2011). The Court notes that the effectiveness of the preventive remedy is not as such a subject matter of the instant cases. It was not raised before the domestic courts or before this Court, as by the time the applicants' claims for compensation were examined by the domestic courts, the applicants had already been released or transferred to another detention facility. The Court will therefore not examine the issue under Article 13 of the Convention. It would nevertheless point out and invite the respondent Government to take cognisance of the principles deriving from the Court's case-law, according to which the existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 (see, among other authorities, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 98, 10 January 2012).

*(iii) Compensatory remedy*

130. A prisoner may claim financial compensation for non-pecuniary damage resulting from inadequate conditions of detention, as provided for in the State Liability Act (see paragraph 88). Compensation for non-

pecuniary damage is, in principle, awarded in proportion to the gravity of the violation, taking into account the form and gravity of the fault on the part of the public authority. Such claims have to be submitted within three years of the date on which the injured party became aware or should have become aware of the damage and of the authority causing it.

131. The Court concludes from the above that judicial proceedings instituted in accordance with the Code of Administrative Proceedings and the State Liability Act provide a forum that guarantees due process of law and effective participation for an aggrieved individual. This finding is best illustrated by the case-law of the domestic courts, according to which prisoners' claims for compensation are duly examined. In such proceedings, courts can take cognisance of the merits of a complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation. The ensuing judicial decision will be binding on the authority at fault and enforceable against it.

**(c) Application of the general principles to the present cases**

*(i) Obligation to comply with the mandatory pre-action procedure and to raise the issues on appeal with regard to Mr Villems, Mr Kaziks, Mr Tarasovski, Mr Karp and Mr Savv*

132. The Government submitted that Mr Villems had not made his allegations concerning access to a shower, lack of privacy in the shower and humidity in the cells by way of the mandatory pre-action procedure. Mr Kaziks had not raised in his appeal the alleged lack of ventilation and absence of hot water. Mr Tarasovski had not raised the alleged lack of opportunity to engage in sports activities by way of the mandatory pre-action procedure. Mr Karp had not appealed against the County Court's decision in which it had partly refused to examine the complaint for failure to abide by the domestic procedural rules. He had also failed to raise in his appeal any other issues of conditions of detention except for insufficient floor space. His complaints with regard to the periods from 2008 to 2010 and those about ventilation and humidity, raised before the Court, were therefore inadmissible for non-exhaustion of domestic remedies. The Government also pointed out that Mr Savva had not raised by way of the mandatory pre-action procedure any other issues apart from the alleged lack of personal space.

133. The Court has already established that the mandatory pre-action procedure is an essential part of the domestic procedure for dealing with prisoners' complaints (see paragraph 123). In view of those findings and having regard to the documents submitted, the Court agrees with the Government's objections as to non-exhaustion of domestic remedies. As the applicants failed to lodge the above-mentioned complaints by way of the mandatory pre-action procedure or failed to raise the issues in their appeals, the domestic courts were not able to examine them on the merits. Given the

subsidiary nature of the Convention mechanism, the Court is unable to agree with the applicants that their complaints with regard to different aspects of their detention can nevertheless be considered by this Court.

134. The Court finds that the applicants did not properly exhaust domestic remedies and that these complaints are therefore inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must therefore be rejected pursuant to Article 35 § 4 of the Convention.

*(ii) Statutory time-limit for lodging a complaint with the domestic authorities and exhaustion of domestic remedies with regard to Mr Nikitin, Mr Kaziks, Mr Tarasovski and Mr Savva*

135. The Government submitted that those parts of the applicants' complaints that had not been lodged with the domestic authorities within the statutory time-limit were inadmissible for non-exhaustion of domestic remedies.

136. The Court observes that under domestic law, a claim for compensation has to be lodged within three years of the date on which the person became aware or should have become aware of the damage and of the public authority causing it. The practice of the Supreme Court of Estonia is that the time-limit for lodging a claim in cases of inadequate conditions of detention usually starts running when the continuous situation ends. It may start running before the end of the continuous situation in exceptional circumstances if it is clear that the person already became aware or should have become aware of the damage (see paragraph 103). The Court observes that this approach is in principle consistent with its own case-law on calculating the running of a time-limit in continuous situations, such as in cases of inadequate conditions of detention. In particular, the Court has held that the period of an applicant's detention should be regarded as a "continuing situation", as long as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural measures would have no bearing on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation" (see *Seleznev v. Russia*, no. 15591/03, §§ 34-36, 26 June 2008; *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008; *Iacov Stanciu v. Romania*, no. 35972/05, §§ 136-38, 24 July 2012; and *Ananyev and Others*, cited above, §§ 75-78; and *Neshkov and Others*, cited above, § 199).

137. It is not this Court's task to verify whether the administrative courts' rulings in the instant cases were correct in terms of Estonian law. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by the national courts and that it is in the first place

for the national authorities, notably the courts, to interpret national law. However, the Court is called upon to examine whether the effects of such an interpretation are compatible with the Convention (see *Platakou v. Greece*, no. 38460/97,§ 37, ECHR 2001-I, and *Zubac v. Croatia* [GC], no. 40160/12, § 81, 5 April 2018). That being so, the Court will not question the interpretation and application of domestic law by the national courts unless it is arbitrary or manifestly unreasonable (see, *mutatis mutandis*, *Farbers and Harlanova v. Latvia* (dec.), no. 57313/00, 6 September 2001, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

(α) The case of Mr Nikitin

138. In the case of Mr Nikitin, the domestic courts held that the time-limit for lodging a complaint with the domestic authority started to run separately with regard to the applicant's stay in each different cell (see paragraph 14). According to documents submitted by the Government, the applicant was transferred between different cells in different prison units within the same prison fourteen times within a period of six years. The Court notes that even though the approach taken by the Court of Appeal when calculating the running of the time-limit does not appear to be consistent with the clearly established practice of the Supreme Court of Estonia or the practice of this Court, as it does not take into account the actual circumstances of the applicant's detention, the conclusion of the court was nevertheless not arbitrary in terms of the applicant's rights under the Convention.

139. According to the documents, the circumstances of the applicant's detention changed when he was transferred from one prison unit to another, as he was subjected to different regimes. On 10 February 2009 he was transferred from a semi-open section to cell no. 15 in an open section, where he stayed until 25 April 2013, with the exception of two days in March 2009 which did not interrupt the continuous nature of his detention in the open section. The period from 10 February 2009 to 25 April 2013 can thus be taken as a whole. Subsequently, from 26 April to 22 October 2013 the applicant was detained in a closed cell. He was then transferred to another prison facility. Given that he lodged his application with the prison administration on 27 April 2014, the Court accepts the Government's objection as to non-exhaustion of domestic remedies regarding the period prior to his stay in cell no. 15.

(β) The cases of Mr Kaziks, Mr Tarasovski and Mr Savva

140. In the cases of Mr Kaziks, Mr Tarasovski and Mr Savva the domestic courts held that given the nature of the applicants' grievances, they must have realised the damage they were suffering from the beginning of

their detention in Tallinn Prison. This was found to be especially true of Mr Savva, who had been detained in Tallinn Prison on previous occasions and therefore must have been aware of the material conditions there. The time-limit was therefore found to have started to run from the beginning of their detention in that prison and, as a result, most of the applicants' complaints were considered as having been lodged out of time. The Court notes at the outset that in his reply to the Government's observations, Mr Savva stated that he did not oppose the Government's objection with regard to the inadmissibility of his complaint regarding the period from 2007 to 2009, but maintained that he had lodged his complaint with regard to the period from 20 May 2010 to 14 July 2014 in due time. Relying on that submission, the Court will consider only the period as clearly stated by the applicant.

141. The Court is of the view that in the instant cases, the domestic courts' restrictive approach to the calculation of domestic time-limits were inconsistent with the clearly established practice of the Supreme Court of Estonia according to which the time-limit usually starts running after the end of the continuous situation, save in exceptional circumstances (see paragraphs 103 to 106). The Court observes that in the instant cases the domestic courts did not assess the actual nature or circumstances of the applicants' detention, including the regime they had been subjected to and the conditions in which they had been placed, but relied merely on a specific event, such as their placement in the relevant prison and concluded that the time-limit started running from the beginning of their detention. The Court reiterates that it does not question the interpretation of domestic law by the national courts, save in the event it is arbitrary or manifestly unreasonable (see paragraph 137). The Court finds that requiring applicants to bring their claim for compensation against the State before the end of the three-year period provided for in Section 17 (3) of the State Liability Act in a situation of continuous nature imposes an unreasonable procedural burden on detainees. Such a requirement does not take into account the vulnerability of prisoners who are kept in inadequate conditions and whose main concern is to try to meet basic needs, maintain their health, safety and dignity on a daily basis. Restricting the period of admissibility of the claim requires that the starting point of the running of the time-limit is fixed precisely relying on objective criteria. However, this seems very difficult given not only the continuous nature of the inadequate conditions, but also of the lack of prospects for improvement of those conditions, particularly as there was no preventive remedy foreseen in Estonia, and the damage that ensues.

142. The Court is therefore unable to agree that a scarcity of personal space in itself can be considered as an exceptional circumstance in which the time-limit can be calculated from the beginning of a prisoner's placement in such conditions. This has also been explained by the Supreme Court of Estonia (see also paragraph 106). No other exceptional

circumstances was pointed out by the domestic courts, nor by the Government, which would enable to precisely establish the starting point of the running of the time-limit before the end of the situation of continuous nature. It follows that even though the Court would normally not question the domestic time-limit and the established practice concerning its application (see *Vučković and Others,* cited above, § 72), which are in itself reasonable, the Court is of the view that the domestic courts in the instant cases, when placing an unreasonable procedural burden on the applicants failed to examine their grievances as a whole and take into account the cumulative effect of their placement in conditions contrary to Article 3. Their conclusion thus put the applicants in a situation that unreasonably denied them their rights under the Convention. The Court is therefore unable to accept the Government's objection as to non-exhaustion of domestic remedies.

143. The Court observes from the material submitted by the Government that on 21 January 2014 Mr Kaziks lodged his claim in respect of inadequate conditions of detention in Tallinn Prison in the periods from 28 December 2009 to 9 November 2011 and from 7 December to 21 December 2011. In both periods he was detained as a remand prisoner in a closed cell. On 9 June 2013 Mr Tarasovski lodged his claim with regard to the periods from 24 October 2008 to 26 July 2011 (including from 24 October 2008 to 18 August 2010 in closed cells; from 19 August to 22 October 2010 in an open unit; and from 23 October 2010 to 26 July 2011 in a semi-open unit) and from 23 April to 7 May 2013 in a closed cell. On 30 January 2014 Mr Savva lodged his claim for the period, as relevant to the instant complaint, from 20 May 2010 to 14 July 2011. As no exceptional circumstances have been pointed out by the Government, the time-limit for lodging the claims did not start running before the end of the periods complained of. All the above-mentioned complaints therefore fall within the statutory time-limit and were accordingly lodged in due time.

144. The Court thus dismisses the Government's objection as to non-exhaustion of domestic remedies with regard to the complaints lodged by Mr Kaziks, Mr Tarasovski and Mr Savva.

*3. Victim status*

145. The Government submitted that the domestic courts had conducted a proper review of the cases insofar as they had been lodged in accordance with domestic procedural rules. As the domestic courts had acknowledged the violations and afforded adequate and sufficient redress where it was appropriate, the applicants Mr Nikitin, Mr Villems, Mr Jeret, Mr Kaziks, Mr Tarasovski and Mr Savva could no longer be regarded as victims of a violation under Article 3.

146. The Court considers that the question whether the redress provided by the national courts was sufficient, so that the applicants can no longer

claim to be victims of a violation of the substantive aspect of Article 3, is inextricably linked to the merits of this complaint. It therefore joins the Government's preliminary objection with regard to the applicants' victim status to the merits of their complaints under Article 3.

*4. The complaints concerning having between 3 and 4 square metres of personal space in Tallinn Prison in respect of Mr Kaziks, Mr Karp and Mr Savva*

147. Mr Kaziks, Mr Karp and Mr Savva complained of overcrowding in their cells, including about the periods where they had been afforded more than 3 but less than 4 square metres of personal space. The Court notes in this regard that the applicants did not properly raise any other specific aspects of the alleged inappropriate physical conditions of their detention which would allow it to conclude that in the circumstances of their cases, taken cumulatively with the factor of having been afforded between 3 and 4 square metres of personal space, the conditions of their detention were degrading (see the principles set out in paragraph 159 and following).

148. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that the evidence before it in respect of these complaints discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (see *Muršić v. Croatia* [GC], no. 7334/13, § 139, 20 October 2016). It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 § 3 (a) and § 4 of the Convention.

*5. Conclusion as to admissibility*

149. Having regard to the aforementioned, the Court finds that the applicants' complaints of having less than 3 square metres of personal space in Tallinn Prison, Mr Jeret's complaint of having between 3 and 4 square metres of personal space, also regarding the general conditions of the prison facility and of the inadequacy of the food and medical care provided, and Mr Villems' complaint that he was unable to take walks in the fresh air, are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention with regard to the following periods:

(i) from 10 February 2009 to 22 October 2013 in respect of Mr Nikitin;

(ii) from 24 October 2008 to 26 July 2011 and from 23 April to 7 May 2013 in respect of Mr Tarasovski;

(iii) from 28 December 2009 to 9 November 2011 and from 7 December to 21 December 2011 in respect of Mr Kaziks;

(iv) from 20 May 2010 to 14 July 2011 in respect of Mr Savva;

(v) from 23 February to 9 November 2012 and from 27 December 2012 to 31 October 2013 in respect of Mr Karp;

(vi) from 6 July 2011 to 17 April 2013 in respect of Mr Villems;

(vii) from 25 February 2011 to 21 November 2013 in respect of Mr Jeret.

150. These complaints are not inadmissible on any other grounds and they must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

151. The applicants maintained that the conditions of their detention in Tallinn Prison had been inadequate and that the domestic courts had failed to redress their grievances.

152. The Government's assertions about the overall conditions of the applicants' detention in Tallinn Prison are set out in paragraph 75 above. They submitted that the conditions of the applicants' detention had been in conformity with the Estonian legislation in force at the material time and compatible with the requirements under the Convention. They argued that those conditions of detention could not, either individually or cumulatively, be considered as aggravating circumstances which, in combination with the size of the cells, amounted to degrading or inhuman treatment of the applicants. They also emphasised that because prior to the Court's judgment in the case of *Muršič v. Croatia* ([GC] no. 7334/13, ECHR 2016), the Court had not relied on a fixed methodology for calculating the size of a cell – in particular, it had not been clear whether the toilet area had to be deducted from the overall surface area of a cell – in the instant cases it was appropriate that the assessment of the conditions be based on the calculations of the domestic courts, regardless of the methodology they used. Based on those calculations, the Government argued that the conditions of the applicants' detention had not reached the minimum level of severity to fall within the scope of Article 3.

### *2. The Court's assessment*

#### (a) General principles

153. Article 3 of the Convention enshrines one of the most fundamental values of a 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, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Svinarenko and Slyadnev* v. Russia [GC], nos. 32541/08 and 43441/08, § 113, ECHR 2014 (extracts)).

154. 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, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; and *Idalov v. Russia* [GC], no. 5826/03, § 91, 22 May 2012).

155. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III; *Ananyev and Others*, cited above, § 140; *Idalov*, cited above, § 92; and *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, § 70, 10 March 2015). Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity (see *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015).

156. In the context of deprivation of liberty, the Court has consistently stressed that to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94; *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; *Ananyev and Others*, cited above, § 141; *Idalov*, cited above, § 93; and *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 178, ECHR 2016).

157. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention (see, *inter alia*, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III; *Mandić and Jović*, cited above, § 80; *Iacov Stanciu*, cited above, § 179; and, generally under Article 3, *Bouyid*, cited above, § 86). Indeed, it is incumbent on the respondent Government to organise their penal system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see, amongst many others, *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006; *Neshkov and Others*, cited above, § 229; and *Varga and Others*, cited above, § 103).

158. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of the specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions has also to be considered (see, amongst many others, *Ananyev and Others*, § 142, and *Idalov*, § 94, both cited above).

**(b) Principles in relation to overcrowding**

159. Having regard to the principles laid down by this Court in the case of *Muršić v. Croatia*, 3 square metres of floor surface per detainee in multi-occupancy accommodation is the relevant minimum standard under Article 3 of the Convention (see *Muršić*, cited above, § 136).

160. When the personal space available to a detainee falls below that level, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government, which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space (see *Muršić*, cited above, §§ 137-138). The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

(1) the periods in which the conditions of detention fell below the required minimum personal space of 3 square metres were short, occasional and minor;

(2) such periods were accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and

(3) the applicant was confined in a detention facility that can generally be described as appropriate, and there were no other aggravating aspects of the conditions of his or her detention.

161. In cases where a prison cell affording between 3 and 4 square metres of personal space per inmate is at issue, the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances, a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see *Muršić*, cited above, § 139).

162. The Court also stresses that in cases where a detainee had at his disposal more than 4 square metres of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention remain relevant for the Court's assessment of the adequacy of his

or her conditions of detention under Article 3 of the Convention (see, for example, *Story and Others v. Malta*, nos. 56854/13, 57005/13; 57043/13, §§ 112-13, 29 October 2015, and *Muršić*, cited above, § 140).

**(c) Application of these principles to this case**

163. First, the Court considers that it has no reason to depart from its previous case-law concerning the calculation of the minimum personal space allocated to a detainee in multi-occupancy accommodation for its assessment under Article 3. In particular, the Court has already established that the in-cell sanitary facility should not be counted in the overall surface area of the cell. On the other hand, calculation of the available surface area in the cell should include space occupied by furniture. What is important in this assessment is whether detainees had a possibility to move around within the cell normally (see *Muršić*, cited above, § 114).

*(i) Conditions of detention of Mr Villems, Mr Kaziks and Mr Savva*

164. The applicants maintained that the overall conditions in Tallinn Prison had been inadequate. In particular, the cells had been overcrowded, affording less than 3 square metres of personal space per inmate. Mr Villems also complained that he had been unable to take his daily one-hour walks in fresh air because he had not wished to share the exercise yard with smoking inmates.

165. The Government reiterated that the domestic courts had acknowledged that the conditions of Mr Villems', Mr Kaziks' and Mr Savva's detention had been inadequate. The Government were nevertheless of the view that the conditions in question had not reached the minimum level of severity to fall within the scope of Article 3.

166. The Court has already had the opportunity to assess the detention conditions of a remand prisoner in a closed section of Tallinn Prison in the period between 2006 and 2009 in the case of *Tunis v. Estonia* (cited above). It held in that case that the area available to the applicant consisting of less than 3 square metres of floor space, which also included space under furniture, had been so limited as to create in itself a strong presumption that the conditions of his detention had amounted to degrading treatment. The Court considered that the applicant had been confined in the cell round the clock, with the exception of one hour of daily outdoor exercise in a yard measuring about 15 square metres, which he had had to share with his cellmates. It found that the conditions of the applicant's detention had amounted to treatment contrary to Article 3 of the Convention. That conclusion was not affected by the fact that the applicant had not raised complaints about other aspects of the detention conditions in his cell or in the prison in general. The Court observes that the applicants in the instant cases were also held in cells providing less than 3 square metres of personal space in conditions similar to those the Court has already had occasion to

assess. The Government have not submitted that the overall conditions in Tallinn Prison have significantly improved. The Court has therefore no reason to depart from its previous finding of a strong presumption that the conditions of the remand prisoners' detention in Tallinn Prison amounted to degrading treatment. This presumption is even stronger in the case of Mr Villems, who complained also that he had been unable to take his daily one-hour walks in fresh air.

167. The Court is mindful of the fact that the old Tallinn Prison will be closed after the opening of a new facility at the end of 2018, which, according to the Government, will not raise any issues of inadequate conditions of detention under the Convention. The Court also takes note of a change in domestic legislation, increasing the minimum space allocated to a prisoner in a cell from 2.5 to 3 square metres (see paragraph 98). This, however, does not change the Court's findings in the cases in hand.

168. Turning to whether there were factors capable of rebutting the strong presumption of a violation of Article 3, the Court reiterates that it was for the respondent Government to demonstrate convincingly that there were factors capable of adequately compensating for the scarce allocation of personal space. The Government submitted in this connection that the periods in which the applicants had been placed in cells which afforded less than 3 square metres of personal space were short and constituted only minor reductions in the required personal space. In particular, the Government pointed out that Mr Kaziks had been placed in cells affording him less than 3 square metres of personal space for thirteen days, Mr Villems for nine days and Mr Savva for nineteen days.

169. The Court does not agree with the Government's submission, because this factor, which is capable of rebutting the strong presumption of a violation of Article 3, is not applicable in the instant cases.

170. The Court observes that in the case of Mr Villems, the domestic courts found that he had been held in inadequate conditions of detention, namely in cells that provided him with less than 3 square metres of personal space and/or that he had been unable to take walks in fresh air, for a period of around 100 days. The Government pointed out that of those 100 days, the applicant had spent only nine days in cells where he had had less than 3 square metres of personal space. The Court observes from the documents submitted by the Government that the domestic court found that the applicant had spent a total of 544 days in cells which afforded less than 3 square metres of personal space; however, it refused to examine his complaint with regard to 444 days, owing to the applicant's failure to use preventive remedies prior to lodging the claim for compensation. Under the State Liability Act, that fact gave the court grounds to dismiss the claim for damages.

171. However, the Court has already found that the prison administration did not have at its disposal the necessary legal or material

tools for eradicating the problems of overcrowding in Tallinn Prison. Therefore, holding a failure to use preventive remedies against the applicant when adjudicating on his claim for compensation was therefore unreasonable (see paragraph 124 and following) given that requesting an improvement in the conditions of detention would not have had any reasonable prospect of success. The domestic courts' refusal to examine the complaint with regard to 444 days therefore unreasonably limited the actual scope of the applicant's case and thus restricted his rights under the Convention.

172. With regard to the cases of Mr Savva and Mr Kaziks, the Court has already concluded that the domestic courts failed to take into account the continuous nature of the applicants' detention, which resulted in failure to examine the actual periods in which the applicants claimed they had been subjected to inhuman and degrading treatment (see paragraph 141).

173. The Government's submissions that the applicants were detained in inadequate conditions for only short periods fail to take into account the gravity of suffering caused to a detainee by lengthy detention in conditions which the domestic courts themselves considered inadequate. The Court observes that the periods the applicants spent in cells which afforded less than 3 square metres of personal space sometimes lasted for months, with the exception of short periods when the cells were temporarily not fully occupied. In particular, during the material time, out of 642 days Mr Villem spent 544 days in cells that afforded less than 3 square metres of personal space; out of 686 days Mr Kaziks spent 225 days in such cells; and out of 414 days Mr Savva spent 249 days in such cells. The Court is unable to conclude from these findings that the periods of the applicants' detention in conditions that did not meet the required minimum of personal space were "short, occasional and minor".

174. The Court therefore concludes that the conditions of the applicants' detention caused them hardship which exceeded the unavoidable level of suffering inherent in detention and attained the threshold of degrading treatment proscribed by Article 3. This conclusion is not affected by the fact that remand prisoners had the right to one hour's walk in fresh air together with their cellmates, or by other aspects of the detention conditions in their cell or in the prison in general (see *Tunis*, cited above, § 46).

*(ii) Conditions of Mr Nikitin's and Mr Tarasovski's detention*

175. The applicants maintained that the overall conditions in Tallinn Prison had been inadequate.

176. The Government submitted that the material conditions of Mr Nikitin's and Mr Tarasovski's detention had been neither inhuman nor degrading, taking into account their extensive freedom of movement.

177. The Court observes that in the periods from 10 February 2009 to 25 April 2013 and from 26 April to 22 October 2013 Mr Nikitin was placed

in multi-occupancy cells that afforded him less than 3 square metres of personal space for 723 and 57 non-consecutive days respectively. In the period from 24 October 2008 to 26 July 2011 and from 23 April to 7 May 2013 Mr Tarasovski was placed in cells affording him less than 3 square metres of personal space for 583 and fourteen non-consecutive days respectively.

178. The Court reiterates that in the event that a prisoner is placed in a cell that affords him or her less than 3 square metres of personal space, a strong presumption of a violation of Article 3 arises (see paragraph 159). It was therefore for the respondent Government to demonstrate convincingly that there were factors capable of adequately compensating for the scarce allocation of personal space. As to the first of those factors capable of rebutting the presumption, which need to be cumulatively met, the Court notes that the periods of detention in cells in which the applicants' personal space fell below 3 square metres were of a considerably long duration, amounting to almost half the relevant periods. Mr Nikitin was placed in such conditions for a total of more than two years and Mr Tarasovski for more than one and a half years. Such periods cannot be regarded as "short, occasional and minor" and cannot therefore be used to rebut the presumption of a violation of Article 3 in the circumstances of the present cases (see *Muršić,* cited above, §§ 151-52, where even a significantly shorter period of twenty-seven days could not be used to rebut the presumption; and *Ābele v. Latvia*, nos. 60429/12 and 72760/12, §§ 65-67, 5 October 2017). It follows that there is no need to examine whether those periods were accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities, or whether the conditions in Tallinn Prison were generally appropriate.

179. As to Mr Tarasovski's complaint with regard to the period from 23 April to 7 May 2013, the Court notes that out of those fifteen days, he was detained for fourteen days in a cell affording less than 3 square metres of personal space. Although that period can be regarded as relatively short, that factor alone will not automatically remove the treatment complained of from the scope of Article 3 if other elements are sufficient to bring it within the scope of that provision (see *Muršic*, cited above, § 131). The Court notes that during that period the applicant was detained in Tallinn Prison as a remand prisoner. The Court has already concluded that for inmates who were subjected to the regime for remand prisoners there were no other relevant factors which could alleviate the lack of sufficient personal space, namely sufficient freedom of movement outside the cell and adequate out-of-cell activities (see paragraph 166). The Court therefore concludes that for the period of those fourteen days the applicant was subjected to conditions in which he had less than 3 square metres of personal space at his disposal. The conditions of his detention still subjected him to hardship going beyond

the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

*(iii) Conditions of Mr Karp's detention*

180. The applicant argued that the conditions of his detention in Tallinn Prison had been inadequate, as he had been afforded only 1.7 square metres of personal space, taking into account the space taken by the sanitary facility and the furniture.

181. The Government submitted that Mr Karp had spent 183 days in cells that afforded him less than 3 square metres of personal space. They pointed out that his claim for damages had been dismissed by the domestic courts due to his own omissions. In particular, he had not lodged any complaints with regard to the material conditions in which he had been placed while being held in Tallinn Prison. The Government concluded from the above that he had not found that the conditions had actually caused him suffering and inconvenience, and the conditions had not therefore reached the minimum level of severity to fall within the scope of Article 3.

182. The Court reiterates at the outset that when calculating the minimum personal space allocated to a detainee in multi-occupancy accommodation, the in-cell sanitary facility should not be counted in the overall surface area of the cell. On the other hand, the calculation should include space occupied by furniture (see paragraph 163). Bearing this in mind, the Court observes from the material submitted by the Government that in the periods from 23 February to 18 September 2012 and from 27 December 2012 to 31 October 2013, Mr Karp was placed in closed multi-occupancy cells which afforded him less than 3 square metres of personal space for 159 and 215 non-consecutive days respectively. After his conviction, from 19 September to 9 November 2012 (81 days) he was placed in a cell in an open section which provided him with 3.02 to 3.78 square metres of personal space.

183. The Court is unable to agree with the Government's submission that the minimum level of severity was not reached because the applicant did not actually find the conditions inconvenient. The Court has already held on several occasions that in the event of a prisoner's placement in a cell which affords less than 3 square metres of personal space, a strong presumption of a violation of Article 3 arises (see paragraph 159). Whether the applicant found the material conditions inconvenient is therefore immaterial from the standpoint of reaching the threshold of Article 3 of the Convention.

184. Accordingly, the question to be answered is whether there were factors capable of rebutting the presumption of a violation of Article 3 of the Convention (see paragraph 159). As to the first of those factors, which need to be cumulatively met, the Court notes that the periods of detention in conditions in which Mr Karp's personal space fell to below 3 square metres

were of a considerably long duration (159 and 215 days), amounting to two thirds of the relevant period. Such periods cannot be considered as "short, occasional and minor" and cannot therefore be used to rebut the presumption of a violation of Article 3 in the circumstances of the present case (see *Muršić,* cited above, §§ 151-52, where even a significantly shorter period of twenty-seven days could not be used to rebut the presumption; and *Ābele v. Latvia*, nos. 60429/12 and 72760/12, §§ 65-67, 5 October 2017). It follows that there is no need to examine the remaining factors.

185. Accordingly, the Court concludes that for the period the applicant was placed in cells in which he had less than 3 square metres of personal space at his disposal, the conditions of his detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention. They thus amounted to degrading treatment prohibited by Article 3 of the Convention.

*(iv) Conditions of Mr Jeret's detention*

186. The crux of Mr Jeret's complaint was that he had been placed in overcrowded cells in Tallinn Prison, with generally inadequate conditions in terms of hygiene, temperature and freedom of movement. He also raised issues with regard to his healthcare and nutrition, in particular that the prison had refused to treat his nail-fungus infection and that he had been forced to starve as he had not been provided with meals compatible with the lactose-free diet prescribed by a doctor.

187. The Government submitted that the applicant had been awarded compensation for non-pecuniary damage for the 416 days he had been kept in cells which afforded him less than 3 square metres of personal space. The conditions of the applicant's detention in cells affording him 3 to 4 square metres of personal space had not reached the minimum level of severity to fall within the scope of Article 3. The applicant's other allegations with regard to the conditions of his detention had not been proven in the domestic proceedings. The prison's failure to provide him with an appropriate diet had been taken into account by the court when awarding damages; however, the allegation that he had been forced to starve for two years and eleven months due to inappropriate food was not reflected in any medical examinations through signs of weight loss or other health problems. The applicant had also been engaged in employment and had been allowed to spend time outside the cell on various short-term visits and when attending court hearings. The Government concluded from those findings that the conditions of his detention had been neither degrading nor inhuman within the meaning of Article 3 of the Convention.

(α) Period in which the applicant had less than 3 square metres of personal space

188. According to the documents submitted by the Government, the applicant spent 986 days in Tallinn Prison. Based on the principles established by this Court for calculating the minimum personal space afforded to a prisoner (see paragraph 163), the applicant was placed in cells with less than 3 square metres of personal space for a total of 567 days. The Court has already held that in such conditions a strong presumption of a violation of Article 3 arises. Accordingly, the question to be answered is whether there were factors capable of rebutting that presumption (see paragraph 159). As to the first of those factors, which need to be cumulatively met, the Court notes that the period of detention in scarce personal space was of a considerably long duration, amounting to more than half of the entire period complained of. Such period cannot be considered as "short, occasional and minor" and cannot therefore rebut the presumption of a violation of Article 3 (see *Muršić,* cited above, §§ 151-52, where even a significantly shorter period of twenty-seven days could not be used to rebut the presumption; and *Ābele*, cited above, §§ 65-67). It follows that there is no need to examine the remaining factors.

189. Accordingly, the Court finds that in the period in which the applicant had less than 3 square metres of personal space at his disposal in Tallinn Prison, the conditions of his detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention. They thus amounted to degrading treatment prohibited by Article 3 of the Convention. There has accordingly been a violation of Article 3 of the Convention.

(β) Periods in which the applicant had between 3 and 4 square metres of personal space

190. The Court observes that the applicant was placed in cells which afforded him more than 3 but less than 4 square metres of personal space for a total of 211 days. It reiterates that in cases where a prisoner had between 3 and 4 square metres of personal space, a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see paragraph 159).

191. In so far as the applicant raises unspecified allegations about the prison facility not meeting the general statutory requirements (including windows, electricity and the structure of the building as a whole) and of having been locked in punishment and reception cells, the Court holds that such abstract and unsubstantiated allegations do not enable it to assess the particular circumstances of the applicant's detention. The Court observes

that according to the domestic courts, the circumstances with regard to natural light and air, ventilation, room temperature, basic hygiene and access to a toilet were satisfactory. There are no grounds for the Court to hold otherwise. It also attaches importance to the fact that the applicant did not raise, let alone substantiate, allegations concerning medical treatment or insufficient possibilities to exercise in his appeal on points of law before the Supreme Court.

192. The Court also takes cognisance of the domestic courts' finding that the conditions of the applicant's detention fell short on account of the prison administration's failure to provide him with a lactose-free diet, as prescribed by the prison doctor. The applicant claimed that he had therefore starved for more than two years. The Court reiterates that Article 3 of the Convention requires the State to protect the physical integrity of persons deprived of their liberty. In particular, the Court considers that the obligation of the national authorities to ensure the health and general well-being of an inmate implies, *inter alia*, the obligation to feed the prisoner properly (see *Ebedin Abi v. Turkey*, no. 10839/09, § 33, 13 March 2018). However, for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. Allegations of such ill-treatment must be supported by appropriate evidence. Based on those principles, the Court concludes that as the applicant himself did not make any such allegations before the Court and the evidence he submitted contained no information as to the extent of his suffering or the detrimental effects on his physical health, or the risk of such effects or suffering due to inadequate nutrition, this factor in itself does not imply that there has been a violation of Article 3. The Court considers this to be characteristic of the overall conditions of the applicant's detention.

193. During the period in which the applicant was afforded between 3 and 4 square metres of personal space, he was placed in a semi-open section (for a total of 146 days) where the cell doors were opened for at least four hours a day and he was also allowed to take an hour's walk per day in fresh air. He had access to the prison shop and to the sports hall once a week, and was engaged in work for three months in 2012 and two months in 2013 for an average of eleven hours per month (one hour a day). Throughout his confinement, the applicant could use the shower once a week and after 24 July 2013, twice a week for medical reasons. The Court is of the opinion that even though the failure to provide the applicant with a lactose-free diet was unfortunate, the medical documents submitted by the applicant do not state that he developed any medical conditions related to alleged inadequate nutrition. It does not therefore appear from the material available to the Court that the space factor was coupled with other aspects of inappropriate physical conditions of detention.

194. Based on the aforementioned considerations, the Court concludes that there has been no violation of Article 3 of the Convention with regard

to the period the applicant had 3 to 4 square metres of personal space at his disposal in Tallinn Prison.

*3. Victim status of Mr Nikitin, Mr Villems, Mr Jeret, Mr Kaziks, Mr Tarasovski and Mr Savva*

195. The Court reiterates that it falls, firstly, to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a "victim" of the violation alleged is relevant at all stages of the proceedings under the Convention. A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 179-80, ECHR 2006-V, and *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 259-60, ECHR 2012 (extracts)).

196. The Court considers that the first condition for the loss of victim status, acknowledgment of a violation by the national authorities, has been fulfilled. The domestic courts expressly acknowledged that the conditions in Tallinn Prison had not met the Convention standard for the periods the applicants had been placed in cells which afforded them less than 3 square metres of personal space.

197. It remains for the Court to ascertain whether the amount of compensation awarded by the domestic courts was sufficient to compensate the applicants for their grievances under Article 3. A finding that conditions of detention were incompatible with the requirements of Article 3 is of a factual nature and creates a strong legal presumption that such conditions have caused the applicant non-pecuniary damage. In this connection, the Court reiterates that the question whether the applicant received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. The Court has already had occasion to indicate that an applicant's victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 93, ECHR 2006-V, with further references). Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These include also the value of the award judged in the light of the ordinary living standards and the general level of incomes in the State concerned and the fact that the remedy in the national system is closer and more accessible than an application to the Court (see *Scordino*, cited above, §§ 206 and 268, and *Shilbergs v. Russia*, no. 20075/03, § 72, 17 December 2009). The amount of time spent by the person concerned in those conditions is, however, the most important factor for assessing the extent of the damage.

The Court is mindful that the task of making an estimate of damages to be awarded is a difficult one. It is especially difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in terms of money. The domestic courts should, in each case, attempt to assess the cumulative effect which the conditions of detention have on the applicant's well-being (see, *mutatis mutandis*, *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II) and determine the level of physical suffering, emotional distress, anxiety or other harmful effects sustained by the prisoner by reason of his detention in those conditions (see *Nardone v. Italy* (dec.), no. 34368/02, 25 November 2004). The level of compensation awarded for non-pecuniary damage must not be unreasonable in comparison with the awards made by the Court in similar cases.

198. Turning to the specific circumstances of the instant cases, the Court observes that in the case of Mr Nikitin, the domestic courts held that his placement in overcrowded cells for 815 days did not call for monetary redress because he had had sufficient freedom of movement. Mr Villems was awarded EUR 100 for the 100 days he spent mostly in less than 3 square metres of personal space, with the aggravating fact that he had been unable to take walks in fresh air separately from smoking inmates. Mr Jeret was awarded EUR 1,100 for being placed in overcrowded cells for 416 days. Mr Kaziks' placement in overcrowded cells for only thirteen days was seen as not severe enough to justify awarding monetary compensation. Mr Tarasovski was awarded EUR 200 for having been placed in cells with less than 3 square metres of personal space (excluding the lavatory) for seventy-five days.

199. The Court observes that the relatively low amounts of compensation were the result of the domestic courts' restrictive approach to the domestic time-limits or their incorrect calculation of the personal space allocated to detainees, which resulted in a failure to examine the whole periods complained of by the applicants (see paragraph 141 et seq. and paragraph 188). When conducting its assessment, the Court took into account a relatively longer period of suffering caused to the applicants as a result of being held in conditions that were so poor as to amount to inhuman or degrading treatment within the meaning of Article 3. Accordingly, the Court cannot but conclude that the damages that were awarded by the domestic courts were not sufficient to remove the applicants' victim status.

200. With regard to the domestic court's refusal to award any compensation to Mr Nikitin, the Court reiterates that a finding that the conditions of detention fell short of the requirements of Article 3 of the Convention gives rise to a strong presumption that they have caused non-pecuniary damage to the aggrieved person (see *Neshkov and Others*, cited above, § 190). A decision to award lower or no compensation in respect of

non-pecuniary damage can be justified only by exceptionally compelling and serious reasons (see *Ananyev and Others*, § 230, and *Neshkov and Others*, § 288, both cited above). In the instant case the domestic courts attached significant importance to the fact that Mr Nikitin had enjoyed extensive freedom of movement outside the cell. In particular, he had been placed in an open section where the cells had been locked only at night and he had therefore been able to move around the section throughout the day; he had also been allowed to take a daily one-hour walk in fresh air and could use the sports hall once a week. The Court of Appeal also considered that Mr Nikitin had been participating in social programmes and had worked. The Court observes that Mr Nikitin was engaged in what appears to be a full-time job in the prison. It takes cognisance of those particular circumstances as factors that can be considered when deciding on the appropriate amount of compensation, but notes that the domestic court's reasoning overlooks the fact that for a period of six months the applicant had been placed in a closed section where he lacked the above-mentioned privileges. The Court is of the view that the mere acknowledgment of a violation cannot therefore be considered as appropriate redress for the applicant's grievances under Article 3.

201. The Court therefore dismisses the Government's objection with regard to the applicants' victim status. It finds that there has been a violation of Article 3 of the Convention on account of the material conditions of their detention in Tallinn Prison for the periods in which they had less than 3 square metres of personal space at their disposal. This subjected them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, thus amounting to degrading treatment.

## III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

202. Mr Nikitin complained that the amount of compensation for non-pecuniary damage awarded by the domestic courts was insufficient and rendered the compensatory remedy ineffective for the purposes of Article 13 of the Convention. Mr Villems and Mr Tarasovski raised in principle the same complaint, Mr Villems referring to Article 6 and Mr Tarasovski to Article 41 of the Convention. Mr Nikitin and Mr Kaziks also complained that the application of the domestic statutory time-limit had rendered the domestic remedy ineffective. Mr Tarasovski raised in principle the same complaint under Article 6 of the Convention. Mr Jeret complained that the length of the domestic court proceedings had been excessively long.

203. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja*, cited above, § 126), the Court finds it appropriate to examine all the applicants' complaints under Article 13 of the Convention, which provides as follows:

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

### A. Admissibility

204. The Court has found that the respondent State is responsible under Article 3 of the Convention for the inhuman and degrading treatment suffered by the applicants. The applicants' complaints in this regard are therefore "arguable" for the purposes of Article 13 in connection with Article 3 of the Convention.

205. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### B. General principles

206. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective (see *Kudła*, cited above, § 157).

207. In the area of complaints about inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention and compensation for the damage or loss sustained on account of such conditions (see *Roman Karasev v. Russia*, no. 30251/03, § 79, 25 November 2010, and *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007). If an applicant is held in conditions that are in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. Once, however, the applicant is no longer subjected to the inadequate conditions, he or she should have an enforceable right to compensation for

the violation that has already occurred (see *Ananyev and Others*, cited above, § 97).

### C. Application of those principles to the present cases

#### *1. Application of the statutory time-limit for lodging a complaint for compensation in respect of Mr Nikitin, Mr Kaziks and Mr Tarasovski*

208. The applicants submitted that the domestic courts had failed to consider their complaints as a whole and that this had rendered the compensatory remedy ineffective for the purposes of Article 13 of the Convention. The Government argued that there were no signs of arbitrariness in the domestic courts' application of the statutory time-limits.

209. The Court has already established that in the cases of Mr Kaziks and Mr Tarasovski, the domestic courts' restrictive approach to the calculation of domestic time-limits were inconsistent with the established practice of the Supreme Court of Estonia and imposed on them an unreasonable procedural burden (see paragraph 141 and following). In this context, the effectiveness of the remedy was undermined by the domestic courts' restrictive approach to its scope (see, mutatis mutandis, *Krawczak v. Poland*, no. 40387/06, 18 March 2008) which resulted in failure to examine a significant period of the applicants' complaints with regard to their placement in inadequate conditions. This amounted to periods of one year and one year and seven months respectively. The Court reiterates in this connection that to be Article 13 compliant, a remedy must be capable of effectively dealing with the substance of the complaints under Article 3 (idem., § 39).

210. Having regard to the above considerations, the Court holds that the State Liability Act, as applied in the cases of Mr Kaziks and Mr Tarasovski, cannot be regarded as offering an effective remedy within the meaning of Article 13 of the Convention as it did not provide the applicants with a remedy for the substance of their complaints. It follows from the above findings that there has been a violation of Article 13 of the Convention with regard to Mr Kaziks and Mr Tarasovski.

211. With regard to Mr Nikitin's complaint, the Court has no reason to depart from its previous finding that the application of the domestic time-limits was not arbitrary in terms of the applicant's rights under the Convention (see paragraph 138 and following). The Court therefore concludes that there has been no violation of Article 13 of the Convention with regard to Mr Nikitin's complaint about the application of domestic time-limits.

*2. Effectiveness of the compensatory remedy with regard to the redress afforded in the cases of Mr Nikitin, Mr Villems and Mr Tarasovski*

212. The applicants complained that the monetary compensation awarded by the domestic courts had been unreasonably low and not in conformity with the standard of living in Estonia.

213. The Government submitted that in accordance with the Estonian legal tradition, awards made in respect of non-pecuniary damage may not have a punitive function and may not result in anyone's enrichment. In awarding compensation, the courts considered the overall cost of living in Estonia, including the minimum wage, the average old-age pension and the average gross wage. In the light of those indicators, the amounts awarded in the instant cases were reasonable.

214. The Court observes that in accordance with domestic law, a prisoner whose rights are violated by the unlawful actions of a public authority may claim compensation for damage caused. The Court has already held that the compensatory remedy is capable of effectively dealing with the substance of prisoners' complaints (see paragraph 130). It further observes that compensation for non-pecuniary damage is awarded in proportion to the gravity of the violation, taking into account the form and gravity of the fault at issue. In the instant cases the domestic courts examined the complaints on the merits, considering also the principles enshrined in this Court's case-law, and found that there had been a violation of the applicants' rights under the Convention. The courts decided on the awards in respect of non-pecuniary damage taking into account the particular circumstances of the cases, such as the time spent in inadequate conditions and the possibilities of participating in out-of-cell activities, while dismissing the prison administration's objections about the absence of any fault or intention to degrade the applicants. The ensuing judicial decisions were binding on the authority and enforceable against it. According to the Government, the sums that were awarded to the applicants have been paid. The Court observes that there existed no limit on the amount of compensation which could be awarded to an applicant in such proceedings.

215. The Court concludes from the above that judicial proceedings instituted in accordance with the domestic law provide a forum that guarantees due process of law and effective participation for an aggrieved individual. In such proceedings, the courts can take cognisance of the merits of a complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation.

216. The Court reiterates that the word "remedy" within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, for example, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006). It notes that Estonian law allowed the applicants to

lodge a claim for compensation for the non-pecuniary damage sustained as a result of the inadequate conditions of detention. The Court is of the view, however, that the fact that the applicants' claims were granted only partially is not in itself sufficient to render the remedy ineffective within the meaning of Article 13. Furthermore, no other evidence has been provided showing that the remedy at issue could be considered ineffective.

217. In the light of the foregoing, the Court considers that the above-mentioned situation cannot be regarded as a breach of the applicant's right to an effective remedy (see *Artur Ivanov v. Russia*, no. 62798/09, § 40, 5 June 2018, and, *mutatis mutantis*, *Zarb v. Malta*, no. 16631/04, §§ 50-51, 4 July 2006).

218. Accordingly, there has been no violation of Article 13 of the Convention with respect to Mr Nikitin's, Mr Villems' and Mr Tarasovski's complaints concerning the effectiveness of the compensatory remedy.

*3. Length of the proceedings in respect of Mr Jeret*

219. Mr Jeret submitted that the domestic compensatory remedy had not been effective due to the length of the domestic proceedings. The Government did not submit any objections with regard to this complaint.

220. The Court observes that the applicant lodged his complaint with the prison administration on 21 January 2014. As the administration did not respond to the complaint in due time, the applicant lodged his complaint with a court on 27 May 2014. The final decision on the applicant's case entered into force on 25 April 2016, when the Supreme Court refused to grant the applicant leave to appeal. The proceedings therefore lasted for two years and four months at three levels of jurisdiction.

221. In contrast to length-of-proceedings complaints in which the applicant relies on preventive remedies, which in order to be effective, have to provide prompt relief to the claimant who is still being kept in inadequate conditions of detention (see *Longin v. Croatia*, no. 49268/10, § 41, 6 November 2012), a claim for compensation does not require the same promptness, as it serves a different purpose.

222. The Court is of the view that the length of the proceedings complained of cannot, therefore, be considered as excessive for the purposes of Article 13. Accordingly, there has been no violation of the Convention.

## IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

223. Mr Savva further complained of lack of contact with his family. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

224. The Government submitted that the applicant's complaint was inadmissible for non-exhaustion of domestic remedies. In particular, the applicant had failed to raise the issue by way of the mandatory pre-action procedure, so the domestic courts had been unable to address this part of his complaint on the merits.

225. The Court has already established that the mandatory pre-action procedure is an essential part of the domestic procedure for dealing with prisoners' complaints (see paragraph 123). Failure to lodge this complaint with the prison administration thus resulted in the domestic courts being unable to examine it on the merits.

226. Accordingly, the Court finds that the applicant did not properly exhaust domestic remedies and that this part of his complaint is inadmissible under Article 35 § 1 of the Convention and must therefore be rejected pursuant to Article 35 § 4 of the Convention.

## V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

227. Lastly, Mr Nikitin, Mr Villems and Mr Kaziks complained of excessive level of the State fee payable for compensation claims. The Court will not address these complaints as none of the applicants raised this issue before the domestic courts or in their initial applications with the Court. Furthermore, the Court observes from the documents available to it that the applicants were granted free legal aid in accordance with their needs. It follows that this part of the complaints must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

228. 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

229. The applicants submitted claims in respect of non-pecuniary damage as follows: Mr Nikitin, 40,000 euros (EUR); Mr Tarasovski,

EUR 10,000; Mr Villems, EUR 10,880; Mr Kaziks, EUR 5,100; Mr Jeret, EUR 76,500; Mr Savva, EUR 4,980; and Mr Karp, EUR 13,000.

230. The Government found the applicants' claims to be excessive.

231. The Court finds that the suffering caused to a person detained in conditions that are so poor as to amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention cannot be made good by a mere finding of a violation; it calls for an award of compensation (see *Neshkov and Others*, cited above, § 299). When making its assessment with regard to the applicants' claim, the Court considers that the length of stay in inadequate conditions of detention is an important factor for the assessment of the extent of non-pecuniary damage (see *Ananyev and Others*, cited above, § 172). The Court takes into account the circumstances of each case, including the fact that a violation of Article 3 has been found with regard to the relatively long periods in which the applicants had less than 3 square metres of personal space at their disposal. Making its assessment on an equitable basis, and considering the sums already awarded and paid by the respondent State, the Court finds it appropriate to make the following awards in respect of non-pecuniary damage: EUR 8,000 to Mr Nikitin; EUR 8,925 to Mr Tarasovski; EUR 8,375 to Mr Villems; EUR 4,625 to Mr Kaziks; EUR 9,975 to Mr Jeret; EUR 4,575 to Mr Savva; and EUR 6,525 to Mr Karp, plus any tax that may be chargeable. The Court rejects the remainder of the claims under this head.

### B. Costs and expenses

232. The applicants also made the following claims for the costs and expenses incurred before the domestic courts and the Court:

– Mr Nikitin claimed EUR 2,340 (including VAT) for cost and expenses incurred before the Court. This sum corresponds to 12.5 hours of legal work billed by his lawyer.

– Mr Villems claimed EUR 7,821.48 (including VAT) for the costs and expenses incurred before the domestic courts and the Court. This figure corresponds to 42 hours and 33 minutes of legal work billed by his lawyer and includes postal fees of EUR 12.48.

– Mr Kaziks claimed EUR 2863.07 (including VAT) for the costs and expenses incurred before the Court. This figure corresponds to 15 hours of legal work billed by his lawyer and includes postal fees of EUR 13.07.

– Mr Savva claimed EUR 1,418.56 (including VAT) for the costs and expenses incurred before the Court. This sum corresponds to 11 hours and 48 minutes of legal work billed by his lawyer at an hourly rate of EUR 100 plus VAT and includes postal fees of EUR 2.60.

– Mr Karp claimed EUR 1,000 (excluding VAT) for the costs and expenses incurred before the domestic courts and EUR 2,000 for the costs

and expenses incurred before the Court. This sum corresponds to a total of 24 hours of legal work billed by his lawyer.

– Mr Jeret and Mr Tarasovski did not lodge claims for costs and expenses.

233. The Government considered the applicants' claims excessive. They pointed out that as Mr Nikitin, Mr Kaziks, Mr Villems and Mr Savva had had the same lawyer and their replies to the Government's observations were almost identical, the amounts claimed by each applicant separately were excessive. The Government also disputed Mr Kaziks' claim for expenses incurred for drafting a request to the Tax and Customs Board and the hourly rate of EUR 200 charged by Mr Karp's lawyer for composing a reply to the Government's observations.

234. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Although the Court accepts that the number of applicants must inevitably have necessitated additional work on the part of their representatives, as regards the issues under Articles 3 and 13 a joint approach was adopted and the replies to the Government's observations were co-ordinated. In those circumstances, the Court finds the sums claimed to be high and is not persuaded that they were necessarily incurred or are reasonable as to quantum. The Court also observes that Mr Kaziks' lawyer was entitled to EUR 850 on account of the legal aid granted.

235. Regard being had to the documents in its possession and the above criteria, as well as the sums to which the applicants' lawyers were entitled on account of the legal aid granted, the Court considers it reasonable to award the following sums to cover costs under all heads: EUR 2,000 to Mr Nikitin; EUR 4,000 to Mr Villems; EUR 1,500 to Mr Kaziks; EUR 1,400 to Mr Savva; and EUR 1,500 to Mr Karp, plus any tax that may be chargeable to the applicants, in respect of the costs and expenses incurred before the domestic authorities and before the Court.

### C. Default interest

236. 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

1. *Decides* unanimously to join the applications;

2. *Joins* to the merits and *dismisses*, unanimously, the Government's preliminary objection of loss of victim status in respect of Mr Nikitin, Mr Villems, Mr Jeret, Mr Kaziks, Mr Tarasovski and Mr Savva;

3. *Declares*, by a majority, the applicants' complaints under Article 3 of the Convention concerning having less than 3 square metres of personal space in Tallinn Prison, and Mr Jeret's complaint concerning having between 3 and 4 square metres of personal space in Tallinn Prison, admissible with regard to the following periods:
(i) from 10 February 2009 to 22 October 2013 in respect of Mr Nikitin;
(ii) from 24 October 2008 to 26 July 2011 and from 23 April to 7 May 2013 in respect of Mr Tarasovski;
(iii) from 28 December 2009 to 9 November 2011 and from 7 December to 21 December 2011 in respect of Mr Kaziks;
(iv) from 20 May 2010 to 14 July 2011 in respect of Mr Savva;
(v) from 23 February to 9 November 2012 and from 27 December 2012 to 31 October 2013 in respect of Mr Karp;
(vi) from 6 July 2011 to 17 April 2013 in respect of Mr Villems;
(vii) from 25 February 2011 to 21 November 2013 in respect of Mr Jeret;

4. *Declares*, unanimously, the applicants' Mr Nikitin's, Mr Villems', Mr Tarasovski's, Mr Kaziks's, and Mr Jeret's complaints under Article 13 concerning the ineffectiveness of domestic remedies admissible;

5. *Declares*, unanimously, the remainder of the complaints inadmissible;

6. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention with regard to the periods in which the applicants had less than 3 square metres of personal space at their disposal in Tallinn Prison;

7. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention with regard to the periods in which Mr Jeret had between 3 and 4 square metres of personal space at his disposal in Tallinn Prison;

8. *Holds*, by 4 votes to 3, that there has been a violation of Article 13 of the Convention on account of the unreasonable application of domestic procedural rules in respect of Mr Kaziks and Mr Tarasovski;

9. *Holds*, by 6 votes to 1, that there has been no violation of Article 13 of the Convention with regard to Mr Nikitin, Mr Villem, and Mr Tarasovski on account of the effectiveness of the compensatory remedy;

10. *Holds*, unanimously, that there has been no violation of Article 13 with regard to Mr Jeret on account of the length of the proceedings;

11. *Holds*, by 4 votes to 3,
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:
(i) EUR 8,000 (eight thousand euros) to Mr Nikitin; EUR 8,375 (eight thousand three hundred and seventy-five euros) to Mr Villems; EUR 9,975 (nine thousand nine hundred and seventy-five euros) to Mr Jeret; EUR 4,625 (four thousand six hundred and twenty-five euros) to Mr Kaziks; EUR 8,925 (eight thousand nine hundred and twenty-five euros) to Mr Tarasovski; EUR 6,525 (six thousand five hundred and twenty-five euros) to Mr Karp; and EUR 4,575 (four thousand five hundred and seventy-five euros) to Mr Savva, plus any tax that may be chargeable, in respect of the non-pecuniary damage sustained by them on account of the violations found under Articles 3 and 13 of the Convention;
(ii) EUR 2,000 (two thousand euros) to Mr Nikitin; EUR 4,000 (four thousand euros) to Mr Villems; EUR 1,500 (one thousand five hundred euros) to Mr Kaziks; EUR 1,400 (one thousand four hundred euros) to Mr Savva; and EUR 1,500 (one thousand five hundred euros) to Mr Karp, 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;

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

Done in English, and notified in writing on 29 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
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) Partly dissenting opinion of Judges Spano, Lemmens, Kjølbro;

(b) Partly dissenting opinion of Judge Lemmens.

R.S.
H.B.

# JOINT PARTLY DISSENTING OPINION OF JUDGES SPANO, LEMMENS AND KJØLBRO

1. For the reasons explained below, we voted against dismissing the Government's objection (see paragraph 117 of the judgment) to the effect that three of the applicants, Mr Kaziks, Mr Tarasovski and Mr Savva, had failed to exhaust domestic remedies in that they did not lodge all their complaints with the domestic authorities within the statutory limitation prescribed in domestic law, as a consequence of which the domestic courts were unable to examine the complaints subsequently brought before the Court (see paragraphs 140-144 of the judgment). Consequently, we also distance ourselves from the reasoning of the majority in paragraph 172 (concerning the relevant period to be taken into account), paragraph 199 (concerning victim status), paragraphs 208-210 (concerning effective remedies under Article 13)[1] as well as paragraph 231 (concerning the amount of non-pecuniary damage to be granted under Article 41), as these parts of the judgment are intrinsically linked to the question of exhaustion of domestic remedies and thus the scope of the case before the Court.

2. What may appear to be a rather technical issue, namely compliance with a domestic time-limit for submitting a compensation claim in respect of alleged inadequate conditions of detention, in fact raises important questions concerning the effectiveness of the remedies provided for in domestic law.

3. As the Court has stated many times, Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law; where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014). More specifically, if an applicant, according to the interpretation given by the domestic courts, has failed to comply with the applicable prescription rules, he or she will have failed to meet one of the conditions that should normally be fulfilled in order to meet the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention (ibid., § 80).

4. The three applicants in question, Mr Kaziks, Mr Tarasovski and Mr Savva, complain about inadequate conditions of detention, and the complaints lodged with the Court were also brought before the domestic

1. Judge Lemmens also disagrees with the conclusion that there has been no violation of Article 13 with respect to Mr Nikitin's, Mr Villems' and Mr Tarasovski's complaints (see his separate opinion on this issue).

authorities, which, however, dismissed parts of the applicants' claims as being time-barred. The Government's objection concerns these parts of their applications.

5. On 30 January 2014 Mr Savva lodged a complaint seeking compensation for allegedly inadequate conditions of detention from 28 February 2007 until 14 July 2011. In the view of the domestic authorities, the claim relating to the period prior to 30 January 2011, that is, three years before he lodged his complaint, was time-barred, and, consequently the domestic authorities only assessed the conditions of detention from 30 January 2011.

6. On 21 January 2014 Mr Kaziks lodged a complaint seeking compensation for allegedly inadequate conditions of detention from 28 December 2009 until 21 December 2011. In the view of the domestic authorities, the claim relating to the period prior to 21 January 2011, that is, three years before he lodged his complaint, was time-barred, and consequently the domestic authorities only assessed the conditions of detention from 21 January 2011.

7. On 9 June 2013 Mr Tarasovski lodged a complaint seeking compensation for allegedly inadequate conditions of detention from 24 October 2008 until 7 May 2013. In the view of the domestic authorities, the claim relating to the period prior to 11 June 2010, that is, approximately three years before he lodged his complaint, was time-barred, and consequently the domestic authorities only assessed the conditions of detention from 11 June 2010.

8. Thus, in the case of all three applicants, the domestic courts, on the basis of an interpretation of the domestic rules on statutes of limitation, namely section 17(3) of the State Liability Act, reached the conclusion that parts of the applicants' claims were time-barred, and such a finding by domestic courts should, in general, lead to the conclusion that the applicants have failed to comply with the requirement of exhaustion of domestic remedies (see *Vučković and Others*, § 80).

9. In this context, we find it important to reiterate that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Vučković and Others*, § 80). To put it differently, the Court cannot call into question the findings of the domestic authorities on alleged errors of domestic law unless they are arbitrary or manifestly unreasonable (see *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 116, 15 March 2018, and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 148, 22 October 2018). Similarly, the Court may disregard an applicant's failure to exhaust domestic remedies if the domestic authorities' interpretation and application of domestic law is the result of excessive formalism (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 224, ECHR 2014 (extracts)), that is, if the Court is of the view that the applicant has done everything that could

reasonably be expected of him or her to exhaust domestic remedies (see *Salah v. the Netherlands*, no. 8196/02, § 51, ECHR 2006-IX (extracts), and *Baybaşin v. the Netherlands* (just satisfaction), no. 13600/02, § 53, 6 July 2006).

10. The question therefore arises why or on what grounds the majority disregard the domestic courts' interpretation and application of domestic rules on statutory limitations in the cases of the applicants Mr Kaziks, Mr Tarasovski and Mr Savva, and dismiss the Government's objection that these applicants have failed to exhaust domestic remedies. The majority rely on two arguments: (1) failure to comply with domestic law and practice, and (2) unreasonably denying the applicants an assessment of their claims. Thus, in the view of the majority, the domestic courts' interpretation and application of domestic law was "inconsistent with the clearly established practice of the Supreme Court of Estonia" (see paragraph 141 of the judgment) and imposed "an unreasonable procedural burden" on the applicants (see paragraphs 141 and 142). We respectfully disagree with both these arguments.

11. As to the alleged inconsistency with the guidelines given by the Supreme Court of Estonia, we find it questionable whether such an inconsistency exists at all, and, in any event, the domestic courts' interpretation and application of domestic law does not, in our view, reach the threshold of being "arbitrary or manifestly unreasonable", which is the relevant Convention standard to be applied under the Court's case-law.

12. Estonian law provides for a compensatory remedy by which compensation may be granted for periods of detention in conditions incompatible with Article 3 of the Convention. Pursuant to section 17(3) of the State Liability Act, a claim for compensation is to be lodged "within three years of the date on which the injured party became aware or should have become aware of the damage". Article 46 § 4 of the Code of Administrative Court Procedure contains a similar time-limit.

13. In cases concerning conditions of detention, the Supreme Court of Estonia has stated that in the event of a continuous situation, the time-limit usually starts to run after the situation has ended, but that, in exceptional circumstances, it may start to run before the end of the continuous action (see paragraph 103 of the judgment). Furthermore, it has stated that the more the period of detention in inadequate conditions of detention exceeds the 3-year time-limit, the weightier the arguments must be as to why the applicant could not and should not have become aware of the damage before the end of the continuous situation, otherwise the time-limit would become illusory and considerable accumulation of damage may occur as a result of delay in lodging the claim (see paragraph 105).

14. In other words, under domestic law the determination of the point at which the claimant "became aware or should have become aware of the damage" caused by the inadequate conditions of detention depends on an

assessment of the specific circumstances of each case, and the longer the period in question, the stronger the arguments will have to be in order to justify why the claimant could not and should not have become aware of the basis for lodging a claim.

15. In the case of the applicants Mr Kaziks, Mr Tarasovski and Mr Savva, this is exactly what was done by the domestic courts, in particular the Court of Appeal. In all three cases, the applicants claimed compensation for inadequate conditions of detention going back more than three years before the claims were lodged: in the case of Mr Kaziks going back more than 4 years, in the case of Mr Tarasovski going back more than 4.5 years, and in the case of Mr Savva going back almost 7 years. In all three cases the Court of Appeal explained why the applicants became or should have become aware of the inadequate conditions of detention years before they filed their claims (see paragraphs 53, 63 and 72 of the judgment).

16. We find it problematic to label the Court of Appeal's interpretation and application of the domestic time-limit as "arbitrary or manifestly unreasonable". In this context we cannot but note that the Supreme Court of Estonia dismissed all three applicants' appeals on points of law (see paragraphs 55, 65 and 74) which in itself would have been surprising had the Court of Appeal's assessment been clearly inconsistent with the Supreme Court's guidelines, as argued by the majority.

17. As to the alleged unreasonable procedural burden imposed on the applicants, there is, in our view, nothing in the Court of Appeal's interpretation and application of the domestic time-limit that made it impossible in practice for the applicants to lodge claims for compensation for inadequate conditions of detention. In fact, the applicants had three years to lodge their claims from the moment when they became aware or should have become aware of the alleged inadequate conditions of detention, a time-limit which gave the applicants sufficient time to submit their claims. The domestic three-year time-limit leaves sufficient time for a detainee who is detained in the same cell, or in different cells in more or less the same conditions, for a period exceeding that time-limit to assess the situation and to submit a complaint about the alleged inadequate conditions of detention.

18. The majority's approach also runs counter to one of the purposes of the domestic time-limit which, as explained in the case-law of the Supreme Court of Estonia, is to avoid significant sums being accumulated in damages as a result of delays in lodging the claim (see paragraph 105 of the judgment). The majority's applicant-friendly interpretation of the domestic time-limit for lodging a claim for compensation for alleged inadequate conditions of detention, in practice disregarding the three year time-limit in cases of a continuous situation, will or may have significant financial implications for Estonia, as it will allow detainees to bring claims for

periods of detention that, depending on the specific circumstances of the case, may be significantly longer than three years.

19. As the Government's objection to the admissibility of part of the complaints by Mr Kaziks, Mr Tarasovski and Mr Savva should, in our view, have been upheld for failure to comply with the domestic time-limit and thus for failure to exhaust domestic remedies, we consequently also disagree with the majority's reasoning resulting from their dismissal of the objection, namely the conclusions in paragraph 172 (on the relevant period to be taken into account), paragraph 199 (concerning victim status), paragraphs 208-210 (concerning effective remedies under Article 13) and paragraph 231 (concerning the amount of non-pecuniary damage to be awarded under Article 41).

# PARTLY DISSENTING OPINION OF JUDGE LEMMENS

1. I agree with most of the judgment. I respectfully dissent, however, on two issues.

The first issue relates to the exhaustion of domestic remedies by the applicants Kaziks, Tarasovski and Savva. On this point I have joined Judges Spano and Kjølbro in a joint partly dissenting opinion.

The second issue relates to the Article 13 complaint of the applicants Nikitin, Villems and Tarasovski (see paragraphs 212-18 of the judgment). To my regret, I cannot agree with the majority's conclusion that there has been no violation of Article 13. The present separate opinion deals with that issue.

2. Article 13 of the Convention requires the availability of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant "appropriate relief" (see, among many other authorities, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 268, 15 December 2016, and *De Tommaso v. Italy* [GC], no. 43395/09, § 179, 23 February 2017). Where a violation is found, the victim has a right to reparation, and what is more, the relief must be "appropriate".

I therefore wonder whether it is entirely correct to suggest that the remedy required under Article 13 is "simply" a remedy before an authority "competent to examine the merits of a complaint" (see paragraph 216 of the judgment). The majority refer to *Šidlová v. Slovakia* (no. 50224/99, § 77, 26 September 2006); there are other cases in which such a statement has been made by the Court, but the wording does not belong to the standard formula followed in, e.g., Grand Chamber cases. The formula used by the majority seems to overlook the "relief" aspect of Article 13.

It is of course true that the "effectiveness" of a "remedy" does not depend on the certainty of a favourable outcome for the applicant (see *Amann v. Switzerland* [GC], no. 27798/95, § 88, ECHR 2000-II, and *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI, and as a more recent authority, *Khlaifia*, cited above, § 268). But this is not the point.

3. When the remedy is of a compensatory nature, the amount of compensation that can be awarded, or that has been awarded where the applicant has actually made use of the remedy, is relevant in order to assess its effectiveness.

I agree with the majority that "the fact that the applicants' claims were granted only partially is not in itself sufficient to render the remedy ineffective" (see paragraphs 216-17 of the judgment, referring to *Artur Ivanov v. Russia*, no. 62798/09, § 40, 5 June 2018 and, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, § 51, 4 July 2006). But it seems to me that an issue of effectiveness of the remedy arises where the amount is "derisory" (see *Wainwright v. the United Kingdom*, no. 12350/04, § 55,

ECHR 2006-X (*a contrario*)), (wholly) "inadequate" (see *Slavcho Kostov v. Bulgaria*, no. 28674/03, § 64, 27 November 2008), or "unreasonably low" (as claimed by the applicant in the present case - see paragraph 212 of the judgment; see *Sabev v. Bulgaria*, no. 27887/06, §§ 92 and 102, 28 May 2013).

In order to assess whether the amount awarded at the domestic level is simply low or whether it is unreasonably low, it may be useful to compare that amount to the amounts the Court normally awards in comparable cases.

Again, the mere fact that the compensation awarded to an applicant at the domestic level does not correspond to the amounts awarded by the Court in comparable cases does not render the remedy ineffective (see, among other authorities, *Rišková v. Slovakia*, no. 58174/00, § 100, 22 August 2006; *Jakupović v. Croatia*, no. 12419/04, § 28, 31 July 2007; *Wasserman v. Russia (no. 2)*, no. 21071/05, § 48, 10 April 2008; *Kaić and Others v. Croatia*, no. 22014/04, § 39, 17 July 2008). But the situation is different when the compensation awarded is "unreasonably" or "disproportionately" lower than the amounts awarded by the Court (see, among other authorities, *Wasserman v. Russia (no. 2)*, no. 21071/05, § 56, 10 April 2008; *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 99 and 115, ECHR 2009; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 117, 10 January 2012; *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, § 158, 9 October 2014; *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, §§ 175 and 182-83, 7 July 2015; *Valada Matos das Neves v. Portugal*, no. 73798/13, §§ 73 and 99, 29 October 2015 (*a contrario*); in the same sense, with respect to the assessment of whether the amount awarded at the domestic level is sufficient to deprive an applicant of his or her victim status, see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 206 and 214-15, ECHR 2006-V).

4. In the present case, no comparison has been made between the amounts awarded by the domestic courts and those that the Court normally awards in comparable cases. While the amounts awarded are, in my opinion, definitely low, I cannot conclude from the reasons given by the majority whether they are unreasonably or disproportionately lower than those normally awarded by the Court. In these circumstances, I am unable to conclude that the remedies used by the applicants Nikitin, Villems and Tarasovski were actually effective.