



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

FIRST SECTION

CASE OF BULDASHEV v. RUSSIA

(Application no. 46793/06)

JUDGMENT

STRASBOURG

18 October 2011

FINAL

18/01/2012

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

In the case of Buldashev v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 46793/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vladimir Mikhaylovich Buldashev (“the applicant”), on 6 October 2006.

2. The applicant was represented by Ms O. Ogur, a lawyer practising in Chelyabinsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in inhuman and degrading conditions; that he had been subjected to ill-treatment while in custody; that the length of the criminal proceedings against him had exceeded the reasonable time requirement; that he had not had an effective remedy in respect of those violations and that his pre-trial detention had been unreasonably long.

4. On 10 September 2009 the Court declared the application partly inadmissible and decided to give notice to the Government of the complaints concerning (1) the conditions of the applicant’s detention, (2) ill-treatment in custody, (3) the length of the criminal proceedings against the applicant, (4) the lack of effective domestic remedies in respect of the alleged violations, and (5) length of the applicant’s pre-trial detention, and to grant priority treatment to the application under Rule 41. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and is serving a prison sentence in the Chelyabinsk Region.

A. The applicant's arrest and detention pending investigation

6. On 12 March 2004 the applicant was charged with three counts of fraud, two counts of murder and unlawful dealings in firearms. According to the Government he made an undertaking not to leave his place of residence pending investigation. On several occasions he failed to appear for questioning and on 30 June 2005 his name was put on the wanted persons' list.

7. On 18 July 2006 the applicant was arrested and remanded in custody. On 20 July 2006 the Tsentralniy District Court of Chelyabinsk authorised the applicant's detention. In particular, the court noted as follows:

"Having regard to the materials submitted, [the court] considers that [the applicant] is charged with a particularly serious criminal offence that entails a custodial sentence, that he absconded in the past, that his name was put on the wanted persons' list, that he does not reside at his registered place of residence. It can be inferred from these facts taken together that the applicant might abscond, continue his criminal activities, interfere with the investigation..."

8. On 15 September 2006 the District Court further extended the applicant's detention until 14 December 2006. Referring to his health, unsatisfactory conditions of detention, lack of a criminal record and his minor child, the applicant argued that the court might use any other preventive measure, including bail, rather than detention. Dismissing the applicant's arguments, the court noted as follows:

"[The applicant] is charged with serious offences and his name has been on the federal wanted persons list for over a year. It follows that, if released, [the applicant] might abscond or re-offend ... The defence has not furnished any medical documentation to substantiate the allegations that [the applicant] is unfit for detention. The court has also taken into account the material concerning [the applicant's] character when deciding on the matter."

9. On 26 September 2006 the Chelyabinsk Regional Court upheld the decision of 15 September 2006 on appeal.

10. On 12 December 2006 the District Court extended the applicant's detention until 14 March 2007. The applicant asked the court to release him on bail. He noted that his detention had been unreasonably long; that the prosecutor's office had been procrastinating with the investigation; and that

he had a permanent residence, a job and family ties. The court reasoned as follows:

“[The applicant] is charged with serious offences... [In the past the applicant] absconded ... and his name was put on the local and federal wanted persons lists. In such circumstances the court considers that, if released, [the applicant] might abscond.”

11. On 12 March 2007 the District Court extended the applicant’s detention until 14 June 2007. In particular, the court noted as follows:

“[The applicant] is charged with a particularly serious offence, he absconded for over a year which, in the court’s opinion, indicates that, if released, [the applicant] might abscond, continue his criminal activities, or interfere with the establishment of the truth in the case.”

12. On 5 April 2007 the Regional Court upheld the decision of 12 March 2007 on appeal.

13. On 13 June 2007 the District Court extended the applicant’s detention until 19 July 2007 noting as follows:

“Regard being had to the gravity of the charges, information concerning the [applicant’s] character, including the fact that his name was put on the federal wanted persons’ list, the court finds substantiated the prosecutor’s arguments that, if released, [the applicant] might abscond [or] interfere with the establishment of the truth.”

B. Trial and ensuing proceedings

14. On 13 July 2007 the Regional Court opened the trial in respect of the applicant and two other defendants and scheduled the first hearing for 19 July 2007. The case file submitted by the prosecution comprised twenty-three volumes.

15. On 19 July 2007 the Regional Court ruled that the preventive measure imposed on the applicant and two other defendants should remain unchanged pending their trial. The court found as follows:

“Regard being had to the gravity of the charges and information concerning the defendants’ character, the court does not discern grounds to lift or change the preventive measure imposed on the [defendants] and considers it necessary to continue to detain them.”

16. On 27 September 2007 the Supreme Court of Russia upheld the decision of 19 July 2007 on appeal.

17. On 28 November 2007 the jury found the applicant guilty of two counts of murder, fraud and misappropriation of funds.

18. On 3 December 2007 the Chelyabinsk Regional Court sentenced the applicant to twenty-two years’ imprisonment. On 25 September 2008 the Supreme Court of Russia upheld the verdict on appeal. The applicant’s lawyer was not present at the hearing.

19. On 11 March 2009 the Presidium of the Supreme Court of Russia quashed the appeal judgment of 25 September 2008 by way of supervisory review and remitted the matter for fresh consideration owing to the appeal court's failure to ensure the presence of the applicant's lawyer at the hearing. The court further noted that the applicant should remain in custody until 11 June 2009. In this regard the court indicated as follows:

“... given that [the applicant] has been found guilty of a very serious offence and that he might abscond and interfere with the prompt consideration of his case by the appeal court ..., the Presidium of the Supreme Court of Russia considers it necessary that [he] remain in custody.”

20. On 3 June 2009 the Supreme Court of Russia upheld the applicant's conviction on appeal. Both the applicant and his lawyer were present.

C. Conditions of detention

21. On 19 July 2006 the applicant was placed in remand prison no. 74/1 in Chelyabinsk where he was held until 30 June 2009.

1. The description provided by the Government

22. The Government submitted extracts from the remand prison's register of inmates. They indicated the cell numbers where the applicant was detained without specifying the period of detention in each case:

Cell no.	Surface area (in square metres)	Number of inmates	Number of beds
22	4.1	0-1	1
47	22.5	0-11	12
49	31.8	10-11	14
54	16.2	8	9
60	25.1	4-11	13 (8 after 15 April 2009)
68	8.1	0-4	4
73	8.1	3-4	4
86	35.1	10-14	14
95	8.1	2-4	4
97	8.1	2-4	4
98	8.1	2-4	4
99	8.1	2-4	4
102	8.1	2-4	4
103	8.5	2-4	4
106	8.5	2-4	4
107	8.1	2-4	4
121	14.9	2-8	8

138	19.1	5-6	6
233	41.7	3-12	12

23. The applicant was not confined to his cell for the whole of the day. He left the cell to meet his lawyer, relatives and the prison administration. He was entitled to one hour's exercise in the prison courtyard and had the right to use the shower at least once a week for at least fifteen minutes. The size and the organisation of the courtyard did not prevent the applicant from doing physical exercises.

24. All the cells in the remand prison were equipped with natural and piped ventilation, which was in good working order. The average temperature in the cells was 18°C to 20°C.

25. At all times the applicant was provided with an individual sleeping place and bedding. The cells were disinfected regularly. The lavatory was located at a considerable distance from the beds and the dining table and separated by a 1.5-m brick wall and a door.

2. The description provided by the applicant

26. According to the applicant, all the cells in which he was held were overcrowded and the inmates had to take turns to sleep. In particular, he submitted the following information on the issue:

Period of detention	Cell no.	Surface area (in square metres)	Number of inmates	Number of beds
	102	8.5	4-6	4
from 31 October 2006 to 25 January 2007	47	19.7	12-17	8
	49	30	17-21	10
	54	15.3	up to 12	6
from 25 January 2007 to 18 April 2008	95	8.5	up to 5	4
from 25 April 2008 to 30 June 2009	60	25.6	11	8

27. The radiators in the cells hardly worked. The walls and the ceiling were covered with mould. The cells had no piped ventilation, except for cell no. 233, where the applicant spent one day. It was stiflingly hot in the summer and very cold and damp in the winter. Most of the windows were completely covered with metal sheets. The majority of the inmates smoked and the applicant, a non-smoker, was exposed to their tobacco smoke. He was allowed a daily walk outside, which did not exceed 40-50 minutes. There was no opportunity to do physical exercises.

28. The toilet offered no privacy and the person using it could potentially be seen by both the inmates and the guards watching the inmates through the peep-hole in the door.

29. The cells were lit with dim electric lights. There was no access to daylight in cell no. 95.

30. The cells were infested with cockroaches, bugs, ants and rats. Disinfection was not performed, nor was any detergent distributed. The meals provided often contained flies, bugs, cockroaches and rats' feet. The food was of a very poor quality and not in compliance with the quality standards established by law. Fish and meat were rarely served. Eggs, milk or fruit drinks were never offered. The quality of the food improved only on days when inspections were held. The food products the inmates could buy in the prison shop were of a very low quality.

31. Hot water was not supplied, except for cell no. 233, where the applicant spent one day. From April to October each year the inmates were allowed to take only cold showers. From 6 September to 29 November 2008 the applicant did not have a single opportunity to take a shower.

32. On several occasions HIV-infected inmates and inmates diagnosed with tuberculosis were placed in the cells where the applicant was detained.

33. On 25 January 2007 the applicant's lawyer complained to the local prosecutor about the conditions of the applicant's detention. On 21 February 2007 the prosecutor responded that the conditions of detention were in compliance with the applicable rules.

34. On 25 December 2007 the applicant's tableware was confiscated and he had to share plates and spoons with other inmates.

D. Alleged inhuman and degrading treatment in custody

1. The applicant's account of the events

35. According to the applicant, on several occasions he was subjected to humiliating and degrading treatment and beatings while in detention.

36. In December 2007 the applicant was beaten by one of the prison guards. The applicant's request to see a doctor was refused.

37. On 2 March 2008 the applicant was woken up by the guards. They took him and one of his cellmates to the corridor where they were stripped naked and subjected to a body search in the presence of female guards.

38. On 12 August 2008 the prison administration allegedly refused to dispatch the applicant's complaint concerning the ill-treatment.

39. On 4 September 2008 one of the SWAT officers kicked the applicant twice in the rear and in the crotch during another search. Then the applicant was stripped naked and ordered to do numerous sit-ups. He provided statements from two inmates who had witnessed the incident.

2. The authorities' inquiry into the applicant's complaints as accounted for by the Government

40. The Government provided the following information with regard to the authorities' inquiry in response to the applicant's complaints about ill-treatment in custody.

41. On 25 July 2008 the Chelyabinsk Region prosecutor's office received a complaint lodged by a number of inmates detained at remand prison no. 74/1 about unlawful actions by prison guards in the course of searches.

42. The prosecutor's office forwarded the complaint to the regional department of custodial facilities and the latter carried out an inquiry which disclosed no instances of unlawful acts or negligence on the part of the remand prison administration. On 29 August 2008 the complainants were informed accordingly.

43. The applicant's subsequent complaint about the incidents that took place in December 2007, March and September 2008 reached the regional prosecutor's office on 29 September 2009. The prosecutor's office carried out an inquiry and dismissed the applicant's complaint as unsubstantiated.

44. The relevant decision was quashed on 17 December 2009 for failure by the investigator to carry out a complete inquiry and the case file was returned to the latter for further action. According to the Government, the inquiry is still pending.

II. RELEVANT DOMESTIC LAW

A. Conditions of pre-trial detention

45. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. According to Section 23, detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

B. Investigation of criminal offences

46. In response to a complaint alleging a criminal offence, the investigator is under an obligation to verify the complainant's allegations (Article 144 of the new CCrP).

47. Should there be sufficient grounds to believe that a crime has been committed, the investigator initiates a criminal investigation (Article 145 of the new CCrP).

C. Remedies in respect of a violation of the right to trial within a reasonable time

48. Federal Law No. 68-ΦЗ of 30 April 2010 (in force as of 4 May 2010) provides that in case of a violation of the right to trial within a reasonable time, the person concerned is entitled to seek compensation in respect of the non-pecuniary damage. Federal Law № 69-ΦЗ adopted on the same day introduced the pertinent changes to the Russian legislation.

49. Section 6.2 of the Federal Law No. 68-ΦЗ provides that everyone who has an application pending before the European Court of Human Rights concerning a complaint of the nature described in the law has six months to submit that complaint to the domestic courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION

50. The applicant complained that he had been detained in appalling conditions in contravention of Article 3 of the Convention, which reads as follows:

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

He also claimed that he did not have at his disposal an effective remedy in respect of the conditions of his pre-trial detention as required under Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority...”

A. Submissions by the parties

1. The Government

51. In the Government’s view, it was open to the applicant to bring his grievances to the attention of domestic judicial authorities by lodging an

action for damages arising out of the unsatisfactory conditions of his pre-trial detention. However, he chose not to pursue his claims. The Government referred to the case of *Kokoshkina* (*Kokoshkina v. Russia*, no. 2052/08, § 49, 28 May 2009), asserting that in relation to that application they had cited a number of examples to illustrate the availability of an effective domestic remedy in respect of complaints about conditions of detention. Lastly they noted that at no time had the applicant been detained in overcrowded cells. His grievances had not, therefore, concerned a structural problem and it was incumbent on him to exhaust the domestic remedies before having recourse to the Court.

52. Relying on extracts from the remand prison's registers of inmates, the photographs of the cells and certificates issued by the remand prison administration in December 2009, the Government submitted that the conditions of the applicant's detention had been in compliance with the standards set forth in Article 3 of the Convention and applicable domestic laws. At all times the applicant had been provided with an individual bed and bedding and the personal space afforded to him had not fallen short of the domestic statutory requirements. In any event, he had not been confined to the cell for twenty-four hours a day. He had spent a considerable amount of time outside the cell when meeting his lawyer and family. He had been able to take at least one hour's daily exercise and have showers.

2. The applicant

53. The applicant maintained his complaints. He disputed the accuracy of the Government's submissions. In particular, he claimed that the photographs presented were not of the cells where he had been detained. The number of windows and the arrangement of the cells did not correspond to the reality. In any event, the cells had been refurbished after he had lodged his application with the Court. The documents submitted by the Government allegedly confirming that he had been provided with bedding had been tampered with. His signatures had been forged. Lastly, he submitted that his numerous complaints about the conditions of his pre-trial detention in the remand prison brought before the domestic authorities had been to no avail.

B. The Court's assessment

1. Admissibility

54. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the complaint that the applicant did not have at his disposal an effective remedy by which to complain about inhuman and degrading conditions during his detention. The Court therefore

finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention.

55. The Court further notes that the complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 13 of the Convention

56. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

57. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

58. As regards the Government's contention that the applicant should have brought his grievances in respect of the allegedly inhuman and degrading conditions of his detention to the attention of the prosecutor's office or the court, the Court observes that it has previously found that the opportunity to make such an application cannot be regarded as an effective domestic remedy (see, among other authorities, *Benediktov v. Russia*, no. 106/02, §§ 27-30, 10 May 2007, and *Kokoshkina*, cited above, § 52). Having regard to the material submitted by the Government, the Court notes that they have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

59. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies and concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law enabling the applicant to complain about the general conditions of his detention.

(b) Article 3 of the Convention

60. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. The Convention prohibits torture or inhuman or degrading treatment or punishment in absolute terms, irrespective of the circumstances or the victim's behaviour (see, among other authorities,

Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that in order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of his liberty may often involve such an element, under Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła*, cited above, §§ 92-94).

61. Turning to the facts of the instant case, the Court notes that the parties disagreed as to most aspects of the conditions of the applicant’s detention. However, there is no need for the Court to establish the veracity of each and every allegation. It can find a violation of Article 3, even on the assumption that the information provided by the Government is correct.

62. The Court observes, based on the extracts from the remand prison register of inmates submitted by the Government, that on average the inmates in the remand prison were afforded no more than 2 to 3 sq. m of personal space, which falls short of the domestic statutory requirements (see paragraph 45 above). This fact alone is sufficient for the Court to find that the problem of overcrowding had not been alleviated by the authorities.

63. The Court further notes that apart from an hour’s daily exercise, the applicant was confined to the cell for the rest of the time. The Court does not consider that the occasional meetings the applicant had with his lawyer or family outside the cell, or a fifteen-minute weekly use of the shower facilities, significantly altered the conditions of his detention. In any event, the Government did not provide any specific details as to the number and duration of such meetings.

64. The Court reiterates that, irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006, and *Benediktov*, cited above, § 37).

65. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see, among other authorities, *Belevitskiy v. Russia*, no. 72967/01, §§ 75 et seq., 1 March 2007; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005).

66. Having regard to its case-law on the subject and the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

67. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-74/1 in Chelyabinsk between 19 July 2006 and 30 June 2009, which it considers were inhuman and degrading within the meaning of this provision.

68. In view of the above finding, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention in remand prison no. 74/1 in Chelyabinsk.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF INHUMAN AND DEGRADING TREATMENT IN CUSTODY BETWEEN DECEMBER 2007 AND SEPTEMBER 2008

69. The applicant complained that on several occasions between December 2007 and September 2008 he had been subjected to humiliating and degrading treatment by prison guards and SWAT officers. He relied on Articles 3 and 13 of the Convention.

70. The Government contested the applicant's allegations. They submitted that, in response to the applicant's complaint about the beatings in December 2007 and September 2008 and a strip search in May 2008, the prosecutor's office had carried out an inquiry and dismissed the applicant's allegations as unsubstantiated. The relevant decision was quashed on 17 December 2009 and the case file had been forwarded to an investigator for further enquiries, which were still pending. In this connection the Government noted that the applicant's complaint should be dismissed by the Court as premature.

71. The applicant did not comment.

A. Article 3

1. Admissibility

72. The Court considers that the question whether this complaint is, as the Government asserted, premature in view of the pending enquiries, is closely linked to the general question whether the investigation into his allegations of ill-treatment has been effective. However, these issues relate

to the merits of the applicant's complaint under Article 3 of the Convention. The Court therefore decides to join these issues to the merits.

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

2. Merits

(a) Effectiveness of investigation

74. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see, among other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102-103, *Reports of Judgments and Decisions* 1998-VIII).

75. Questions under the procedural limb of Article 3 arise particularly when the authorities have failed to react effectively to the complaints about the ill-treatment at the relevant time (see, *mutatis mutandis*, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 178, 24 February 2005).

76. The Court observes that the applicant's detailed submissions on the matter, coupled with the supporting statements made by the inmates detained with him and the fact that the authorities have been conducting an inquiry into his allegations since 2008, give rise to a reasonable suspicion that he was subjected to treatment contrary to Article 3 (see *Labita*, cited above, § 130, and *Kazım Gündoğan v. Turkey*, no. 29/02, § 24, 30 January 2007).

77. The Court notes that the applicant indeed lodged two complaints about the strip searches and beatings before the national authorities. The first complaint was made on 25 July 2008 and the second one reached the prosecutor's office on 29 September 2009. According to the Government, which provided no documents on the matter, the first complaint was dismissed as unsubstantiated and the inquiry initiated in response to the second has been pending ever since.

78. The Court further notes that the Government did not provide any document to report on the scope of that inquiry or the progress made by the authorities in an attempt to elucidate the facts complained of by the applicant. Nor did they furnish an explanation as to why the inquiry had not been yet completed.

79. In these circumstances, the Court considers that the authorities did not fulfil their obligation to carry out an effective investigation into the

applicant's allegations of ill-treatment, as required by Article 3 of the Convention. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies and concludes that there has been a violation of Article 3 of the Convention under its procedural limb.

(b) Alleged ill-treatment

80. As the Court has stated on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Labita*, cited above, § 120). Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

81. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities have a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

82. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25). Furthermore, where allegations are made under Article 3 of the

Convention, the Court must apply a particularly thorough scrutiny (see *Ribitsch*, cited above, § 32).

83. Turning to the circumstances of the present case, the Court observes that the applicant provided a clear account of the events (see paragraphs 35-39). His allegations of ill-treatment in custody were sufficiently serious for the authorities to open a formal inquiry. Before the Court the applicant also produced two witness statements which directly corroborated his submissions relating to the incident of 4 September 2008.

84. Against this background, and having regard to the fact that the applicant had been for all that time in the State's custody, the Court considers that the applicant made out a *prima facie* case of ill-treatment. The burden therefore rests on the Government to provide a satisfactory and convincing explanation as to the events in question.

85. The Court notes that the Government did no more than inform the Court that the investigation into the applicant's allegations was still pending. No documents or further details were provided. In such circumstances, the Court considers that the Government failed to provide a satisfactory and convincing explanation as to the applicant's complaint and accepts his version of the events.

86. The Court further notes that the beatings and strip searches to which the applicant was subjected on several occasions in 2007-2008 demonstrate the lack of due respect for human dignity and had no legitimate purpose. The Court concludes, therefore, that they amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

87. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

B. Article 13

88. The Court observes that this complaint concerns the same issues as those examined in paragraphs 74-79) above under the procedural limb of Article 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

89. The applicant complained about the excessive length of his pre-trial detention. He referred to Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

90. The Government contested that argument. They observed that the length of the applicant’s pre-trial detention had been reasonable and justified. The domestic courts had taken into account all the relevant circumstances when deciding to detain the applicant pending investigation and trial. The applicant had been charged with several serious offences and had absconded after being released on an undertaking not to leave his place of residence. The risk that, if released, he might abscond again had been serious.

91. The applicant maintained his complaint. He claimed that he had not absconded pending investigation and that the authorities had put his name on the wanted persons’ list without good reason.

A. Admissibility

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

B. Merits

1. Period to be taken into consideration

93. According to the Court’s well-established case-law, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among many other authorities, *Belevitskiy*, cited above, § 99). Furthermore, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see *Panchenko v. Russia*, no. 45100/98, §§ 91 and 93, 8 February 2005, with further references).

94. Accordingly, in the present case the period to be taken into consideration started on 18 July 2006 when the applicant was arrested and remanded in custody and ended on 3 December 2007 when the applicant

was convicted by the court at the first level of jurisdiction. It amounted accordingly to one year and four and a half months.

2. Whether there were relevant and sufficient reasons to justify the applicant's detention

95. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its particular features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A, and *Pantano v. Italy*, no. 60851/00, § 66, 6 November 2003).

96. The Court notes that the domestic courts advanced two principal reasons for keeping the applicant in detention pending investigation and trial, namely that he was charged with serious offences and that he might abscond if released.

97. As regards the domestic authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *Panchenko*, cited above, § 102). This is particularly true in the Russian legal system where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of the issue whether the evidence that has been obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180).

98. As regards the danger of the applicant's absconding, the Court observes that the possibility of a severe sentence alone is not sufficient after a certain lapse of time to justify continued detention based on the danger of flight (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7, and *B. v. Austria*, 28 March 1990, § 44, Series A no. 175). In the instant case, however, the domestic courts also relied on other relevant circumstances, noting that the applicant had absconded in the past. In particular, the applicant failed to appear for questioning and his name was put on the wanted persons' list. He spent more than a year in hiding.

99. The Court is therefore satisfied that, in the particular circumstances of the case, a substantial risk of the applicant's absconding persisted throughout his detention, and it accepts the domestic courts' finding that no other measures to secure his presence would have been appropriate.

100. The Court concludes that there were relevant and sufficient grounds for the applicant's continued detention. Accordingly, it remains to be ascertained whether the judicial authorities displayed "special diligence" in the conduct of the proceedings.

101. The Court notes that, following the applicant's placement in custody on 18 July 2006, the investigation was completed within thirteen months and the District Court opened the trial, which took three and a half months. There is nothing in the materials submitted to the Court to show any significant period of inactivity on the part of the prosecution or the court. In such circumstances, the competent domestic authorities cannot be said to have displayed a lack of special diligence in handling the applicant's case.

102. There has accordingly been no violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

103. The applicant complained that the length of the criminal proceedings in his case had been excessive. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

104. The Government submitted that the length of the proceedings had been reasonable, having regard to the complexity of the case which concerned two murders, three counts of fraud and misappropriation of funds. The proceedings had been conducted in respect of three defendants. The investigator had had to examine about a hundred witnesses and the court had heard evidence from forty-eight of them.

105. The applicant contested the Government's arguments, maintaining that, even taking into account the complexity of the case, the overall period of the criminal proceedings in his case remained excessive. It had taken the prosecutor's office more than six years and four and a half months to complete the investigation in respect of the charges.

A. Admissibility

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

B. Merits

1. Period under consideration

107. The Court observes that the criminal proceedings against the applicant were opened on 12 March 2004 and ended on 3 June 2009, when

his conviction was upheld on appeal and became final. The Court notes that from 30 June 2005 to 18 July 2006 the applicant was unlawfully at large. That period should be excluded from the overall length of the proceedings (see *Girolami v. Italy*, 19 February 1991, § 13, Series A no. 196-E). The Court further notes that the period from 25 September 2008, when the applicant's conviction became final and no proceedings were pending, to 11 March 2009, when the appeal judgment was quashed by way of supervisory review and the case was remitted to the appeal court for fresh consideration, should not be taken into account (see, for example, *Brovchenko v. Russia*, no. 1603/02, § 97, 18 December 2008). Accordingly, the criminal proceedings against the applicant lasted for approximately three years and eight and a half months. This period spanned the investigation stage and that of the judicial proceedings, when the case was reviewed by the trial court and twice by the appeal court, the first appeal judgment having been quashed by way of supervisory review and the case having been remitted for a fresh examination to the appeal court.

2. Reasonableness of the length of the proceedings

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

109. The Court accepts the Government's argument that the proceedings against the applicant were complex. The investigation was opened in respect of three defendants, including the applicant, who were charged with two counts of murder, three counts of fraud and misappropriation of funds. The case file comprised twenty-three volumes and the authorities had to examine numerous witnesses.

110. As regards the applicant's conduct, the Court accepts that he did not contribute to the length of the proceedings.

111. As to the conduct of the authorities, the Court notes that they demonstrated sufficient diligence in handling the proceedings. Admittedly, the investigation into the matter lasted for more than two years and four months. However, the Court accepts that, in the circumstances of the case, such a duration was justified. The judicial proceedings lasted for approximately one year and four months. There is nothing in the materials submitted to the Court to suggest that there were any unreasonable delays or adjournments.

112. Making an overall assessment of the complexity of the case, the conduct of the parties and the total length of the proceedings, the Court considers that the latter did not go beyond what may be considered reasonable in this particular case.

113. There has accordingly been no violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE COMPLAINT OF AN UNREASONABLE LENGTH OF PROCEEDINGS

114. The applicant further complained that he had not had an effective remedy in respect of the allegedly unreasonable length of the proceedings in his case. He relied on Article 13 of the Convention.

115. The Government considered that it had been open to the applicant to bring his grievances to the attention of a prosecutor or a court.

116. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

118. The Court considers the complaint under Article 13 in respect of the length of the proceedings arguable, even though it has not found a violation of the applicant's right to a trial within a reasonable time.

119. The Court takes cognisance of the existence of a new remedy introduced by federal laws no. 68-Φ3 and no. 69-Φ3 in the wake of the pilot judgment adopted in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009-...). These statutes, which entered into force on 4 May 2010, have set up a new remedy which enables those concerned to seek compensation for the damage sustained as a result of an unreasonable length of proceedings (see paragraph 48 above).

120. The Court observes that in the present case the parties' observations in respect of Article 13 arrived before 4 May 2010 and did not contain any references to the new legislative development. However, it accepts that as from 4 May 2010 and until 4 November 2010 the applicant had a right to use the new remedy (see paragraph 49 above), which he, however, did not pursue.

121. The Court observes that, in the pilot judgment cited above, it stated that it would be unfair to request applicants, whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court, to bring their claims again before domestic tribunals (see *Burdov (no. 2)*, cited above, § 144). In line with that principle, the Court

decided to examine the complaint about the length of the proceedings on its merits and found no violation of the substantive provision of the Convention.

122. However, the fact of examining the present case on its merits should in no way be interpreted as prejudging the Court's assessment of the quality of the new remedy. It will examine this question in other cases that are more suitable for such analysis. It does not see fit to do so in the present case, particularly as the parties' observations were made in relation to the situation that had existed before the introduction of the new remedy.

123. Having regard to these special circumstances, the Court does not consider it necessary to pursue a separate examination of the complaint under Article 13 in the present case.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant claimed 26,250 euros (EUR) in respect of pecuniary damage as compensation for (1) the loss of earnings he had allegedly sustained while in detention, and (2) his expenses for food that he had had to buy, given that the food served in the remand prison had been inedible. He further claimed EUR 125,000 in respect of non-pecuniary damage.

126. The Government considered the applicant's claims for pecuniary damage unsubstantiated and unreasonable. They further submitted that, given that the applicant's rights under the Convention had not been infringed, his claims in respect of damage should be rejected in full. Alternatively, they proposed that a finding of a violation would constitute sufficient just satisfaction. In any event, the Government considered the applicant's claims excessive.

127. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

128. The Court further notes that it has found a combination of serious violations in the present case. The applicant spent almost three years in inhuman and degrading conditions of detention. He did not have an effective remedy in respect of his grievances in this respect. He was subjected to inhuman and degrading treatment in custody, while the ensuing investigation in respect of his complaint was not effective. In these

circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards him EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

129. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

130. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Joins to the merits the Government's objection as to the non-exhaustion of domestic remedies in respect of the complaints brought under Article 3 of the Convention and rejects it;
2. *Declares* the complaints under Articles 3, 5, 6 and 13 admissible;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law enabling the applicant to complain about the conditions of his detention;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. 77/1 in Chelyabinsk from 19 July 2006 to 30 June 2009;
5. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the lack of an effective investigation into the applicant's complaint about ill-treatment in custody;
6. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in respect of the applicant's allegations of ill-treatment in custody;

7. *Holds* that there is no need to examine the complaint under Article 13 of the Convention in respect of the lack of an effective remedy under domestic law for the applicant's allegations of ill-treatment;
8. *Holds* that there has been no violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention;
9. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicant;
10. *Holds* that there is no need for a separate examination of the complaint under Article 13 of the Convention in respect of the applicant's complaint about the length of the criminal proceedings against him;
11. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
12. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President