CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MAYZIT v. RUSSIA

(Application no. 63378/00)

JUDGMENT

STRASBOURG

20 January 2005

FINAL

06/07/2005

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 Mayzit v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mr P. LORENZEN,
Mrs N. VAJIC,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges,*
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 9 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 63378/00) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Yuriy Yevgenyevich Mayzit ("the applicant") on 10 July 2000.

2. The Russian Government ("the Government") were represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, *inter alia*, that the conditions of his pre-trial detention were inhuman; that the authorities did not respect his choice of defence counsel; that he could not properly prepare for trial because of the conditions in the prison; and that his application for release was not examined.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 29 April 2003, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1953 and lives in Kaliningrad.

8. On 21 July 1998 the investigating authorities of the District Department of Internal Affairs of Kaliningrad opened a criminal investigation based on a complaint by Mr. S who alleged that the applicant had shot at his windows with a hunting rifle in revenge for an unpaid debt. Following Mr. S's second complaint on 14 August 1998 concerning a similar incident, a second investigation was opened and joined with the first.

9. It appears that these investigations led to the applicant's arrest on 21 September 1998. Following interrogations, he was detained on 22 September 1998 under suspicion of having committed a crime under Sections 167 § 2 and 213 § 3 of the Criminal Code of the Russian Federation which concerns intentional destruction of, or damage to, property and hooliganism and which carries a sentence of up to seven years' imprisonment.

10. The following day, 23 September 1998, the applicant was released under his written undertaking not to leave the town as a measure of restraint.

11. On 1 December 1998 the prosecution authorities forwarded the case-file and an indictment to the Moskovskiy District Court of Kaliningrad for examination and trial. However, on 24 March 1999 the court remitted the case for further investigations. During these subsequent investigations the authorities issued, on 7 July 1999, an arrest warrant against the applicant as he had on a number of occasions failed to attend for interrogation. The applicant was arrested on 27 July 1999 and remained in detention until 1 October 1999 when the District Court ordered his release, finding the alleged risk of the applicant absconding unsubstantiated.

12. In the meantime, on 2 August 1999, the resumed investigations had been brought to an end and the case-file sent, once more, to the District Court for adjudication. However, on 30 September 1999 the District Court ordered further investigation to be carried out. In the course of this investigation, on 4 April 2000, the authorities anew ordered the applicant's arrest and detention on the basis that the applicant had changed his residence, failed to appear for interrogations and hampered the proceedings. On 17 April 2000 an arrest warrant was issued and on 26 July 2000 the applicant was arrested and detained on remand in the Remand Centre IZ-39/1 of Kaliningrad.

A. Conditions of detention

13. According to the report issued by the Chief Prison Directorate of the Ministry of Justice, submitted by the Government, the applicant stayed at the Remand Centre IZ-39/1 from 26 July 2000 until 7 March 2001 and from

16 May 2001 until 18 July 2001. He was kept in six different cells described as follows: cell no. 67 (21 m² of surface, 10 bunks, the sanitary conditions satisfactory); cell no. 97 (7.8 m² of surface, 6 bunks, the sanitary conditions satisfactory); cell no. 135 (25.1 m² of surface, 10 bunks, the sanitary conditions satisfactory); cell nos. 4/16, 4/8, 4/21 (13.8 m² of surface for each cell, 8 bunks, the sanitary conditions of each of the cells satisfactory). It appears from the report that the sanitary and technical conditions of the cells in which the applicant was held were monitored on a regular basis.

14. In accordance with Section 17 § 1.11 of the Federal Law on detention the applicant was allowed daily walks for not less than one hour.

15. According to a letter from the Head of the Medical Department of the Prison Directorate for the Kaliningrad Region, submitted by the Government, the applicant was on admission to the remand centre examined by the general practitioner, the dermatologist, the venerologist and the psychiatrist who found his health to be satisfactory. In the course of a check-up two days after his arrival, on 28 July 2000, post-tuberculosis changes in the upper lobe of the right lung were detected. During the detention the applicant did not make requests for medical assistance, no diseases were detected in the course of routine examination and his state of health was considered to be satisfactory.

16. Without disputing the size of the cells the applicant submitted that these were dirty and infected with cockroaches, bed-bugs and lice. The weekly inspection did nothing to remedy that. The cells were overcrowded, leaving about 1 square metre of surface per person. The detainees were obliged to sleep in turns and the applicant could wash only every 10 days. The windows were covered with steel shutters and let in very little light.

B. The applicant's requests for release

17. As indicated above the applicant was arrested and detained on 26 July 2000.

18. On 30 July 2000 the applicant lodged an application with the Moskovskiy District Court of Kaliningrad complaining about the unlawfulness of the arrest, under Section 220-2 of the Code of Criminal Procedure of the RSFSR. The application was remitted for review to the Tsentralniy District Court of Kaliningrad being the place of the applicant's detention.

19. On 25 August 2000 the Tsentralniy District Court of Kaliningrad, for its part, forwarded the application for release from detention under Section 220-2 of the Code of Criminal Procedure, without examining it, to the Moskovskiy District Court for a ruling on a measure of restraint under Section 223 of the Code of Criminal Procedure of the RSFSR.

20. On 4 September 2000 the Moskovskiy District Court of Kaliningrad decided to remit the applicant's complaint of 30 July 2000 about the unlawfulness and invalidity of detention for review to the judge of the

Moskovskiy District Court of Kaliningrad who conducted the proceedings in the case.

21. On 21 November 2000 the Criminal Chamber of the Kaliningrad Regional Court dismissed the applicant's appeal against the ruling of the Moskovskiy District Court of Kaliningrad of 4 September 2000.

22. On 15 December 2000 the Moskovskiy District Court of Kaliningrad rejected the applicant's application of 30 July 2000 for release pending trial.

23. On 19 August 2002 a Deputy President of the Supreme Court made an application for supervisory review of the decisions of the Moskovskiy District Court of 4 September and 15 December 2000. The Deputy President alleged that these decisions had been unlawful as far as they had effectively deprived the applicant of his right to obtain a judicial review of his detention.

24. On 16 September 2002 the Presidium of the Kaliningrad Regional Court granted the application. It set aside the decisions of the Moskovskiy District Court of 4 September and 15 December 2000 and ordered a fresh examination of the applicant's application for release. It appears that the applicant did not pursue the case following which the proceedings were terminated.

C. The criminal trial subsequent to 26 July 2000

25. On 21 August 2000, following the completion of the investigation ordered by the District Court on 30 September 1999 (see § 12 above), the public prosecutor prepared the indictment and submitted the case to the District Court for adjudication. The indictment referred to Sections 330 § 2 and 213 § 3 of the Criminal Code. On 4 September 2000 the court decided that the applicant should be given time to study the case-file and set the trial to commence on 9 October 2000. Due to the seriousness of the charges against the applicant the court appointed a defence counsel. It appears that the applicant refused the appointment of eight different defence counsels and eventually the court decided to entrust the applicant's defence to Mr M. as the applicant had not suggested any other lawyers. During the trial, on 12 October 2000, the applicant requested that he be represented by his mother and his sister. On 13 October 2000 the court rejected the applicant's request referring in particular to the fact that the case was complex and that therefore special legal knowledge and professional experience, which his mother and sister did not have, were required. A subsequent request of 19 November 2000 to be represented by his relatives was likewise rejected.

26. By judgment of 25 December 2000 the Moskovskiy District Court found the applicant guilty of the charges against him and sentenced him to six years' imprisonment. The applicant appealed against the judgment, complaining also that he had not been allowed to choose his legal assistance.

27. On 27 February 2001 the Kaliningrad Regional Court upheld the judgment. On 28 February 2002 the Presidium of the Kaliningrad Regional Court lowered the sentence to four years' imprisonment.

28. On an unspecified date the applicant filed a supervisory complaint in order to review the domestic courts' judgment in his case. On 6 May 2004 the judicial panel on criminal cases of the Supreme Court rendered its judgment which in part found in the applicant's favour. The Supreme Court quashed the domestic courts' judgments in so far as they related to the conviction under Section 213 § 3 of the Criminal Code, whereas the remainder of the conviction was upheld. The applicant has been released from prison having served the sentence related to the remaining conviction.

II. RELEVANT DOMESTIC LAW

29. Code of Criminal Procedure of 1960, in force at the material time:

Article 46. The accused

"... The accused may ... appeal to court against unlawfulness and groundlessness of detention..."

Article 47. Involvement of defenders in criminal proceedings

"May be admitted as defenders: an advocate authorised by a bar office; a representative of a trade union or of another public association...

Where authorized by a court decision or ruling, close relatives, legal representatives and other persons may be admitted as defenders."

Article 49. Obligatory participation of defender

"A defender's participation is obligatory in proceedings:

1. in which a public or private prosecutor is involved..."

Article 220-1. Appeals against detention orders and extension of custody periods

"... When a prison administration receives a detainee's [appeal to a court against pre-trial detention], it must pass the [appeal] to the relevant court immediately, and, at any rate, not later than 24 hours after its receipt, having informed a public prosecutor...

If the appeal has been lodged via the prison administration, the prosecutor must send [the documents confirming the lawfulness and validity of the detention as a measure of restraint] to the court within 24 hours after receipt of the prison administration's notification that the person concerned has lodged the appeal..."

Article 220-2. Judicial review of lawfulness and validity of detention orders and extension of custody periods

"... A judge must review the lawfulness of the detention ... within three days after receipt of documents confirming the lawfulness and validity of the detention as a measure of restraint..."

30. Constitution of the Russian Federation of 1993:

Article 48

"Everyone has the right to professional legal aid. In cases established by law, legal aid is granted free..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained about his conditions of detention in the Remand Centre IZ-39/1. He relied on Article 3 of the Convention, which provides:

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

A. Arguments of the parties

32. The applicant referred in particular to the overcrowding and unsanitary conditions in his cells which had an adverse effect on his physical health and caused him humiliation and suffering.

33. The Government argued that the applicant's conditions of detention could not be considered to amount to a violation of Article 3 of the Convention. They pointed out that the sanitary conditions in all the cells where the applicant was detained were found to be satisfactory and they were monitored on a regular basis. The applicant was allowed daily walks and was in good health. In particular the Government stressed that the applicant underwent a medical examination upon arrival and that during his detention he made no request for medical assistance. Finally, the authorities had no intention to make the applicant suffer, physically or morally, to debase his human dignity or to humiliate him during his detention.

B. The Court's assessment

34. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy*, judgment of 6 April 2000, *Reports of Judgments and Decisions* 2000-IV, § 119).

35. The Court further reiterates that, according to its case-law, 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*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

36. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudła v. Poland*, no. 30210/96, § 92, ECHR 2000-XI). In considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, among other authorities, *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII, pp. 2821–22, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, *Peers v. Greece*, no; 28524/95, § 74, ECHR 2001-III). The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

37. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment.

38. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or handlings of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI).

39. In the present case the Court recalls that the applicant was detained in the Remand Centre IZ-39/1 from 26 July 2000 until 7 March 2001 and from 16 May 2001 until 18 July 2001, that is a total of 9 months and 14 days. He was kept in different cells which according to the information provided by the Government were designed for between 6 and 10 inmates and thus left between 1.3 and 2.51 square metres for each inmate. It may be questioned whether such accommodation could be regarded as attaining acceptable standards. In this connection the Court recalls that the European Committee for the Prevention of Torture and Inhuman or Degrading treatment or punishment (CPT) has set 7 m² per prisoner as an appropriate, desirable guideline for a detention cell.

40. Despite the fact that the cells in which the applicant stayed were designed for a specific number of inmates the applicant submitted that the actual number of inmates was 2–3 times higher and that therefore he had to share a bed with 1 or 2 other inmates. The Government did not contest this allegation nor did they submit any evidence to the contrary. Besides, from similar cases (cf. the above mentioned Kalashnikov v. Russia) the Court is aware that overcrowding in pre-trial detention facilities is a general problem in Russia (ibid. § 93). In these circumstances the Court does not find it of crucial importance to determine the exact number of inmates in the cells during the periods concerned. The material available suggests that at any given time there would be less than 2 m² of space per inmate. Thus, in the Court's view the cells were overcrowded, something which in itself raises an issue under Article 3 of the Convention.

41. As regards the sanitary conditions of the cells the applicant alleged that they were dirty and infested with cockroaches, bed-bugs and lice, and that the windows were covered with steel shutters which let in very little light. The Government submitted that the sanitary conditions were "satisfactory" according to the report of the Chief Prison Directorate without, however, providing further details or evidence. Without entering into further details on this point the Court concludes that although the applicant was allowed outdoor activity for one or two hours a day, the rest of the time he was confined to his cell, with very limited space for himself.

42. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant the Court finds that such conditions of pre-trial detention which the applicant had to endure for more than nine months, must have undermined his human dignity and arousing in him feelings of humiliation and debasement. In the light of this the Court finds that the applicant's conditions of detention, in particular the overcrowded environment and the length of time the applicant was detained in such conditions, amounted to a degrading treatment.

43. Accordingly, there has been a breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

44. The applicant complained that the domestic authorities did not examine his application for release, lodged on 30 July 2000 with sufficient speed. Article 5 § 4 reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Arguments of the parties

45. The Government submitted that Russian law, and, in particular, Articles 46 and 220-1 of the CCrP, gave detainees the right to apply to courts for judicial review of the lawfulness of their detention. The Government claimed that the applicant enjoyed this right fully.

46. The applicant averred that the Government's submission was inconclusive which proved that his complaint was well-founded.

B. The Court's assessment

47. In guaranteeing to persons arrested or detained a right to institute proceedings, Article 5 § 4 also proclaims their right, following the institution of such proceedings, to a speedy judicial decision terminating their deprivation of liberty if it proves unlawful (see *Van der Leer v. the Netherlands*, judgment of 21 February 1990, Series A no. 170-A, § 35).

48. This right must be not only theoretical or illusory but practical and effective (see *R.M.D. v. Switzerland*, judgment of 26 September 1997, *Reports* 1997-VI, § 51).

49. The question of speed of review of lawfulness of detention cannot be defined in the abstract but must be assessed in the light of the circumstances of the particular case. The Court must take account of the general conduct of the proceedings and the extent to which delays can be attributed to the behaviour of the applicant or his legal representatives. In principle, however, since the liberty of the individual is at stake, the State must organise its procedures in such a way that the proceedings can be conducted with the minimum of delay (see *Zamir v. the United Kingdom*, no. 9174/80, Commission's report of 11 October 1983, DR 40, p. 42, §§ 107–108)

50. The Court notes that the applicant lodged his application for release on 30 July 2000. It was only on 15 December 2000, i.e. 4 months and 15 days later, that the Central District Court dealt with the application and decided on the merits of the application to keep the applicant in detention pending trial.

51. The Court considers that this period is not "speedy" the more so since pursuant to Article 220 of the CCrP a court must decide on an application not later than five days after a detainee sends it.

52. The Court also finds that the whole of this period is attributable to the authorities, since nothing suggests that the applicant, having lodged the application, hampered its examination.

53. There has, accordingly, been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) OF THE CONVENTION

54. The applicant next complained under Article 6 § 3 (c) of the Convention that his relatives had not been permitted to represent him during the trial, and therefore he had to accept the assistance of M., an allegedly inefficient legal-aid counsel. Article 6 § 3 (c) reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require..."

A. Arguments of the parties

55. According to the Government, the Moskovskiy District Court refused to let the applicant's mother and sister represent him at the trial for valid reasons. The mother was a person of advanced age and frail health. The sister worked as a speech therapist in a children's polyclinic, and the duties of her office prevented an active involvement in the proceedings.

56. Furthermore, the two charges the applicant faced were serious, and the circumstances of his case were complex. It was therefore necessary for the applicant's representative to have special knowledge and professional experience in law, something the mother and sister, both lay-educated, had not. Had the relatives been permitted to act on the applicant's behalf, the defence could have been weakened, and the proceedings could have been prolonged. In any event, pursuant to Article 47 of the CCrP a court may, but is not obliged to, admit relatives as defenders.

57. With regard to the professional lawyers involved in the case, the Government submitted that at the outset of the proceedings the authorities had appointed Z., a member of the bar, to defend the applicant. After the applicant had refused Z.'s services, the court asked the bar association to provide another lawyer. At the beginning of the trial the applicant did not inform the court whether he would like to have a legal-aid lawyer. Later, when M.—the lawyer provided by the bar association to replace Z.—appeared in the hearing, the

applicant protested against having him as counsel. The applicant announced that he did not trust M. or any other legal-aid lawyers who may be appointed because he did not know them. The court asked the applicant whether he needed professional legal assistance, and whether indigence was the reason why he had not hired a lawyer he wished. The applicant refused to answer these questions. In sum, the applicant refused assistance from eight legal-aid lawyers all of whom acted in good faith and respected bar ethics.

58. Lastly, pursuant to Article 49 of the CCrP, if a public prosecutor participates in a trial, defence counsel must also participate. Article 48 of the Constitution secures to everyone the right to legal aid, free where necessary. Therefore, if the court had disregarded this rule by respecting the applicant's refusal of M., it would have breached the applicant's constitutional right to free legal aid.

59. The applicant asserted that even though in their submissions the Government had referred to the law, in reality, they distorted the facts and contradicted the Constitution.

60. According to him, the authorities refused to respect his choice of defenders because otherwise it would have become apparent that he had no case to answer, and that the whole proceedings were but a criminally fabricated political persecution. The case was based on forged documents, which the authorities put in and out of the case file at will. Criminal methods of investigation were employed. Authorities which were that malicious needed no independent witnesses of their misdoings.

61. Secondly, if the relatives had been admitted as defenders, they would have been able to visit the applicant in remand custody as often as they wished. In that case, the prison authorities would not have been able to block his complaints because he would have passed them to the outside through the relatives.

62. Next, M. was inefficient as defence counsel because he overlooked the most outrageous breaches of the rules of criminal procedure. If the Government considered such assistance "professional", they should have given examples of M.'s constructive activity. In fact, the court was satisfied to have a dummy instead of efficient counsel. The mother and sister both agreed to defend the applicant. The mother was in good health, and the sister's profession would in no way had affected the continuous flow of the proceedings. Under the law the court could only refuse their participation if they were insane.

63. It is untrue that the applicant refused to answer the court's question whether he needed professional legal assistance. In fact, he did answer this question by saying that all the legal-aid lawyers he had had, i.e. about a dozen, had been werewolves sympathising with the prosecution. There was no sense in having any more of them. However, the court ignored this statement and imposed yet another werewolf of a lawyer ready to cover up the lawlessness of the judgment to be given.

B. The Court's assessment

64. In examining questions under Article 6 § 3 (c) the Court takes account of the treatment of the defence as a whole rather than the position of the accused taken in isolation, with particular regard to the principle of equality of arms as included in the concept of a fair hearing.

65. Article 6 § 3 (c) guarantees that proceedings against the accused will not take place without an adequate representation for the defence, but does not give the accused the right to decide himself in what manner his defence should be assured. The decision as to which of the two alternatives mentioned in the provision should be chosen, namely the applicant's right to defend himself in person or to be represented by a lawyer of his own choosing, or in certain circumstances one appointed by the court, depends upon the applicable legislation or rules of court (see *X v. Norway*, no. 5923/72, Commission decision of 30 May 1975, Decisions and Reports DR 3, p. 43).

66. Notwithstanding the importance of a relationship of confidence between lawyer and client, the right to choose one's own counsel cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defence counsel the national courts must certainly have regard to the defendant's wishes. However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (see *Croissant v. Germany*, judgment of 25 September 1992, Series A no. 237-B, § 29).

67. The State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Kamasinski v. Austria*, judgment of 19 December 1989, Series A no. 168, § 65).

68. The Court notes that Article 47 of the CCrP sets as a general rule the requirement that defenders must be professional advocates, members of the bar. Pursuant to the same provision the Moskovskiy District Court could, if it had seen fit, have let the applicant's mother and sister act as his defenders. The court considered, however, that as lay persons they would not be able to ensure the applicant's efficient defence in compliance with the procedure. Furthermore, the court concluded that they would not, for the reasons of health or occupation, be able sufficiently to attend to the proceedings. In the Court's opinion, these considerations were legitimate and outweighed the applicant's wishes.

69. Insofar as the applicant alleges that the legal aid lawyers appointed by the Moskovskiy District Court were inefficient, the applicant has not substantiated any examples of their manifest negligence.

70. Considering the applicant's defence as a whole, the Court notes that he was given an ample opportunity to present his own case. The restriction imposed on the applicant's choice of representation was limited to excluding his mother and sister on the grounds cited above. The applicant could have chosen any advocate to represent him but apparently made no effort to do so. The facts of the case do not disclose any disadvantage to the defence or unfairness in this respect.

71. There has therefore been no violation of Article 6 § 3 (c) of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 (b) OF THE CONVENTION

72. The applicant complained next that he could not adequately prepare for trial because of the poor conditions of his detention, and because the administration of the remand centre prohibited him to have legal books and to copy procedural documents. The applicant referred to Article 6 § 3 (b) of the Convention which reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (b) to have adequate time and facilities for the preparation of his defence..."

A. Arguments of the parties

73. In the Government's submission, the applicant had ample opportunity to study the material gathered against him by the prosecution. The investigating authorities served on the applicant the final version of the indictment on 8 August 2000, and as early as on 15 August 2000 they let him study the case file. Furthermore, on 4 September 2000 the Moskovskiy District Court provided the applicant with extra time to study the case file. The trial came about later, in December 2000, hence the applicant had enough time to prepare for it.

74. During the trial the applicant wrote a number of complaints to various authorities. Many of the complaints contained references to laws indicating that the applicant had access to law books. The Government enclosed a copy of an application of 15 March 2001 in which the applicant's friend asked the prison administration to pass to the applicant legal codes. Lastly, after his conviction the applicant received copies of the judgment and trial records which means that he had everything necessary to file an appeal.

75. The applicant claimed that the information submitted by the Government was incorrect.

76. With regard to the application of 15 March 2001 he maintained that nothing proved that it had in fact been granted, and that, in any event, by that

date he had already been convicted. Secondly, the great number of complaints the applicant wrote from prison only demonstrated his firm will to stand for his rights despite the unbearable conditions of detention. Thirdly, the trial lasted from 9 October to 25 December 2000, and during this period the applicant in sum spent 22 days in the tight cell in which he awaited being called to the courtroom. He was handcuffed throughout the trial.

B. The Court's assessment

77. The specific guarantees laid down in Article 6 § 3 exemplify the notion of fair trial in respect of typical procedural situations which arise in criminal cases, but their intrinsic aim is always to ensure, or contribute to ensuring, the fairness of the criminal proceedings as a whole. The guarantees enshrined in Article 6 § 3 are therefore not an end in themselves, and they must accordingly be interpreted in the light of the function which they have in the overall context of the proceedings.

78. Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court, and thus to influence the outcome of the proceedings. The provision is violated only if this is made impossible (see *Can v. Austria*, no. 9300/81, Commission's report of 12 July 1984, Series A no. 96, § 53).

79. The "rights of defence", of which Article 6 § 3 (b) gives a non-exhaustive list, have been instituted, above all, to establish equality, as far as possible, between the prosecution and the defence. The facilities which must be granted to the accused are restricted to those which assist or may assist him in the preparation of his defence (see *Jespers v. Belgium*, no. 8403/78, Commission's report of 14 December 1981, DR 27, p. 61, §§ 55, 57).

80. Turning to the present case the Court recalls that the indictment was served on the applicant in August 2000, and that the District Court, in September 2000, set the trial to commence on 9 October 2000 in order to allow the applicant time to study the case-file. In these circumstances, and having regard to the charges against him, the Court is satisfied that the applicant had sufficient "time" to prepare for the trial.

81. As regards the "facilities" the Court does not rule out that where a person is detained pending trial, this word may include such conditions of detention that permit the person to read and write with a reasonable degree of concentration. Having regard to its conclusion above under Article 3 of the Convention it is clear that the conditions of the applicant's detention did not favour intense mental work. Nevertheless, the Court notes that no restrictions were placed on the applicant as regards access to the case-file and free and

unrestricted legal aid assistance was placed at the applicant's disposal, although he chose not to avail himself thereof. Accordingly, the Court is satisfied that appropriate facilities were available.

82. Finally, and leaving aside the fact that the applicant chose to disregard the legal assistance offered, the Court finds that the applicant's allegations about the lack of access to law books in the prison, lack of access to photocopying, his placement in a tight cell during the days of court hearings and the use of handcuffs remain unsupported by factual evidence. Nor has it been shown that the applicant at any moment availed himself of the right to bring these issues to the attention of the competent authorities had he considered this to influence, at the relevant time, the preparation of his defence.

83. Having regard to all of the above the Court finds that the effects of the applicant's detention taken as a whole did not restrict the rights of the defence in a way that the principle of a fair trial, as set out in Article 6 of the Convention, was contravened.

84. There has accordingly been no breach of Article 6 § 3 (b) of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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."

86. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

87. On 6 May 2003, after the present application had been declared admissible, the Court invited the applicant to submit his claims for just satisfaction. He did not submit any such claims within the required time-limits.

88. In such circumstances, the Court would usually make no award (see *Ryabykh v. Russia*, no. 52854/99, §§ 67–68, ECHR 2003-X, *Timofeyev v. Russia*, no. 58263/00, §§ 51–52, 23 October 2003). In the present case, however, the Court has found a violation of the applicant's right not to be subjected to degrading treatment. Since this right is of absolute character, the Court finds it possible to award the applicant 3,000 euros by way of non-pecuniary damage.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds* that there has been no violation of Article 6 § 3 (c) of the Convention;

4. *Holds* that there has been no violation of Article 6 § 3 (b) of the Convention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President