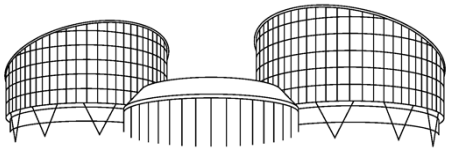

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SCHMIDT AND ŠMIGOL v. ESTONIA

(Applications nos. 3501/20 and 2 others)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Consecutive enforcement of disciplinary punishments and security measures in prison resulting in protracted periods of solitary confinement • Practice of using solitary confinement as a disciplinary measure for long and consecutive periods of time, in principle, incompatible with Art 3 save for exceptional circumstances and as measure of last resort • Domestic maximum 45-day legal limit for solitary confinement of considerable length and rendered practically worthless by consecutive enforcement of disciplinary punishments • Applicants in solitary confinement for uninterrupted periods exceeding that legal limit • Prolonged solitary confinement entailed an inherent risk of harmful effect on any person's mental health, irrespective of the material or other conditions surrounding it • Solitary confinement to be alternated with periods of return to regular prison regime; the longer the periods of solitary confinement, the longer the intervening periods under regular prison conditions • Doubtful whether solitary confinement as form of disciplinary punishment in instant case was measure of last resort • Absence of compelling reasons as to existence of exceptional circumstances capable of justifying use of such long periods of solitary confinement as purely disciplinary measure • Applicants subjected to hardship going beyond unavoidable level of suffering inherent in detention

STRASBOURG

28 November 2023

FINAL

28/02/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Schmidt and Šmigol v. Estonia,

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

Jolien Schukking, *President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 3501/20, 45907/20 and 43128/21) 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 an Estonian national, Mr Allan Schmidt ("the first applicant") and by a stateless person, Mr Ilja Šmigol ("the second applicant"), on the various dates indicated in the appended table;

the decision to give notice to the Estonian Government ("the Government") of the complaints under Article 3 of the Convention concerning consecutive enforcement of disciplinary punishments against the applicants resulting in them spending protracted periods in solitary confinement, and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 7 November 2023,

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

INTRODUCTION

1. The case concerns the consecutive enforcement of disciplinary punishments against the applicants and the placing of the first applicant in a locked isolation cell as a security measure. This resulted in the applicants spending periods of differing durations under conditions effectively amounting to solitary confinement, which – according to the applicants – violated their rights under Article 3 of the Convention.

THE FACTS

2. The applicants were at the time in question detained in Viru Prison. The first applicant, who had been granted legal aid, was represented by Mr J. Valdma, a lawyer practising in Tallinn. The second applicant was represented by Mr R. Paas, a lawyer practising in Tallinn.

3. The Government were initially represented by their Agent, Ms M. Kuurberg, Representative of Estonia to the European Court of Human Rights, and subsequently by Mr T. Kolk, her successor in that office.

4. The facts of the case may be summarised as follows.

I. THE FIRST APPLICANT (APPLICATION Nos. 3501/20 AND 43128/21)

A. Periods of solitary confinement

5. Between June 2015 and April 2018 the first applicant, who was imprisoned at the time, received twenty-eight disciplinary punishments for refusing to perform his work duties, for carrying forbidden items on his person and for disobeying prison officers' (unspecified) orders. On each occasion the punishment-cell regime (*kartserirežiim*) was imposed on him. The duration of the periods that the first applicant spent under the punishment-cell regime varied between five and forty-five days, but they were often enforced consecutively.

6. On one occasion additional security measures (*täiendavad julgeolekumeetmed*) – namely, placement in a locked isolation cell (*eraldatud lukustatud kamber*) – were imposed on the first applicant for throwing a bottle at a prison guard.

7. As a consequence, the first applicant spent the following periods under either the punishment-cell regime or the locked isolation-cell regime:

Dates	**Number of days**	**Regime**
27 June-4 September 2015	69	Punishment-cell regime
23 September-25 October 2015	33	Locked isolation-cell regime
26 October-25 November 2015	30	Punishment-cell regime
1 December 2015-4 February 2016	65	Punishment-cell regime
11 March-10 May 2016	60	Punishment-cell regime
20 May 2016-6 June 2018	747	Punishment-cell regime

8. There were breaks of between six and thirty-six days between the respective applications of these regimes.

B. Proceedings concerning solitary confinement

1. Proceedings concerning the lawfulness of the consecutive enforcement of disciplinary punishments

9. On 20 November 2017 the first applicant lodged an application with the prison authorities, asking to be allowed to spend a reasonable amount of time under the regular prison regime between the enforcement of disciplinary punishments. He noted that he had been held constantly under the punishment-cell regime since 20 May 2016.

10. The prison dismissed both his application and a challenge (*vaie*) that he subsequently lodged against it.

11. On 11 February 2018 the first applicant brought an action in the Tartu Administrative Court. He asked the court to declare unlawful the consecutive enforcement (or enforcement with only brief pauses) of disciplinary punishments against him for the period from 27 June 2015 to the date of the lodging of his action, and to order the prison to cease that practice. He later clarified that he did not intend to challenge the imposition on him of disciplinary punishments themselves – only how they were enforced.

12. On 9 October 2018 the Tartu Administrative Court in case no. 3-18-327 dismissed his action. The first applicant appealed.

13. On 21 May 2019 the Tartu Court of Appeal partly quashed the first-instance judgment and partly allowed the first applicant's claim.

14. The Tartu Court of Appeal firstly held that the separate periods of up to sixty-nine days that the applicant had spent under the punishment-cell regime between 25 June 2015 and 10 May 2016 (see paragraph 7 above) had been lawful. Analysing each of the periods separately, the court found that those periods had either been below the forty-five-day limit set out in the Imprisonment Act (see paragraph 63 below) or had not significantly exceeded it (the court having noted that the Imprisonment Act did not set an upper limit in respect of the consecutive enforcement of separate punishment-cell-regime measures by way of disciplinary punishment). The applicant had been able to spend a reasonable number of days (between six and fifty-two days) under the regular prison regime between the enforcement of the separate punishments. The Tartu Court of Appeal emphasised the fact that the first applicant had repeatedly breached prison rules and had presumably understood that such behaviour meant that he would face disciplinary punishments, which would be enforced immediately, in accordance with section 65(1) of the Imprisonment Act. The court found that the prison would not be able to carry out its statutory role if it was prevented from taking immediate action against systematic offenders and from enforcing disciplinary punishments against them. The court examined the first

applicant's health records and found that he had attended several consultations with the prison's medical staff at the relevant time. He had thus been under the constant supervision of medical workers. The health problems that the first applicant had complained of were either not confirmed by the medical records of the time or could not be linked to the punishment-cell regime but rather to his earlier injuries or medical conditions. The first applicant had been able to spend one hour in the fresh air every day. The court noted that the applicant had applied for and had been granted permission to receive three short visits during the relevant period and had not applied for permission to receive any long visits. He had served his disciplinary punishments in an ordinary cell, although his bedding had been removed during the daytime. He had been given access to newspapers and been allowed to listen to the radio, read religious literature, make telephone calls, correspond by mail and participate in social programmes.

15. However, the Tartu Court of Appeal found that the period that the first applicant had spent under the punishment-cell regime between 20 May 2016 and 6 June 2018 (see paragraph 7 above) had been unlawful. Although it was proven that the applicant had repeatedly sought and received medical assistance during this period, it was not clear from the records whether and how the prison had in reality assessed the mental and physical consequences of the lengthy period that the first applicant had spent in solitary confinement.

16. On 10 September 2019 the Supreme Court refused to examine an appeal on points of law lodged by the first applicant.

2. Proceedings concerning compensation

(a) First compensation proceedings

17. On 7 December 2017 the first applicant lodged an application with the Viru Prison authorities seeking compensation for the unlawful enforcement between 25 June 2015 and 6 December 2017 of disciplinary punishments imposed on him.

18. The Viru Prison authorities dismissed his application, and the first applicant lodged a claim for compensation with the Tartu Administrative Court on 9 March 2018. He sought compensation in the sum of 20,000 euros (EUR) for the period from 25 June 2015 until 8 March 2018.

19. On 4 May 2018 the Tartu Administrative Court refused to examine his claim with regard to the period from 7 December 2017 until 8 March 2018 because he had not first raised (as had been mandatory) the complaint in question with Viru Prison (hereinafter "mandatory pre-action proceedings" – *kohustuslik kohtueelne menetlus*) in respect of that period. That decision became final.

20. On 25 October 2019 the Tartu Administrative Court allowed in part the first applicant's claim for compensation and awarded him EUR 1,200 in

respect of the period that he had spent in solitary confinement from 20 May 2016 until 6 December 2017.

21. The Tartu Administrative Court stated that spending that period – 566 days – in solitary confinement could be considered to have been degrading as well as damaging to the first applicant's mental health. It analysed the first applicant's medical records and concluded that he had had a record of mental health problems since 2013 and that the problems had deteriorated in the period 2018-19. The court concluded that the period in solitary confinement had, alongside other factors, contributed to the worsening of the first applicant's mental health. The court noted that the first applicant had been able to participate in social programmes and had had regular conversations with various prison officers, a chaplain and a psychologist, but that such conversations had not taken place during a significant part of the time spent under the punishment-cell regime. He had not had any contact with fellow prisoners, which the court considered important. As for visits from family members, the court noted that while such visits were forbidden under domestic law to a prisoner undergoing the punishment-cell regime, this had not aggravated the first applicant's situation, as it was proven that not having contact with his family had been his own choice.

22. As regards other shorter periods of solitary confinement between 27 June 2015 and 10 May 2016 (see paragraph 7 above), the Tartu Administrative Court noted that the first applicant's treatment during those periods had been found to have been lawful in earlier court proceedings in respect of case no. 3-18-327 (see paragraph 14 above). Consequently, the first applicant's claim for compensation in respect of those periods could not be granted, as a finding of unlawfulness was a prerequisite for awarding damages.

23. As regards the period from 23 September 2015 until 26 October 2015 (when the first applicant had been placed in a locked isolation cell for thirty-three days as part of additional security measures imposed on him – see paragraph 7 above), the Tartu Administrative Court explained that such security measures were different from disciplinary punishment. They were used on precautionary grounds in order to prevent security threats either to prisoners or prison officers. Therefore, a prison could not forgo applying them on the grounds that the prisoner in question had already spent some time in solitary confinement. In any event, the first applicant had been held under a regular prison regime directly before his placement in a locked isolation cell. That period of solitary confinement – which had been shorter than the forty-five-day limit set by domestic law – had thus been lawful; therefore, the compensation claim in that respect had to be dismissed.

24. Furthermore, the court rejected the first applicant's claim for compensation in so far as it concerned his back problems (which had

allegedly worsened while he had been in solitary confinement), as the applicant had not raised that aspect in the mandatory pre-action proceedings.

25. Following an appeal lodged by the applicant, the Tartu Court of Appeal on 1 December 2020 quashed the first-instance judgment with respect to damages. Instead, it awarded the applicant EUR 1,700 in compensation for non-pecuniary damage in respect of the 566 days that he had spent in solitary confinement between 20 May 2016 and 6 December 2017.

26. On 9 March 2021 the Supreme Court refused to examine an appeal on points of law lodged by the applicant.

(b) Second compensation proceedings

27. In August 2018 the first applicant lodged an application with Viru Prison seeking compensation for the period that he had spent in solitary confinement from 7 December 2017 until 30 August 2018.

28. The prison dismissed his application and on 12 December 2018 the applicant brought an action in the Tartu Administrative Court seeking compensation for the above-mentioned period that he had spent in solitary confinement.

29. The Tartu Administrative Court admitted for examination the applicant's action for compensation. On 25 March 2020 the first applicant informed the court that he had been released from prison. As he subsequently failed to remain in contact with the court, on 14 October 2020 the Tartu Administrative Court refused to examine his claim. The applicant did not appeal against this decision.

II. THE SECOND APPLICANT (APPLICATION No. 45907/20)

A. Periods of solitary confinement

30. The second applicant, who was serving a prison sentence at the time, was placed several times under the punishment-cell regime as a disciplinary punishment for refusing to perform his work duties.

31. As a result of the consecutive enforcement of these disciplinary punishments, the applicant spent the following periods under the punishment-cell regime:

Dates	Number of days	Regime
1 June 2016-27 June 2017	392	Punishment-cell regime
29 June 2017-22 August 2017	55	Punishment-cell regime
24 August 2017-26 September 2017	34	Punishment-cell regime

32. Although the second applicant was also subjected to the punishment-cell regime for numerous periods before 1 June 2016 and after 26 September 2017, and although the domestic court proceedings also concerned longer periods, he clarified that his application to the Court concerned exclusively the periods between 1 June 2016 and 26 September 2017.

B. Proceedings concerning solitary confinement

1. Proceedings concerning the lawfulness of the consecutive enforcement of disciplinary punishments on the second applicant

33. In case no. 3-17-356 the second applicant lodged a claim with the Tartu Administrative Court seeking, *inter alia*, to have the consecutive enforcement of disciplinary punishments declared unlawful.

34. On 3 August 2017 the Tartu Administrative Court dismissed his claim. The second applicant appealed.

35. On 29 March 2018 the Tartu Court of Appeal partly quashed the first-instance judgment and partly allowed the second applicant's claim. The court declared unlawful the consecutive enforcement of disciplinary punishments between June 2015 and June 2017 in respect of those periods spent during that time under the punishment-cell regime which had exceeded the forty-five-day limit set by domestic law. The court ruled that the prison had not explained how it had verified and come to the conclusion that the consecutive enforcement of disciplinary punishments would not harm the second applicant's health.

36. The second applicant lodged an appeal on points of law, which the Supreme Court refused to examine on 2 October 2018.

2. Proceedings concerning compensation

37. On 17 November 2017 the second applicant lodged an application with the Viru Prison authorities for compensation for the unlawful enforcement of disciplinary punishments between 1 June 2016 and 9 November 2017.

38. On 17 January 2018 the Viru Prison authorities dismissed the application. The second applicant then lodged a claim for compensation with the Tartu Administrative Court on 19 February 2018; he sought compensation in the sum of EUR 20,000 for the period from 1 June 2016 until 9 November 2017.

39. On 14 December 2018 the Tartu Administrative Court in case no. 3-18-360 allowed the second applicant's claim in part. Taking note of the final judgment in case no. 3-17-356 (see paragraph 35 above), the Tartu Administrative Court considered that the applicant had suffered non-

pecuniary damage in respect of his solitary confinement between 1 June 2016 and 27 June 2017. However, it deemed the acknowledgment of the unlawfulness of the prison's practice of consecutive enforcement of separate disciplinary punishments to constitute sufficient redress.

40. Following an appeal lodged by the applicant, the Tartu Court of Appeal on 27 June 2019 quashed the first-instance judgment. It found that the applicant should be awarded EUR 50 with respect to the non-pecuniary damage that he had suffered during the period identified by the first-instance court. The second applicant lodged an appeal on points of law.

41. On 15 April 2020 the Supreme Court allowed in part the second applicant's appeal on points of law. It firstly found that the lower-instance courts had erred in identifying the relevant period of solitary confinement. It noted that the second applicant had also spent a period longer than forty-five days under the punishment-cell regime after 27 June 2017. Moreover, the Supreme Court considered that a one-day break from the punishment-cell regime during which the second applicant had been held under normal prison conditions had not been sufficient to alleviate the negative effects arising from solitary confinement (the various periods of solitary confinement are listed in paragraph 31 above). The court deemed that spending some time under the regular prison regime was necessary if the mental and physical stimulation provided by prison did not offer sufficient opportunities for socialising or other appropriate activities. As a result, the Supreme Court found that the enforcement of disciplinary punishments with respect to the second applicant during the 482 days between 1 June 2016 and 26 September 2017 had been unlawful.

42. The Supreme Court then outlined the basis for calculating compensation in respect of non-pecuniary damage under section 9 of the State Liability Act (see paragraph 69 below). It observed that the courts had a wide margin of discretion when awarding compensation for non-pecuniary damage. The amount of compensation was to be set by the courts, who had to take into account, *inter alia*, the importance of the violated right, all the established circumstances in which the damage in question was caused, and the gravity of the interference in question. Moreover, the case-law of the European Court of Human Rights had to be taken into consideration when setting the amount of compensation. The Supreme Court noted that in *Shmelev and Others v. Russia* ((dec.) nos. 41743/17 and 16 others, 17 March 2020), the Court had considered reasonable and proportionate compensation awarded by a national court that had amounted to approximately 30% of the award made by the Court.

43. When assessing the amount of compensation to be awarded, the Supreme Court observed that the second applicant had been detained in a regular cell, that he had been under constant medical supervision and that the solitary confinement had not appeared to have seriously impacted his health. Moreover, the second applicant had had no compelling reasons to refuse to

work. He had nevertheless decided to do so, even though he had been aware that, in line with the normal practice followed by the prison, he would be placed in a punishment cell for this violation.

44. The Supreme Court emphasised that refusal to work in prison was not to be regarded as an insignificant violation. A prisoner had a duty to work, in the interests of attaining the aims of the sentence of imprisonment. Working in prison helped a person to maintain or develop the habit of working and coping independently. Ultimately, this helped to guide a person towards law-abiding behaviour. It was also significant that from the remuneration received for their work a prisoner could provide compensation for the damage caused by his criminal offence and accumulate money that would cover his initial expenses upon release and help to alleviate the risk of his committing new criminal offences.

45. Taking all the aforementioned elements into account, the Supreme Court considered that the second applicant should be awarded EUR 1,500 in respect of the 482 days that he had spent in solitary confinement.

III. CONDITIONS OF THE APPLICANTS' SOLITARY CONFINEMENT

46. The overall conditions of the punishment-cell regime are set out by the relevant provisions of the Imprisonment Act and Regulations no. 72 of the Minister of Justice on the Internal Prison Rules (*Vangla sisekorraeeskiri* – see paragraphs 63-68 and 70 below).

47. Both applicants served their disciplinary punishments in a regular prison cell, albeit under the punishment-cell regime. As part of that regime, their bedding was removed from the cell during the daytime. They were given prison clothing and they were not allowed to keep personal items other than those allowed under the Internal Prison Rules (see paragraph 70 below).

48. The cells in which the applicants served their disciplinary punishments measured approximately 9.9 square metres and were equipped with a shower and a toilet. The applicants could listen to a built-in radio and have access to newspapers and religious literature (the second applicant also had access to educational literature). If needed, they could have online access to all the domestic legislation in a separate computer room, and were able to take daily one-hour outdoor walks. Neither of the applicants have raised complaints regarding aspects of their living conditions, such as the quality of lighting, ventilation or heating.

49. Under domestic law the applicants were not allowed to receive either short or long-term visits while being held under the punishment-cell regime. However, such visits were allowed during the breaks between the different periods that they spent confined to the punishment-cell regime.

50. The applicants were able to make telephone calls at least once a week. Written correspondence was authorised without any restrictions, and the

applicants made active use of it to communicate either with other prisoners or with persons at liberty.

51. Meals were distributed three times a day, and mail was collected once a day.

A. Specific circumstances of the first applicant

52. During the period in question the first applicant participated in social programmes entitled "Training on replacing aggressiveness" (eighteen meetings between 29 July 2015 and 2 October 2015), "Lifestyle training" (seven meetings between 24 April and 5 June 2017) and "Development of social skills" (eight meetings between 29 September and 27 October 2017).

53. In addition, he had numerous conversations (approximately thirty during the period from 27 June 2015 until 6 December 2017) with an "inspector/contact person" (*inspektor-kontaktisik*) and a criminal probation officer (*kriminaalhooldusametnik*), two conversations with a psychologist (on 6 November 2015 and 6 June 2016) and one with a chaplain regarding various topics concerning his behaviour, attitudes, and awareness. Within the context of those conversations, he was provided with various books to read. The psychologist noted in the record that she made of the first conversation that the applicant had expressed the wish to be left in peace to mind his own business. Following the second conversation the psychologist recorded that the applicant had been emotionally stable, with an adequate understanding of the reality of his situation and had appeared to have adapted to the punishment-cell regime.

54. It appears (see paragraph 14 above) that during the period between 27 June 2015 and 10 May 2016 the applicant applied for permission to receive three short visits (all of which the prison authorised), and that two of them took place.

55. He was able to make telephone calls at least once a week. Between 27 June 2015 and 6 June 2018 the applicant made some 750 calls from prison, including over 150 telephone calls between 20 May 2016 and 6 December 2017.

56. It appears from the records submitted by the first applicant that during the period from 27 June 2015 until 6 December 2017 he had attended approximately 180 medical consultations of various natures. He was at times also provided with an exercise mat in his cell.

57. Besides being subjected to disciplinary punishments, the first applicant was also placed in a locked isolation cell between 23 September 2015 and 26 October 2015 (see paragraphs 6-7 above). This regime also demanded that he stay in his cell, apart from taking a daily one-hour walk outdoors (if he chose to do so). Unlike the punishment-cell regime, during the period in which the applicant was subjected to the locked isolation-cell regime his bedding was not removed during the day, and he was allowed to

wear his own clothes, have personal items in the cell and receive visits. The selection of literature in the cell was not limited (he was able to order other books) and the applicant was able to buy items from the prison shop.

B. Specific circumstances of the second applicant

58. The second applicant took part in Estonian-language courses, which partially overlapped with the periods that he spent under the punishment-cell regime. The courses took place three times a week (each lesson lasted for three hours) from 3 May until 11 September 2016 and from 27 January until 18 May 2017.

59. From 1 June 2016 until 26 September 2017 he had fifteen meetings with the inspector/contact person. While some meetings were held for the purpose of informing the second applicant of certain modifications to prison rules, other conversations concerned the second applicant's duty to work, the possibility of engaging in the educational activities, and life after imprisonment. According to the records of those meetings the second applicant expressed his refusal on principle to working in prison because he considered it to be demeaning. It appears that during the period in question he was on one occasion (on 4 April 2017) offered a consultation with a psychologist, which he refused. He later requested a consultation with a psychiatrist, which took place on 17 August 2017. He was diagnosed with "unspecified severe stress reaction" and was prescribed medication. Shortly thereafter he decided not to follow the treatment prescribed by the psychiatrist.

60. During the period in question the second applicant applied for permission to receive six short visits, which the prison authorised (including two visits from his family members). However, three of those visits did not take place for reasons not attributable to the prison authorities.

61. Between 1 June 2016 and 26 September 2017 the second applicant made 312 telephone calls.

62. It appears from the medical records that during the period from 1 June 2016 until 26 September 2017 the second applicant attended approximately eighty medical consultations of various natures.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Imprisonment Act

63. Section 63(1)(4) of the Imprisonment Act (*vangistusseadus*) lists the following possible disciplinary punishments: reprimand; prohibition on using a personal radio, television set or other essential electrical equipment for up

to forty-five days; prohibition on receiving one short or long-term visit; removal from work for up to one month; and placement in a punishment cell for up to forty-five days.

64. Section 65(1) states that, as a rule, disciplinary punishments are to be enforced immediately. Section 65(2) provides that a prison officer may suspend the enforcement of a disciplinary punishment (or an aspect thereof) on condition that the prisoner does not commit another disciplinary offence during the suspension period in question.

65. Section 65^1(2) provides that upon being placed in a punishment cell, a prisoner is to be searched and must wear the clothing provided in the punishment cell. The personal belongings that a prisoner kept in his or her ordinary cell will be stored and returned to the prisoner after his or her release from the punishment cell.

66. Under section 65^1(2) a prisoner who is placed in a punishment cell does not have the right to move about within the prison area as permitted under the ordinary prison rules. However, a prisoner is allowed, at his or her request, to be in the open air for at least one hour daily.

67. Section 69(1) provides that additional security measures may be imposed on a prisoner who systematically violates the behaviour-related requirements set out by the Imprisonment Act or the internal rules of the prison in question, damages his or her health or is likely to attempt suicide or escape, or on a prisoner who poses a threat to other persons or security in the prison. Additional security measures may also be imposed in order to prevent the commission of serious offences. Section 69(2) lists all such additional security measures that a prison may impose, including placing the prisoner in question in a locked isolation cell. Section 69(3) specifies that the application of additional security measures is to be terminated if and when the circumstances specified in section 69(1) have ceased to exist.

68. Section 24(4) provides that a prisoner who is placed in a punishment cell in order to serve a disciplinary punishment is not allowed to receive short visits. Section 25(3) provides the same in respect of long-term visits.

B. State Liability Act

69. Section 9 of the State Liability Act (*riigivastutusseadus*) sets out the rules concerning compensation for non-pecuniary damage. Section 9(1) provides that a person may claim financial compensation for non-pecuniary damage resulting from the wrongful undermining of dignity, damage to health, deprivation of liberty, a breach of the inviolability of a person's home or private life or of the confidentiality of their correspondence, or the defamation of a person's honour or good name. Section 9(2) adds that non-pecuniary damage will be compensated for in proportion to the gravity of the violation, taking into account the form and gravity of the fault in question (*süü vorm ja raskus*).

C. Regulations no. 72 of the Minister of Justice on the Internal Prison Rules

70. Regulation 60 of Regulations no. 72 of the Minister of Justice on the Internal Prison Rules (*vangla sisekorraeeskiri*) provides that a prisoner may have the following items while detained in a punishment cell: Holy Scripture (*pühakiri*), copies of legal instruments necessary for the protection of his or her rights, a wedding ring, religious symbols, a reasonable amount of religious and educational literature, stationery, stamps, envelopes, copies of court rulings concerning him or her, summaries of statements of charges, replies received to his or her letters, one telephone card, soap, a comb, toothpaste, a toothbrush, a towel, toilet paper and sanitary pads for female prisoners.

II. RELEVANT DOMESTIC CASE-LAW

A. Concerning prisoners' duty to work while in prison

71. In judgment no. 3-18-1895 of 8 December 2021, the Supreme Court ruled that a prisoner's systematic refusal to work in prison was to be regarded as a serious violation. The Supreme Court agreed with the Viru Prison authorities that a prisoner's systematic refusal (motivated by the code followed by the criminal subculture to which he belonged) to carry out assigned work duties posed a threat to discipline and security in prison. In the Supreme Court case in question, the complainant was serving a sentence for crimes committed as a leader of a criminal organisation. The prison had reason to believe that the prisoner's refusal to comply with the duty to work was not because of health-related impediments, but because of the beliefs commonly held within the criminal subculture to which he belonged. The prisoner's systematic and unfounded refusal to perform cleaning work indicated that he continued to uphold the notion inherent in the criminal subculture that performing cleaning work was degrading to a person of his status. The Supreme Court considered that the enforcement of disciplinary punishment in the form of the punishment-cell regime against the defendant in the case in question had been justified and proportionate. However, the Supreme Court also emphasised that solitary confinement should not be enforced indefinitely.

B. Concerning the consecutive enforcement of disciplinary punishments

72. Supreme Court judgment no. 3-15-3133 of 10 October 2017 concerned an action for the setting aside of several disciplinary decisions concerning the placement of a prisoner in a punishment cell for refusing to work. In its judgment, the court considered that the imposition of the

punishment-cell regime had in itself been lawful and proportionate. It did not therefore set aside the disciplinary decisions in question. However, referring to the case-law of the European Court of Human Rights, it considered it necessary to note that although the disciplinary punishments (which had taken the form of placing the prisoner in a punishment cell) imposed on the complainant for different violations had been lawful in themselves, their uninterrupted consecutive enforcement might not be acceptable. In the case of the prisoner, this would have meant keeping him in a punishment cell for four consecutive months. In that regard, the Supreme Court expressly stated – referring to its earlier judgment no. 3-3-1-79-12 – that it was changing its position regarding the possibility of consecutively enforcing punishments involving placement in a punishment cell. The court specified that the phrase "as a rule" in section 65(1) of the Imprisonment Act (see paragraph 64 above) gave prison authorities some discretion. It stated that, if necessary, prisoners should be afforded a reasonable number of days under an ordinary prison regime between the enforcement of several disciplinary punishments.

73. In judgment no. 3-18-1895 of 8 December 2021 (already referred to in paragraph 71 above), the Supreme Court observed that the conditions of the punishment-cell regime and the level of isolation involved could vary greatly. In addition to the duration of the punishment-cell regime, other factors – such as the physical conditions of detention and the possibilities afforded to the prisoner to sustain his or her physical and mental health, (including opportunities to communicate with family and friends outside the prison and to socialise with others within the prison) – were relevant. It was also important to assess the health of the person in question and his or her ability to withstand isolation – both when deciding to impose solitary confinement and during its application. If the activities offered by the prison did not grant sufficient possibilities to communicate with people outside and inside the prison and did not ensure the protection of the prisoner's mental health, the negative impact of solitary confinement had to be alleviated by allowing the prisoner to spend time in regular conditions. The longer the time spent under the punishment-cell regime, the longer the intervening periods (during which the person would live under the regular prison regime) had to be.

74. The Supreme Court stressed, referring to the case-law of the European Court of Human Rights, that the State had to ensure that the physical and mental health of a person spending time in solitary confinement was regularly assessed. Those prison officers who had regular contact with a prisoner kept in solitary confinement could play a certain a role in carrying out that assessment – especially if they were sufficiently qualified to notice any causes for concern, were informed of the prisoner's health situation and were instructed to immediately inform the relevant officials in the event that concerns arose, so that the latter could end the solitary confinement. It was more important, however, to ensure that regular and sufficiently frequent

physical and mental health checks were conducted by qualified medical workers. The frequency of such checks could depend on the risk factors specific to each prisoner. As it was the prisoner's mental health that was particularly at risk during solitary confinement, it was not sufficient to rely on the assumption that such a person would himself or herself have the necessary capacity to be aware of and draw attention to any mental health problems that they might be suffering.

C. Claims for compensation

75. In judgment no. 3-3-1-71-09 of 16 December 2009, the Supreme Court explained the options available to prisoners wishing to lodge a compensation claim. The court noted that a prisoner had two ways of seeking compensation for damage caused by prison authorities. A prisoner could first bring an action in an administrative court to establish the unlawfulness of an administrative decision or measure. If the court reached a finding of unlawfulness, it was possible to lodge an application for damages with the prison in question, pursuant to the procedure laid down in the State Liability Act. If the prison dismissed the action, the prisoner could then bring an action in an administrative court within thirty days. Another option was to immediately lodge an application for damages with the prison. If the prison dismissed the claim, the prisoner could then bring a claim with an administrative court. In such cases, a separate finding of unlawfulness in respect of an administrative decision or measure was unnecessary, since the claim for damages would also include a request that such unlawfulness be established.

76. In judgment no. 3-15-2943 of 4 June 2018, the Supreme Court quashed the judgments of the lower-instance courts that had dismissed the complainant's claim for compensation in respect of the protracted period that he had spent in a punishment cell. The court explained that in order to assess whether the consecutive enforcement of separate disciplinary punishments was permissible, it was important to consider (i) the length of time to be spent in a punishment cell and (ii) its individual impact on the health or social situation of the person in question. For those reasons it was also relevant to assess how long a prisoner should spend under an ordinary regime in order to compensate for the harmful effects of time spent under the punishment-cell regime. The court added that even in respect of persons in good mental and physical health, the punishment-cell regime would be presumed to be disproportionate if it lasted considerably longer than the forty-five days referred to in the Imprisonment Act. As the Supreme Court was prevented by law from establishing facts relevant for an adjudication of the compensation claim in question, it remitted the case to the first-instance court.

III. FURTHER DOMESTIC ADMINISTRATIVE PRACTICE

77. According to information submitted by the Government, since the autumn of 2018 Estonia's prisons have been running a pilot programme aimed at prisoners who spend extended periods in solitary confinement. The purpose of the programme is to ensure that such persons have sufficient social contact and are engaged in sufficient meaningful activities as to reduce the possible negative effects of solitary confinement. Each prisoner held in solitary confinement enters the programme on the eleventh day of his time in solitary confinement; the programme is conducted by a chaplain, a social worker, a psychologist or a (voluntary) mentor. The meetings take place three times a week and last for an hour. The programme lasts for up to five weeks. Possible free-time activities include sudoku puzzles and educational literature related to the programme. After the initial stage of the programme the meetings take place more often, amounting to one hour of conversation four times per week (of which one meeting has to take place on a weekend). The topics of the meetings are open; their purpose is to offer human contact during solitary confinement and to prevent any possible negative effects of solitary confinement (or the aggravation of such effects). At least once per month the meeting has to be carried out by a clinical psychologist or a psychiatrist, who assesses the mental condition of the prisoner in question (and any changes thereto since the previous meetings). The person conducting each meeting must document the purpose of the meeting, what happened in the meeting, conversational topics, tasks assigned to the person and whether they were fulfilled, noteworthy observations about the prisoner's attitude and behaviour, the person's activity and motivation for cooperation, and the length of the meeting.

IV. RELEVANT INTERNATIONAL INSTRUMENTS

78. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, as the global key standards for the treatment of prisoners adopted by the United Nations General Assembly on 17 December 2015, provide as follows, in so far as relevant (footnote omitted):

Rule 43

"1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment.

The following practices, in particular, shall be prohibited:

(a) Indefinite solitary confinement;

(b) Prolonged solitary confinement;

..."

Rule 44

"For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days."

Rule 45

"1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply."

79. An extract from the section entitled "Solitary confinement of prisoners" in the 21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in 2011 (CPT/Inf(2011)28-part2) explained what is meant by the notion of "solitary confinement":

"The CPT understands the term 'solitary confinement' as meaning whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned. A prisoner subject to such a measure will usually be held on his/her own; however, in some States he/she may be accommodated together with one or two other prisoners, and this section applies equally to such situations."

80. The same report also addressed different types of solitary confinement. In respect of solitary confinement as a disciplinary sanction and administrative solitary confinement for preventive purposes, the report noted:

"**(b) Solitary confinement as a disciplinary sanction**

Withdrawal of a prisoner from contact with other prisoners may be imposed under the normal disciplinary procedures specified by the law, as the most severe disciplinary punishment. Recognising the inherent dangers of this sanction, countries specify a maximum period for which it may be imposed. This can vary from as little as a few days to as much as a month or more. Some countries allow prison directors to impose a given maximum period, with the possibility for a judicial body to impose a longer period. Most countries – but not all – prohibit sequential sentences of solitary confinement.

Given the potentially very damaging effects of solitary confinement, the CPT considers that the principle of proportionality requires that it be used as a disciplinary

punishment only in exceptional cases and as a last resort, and for the shortest possible period of time. The trend in many member States of the Council of Europe is towards lowering the maximum possible period of solitary confinement as a punishment. The CPT considers that the maximum period should be no higher than 14 days for a given offence, and preferably lower. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which it is felt call for more severe sanctions should be dealt with through the criminal justice system.

(c) Administrative solitary confinement for preventative purposes

The law in most European countries allows for an administrative decision to place into solitary confinement prisoners who have caused, or are judged likely to cause, serious harm to others or who present a very serious risk to the safety or security of the prison. This may be for as short as a few hours, in the case of an isolated incident, or for as long as a period of years in cases involving prisoners who are considered as particularly dangerous and to continue to pose an imminent threat. This is potentially the longest lasting type of solitary confinement and often the one with the fewest procedural safeguards. It is therefore crucial that there be rules to ensure that it is not used too readily (e.g. as an immediate response to every disciplinary infraction pending adjudication), too extensively or for too lengthy periods."

81. The European Prison Rules (Recommendation Rec(2006)2 of the Committee of Ministers to member States, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), as applicable at the relevant time and in so far as relevant, read:

"43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

...

60.5 Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible."

82. The European Prison Rules were revised and amended by the Committee of Ministers on 1 July 2020 at the 1380th meeting of the Ministers' Deputies. The contemporary European standards on solitary confinement as a disciplinary measure set out in Rule 60(6) of the revised European Prison Rules provide as follows:

"60.6.a Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison.

60.6.b The decision on solitary confinement shall take into account the current state of health of the prisoner concerned. Solitary confinement shall not be imposed on prisoners with mental or physical disabilities when their condition would be exacerbated by it. Where solitary confinement has been imposed, its execution shall be terminated or suspended if the prisoner's mental or physical condition has deteriorated.

60.6.c Solitary confinement shall not be imposed as a disciplinary punishment, other than in exceptional cases and then for a specified period, which shall be as short as possible and shall never amount to torture or inhuman or degrading treatment or punishment.

60.6.d The maximum period for which solitary confinement may be imposed shall be set in national law.

60.6.e Where a punishment of solitary confinement is imposed for a new disciplinary offence on a prisoner who has already spent the maximum period in solitary confinement, such a punishment shall not be implemented without first allowing the prisoner to recover from the adverse effects of the previous period of solitary confinement.

60.6.f Prisoners who are in solitary confinement shall be visited daily, including by the director of the prison or by a member of staff acting on behalf of the director of the prison."

83. In its Commentary on the European Prison Rules (CM(2020)17-add2), the Council of Europe's European Committee on Crime Problems (CDPC) addressed the issue of the setting in national law of a maximum period for which solitary confinement may be imposed. The relevant part of the Commentary reads (footnotes omitted):

"Rule 60.6.d instructs governments to declare by way of national law a specific enforceable maximum period beyond which a prisoner cannot be held in solitary confinement. When setting this period, governments should be aware that, if this maximum period is too long, it would amount to inhuman or degrading punishment. The CPT is of the view that the maximum period of solitary confinement imposed for disciplinary purposes should be no higher than 14 days and preferably lower. The Nelson Mandela Rules describe solitary confinement of more than 15 consecutive days as prolonged solitary confinement (Rule 44) and explicitly prohibit it (Rule 43). The maximum period of 15 days has also been endorsed by the World Medical Association."

84. In its 2014 report to the Estonian Government on its visit to Estonia from 30 May to 6 June 2012 (21 January 2014, CPT/Inf (2014) 1), the CPT noted the following concerning its visit to Viru Prison (footnotes omitted):

"75. As already indicated ..., at the end of the visit the CPT's delegation made an immediate observation concerning the excessive use being made of solitary confinement at Viru Prison, in particular for disciplinary purposes and in relation to both adults and juveniles. The response of the Estonian authorities to this observation has not removed the Committee's concern.

According to the records consulted by the delegation, more than 570 decisions of placement in a punishment cell had been pronounced *vis-à-vis* inmates during the [first

six] months of the year, with 30 of them for the maximum permitted period of 45 days and another 17 for a period in excess of 30 days.

...

76. As the Committee has made clear in the past, it considers that the 45-day maximum period of placement in a punishment cell for adult inmates is too high and should be substantially reduced; the same is true of the 20-day maximum permitted period for juveniles. Moreover, the delegation found that at Viru Prison, separate sanctions of solitary confinement were often being applied consecutively (without any interruption), with the result that there were cases of prisoners who had been held continuously for months in a disciplinary cell – in some cases for up to 200 days. As regards juveniles, consecutive periods of solitary confinement of more than 30 days were observed. This is totally unacceptable.

It is also noteworthy that placement in a disciplinary cell was often being used to punish prisoners who refused to work, and more specifically to carry out cleaning duties. It was argued that this approach was necessary to combat the 'criminal subculture', which included a belief that one should not work for the State. For its part, the CPT considers that irrespective of the underlying goal, resorting to lengthy periods of disciplinary confinement as a means of obliging prisoners to work is not an appropriate use of that sanction, the most severe of the panoply of sanctions available.

...

The CPT calls upon the Estonian authorities to carry out a full review of the use being made of solitary confinement as a disciplinary sanction at Viru Prison with a view to ensuring that it is only imposed exceptionally as a measure of last resort, is proportionate to the offence committed and is applied for the shortest possible period of time ..."

85. In its 2019 report to the Estonian Government on its visit to Estonia from 27 September until 5 October 2017, the CPT stated (footnotes omitted):

"67. In the course of the visit, the delegation paid particular attention to the situation of prisoners who were subjected to solitary confinement as a punishment.

At the outset, the CPT must express its serious concern that hardly any of the specific recommendations made after the 2012 visit regarding this issue have been implemented.

Firstly, the maximum legal time-limits for disciplinary solitary confinement remain unchanged, namely 45 days for adult sentenced prisoners, 30 days for adult remand prisoners, 20 days for sentenced young offenders (juveniles and young adults) and 15 days for young remand prisoners (juveniles and young adults).

It is of all the more concern that, in particular at Viru Prison, multiple disciplinary sanctions of solitary confinement were still being imposed consecutively, which in a number of cases resulted in very long periods of solitary confinement. For instance, at Tartu Prison, one prisoner had been placed in a disciplinary cell from 12 August to 14 October 2016 (64 days), serving ten consecutive sanctions. At Viru Prison, one prisoner had been subjected to disciplinary confinement for almost eight months in 2017 (serving without interruption 34 sanctions of varying durations), another prisoner was continuously held in a punishment cell for a total of 225 days (serving five sanctions of 45 days), and one juvenile prisoner (aged 16) for a total of 36 days (serving, without interruption, 20 disciplinary sanctions). Such a state of affairs is unacceptable."

THE LAW

I. JOINDER OF THE APPLICATIONS

86. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

87. The applicants complained that the consecutive enforcement of disciplinary punishments against them, which had resulted in their spending protracted periods in solitary confinement, had violated their rights under Article 3 of the Convention. Article 3 reads:

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

A. Admissibility

1. The parties' arguments

(a) The Government

(i) Arguments regarding both applicants

88. In respect of the first applicant's solitary confinement between 20 May 2016 and 6 December 2017 and the second applicant's solitary confinement between 1 June 2016 and 26 September 2017 the Government asserted that the applicants could no longer be considered to be victims of a violation of Article 3 of the Convention. The domestic courts had expressly acknowledged that the applicants' rights had been violated and had awarded them EUR 1,700 and EUR 1,500 respectively in compensation for non-pecuniary damage. That compensation, which had taken into account all the relevant factors of the applicants' cases, had been in line with both the Supreme Court's case-law and with the specific guidelines of the European Court of Human Rights, given that the latter had accepted in *Shmelev and Others v. Russia* ((dec.) nos. 41743/17 and 16 others, § 92, 17 March 2020) that a domestic compensation award amounting to approximately 30% of its own usual award would not be considered unreasonable or disproportionate.

89. Alternatively, the Government argued – referring to the same reasons set out under the merits (see paragraphs 113-118 below) – that the applicants' complaints regarding solitary confinement were manifestly ill-founded.

(ii) Arguments specifically in respect of the first applicant

90. Firstly, as regards the first applicant's solitary confinement between 27 June 2015 and 10 May 2016, the Government noted that the application concerning this period had been lodged with the Court on 2 January 2020. However, during that period the domestic proceedings – which, *inter alia*, had concerned the compensation claim regarding that precise period (the first compensation proceedings – see paragraphs 17-26 above) – had still been ongoing. The Government accordingly argued that the first applicant had not exhausted the available domestic remedies regarding this period of his solitary confinement at the time of lodging his application.

91. Secondly, the Government noted that the first applicant had not appealed against the decision of the Tartu Administrative Court by which that court had refused to examine his complaint regarding the period of his solitary confinement between 7 December 2017 and 8 March 2018 (see paragraph 19 above). Moreover, he had not pursued his claims concerning the period from 7 December 2017 until 30 August 2018 (the second compensation proceedings – see paragraphs 27-29 above). Therefore, the part of his complaint concerning the period that he had spent in solitary confinement after 6 December 2017 should be declared inadmissible for non-exhaustion of domestic remedies.

92. Lastly, in support of their argument that the first applicant's complaint concerning the periods that he had spent in solitary confinement between 27 June 2015 and 10 May 2016 had been manifestly ill-founded, the Government noted that during that period the first applicant had not lodged any applications with the prison to be afforded reasonable breaks between the enforcement of disciplinary punishments. In his application to the prison, which had only been lodged on 20 November 2017, he had stated that he had been under the punishment-cell regime since 20 May 2016 (see paragraph 9 above). In the Government's view, this meant that the first applicant himself had not considered that the enforcement of disciplinary punishments between 27 June 2015 and 10 May 2016 had violated his rights.

(b) The first applicant

93. The first applicant agreed with the Government that he had not exhausted the available domestic remedies in respect of his solitary confinement between 7 December 2017 and 8 March 2018 (see paragraph 91 above). He did not comment on the second compensation proceedings.

94. As regards the remaining periods that he had spent in solitary confinement, the first applicant argued that the domestic remedies could be considered to have been exhausted as of the judgment of the Supreme Court rendered on 9 March 2021 in the first compensation proceedings.

95. The first applicant disagreed that he had lost his victim status with respect to the period from 20 May 2016 until 6 December 2017. He considered that EUR 1,700 did not amount to sufficient redress as to warrant such a conclusion.

96. As for his not having contested the consecutive enforcement of disciplinary punishments any earlier than November 2017 (see paragraph 9 above, and the Government's argument outlined in paragraph 92 above) the first applicant noted (without giving any details) that there had been objective and subjective reasons for him to choose the time to start defending his rights.

(c) The second applicant

97. The second applicant argued that the compensation awarded to him by the domestic courts – EUR 1,500 for the period of uninterrupted solitary confinement between 1 June 2016 and 26 September 2017 – had not been sufficient for it to be considered that he had lost his victim status within the meaning of the Convention.

2. The Court's assessment

98. The Government's preliminary objections to the applicants' complaints concerned the exhaustion of domestic remedies (regarding the first applicant) and the applicants' victim status. Moreover, the Government submitted that the applicants' complaints were manifestly ill-founded.

(a) Exhaustion of domestic remedies

99. As regards the question whether the first applicant had exhausted the available domestic remedies (see paragraphs 90-91 above), the Court notes that the first applicant agreed that he had not done so with regard to his complaint concerning the period from 7 December 2017 until 8 March 2018. The Court observes, moreover, that the first applicant did not pursue his compensation claim in the second compensation proceedings (see paragraphs 27-29 above).

100. Accordingly, the Court finds that the first applicant's complaint concerning the periods of solitary confinement following 6 December 2017 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

101. As for the periods that the first applicant spent in solitary confinement between 27 June 2015 and 10 May 2016, the Court notes that in the proceedings concerning the lawfulness of the consecutive enforcement of disciplinary punishments (proceedings no. 3-18-327), the domestic courts found that the first applicant's treatment in respect of those periods had not been unlawful (see paragraph 14 above). That decision became final on 10 September 2019 (see paragraph 16 above). The application by the first

applicant concerning, *inter alia*, the period between 27 June 2015 and 10 May 2016 was lodged with the Court on 2 January 2020.

102. The Court observes that the first applicant had in the meantime also initiated the first compensation proceedings, in which he sought, *inter alia*, compensation for the very same periods of solitary confinement between 27 June 2015 and 10 May 2016 (see paragraphs 17-26 above). These proceedings were indeed pending at the time that he lodged his application with the Court. It appears, however, that given the fact that the domestic courts had found the enforcement of disciplinary punishments during the periods in question to have been lawful (proceedings no. 3-18-327 – see paragraph 14 above), the first applicant's compensation claim regarding the very same periods was bound to fail – as indeed it did (see paragraph 22 above). The Court does not therefore consider that the first applicant ought to have waited until the end of the first compensation proceedings (which, in any event ended on 9 March 2021) before lodging his complaint with the Court regarding the periods of solitary confinement between 27 June 2015 and 10 May 2016. Accordingly, the Court dismisses the Government's preliminary objection concerning non-exhaustion of domestic remedies.

(b) Victim status

103. The Government submitted that the applicants could no longer be regarded as victims of a violation of Article 3 of the Convention regarding the periods of solitary confinement that they had spent between 20 May 2016 and 6 December 2017 (the first applicant) and between 1 June 2016 and 26 September 2017 (the second applicant), given that the domestic courts had acknowledged the violations and afforded the applicants adequate and sufficient redress.

104. The Court considers that the question whether the redress afforded by the national courts was sufficient for the applicants to no longer be able to argue that they were 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 in respect of the applicants' victim status to the merits of their complaints under Article 3.

(c) Conclusion as to admissibility

105. The Court finds that the applicants' complaints concerning their solitary confinement between 27 June 2015 and 6 December 2017 (as regards the first applicant) and between 1 June 2016 and 26 September 2017 (as regards the second applicant) are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. In that connection it notes that the fact that the first applicant did not lodge his complaint with the domestic courts until November 2017 does not render his complaint regarding the preceding periods of solitary confinement manifestly ill-founded. In any

event, the domestic courts analysed the first applicant's complaint with regard to the various periods of solitary confinement starting from June 2015.

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

B. Merits

1. The parties' observations

(a) The first applicant

107. The first applicant submitted that the impact that the long-term solitary confinement was likely to have had on his health (especially his mental health) had never been assessed.

108. In response to the Government's assertion that he had asked to see a psychiatrist for the first time only on 17 July 2018 (see paragraph 118 below), the first applicant submitted that he had not been capable of diagnosing himself; he had only been capable of describing his symptoms. He had repeatedly complained to the prison's medical personnel of fatigue, weakness and lack of energy, and during his conversations with a social worker and his inspector/contact person in prison he had recurrently complained of the deterioration of his mental health. It had been up to those persons to direct (*suunama*) him towards a psychiatrist. The first applicant pointed to medical records from August 2018 and later which referred to various physical and mental health concerns and which noted a diagnosis of depression.

109. The first applicant emphasised that the domestic law had not allowed him to receive any short or long-term visits while he had been serving his disciplinary punishments. He had seen no sense in applying for permission to receive visits that would not be granted. He further argued that prisoners held under the regular prison regime had been able to make telephone calls on a daily basis, whereas he had been allowed to make a call only once a week. He had been unable to socialise with other prisoners. Contacts with prison staff – that is to say with people in a position of power over him – had not offered a comparable substitute. As for outdoor walks, he noted that the outdoor exercise yard had effectively been a concrete box measuring approximately 10 square metres. The removal of his bedding during the daytime had meant that he had been able to lie down only on a cold metal bunk when needing to rest.

110. The first applicant contested the Government's argument (see paragraph 114 below) that he had expressed himself content with the punishment-cell regime, as he had preferred to be left in peace and be on his own.

(b) The second applicant

111. The second applicant stated that solitary confinement had been hard on him and that he had developed several mental problems. He stated that he had complained of those problems to prison authorities on several occasions but had not received much support. He also mentioned having had problems with a pain in his hand, which had not been addressed. The outdoor exercise area had been small and there had not been any sports equipment there. His interactions with his lawyer or with prison officers could not be considered to have been meaningful and valuable.

(c) The Government

112. The Government argued that there had not been a violation of Article 3 of the Convention in respect of the applicants.

113. The applicants had been punished mainly for systematically refusing to perform their prison work duties. Their solitary confinement had been a result of lawfully imposed disciplinary punishments, each of which had been limited in length. The applicants had known the reasons for the punishments and could have contested them.

114. As for the first applicant, the periods that he had spent in solitary confinement between 7 June 2015 and 10 May 2016 had not been excessively long, and there had been breaks between the enforcement of the respective disciplinary punishments imposed on him (see paragraph 7 above). His placement in a locked isolation cell had served a purpose different from that of the disciplinary punishments imposed on him and should thus not be seen cumulatively with the latter (see paragraph 23 above). At no point during that period had the first applicant requested to be placed under the regular prison regime or to be afforded longer breaks from solitary confinement. Moreover, in conversations with the psychologist and the inspector/contact person he had mentioned having become used to the regime and had expressed contentment with the fact that he had been left alone in peace.

115. In so far as the domestic courts had found the periods that both applicants had spent under the solitary confinement regime to have been unlawful, the Government argued that their circumstances had nonetheless failed to reach the necessary threshold of severity within the meaning of Article 3 of the Convention. The establishment of the unlawfulness of a particular act at the domestic level should not be viewed as an admission that the Convention had been violated.

116. The Government described the physical conditions of detention during the time that the applicants had spent under the punishment-cell regime (and, in respect of the first applicant, under the locked isolation-cell regime – see paragraphs 46-48 above).

117. The applicants' isolation had not been absolute. The Government noted that the applicants had been able to make telephone calls and

correspond through letters. The applicants had been able to apply for permission to receive short visits, and the prison had authorised their requests for permission to receive visits during the breaks from the application of the punishment-cell regime. The first applicant had participated in different training programmes and the second applicant had attended language courses. Moreover, regular conversations with inspector/contact persons, criminal probation officers and – to a lesser extent – psychologists had taken place.

118. Both applicants had been under regular medical supervision. The applicants had had the possibility to request a consultation with a psychiatrist, if they considered it necessary. The first applicant had done so only on 17 July 2018 – that is to say after the period under consideration in the instant case. The second applicant had requested and had attended a consultation with a psychiatrist on 17 August 2017 but then shortly thereafter had stopped taking the medication prescribed to him. The Government argued that the consecutive enforcement of disciplinary punishments had not had a significantly more serious effect on the applicants' health than that normally inherent in imprisonment.

119. The Government also pointed out that since 2018 the prisons had been running a special communication and socialisation programme for prisoners spending extended periods under the solitary confinement regime (see paragraph 77 above).

2. The Court's assessment

(a) General principles

120. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as when engaged in the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, among many authorities, *Ramirez Sanchez v. France* [GC], no. 59450/00, § 115, ECHR 2006-IX). 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).

121. 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 depends on all the circumstances of the case in question, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Muršić v. Croatia* [GC], no. 7334/13, § 97, 20 October 2016).

122. The Court notes that measures that deprive a person of his or her liberty may often involve an inevitable element of suffering or humiliation arising from a form of legitimate treatment or punishment (see *Ramirez Sanchez*, cited above, § 119). However, 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 under 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 *Muršić*, cited above, § 99, and the cases cited therein). Furthermore, when assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Ramirez Sanchez*, cited above, § 119).

123. A prohibition on contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (ibid., § 123, and the cases cited therein). While extended removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005, and *Rzakhanov v. Azerbaijan*, no. 4242/07, § 64, 4 July 2013).

124. The Court reiterates that solitary confinement without appropriate mental and physical stimulation is likely, in the long term, to have damaging effects, resulting in a deterioration in mental faculties and social abilities (see *Razvyazkin v. Russia*, no. 13579/09, § 104, 3 July 2012). Complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment that cannot be justified by the requirements of security or any other reason (see *Ramirez Sanchez*, cited above, § 123, and *A.T. v. Estonia (no. 2)*, no. 70465/14, § 72, 13 November 2018).

125. Solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely and should be based on genuine grounds, ordered only exceptionally and with the necessary procedural safeguards and after every precaution has been taken (see *Rzakhanov*, cited above, § 73).

126. A system of regular monitoring of the physical and mental condition of a prisoner held in solitary confinement should also be set up in order to ensure its compatibility with continued solitary confinement (see *Ramirez Sanchez*, cited above, § 139, and *Fenech v. Malta*, no. 19090/20, § 66, 1 March 2022).

127. It is essential that a prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement (see *Ramirez Sanchez*, cited above, §§ 139 and 145;

Onoufriou v. Cyprus, no. 24407/04, § 71, 7 January 2010; and *Gorbulya v. Russia*, no. 31535/09, § 77, 6 March 2014).

(b) Application of the general principles in the instant case

(i) The scope and substance of the case before the Court

128. The instant case concerns the consecutive enforcement of disciplinary punishments against both applicants and the application of the locked isolation-cell regime as an additional security measure against the first applicant.

129. The application of the above-mentioned measures led to the applicants spending periods of varied duration in conditions amounting to solitary confinement (see paragraph 78 above). Although the locked isolation-cell regime was to a certain extent less strict than the punishment-cell regime (compare paragraphs 47-51 and 57 above), the application of both of those regimes meant – as a rule – that the applicants were kept alone in their cells separately from other prisoners for twenty-three hours a day.

130. Given the facts of the applicants' respective cases, the domestic courts' judgments made in respect of them and the extent to which the Court has declared their applications inadmissible, the periods that the applicants spent in solitary confinement can be set out as follows.

131. The domestic courts acknowledged the violation of the applicants' rights in respect of the longer periods during which the punishment-cell regime had gone practically uninterrupted – 566 days with respect to the first applicant and 482 days with respect to the second applicant – and awarded the applicants EUR 1,700 and EUR 1,500 respectively in compensation for the non-pecuniary damage that the applicants had suffered.

132. In addition, the first applicant spent shorter periods of between thirty and sixty-nine days under either the punishment-cell regime or under the locked isolation-cell regime. There were generally breaks of between six and thirty-six days between those periods of solitary confinement, except for when the applicant was placed in a locked isolation cell. On that occasion the thirty-three days spent under the locked isolation-cell regime were directly followed by thirty days spent under the punishment-cell regime (see paragraphs 7-8 above).

(ii) Preliminary remarks about the use of solitary confinement as a disciplinary punishment

133. As a preliminary remark, the Court expresses strong concerns about the use of solitary confinement, as a disciplinary measure, for long and consecutive periods of time. The Court considers that such practice is, in principle, incompatible with Article 3, unless the Government are able to

present compelling reasons as to the existence of exceptional circumstances that would justify that practice, and to show that such disciplinary punishment is indeed used as a last resort.

134. In this connection the Court notes that it is generally accepted that solitary confinement should be imposed only exceptionally as a measure of last resort and for the shortest possible period of time. This has been set out in the Nelson Mandela Rules (see paragraph 78 above) and also in the European Prison Rules (see paragraph 81 for the rules that were in force at the time relevant to the present case, and paragraph 82 for the rules as revised and amended in 2020).

135. At this juncture the Court further observes that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) strongly criticised the Estonian authorities in its reports issued in 2014 (concerning the visit that took place in 2012) and 2019 (concerning the visit that took place in 2017), both for the excessive use of solitary confinement as a disciplinary measure (see paragraphs 84-85 above) and for the consecutive application of separate sanctions of solitary confinement, resulting in very long periods of solitary confinement. The CPT has also noted that the forty-five-day maximum period of placement in a punishment cell for adult inmates is too long and should be substantially reduced.

136. Against that general background, and noting also the factual circumstances of the cases before it, the Court cannot overlook the fact that it seems to be common practice in Viru Prison to punish prisoners for their refusal to work by placing them in solitary confinement. The Court cannot but note that placement in a punishment cell is the most severe of the disciplinary sanctions available under section 63 of the Imprisonment Act (see paragraph 63 above).

137. The Court does not underestimate the need to keep discipline and maintain security in prisons. It acknowledges that infractions of different gravity may require different responses and sanctions. However, given the information before it the Court has strong doubts whether placement in solitary confinement is indeed used exceptionally and as a measure of last resort in Viru Prison. It is also open to question whether such a supposed administrative practice leaves room for (re)assessment as to whether the disciplinary measure imposed has attained its purpose.

138. The Court also observes that the European Prison Rules did not at the relevant time, and do not after their revision in 2020, set out the maximum period for which solitary confinement can be imposed, while referring to the need to set out such a maximum period in domestic law (see paragraphs 81-83 above). The CPT considers that the maximum period should be no longer than fourteen days for a given offence, and the Nelson Mandela Rules state that prolonged solitary confinement – that is to say, solitary confinement that lasts more than fifteen consecutive days – should be prohibited.

139. In comparison, the Imprisonment Act provides that the disciplinary punishment of placement in a punishment cell cannot exceed forty-five days. Not only is that period three times longer than the maximum period that the CPT and the United Nations General Assembly have considered acceptable, but this maximum limit – which should, in principle, operate as a safeguard against abuse – becomes practically worthless if in practice several disciplinary punishments can be and indeed are enforced consecutively.

(iii) Overall assessment of the conditions of the applicants' solitary confinement

140. The Court considers that prolonged solitary confinement entails an inherent risk of harmful effect on any person's mental health, irrespective of the material or other conditions surrounding it. However, the Court may have regard to the particular conditions and modalities of solitary confinement in relation to the more limited periods of its application.

141. Turning to the case at hand, the Court observes that neither of the applicants raised complaints regarding aspects of their living conditions, such as the quality of ventilation, heating or lighting in their cells or the cleanliness of those cells. However, during the application of the punishment-cell regime, the applicants' bedding was removed during the daytime (see paragraphs 47 and 109 above).

142. The applicants' placement in solitary confinement was accompanied by the restriction that by way of exercise they could take only one-hour daily walks outdoors. The Government did not contest the applicants' assertion that the outdoor walking area had been rather small (approximately 10 square metres, according to the first applicant's estimate). In that connection, the Court has often observed that short periods of outdoor exercise exacerbate the situation of prisoners who are confined to their cells for the rest of the time (see *N.T. v. Russia*, no. 14727/11, § 49, 2 June 2020, and the cases cited therein).

143. There is no doubt that both applicants were authorised to receive (and indeed did receive) some short visits during the overall period of their solitary confinement (see paragraphs 54 and 60 above). It is not in dispute that the applicants could make telephone calls and send and receive correspondence; both of them availed themselves of that opportunity (see paragraphs 50, 55 and 61 above).

144. Both applicants, for some time during their solitary confinement, also attended social programmes (the first applicant) or language courses (the second applicant) and had meetings with inspector/contact persons, criminal probation officers and – to a lesser extent – a chaplain, a psychologist or a psychiatrist (see paragraphs 52 and 58-59 above).

145. As for medical assistance, it is evident from their medical records that both applicants were under regular medical supervision (see paragraphs 56 and 62 above). There is nothing in the case file to conclude

that the applicants' long-term solitary confinement led to a noticeable deterioration in their physical health.

146. Turning to the question of the applicants' mental health, the Court observes that while the applicants were given access to a psychologist during their stay in solitary confinement, those occasions – as recorded in the documents submitted to the Court – were extremely rare (see paragraphs 53 and 59 above). In addition, the Court takes note of the Government's argument that the applicants had had the possibility of requesting to see a psychiatrist in the event of their feeling the need to do so. Indeed, a couple of such appointments took place (see paragraphs 59 and 117 above).

147. However, aside from rare opportunities to meet with a psychologist and the possibility of requesting a consultation with a psychiatrist, there do not seem to have been in place any measures to assess – on the prison authorities' own initiative and at reasonably regular intervals – the applicants' psychological capacity to deal with long-term solitary confinement and its effect on their mental health. The Court emphasises in this connection the fact that prisoners kept in long-term solitary confinement need particular attention in order to minimise the damage that this measure can do to them (see *Razvyazkin*, cited above, § 106; see also Rule 43.2 of the European Prison Rules, referred to in paragraph 81 above; and compare and contrast *Rohde*, cited above, § 108). The Court agrees with the reasoning of the Supreme Court (see paragraph 74 above) that prisoners subjected to long-term solitary confinement cannot always be expected to have the necessary awareness of and capacity to identify their own mental-health problems and to ask for specialist intervention (compare and contrast *Maslák v. Slovakia (no. 2)*, no. 38321/17, §§ 189-91, 31 March 2022). Furthermore, the Court considers that in instances where, as a result of consecutive enforcement of disciplinary punishments, prisoners have spent extensive uninterrupted periods in solitary confinement, granting them regular access to a psychologist or psychiatrist cannot, in itself, justify or validate their continued placement in such conditions.

148. As for procedural safeguards, the Court takes note of the Government's assertion – unrebutted by the applicants – that the applicants had been aware of the reasons for the imposition of the impugned disciplinary and security measures and could have challenged them before the domestic courts (see also the Supreme Court's case-law referred to in paragraph 72 above; see also *Raudsepp v. Estonia* (dec.), no. 22409/18, §§ 20 and 22-23, 9 June 2020). In the case at hand neither of the applicants did so. In fact, the first applicant specifically clarified in the domestic proceedings that he had not sought to challenge the imposition on him of the disciplinary punishments themselves (see paragraph 11 above). The applicants also had the opportunity to challenge – and did indeed challenge – the manner in which those measures were enforced in respect of them. Their arguments were assessed at three levels of jurisdiction, and the domestic courts provided a detailed analysis of

the applicants' situation and the conditions in which they had had to spend their solitary confinement.

(iv) The Court's assessment concerning the compatibility of the applicants' solitary confinement with Article 3 of the Convention

149. Assessing the overall compatibility of the applicants' solitary confinement with the requirements of the Convention, the Court cannot but agree with the reasoning of the Supreme Court in finding that even if the decisions to apply certain measures (disciplinary punishments or security measures) might in themselves be lawful, their uninterrupted enforcement might nonetheless be unacceptable from the perspective of Article 3 of the Convention.

150. In the instant case the Estonian courts concluded that the consecutive enforcement of disciplinary punishments imposed on the applicants – which had led to the first applicant spending 566 days uninterruptedly, and the second applicant 482 days practically uninterruptedly, under the punishment-cell regime – had been unlawful. In reaching that conclusion, the domestic courts focused on the scarcity of meaningful ways for the applicants to socialise and the lack of any assessment of the impact of their continuous solitary confinement regime on the mental and physical health of the applicants (see paragraphs 15, 21, 35 and 41 above).

151. The Court concurs with the Government that the domestic courts' finding of a violation under domestic law did not automatically mean that the Convention had also been violated. It notes, however, that in the instant case the domestic courts' judgments referred to, *inter alia*, the Court's case-law.

152. The Court takes into account the above analysis of the applicants' solitary confinement, particularly its duration combined with the lack of mental and physical stimulation and the absence of a mechanism to meaningfully assess the applicants' physical and psychological capacity to deal with long-term solitary confinement. Against that background, the Court sees no reason to reach a different conclusion from the Convention perspective from the one reached by the domestic courts with respect to the above-mentioned periods of 566 days and 482 days that the first and the second applicant respectively spent in solitary confinement.

153. As regards the period between 27 June 2015 and 10 May 2016 (see paragraph 7 above) – during which the first applicant spent shorter periods (of between thirty and sixty-nine days) under either the punishment-cell regime or the locked isolation-cell regime – the domestic courts found that holding the first applicant under those regimes had been lawful and had not violated his rights.

154. The domestic courts approached those shorter periods of solitary confinement on an individual basis, analysing the duration and lawfulness of

each of the above-mentioned periods separately. In so doing, the domestic courts – while also considering other elements – paid attention to whether each of the periods of solitary confinement had been below or over the forty-five-day limit allowed under the domestic law as the maximum permissible duration of each separate disciplinary punishment. They also took into account the intervening periods that the first applicant had been able to spend under the regular prison regime and the fact that the locked isolation-cell regime had been imposed on the first applicant for different purposes from those of the punishment-cell regime (see paragraphs 14 and 23 above).

155. The Court acknowledges that if one accepts the enforcement of lawfully imposed sanctions and security measures – and in the present proceedings this has not been called into question – then alternating solitary confinement with periods during which prisoners are held under the regular prison regime does not appear to be arbitrary or excessive in itself. It will take this into account when analysing the manner in which the domestic courts carried out their assessment in the instant case.

156. The Court concurs with the Supreme Court that the longer the periods of solitary confinement, the longer the intervening periods should be during which the person in question is held under regular prison conditions – which presumably also afford more possibilities to socialise and engage in other meaningful activities (see paragraphs 72-73 above).

157. By contrast, under circumstances in which extended periods of solitary confinement are interrupted only for negligible periods in relation to the duration of isolation, such breaks would likely not offer the relief necessary to counteract the negative effects of the protracted isolation regime (see the similar standpoint set out by the Supreme Court, as noted in paragraph 41 above).

158. The same applies, in principle, even when successive periods of solitary confinement are the result of the application of different disciplinary or security measures – so long as there is no marked difference between those measures in terms of the solitary nature of the detention regime arising from them. The Court acknowledges, however, that owing to the variety of security concerns that prison authorities must face and tackle in the interests of either their personnel or prisoners, it might not be possible to suspend or postpone the application of different security measures.

159. In the instant case the breaks between the periods of solitary confinement – ranging between six and thirty-six days – cannot all be considered negligible. However, while the period between the enforcement of two sets of disciplinary punishments in September-October 2015 was indeed fifty-two days (as taken into account by the domestic courts – see paragraph 14 above), the first applicant was nonetheless placed under the locked isolation-cell regime for thirty-three of those fifty-two days (see paragraph 7 above). Thus, the period that he spent under the regular regime was only nineteen days long.

160. The Court takes into account the first applicant's overall conditions of detention during this period, as well his access to medical supervision (see paragraphs 141-147 above). It notes that the first applicant's participation in a social programme between July and October 2015 (taking into account the number of meetings – see paragraph 52 above) is likely to have contributed to reducing any general feeling of isolation during the period in question.

161. Although alternating the enforcement of separate lawful and proportionate disciplinary punishments with reasonably long periods spent under the regular prison regime will not necessarily lead to the finding of a violation under Article 3 of the Convention, the Court cannot ignore the specific circumstances surrounding the first applicant's case in the instant proceedings: the first applicant not only spent roughly eight months out of approximately eleven months in solitary confinement between June 2015 and May 2016 (albeit with pauses), but this period was followed only ten days later by a period of 566 days of uninterrupted solitary confinement. In total, of the period between June 2015 and December 2017, the first applicant spent only a little more than two months under the regular prison regime. The Court finds that the possibility of attending social programmes, having meetings with an inspector/contact person and a criminal probation officer – and, to a lesser extent, with a chaplain and with medical professionals – and having a few short meetings was not sufficient to alleviate the negative effects arising from the first applicant's having to spend repeated and extended periods in solitary confinement.

162. Lastly, the Court cannot but underscore once more that the solitary confinement which the applicants were subjected to was imposed (in all instances but one) as a disciplinary measure, leading to their seclusion for long cumulative periods. In that regard, it is significant that the maximum period of forty-five days for which the punishment-cell regime can be imposed under domestic law – which is already of considerable length – seems to have had no bearing on the manner the punishments were consecutively enforced, as the applicants were kept in solitary confinement for uninterrupted periods for much longer than the limit set by law. Having doubts as to whether in the above circumstances solitary confinement as a form of disciplinary punishment was indeed imposed as a measure of last resort, the Court in any event considers that the Government have not presented compelling reasons as to the existence of exceptional circumstances capable of justifying the use of such long periods of solitary confinement as a purely disciplinary measure.

163. Given the background set out above, the Court finds that the first applicant's solitary confinement (be it under the punishment-cell regime or under the locked isolation-cell regime) in respect of all the periods between 27 June 2015 and 6 December 2017 – taking into account their cumulative effect – subjected him to hardship going beyond the unavoidable level of suffering inherent in detention. The second applicant's solitary confinement

during the period between 1 June 2016 and 26 September 2017 also subjected him to distress going beyond the inevitable element of suffering and humiliation inherent in detention.

(v) The applicants' victim status in view of the compensation awarded in the domestic proceedings

164. 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 or her of his or her 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).

165. The Court considers that in the present case the first condition for the loss of victim status – namely, the acknowledgment of a violation in substance by the national authorities – was fulfilled regarding the periods of solitary confinement between 20 May 2016 and 6 December 2017 (concerning the first applicant) and between 1 June 2016 and 26 September 2017 (concerning the second applicant). The domestic courts expressly acknowledged, referring to the Court's case-law, that the consecutive enforcement of disciplinary punishments against the applicants during these two periods had been unlawful.

166. The domestic courts did not find a violation of the first applicant's rights as regards the period between 27 June 2015 and 10 May 2016. Therefore, as regards that period, the first applicant cannot be considered to have lost his victim status.

167. It remains for the Court to ascertain whether the amount of compensation awarded by the domestic courts – in so far as they found a violation of the applicants' rights – was sufficient to compensate the applicants for their grievances under Article 3.

168. The principles according to which the Court ascertains whether the amount in damages awarded by the domestic courts was sufficient to compensate the applicants for their grievances under Article 3 have been set out in *Nikitin and Others v. Estonia* (nos. 23226/16 and 6 others, § 197, 29 January 2019). In that case the Court emphasised that the level of compensation awarded in respect of non-pecuniary damage must not be unreasonable in comparison with the awards made by the Court in similar cases. The Court notes, in addition, that the relevant section of the *Shmelev and Others* decision, referred to by the Government (see paragraph 88 above),

addressed the question of the general effectiveness of a compensatory remedy under Article 13 of the Convention. However, this is a matter that is distinct from the question of victim status under Article 34 of the Convention (ibid., § 118).

169. In the instant case, having regard to the sums it has awarded in similar cases (compare *Rzakhanov*, § 89, and *Razvyazkin*, § 155, both cited above), the Court finds that the amount of compensation awarded by the domestic courts cannot be considered to constitute appropriate redress for the violations complained of in the light of the standards set by it in comparable situations. It considers that the amounts of EUR 1,700 and EUR 1,500 awarded to the first and the second applicant, respectively, were unreasonably low, given the nature and duration of the violation of their rights under Article 3 of the Convention.

170. The Court therefore dismisses the Government's objection with regard to the applicants' victim status.

(vi) Final conclusions

171. In the light of the above reasoning, the Court concludes that there has been a violation of Article 3 of the Convention in respect of all the periods between 27 June 2015 and 6 December 2017 that the first applicant spent under either the punishment-cell regime or the locked isolation-cell regime. There has also been a violation of Article 3 of the Convention in respect of the period between 1 June 2016 and 26 September 2017, which the second applicant spent under the punishment-cell regime.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

172. 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

173. The first applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage concerning his solitary confinement between 27 June 2015 and 10 May 2016 and EUR 20,000 in respect of non-pecuniary damage concerning his solitary confinement between 20 May 2016 and 6 December 2017. The second applicant claimed EUR 15,000 in respect of non-pecuniary damage concerning his solitary confinement between 1 June 2016 and 26 September 2017.

174. The Government submitted that the finding of a violation itself constituted sufficient satisfaction in respect of non-pecuniary damage, taking

into account the fact that the consecutive enforcement of disciplinary punishments had not had any damaging effect on the applicants' physical or mental health. Moreover, in respect of the second applicant, the Government asserted that he had himself caused the accumulation of punishments by disobeying orders given by the prison officers. Should the Court not agree with that assertion, the Government left it to the Court to determine a reasonable sum to be awarded in respect of just satisfaction.

175. The Court has no doubt that the applicants must have suffered distress on account of the violations found above. However, the actual amount claimed by them appears excessive. The Court considers that the applicants should be awarded the difference between the amount obtained from the domestic courts and an amount that would correspond to the Court's own standards in cases of a similar degree of seriousness. Taking into account the duration of the applicants' periods in solitary confinement, and, in so far as relevant, the overall conditions of detention during those periods (including the material conditions of detention, access to medical care and possibilities for socialising), and making its assessment on an equitable basis, the Court awards the first applicant EUR 12,500 and the second applicant EUR 8,300, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

176. The first applicant did not seek the reimbursement of costs and expenses. Accordingly, the Court does not award him any sum under this head.

177. The second applicant asked the Court to award him EUR 3,120 in respect of costs and expenses incurred during his dealings with the domestic courts. This sum consisted of EUR 2,860 in respect of the representative's fees and EUR 1,200 in respect of the court fees paid during the domestic proceedings, minus the sum of EUR 940 that had been awarded by the Supreme Court (including EUR 540 in respect of the fees paid to his representative). He did not seek the reimbursement of costs and expenses incurred in respect of the proceedings before the Court.

178. The Government noted that the Supreme Court had found that only part of the representative's fees claimed by the second applicant had been either actually or necessarily incurred. Specifically, the second applicant had presented to the Supreme Court an invoice issued by a legal advisory firm (*õigusbüroo*) that had not actually provided any services to the applicant relating to the proceedings before the Supreme Court. The Government argued that no award should be made in respect of the costs and expenses that the second applicant had incurred in the course of the domestic proceedings.

179. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that

these were actually and necessarily incurred and are reasonable as to quantum. The Court notes that in support of his claim for costs and expenses submitted to the Court, the second applicant presented a single confirmation issued by the legal advisory firm (*õigusbüroo*) indicating that he had paid it for legal representation in the domestic proceedings. However, the Court notes that that firm represented the second applicant only before the lower-instance courts. Before the Supreme Court he was represented by a lawyer from a different law firm (*advokaadibüroo*) (see paragraph 178 above), in respect of which he has not submitted any invoices. Therefore, the Court takes into account only those costs relating to the legal representation of the applicant before the first-instance and second-instance courts. In conclusion, regard being had to the documents in its possession, the above-mentioned criteria and the award already made by the domestic courts, the Court considers it reasonable to award the second applicant the sum of EUR 1,900 for costs and expenses incurred during the domestic proceedings, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Joins* to the merits and *dismisses* the Government's preliminary objection of loss of victim status in respect of the first applicant (concerning the period from 20 May 2016 to 6 December 2017) and in respect of the second applicant (concerning the period from 1 June 2016 to 26 September 2017);

3. *Declares* the applicants' complaints under Article 3 of the Convention concerning their being placed in solitary confinement admissible with regard to the following periods:
   (a) from 27 June 2015 to 6 December 2017 in respect of the first applicant;
   (b) from 1 June 2016 to 26 September 2017 in respect of the second applicant;

4. *Declares* the remainder of the first applicant's complaints inadmissible;

5. *Holds* that there has been a violation of Article 3 of the Convention with regard to the periods indicated in point 3 above that the applicants spent in solitary confinement as a result of the enforcement of the punishment-cell regime and the locked isolation-cell regime in respect of the first applicant, and as a result of the enforcement of the punishment-cell regime in respect of the second applicant;

6. *Holds*

(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 12,500 (twelve thousand five hundred euros) to the first applicant and EUR 8,300 (eight thousand three hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
  (ii) EUR 1,900 (one thousand nine hundred euros) to the second applicant, plus any tax that may be chargeable to him, 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-mentioned amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Jolien Schukking President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
1.	3501/20	Schmidt v. Estonia	02/01/2020	**Allan SCHMIDT** 1978 Narva Estonian	Janek VALDMA
2.	45907/20	Šmigol v. Estonia	14/10/2020	**Ilja ŠMIGOL** 1993 Tallinn stateless	Raiko PAAS
3.	43128/21	Schmidt v. Estonia	18/08/2021	**Allan SCHMIDT** 1978 Narva Estonian	Janek VALDMA