



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

THIRD SECTION

CASE OF GORLOV AND OTHERS v. RUSSIA

(Applications nos. 27057/06 and 2 others – see list appended)

JUDGMENT

STRASBOURG

2 July 2019

FINAL

04/11/2019

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

In the case of Gorlov and Others v. Russia,

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

Vincent A. De Gaetano, *President*,

Helen Keller,

Dmitry Dedov,

Branko Lubarda,

Alena Poláčková,

Gilberto Felici,

Erik Wennerström, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 4 June 2019,

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

PROCEDURE

1. The case originated in three applications (nos. 27057/06, 56443/09 and 25147/14) 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 three Russian nationals, Mr Igor Yevgenyevich Gorlov (“the first applicant”), Mr Denis Viktorovich Vakhmistrov (“the second applicant”) and Mr Viktor Valeryevich Sablin (“the third applicant”), on 10 May 2006, 11 September 2009 and 6 May 2014 respectively.

2. The first applicant represented himself. The second applicant was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg. The third applicant, who had been granted legal aid, was represented by Ms O. Druzhkova, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights, and then by Mr V. Galperin, his successor in that office.

3. The applicants complained, in particular, that constant surveillance of their cells, at times by female guards, by closed-circuit television cameras had violated their right to respect for their private life, as guaranteed by Article 8 of the Convention. The second applicant also complained under Article 3 of the Convention that he had been unable to take outdoor exercise during wintertime, as the prison authorities had refused to provide him with appropriate winter footwear. The second and third applicants also relied on Article 13 of the Convention, alleging a lack of effective remedies in respect of any of their complaints.

4. On 18 January 2011 the Government were given notice of the complaint concerning constant video surveillance in application no. 27057/06. On 3 May 2016 they were given notice of the complaints

concerning constant video surveillance and the absence of appropriate footwear during wintertime in application no. 56443/09. The remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. On 30 August 2016 the Government were given notice of application no. 25147/14.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1965, 1977 and 1976 respectively.

6. The first two applicants are currently serving sentences in penal institutions in the Krasnoyarsk Region, namely UP-288/T (prison) in Minusinsk and OIK-36 (correctional colony). The third applicant lives in Shilka in the Zabaykalskiy Region.

A. The applicants' criminal history

1. The first applicant

7. By a first-instance judgment of 21 May 2002 the Supreme Court of the Republic of Buryatiya convicted the first applicant of several offences including robbery, theft, forgery, destruction of property, banditry, possession and transportation of firearms and murder, sentencing him to life imprisonment.

8. The judgment was upheld on appeal by the Supreme Court of Russia on 19 June 2003. The first applicant did not allege in his appeal arguments that the composition of the first-instance court had been unlawful.

9. On 22 September 2004 the Eniseyskiy District Court of the Krasnoyarsk Region brought the first applicant's conviction in line with newly introduced amendments to the Russian Criminal Code, having made minor corrections to the legal characterisation of his acts. His sentence was left essentially unchanged.

10. That decision was upheld following a supervisory review by the Krasnoyarsk Regional Court on 30 May 2006.

11. In 2007 the first applicant made some enquiries to check the lawfulness of the composition of the first-instance court in his case. Eventually, he found out that two lay assessors who had sat in his case at the first level of jurisdiction had not had authority to take part in the proceedings. Thereafter, in an attempt to contest the lawfulness of his conviction on the above-mentioned grounds, he requested that the Prosecutor's Office of the Republic of Buryatiya institute supervisory review proceedings with a view to setting aside the judgment of 21 May 2002. His requests were unsuccessful.

2. The second applicant

12. By a judgment of 5 December 2003 the Leninskiy District Court of Krasnoyarsk convicted the second applicant of murder and destruction of property and sentenced him to fifteen years' imprisonment to be served in a correctional colony with a strict regime.

13. On 5 February 2004 the Krasnoyarsk Regional Court upheld the second applicant's conviction on appeal.

14. On 6 April 2007 the Sovetskiy District Court of Krasnoyarsk changed the regime of the second applicant's imprisonment and ordered that three years of his sentence be served in prison.

3. The third applicant

15. The details of the third applicant's criminal history are unknown.

B. The applicants' detention

1. The first applicant

16. The first applicant was placed in UP-288/T prison in Minusinsk, where it appears he remains to date.

17. The case file shows that his cell is under constant surveillance by prison guards by a closed-circuit television camera (hereinafter "CCTV camera") installed inside. The first applicant submitted a copy of a judgment in the case of another inmate, which stated that the prison guard who monitored the cells in that prison was a woman.

18. He also submitted screenshots of the CCTV camera installed in each of the two cells in which he had been kept. The screenshots show that in both cells there was a CCTV camera installed above the door, at ceiling level, in such a manner that the entire cell was clearly visible, including the bed. The toilet was located directly below the CCTV camera and was almost entirely hidden from the camera's view by a shield.

2. The second applicant

19. Between 22 May 2007 and 24 May 2010 the second applicant also served a sentence in UP-288/T prison. According to him, during his detention in that facility he was unable to take walks and undertake outdoor exercise in wintertime because he was not provided with winter boots of a suitable size, despite numerous requests to that effect.

20. On an unspecified date the second applicant was transferred to IK-5 (strict-regime correctional colony) in Krasnoyarsk. According to him, his cell was under constant surveillance by prison guards by a CCTV camera installed inside the cell. The applicant submitted that the prison guard who monitored his cell was a woman, as at times he could hear her giving him orders via loudspeaker.

3. The third applicant

21. Whilst serving a prison sentence in IK-2 (special-regime correctional colony) in the Zabaykalskiy Region, on 22 June 2013 the third applicant was transferred to IZ-1 (pre-trial detention centre) in the same region with a view to ensuring his participation in court proceedings unrelated to this case. The third applicant was placed in cell no. 465, where he remained until 22 February 2014.

22. According to him, the cell was designed for two inmates, but most of the time he was there alone. The cell was under permanent surveillance by a CCTV camera operated by female guards. A screenshot of the CCTV camera submitted by the third applicant shows that it was installed above the entrance door, at ceiling level, in such a manner that the entire cell was clearly visible, including, at least in part, the bed. The screenshot also shows that the toilet was separated by a partition at each side, but had no cover, with the result that the upper part of the cubicle was visible.

C. Court proceedings brought by the third applicant

23. On an unspecified date the third applicant lodged a complaint against the actions of the administration of pre-trial detention centre IZ-1 (“the detention centre authorities”) with the Ingodinskiy District Court of Chita (“the District Court”). He argued that permanent video surveillance of his cell by female operators was humiliating as, in particular, he had to undress in plain view of them, which breached his rights. He asked the court to oblige the detention centre authorities to bring the violation to an end.

24. At a hearing a representative of the detention centre authorities conceded that the duty officers who performed video surveillance were women, but argued that they were merely performing their professional duties. The representative also pointed out that all the other cells in the pre-trial detention centre were equipped with CCTV cameras, which had been installed for security purposes. The representative further argued that the applicant’s sleeping place and cell toilet were outside the CCTV camera’s field of view.

25. In a judgment of 5 July 2013 the District Court dismissed the third applicant’s complaint.

26. It found it established that the third applicant’s cell and all the other cells in pre-trial detention centre IZ-1 were equipped with CCTV cameras located under the ceiling for the purposes of surveillance of detainees. It further accepted the argument of the detention centre authorities that the toilet and sleeping place were outside the camera’s field of view.

27. The court further observed that Article 83 of the Russian Code of Execution of Criminal Sentences (see paragraph 33 below) and section 34(1) of the Pre-trial Detention Act (see paragraph 34 below) enabled the use of audio and video equipment for surveillance and control with a view

to preventing escapes and other crimes or breaches of internal order. Moreover, those legal instruments, as well as the relevant regulations of the Russian Ministry of Justice, including executive order no. 204-dsp of 3 November 2005, as amended on 25 May 2011 (see paragraphs 35-38 below), provided that only body searches and supervision of detainees during hygienic procedures should be performed by officers of the same sex, whereas surveillance of cells by CCTV cameras by officers of the opposite sex was not prohibited by the above-mentioned legal instruments. Officers of pre-trial detention centre IZ-1 were civil servants who performed the professional duties within their competence, as established, in particular, by section 21 of executive order no. 204-dsp of 3 November 2005 (see paragraph 36 below). In that connection, the court noted that no evidence had been submitted to it to show that the officers of pre-trial detention centre IZ-1 had breached or acted outside the scope of their professional duties.

28. The District Court also pointed out that decision no. 1393-O-O of the Constitutional Court of Russia dated 19 October 2010 (see paragraphs 42-43 below) stated that use by the authorities of various pre-trial detention centres and penal institutions of technical means of surveillance and control was part of the mechanism that ensured detainees' personal safety and respect for their rights, as well as performance by them of their obligations. In the District Court's view, such use thus pursued constitutional aims and could not be regarded as a disproportionate restriction of the third applicant's rights.

29. The District Court concluded that, under the applicable law, as interpreted by the Constitutional Court of Russia, it was permissible for officers of the opposite sex to perform CCTV camera monitoring of detainees, thus the situation had not debased the third applicant's dignity, as the female officers had acted within their competence and in the performance of their professional duties.

30. On 11 September 2013 the Zabaykalskiy Regional Court upheld the first-instance judgment on appeal, endorsing its reasoning.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Russia

31. The relevant constitutional provisions are the following:

Article 21

"1. Human dignity shall be protected by the State. Nothing may serve as a basis for its derogation..."

Article 23

“1. Everyone has the right to inviolability of private life, personal and family confidentiality, the protection of his or her honour and good name.

2. Everyone has the right to privacy of correspondence, telephone, mail, telegraph and other types of communication. Any limitation on this right is permitted only upon a court decision.”

Article 55

“1. The enumeration in the Constitution of the basic rights and freedoms should not be interpreted as the denial or belittling of other widely recognised human and civil rights and freedoms.

2. No laws denying or belittling human and civil rights and freedoms may be enacted in the Russian Federation.

3. Human and civil rights and freedoms may be limited by a federal law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, or for ensuring defence of the country and security of the State.”

Article 71

“The jurisdiction of the Russian Federation includes:

...

(o) the constitution of the judiciary, the prosecutor’s office, criminal law, criminal procedure, matters concerning the execution of criminal sentences, amnesty and pardon, civil law, civil procedure, the procedure of commercial courts, legal regulation of intellectual property; ...”

B. Legislative provisions

1. Criminal Code

32. The relevant part of the Russian Criminal Code of 13 June 1996 provides:

Article 58. Choice of penal institutions for persons sentenced to imprisonment

“1. Persons sentenced to imprisonment shall serve their respective sentences, depending on the gravity of the crimes that they have committed, in:

- settlement colonies (*колония-поселение*), if the crime was committed negligently or the crime was of minor or medium gravity and was committed by a person who has never previously served a sentence of imprisonment;

- common-regime correctional colonies (*исправительная колония общего режима*), in the case of a grave crime committed by a man who has never previously served a sentence of imprisonment, or in the case of a crime committed by a woman who has been sentenced to imprisonment for committing a grave or particularly grave crime, including any form of recidivism;

- strict-regime correctional colonies (*исправительная колония строго режима*), in the case of a crime committed by a man who has been sentenced to imprisonment for the commission of a particularly grave crime, who has never previously served a

sentence of imprisonment, and in the case of recidivism or dangerous recidivism, if the convicted person has previously served a sentence of imprisonment;

- special-regime correctional colonies (*исправительная колония особого режима*), if a man has been sentenced to a sentence of life imprisonment or if a man is a particularly dangerous recidivist,

- prisons (*тюрьмы*), if a man has been sentenced to a term of over five years' imprisonment for the commission of a particularly grave crime, or if a man is a particularly dangerous recidivist,....”

2. Code of Execution of Criminal Sentences

33. The relevant parts of the Russian Code of Execution of Criminal Sentences of 8 January 1997 (“the Code of Execution of Criminal Sentences”) provide as follows:

Article 82. Regime in penal institutions and its main requirements

“1. The regime in penal institutions is the system established by law and by regulations compatible with the law which ensures the guarding and isolation of convicts, their constant surveillance, performance of their obligations, the exercise of their rights and lawful interests, the personal safety of convicts and staff..

2. The regime creates conditions for the use of other means of correction of convicts.

3. The rules of internal order of a penal institution, as approved by [a competent federal executive agency] in cooperation with the Prosecutor General’s Office of the Russian Federation, are in force in penal institutions.

4. The authorities of a penal institution have an obligation to provide convicts with standard clothing. The form of clothing shall be established by legal instruments and regulations of the Russian Federation.

5. Convicts and the premises on which they live may be searched and their belongings subject to an inspection. Body searches shall be performed by staff of the same sex as convicts. Searches of residential premises in the presence of convicts are only permitted in cases of urgency...”

Article 83. Technical means of surveillance and control

“1. The authorities of penal institutions are entitled to use audiovisual, electronic and other technical means of surveillance and control to prevent escapes and other crimes or breaches of the established order of serving the sentence, and to obtain necessary information about convicts’ conduct.

2. The authorities of penal institutions have an obligation to inform convicts, obtaining their signature as acknowledgment, of the use of the above-mentioned means of surveillance and control.

3. A list of technical means of surveillance and control and the procedure for their use shall be established by legal instruments and regulations of the Russian Federation.”

3. *Pre-trial Detention Act*

34. The relevant parts of Federal Law “On the Detention of Suspects and Persons Accused of Criminal Offences” no. 103-FZ dated 15 July 1995 (*Федеральный закон от 15 июля 1995 N 103-ФЗ «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»*, “the Pre-trial Detention Act”) provide as follows:

Section 6. Legal Status of Suspects and Accused Persons

“Suspects and persons accused of criminal offences ... enjoy the rights and freedoms and bear the responsibilities established for the citizens of the Russian Federation, subject to the limitations provided for by this law and other federal laws...”

Section 34. Guarding and Supervision of Suspects and Accused Persons

“Suspects and accused persons shall be kept in remand centres under guard and surveillance and shall move around such centres under escort or accompanied by [staff]. Audio and video equipment may be used for the purposes of surveillance.

...

Surveillance during hygienic procedures and body searches of suspects and accused persons shall be performed by officers ... of the same sex as the suspects and accused persons...”

C. Executive orders

1. Ministry of Justice

35. By executive order no. 204-dsp (“for internal use only”) dated 3 November 2005 the Russian Ministry of Justice (“the Ministry of Justice”) approved an instruction concerning the setting up of a service for guarding suspects, accused and convicts detained in pre-trial detention centres and prisons of the penal system (*приказ Министерства Юстиции РФ от 3 ноября 2005 г. «Об утверждении Инструкции об организации службы по обеспечению надзора за подозреваемыми, обвиняемыми и осужденными, содержащимися в следственных изоляторах и тюрьмах уголовно-исполнительной системы»*).

36. The relevant part of section 21 provided that:

“an operator [of a CCTV camera] belongs to the staff of the duty shift, reports to the head of the duty shift... The post of operator [of a CCTV camera] shall be assigned to qualified officers from junior management ... capable, where necessary, of taking independent initial decisions in case of deterioration of an operational situation. An operator has an obligation to monitor the situation in the remand centre by means of [a CCTV camera], report to the head of the duty shift and the administration of the remand centre on all incidents and emergencies and, on the instructions of the head of the duty shift, to call officers of the remand centre in case of deterioration of an operational situation or emergency.”

37. The relevant part of section 42(6) of the same executive order provided that:

“...for the purposes of surveillance over the conduct of suspects, accused [persons] and convicts within restricted (except for cells) and service areas, [CCTV] cameras ... may be used...”

38. By executive order no. 166-dsp (“for internal use only”) of 25 May 2011 the words “(except for cells)” were excluded from the text of section 42(6).

39. By executive order no. 279 of 4 September 2006, as amended on 17 June 2013, the Ministry of Justice approved a manual concerning the equipping of penal institutions with engineering and technical means of guarding and surveillance (*приказ Министерства юстиции РФ от 4 сентября 2006 г. №279 «Об утверждении Наставления по оборудованию инженерно-техническими средствами охраны и надзора объектов уголовно-исполнительной системы»*). Its provisions concerned, in particular, correctional colonies (*исправительные колонии*), pre-trial detention centres (*следственные изоляторы*) and prisons (*тюрьмы*).

40. The forty-page document sets out detailed technical standards for equipping the above types of penal institutions with means of guarding, surveillance and control, for example fencing, walls, earthworks and other barriers, secure and defensible main gates, security lighting, motion sensors and CCTV systems. As regards the latter, it provides that CCTV cameras should be installed in all cells of the relevant institutions in such a manner as would enable full view of a cell, with no blind zones. It also describes technical requirements in respect of CCTV systems, including those relating to their functioning in various conditions, resolution, sensitivity, image quality and such like. It provides, in particular, that cameras should be capable of functioning and providing high resolution images of good quality during daytime as well as nighttime, and that CCTV systems should be capable of storing recordings made by the cameras for thirty days.

2. Federal Service for the Execution of Sentences

41. Executive orders nos. 759 and 533 of the Federal Service for the Execution of Sentences dated 13 August 2005 and 25 August 2008 respectively approved technical specifications as regards technical means of control and surveillance in penal institutions, including the number per institution, the period of their operational life, and such like. In particular, the decrees provided for the installation of one CCTV camera per cell.

D. Court practice

1. Constitutional Court of Russia

42. In ruling no. 1393-O-O of 19 October 2010, the Constitutional Court of Russia (“the Constitutional Court”) declined to accept for examination a complaint brought by Mr U., a convicted prisoner. He had challenged

Article 83 § 1 of the Code of Execution of Criminal Sentences (see paragraph 33 above) and section 34(1) of the Pre-trial Detention Act (see paragraph 34 above), arguing that, in so far as those provisions could be understood as vesting an unlimited power in the administrations of pre-trial detention centres and penal institutions to subject detainees to permanent video surveillance, they were incompatible with Article 21 of the Constitution (see paragraph 31 above).

43. The Constitutional Court held as follows:

“The Constitutional Court ... has pointed out on several occasions that imposition on an individual, who has committed a crime, of punishment in the form of imprisonment [has as its aim] the protection of the interests of the State, society and its members, [and] presupposes a change in the routine of a convict’s way of life, of his relationships with those around him, and the exercise of certain moral and psychological pressure, whereby his rights and freedoms are affected and his personal status is changed. In any event, an individual committing a crime should assume that, as a result, he may be deprived of his liberty and restricted in his rights and freedoms; in other words, such an individual knowingly exposes himself and his relatives to restrictions [of their rights], including the right to maintain contact with family members, inviolability of private life, and personal and family confidentiality.

By virtue of Article 83 § 1 of the Code of Execution of Criminal Sentences..., the administrations of penal institutions are entitled to use audiovisual, electronic and other technical means of surveillance and control to prevent escapes and other crimes or breaches of the established order of serving the sentence, and for the purposes of obtaining necessary information about convicts’ conduct. Section 34 of the [Pre-trial Detention Act] in its first paragraph also establishes that audio and video equipment may be used for the purposes of surveillance of suspects and accused persons.

The right of the authorities of penal institutions and remand centres to use technical means of control and supervision constitutes part of the mechanism which ensures the personal safety of suspects, accused persons, convicts and staff of the relevant institution, [observance of] the regime of detention of suspects, accused persons and convicts, respect for their rights and performance by them of their obligations. Therefore, establishing the aforementioned right [to use technical means of control and supervision] in the disputed legal provisions pursues constitutionally meaningful aims and cannot be regarded as imposing unjustified restrictions on [Mr U.’s] rights.”

2. Supreme Court of Russia

44. On 12 March 2014 the Supreme Court of Russia (“the Supreme Court”) examined a complaint brought by Mr M., a convicted prisoner, who sought to have executive order no. 166-dsp of the Ministry of Justice (see paragraph 38 above) invalidated. Mr M. argued, in particular, that the executive order in question vested in the authorities of a penal institution an unconditional power to use the means of video surveillance in cells, which, in his view, stood in conflict with the Constitution of Russia and other relevant domestic legal instruments, norms of international law and breached the right of detainees to respect for their private life. In the proceedings before the court, Mr M. submitted that he would not exclude, as such, the possibility of video surveillance in penal institutions, but that such

surveillance should not be performed unrestrictedly and should be subject to authorisation by a court or the governor of the penal institution.

45. Representatives of the Russian Ministry of Justice argued that the executive order in question was in conformity with the relevant legislation, had been issued by that Ministry within its competence and did not breach convicts' rights.

46. In its judgment, the Supreme Court quoted the provisions of section 42(6) of executive order no. 204-dsp of 3 November 2005, as in force prior to their amendment by executive order no. 166-dsp of 25 May 2011 (see paragraph 37 above), and then as they stood after amendment (see paragraph 38 above).

47. It further stated that the imposition on an individual, who had committed a crime, of punishment in the form of imprisonment changed that individual's personal status, restricted his rights, including the right to inviolability of private life, and personal and family confidentiality.

48. It went on to observe as follows:

"Both section 34 of the [Pre-trial Detention Act] and Article 83 § 1 of the Code of Execution of Criminal Sentences vest in the administration of a penal institution the right to use audiovisual, electronic and other technical means of surveillance and control. The exercise of surveillance and control with the use of technical means to prevent escapes and other crimes or breaches of the established order of serving the sentence, and for the purposes of obtaining necessary information about convicts' conduct is thus established by law.

Accordingly, [Mr M.'s] argument, that the [executive order in question] vesting in the administration of a penal institution the right to use means of video surveillance for around-the-clock surveillance over convicts' conduct is not in conformity with the [domestic] law, is unfounded. The right of administrations of penal institutions and pre-trial detention centres to use technical means of surveillance and control constitutes part of the mechanism which ensures the personal safety of suspects, accused persons, convicts and staff of the relevant institution, [observance of] the regime of detention by suspects, accused persons and convicts, respect for their rights and performance by them of their obligations, and is established in section 34 of the [Pre-trial Detention Act] and Article 83 § 1 of the Code of Execution of Criminal Sentences.

[Mr M.'s] arguments, that [the executive order in question] stands in conflict with the Constitution of the Russian Federation, as it allows the use of CCTV monitoring in cells without a reasoned court decision, or an order by the [governor] of a penal institution, have no basis in law. Article 83 § 2 of the Code of Execution of Criminal Sentences requires administrations of penal institutions to inform convicts, obtaining their signature as acknowledgment, of the use of the above-mentioned means of surveillance and control, [but does not call for] the adoption of any [individualised] decision [authorising] the use of technical means of control and supervision.

Recommendation N Rec(2003)23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners ... regards the use of technical means, including CCTV cameras, as an additional security mechanism."

49. The Supreme Court went on to note that:

“The disputed executive order does not establish a particular procedure for the use of CCTV cameras within the restricted area [of penal institutions] and, as such, cannot breach convicts’ rights.”

50. It thus concluded that the executive order in question was not in conflict with the federal legislation or any other legal instrument and dismissed Mr M.’s complaint.

51. On 19 June 2014 the Appellate Instance of the Supreme Court (“the Appellate Instance”) upheld the decision of 12 March 2014 on appeal.

52. It quoted the provisions of section 42(6) of executive order no. 204-dsp of 3 November 2005, as in force prior to their amendment by executive order no. 166-dsp of 25 May 2011 (see paragraph 37 above), and then as they stood after amendment (see paragraph 38 above).

53. It further endorsed the first-instance finding that the executive order in question was not in conflict with the domestic legal provisions and did not breach Mr M.’s rights. In particular, the Appellate Instance noted, with reference to Article 82 § 1 of the Code of Execution of Criminal Sentences (see paragraph 33 above), that constant surveillance of convicts was a necessary element of their punishment in the form of imprisonment. It further considered that the first-instance court had rightly concluded that “the right of the administrations of penal institutions and remand centres to use technical means of surveillance and control constitut[ed] part of the mechanism which ensur[ed] the personal safety of suspects, accused persons, convicts and staff of the relevant institution, [observance of] the regime of detention of suspects, accused persons and convicts, respect for their rights and performance by them of their obligations, and [was] not in conflict with the federal legislation.”

54. The Appellate Instance further observed that the executive order in question established general principles (*общие положения*) aimed at ensuring the observance of the regime in pre-trial detention centres and prisons, preventing escapes and other crimes or breaches of the established order of pre-trial and post-conviction detention, and obtaining necessary information about the conduct of suspects, accused persons and convicts. As the first-instance court had rightly noted, that executive order did not establish a particular procedure for the use of CCTV cameras within the restricted area of a remand centre or prison, including round-the-clock surveillance by such cameras of detainees in their cells, and could not thus be regarded as breaching convicts’ rights.

55. The Appellate Instance went on to state that Mr M.’s arguments that the executive order in question had breached his right to respect for his private life “[did not] refute the [first-instance] court’s conclusions about its lawfulness.” In this connection, it quoted several rulings of the Constitutional Court of Russia, including its ruling dated 19 October 2010 (see paragraphs 42-43), in so far as they stated that imposition on an individual, who had committed a crime, of punishment in the form of imprisonment presupposed a change in the routine of a convict’s way of

life, of his relationships with those around him, and the exercise of certain moral and psychological pressure, whereby his rights and freedoms were affected and his personal status was changed. An individual committing a crime should assume that, as a result, he could be deprived of his liberty and restricted in his rights and freedoms, that is, such an individual knowingly exposed himself and his relatives to restrictions of their rights, including the right to maintain contact with family members, inviolability of private life, and personal and family confidentiality. Therefore, a restriction of the rights set forth in the Constitution of Russia, including the right to inviolability of private life, was permissible and justified for ensuring the personal safety of suspects, accused persons, convicts and staff of the relevant institution.

III. COUNCIL OF EUROPE INSTRUMENT

56. On 9 October 2003 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners. The relevant part reads as follows:

Security and safety in prison

“18. *a.* The maintenance of control in prison should be based on the use of dynamic security, that is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners.

b. Where technical devices, such as alarms and closed circuit television are used, these should always be an adjunct to dynamic security methods...”

THE LAW

I. JOINDER OF THE APPLICATIONS

57. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their factual and legal similarities.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicants complained that permanent CCTV camera surveillance of their cells, carried out mostly, if not exclusively, by female guards, had breached their right to respect for their private life as guaranteed by Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Submissions by the parties

1. The applicants

59. The applicants maintained that they had remained under permanent CCTV camera monitoring when confined in their cells. They contested the Government’s argument that the toilet facilities had offered privacy, being outside the CCTV cameras’ field of view (see paragraph 77 below). They argued that, in their respective cells, the CCTV camera had been placed above the door under the ceiling, so that the entire cell had been visible, with no blind zones. As a result they had remained exposed at all times, including when changing their underwear or relieving themselves. The applicants stressed that it had been strictly prohibited to hinder surveillance by covering the CCTV camera, even for a short while, for instance, when changing underwear or using the toilet.

60. In particular, the first applicant argued, with reference to the screenshots of his cells which he submitted to the Court (see paragraph 18 above), that in each of the two cells other inmates had put up cardboard in order to shield the toilet from the CCTV camera’s field of view; otherwise, it would have remained visible to the camera. He added that the inmates concerned had eventually been punished by the administration of the prison for doing so, and the shields had been removed. He submitted that, furthermore, the toilet cubicle had been designed in such a manner that, in order to relieve themselves, detainees had had to step up onto a brick base approximately 40 or 50 cm high, with the result that they had had to look straight into the CCTV camera.

61. The second applicant contended that the CCTV camera had been installed in such a manner that his entire cell had been clearly visible, including the toilet, which had not been properly separated from the living area.

62. The third applicant referred to the screenshot submitted by him (see paragraph 22 above), stating that the toilet cubicle had measured 1 sq. m and had been 1.8 m high; it had offered privacy from other inmates but not from the CCTV camera, as at least one metre from the top of the cubicle had remained exposed.

63. The applicants maintained that video surveillance of their cells at all times had constituted a severe interference with their right to respect for their private life. They acknowledged that they had been notified by the administrations of their penal institutions about such practice. The first applicant confirmed that he had signed a written document to that effect, but argued that it had been a pure formality, as CCTV monitoring was used regardless of whether a detainee had signed such a document, or had refused

to do so. The applicants also insisted that the fact that they had been aware of the permanent video surveillance and the fact that it had been carried out by female guards had exacerbated the humiliation and anxiety they had suffered on account of such an intrusive measure.

64. The applicants further accepted that CCTV monitoring within certain areas of a penal institution might, in principle, be necessary for ensuring security and control and maintaining order; they disputed, however, that such an intrusive measure as permanent video surveillance of all cells – that is to say living premises – was necessary to attain those aims.

65. The third applicant also disputed the Government's argument that video surveillance was effective for preventing escapes (see paragraph 73 below). He pointed out that the information submitted by the Government showed that between 2010 and 2013 the number of escapes had in fact increased. As regards the Government's argument that the CCTV monitoring of the applicants' cells had been necessary to ensure their personal safety, the third applicant argued that the cases relied on by them (see paragraphs 74-75 below) were irrelevant to his situation, as he had never displayed any suicidal tendencies, and had never had any conflicts with any detainees. Moreover, the situation examined by the Court in the case of *Buntov v. Russia* (no. 27026/10, 5 June 2012), where the applicant had refused to take walks in the prison courtyard for fear of being attacked by other detainees, showed that CCTV camera monitoring could be useful in places to which all detainees had access, rather than in their cells. The third applicant therefore argued that the Government had failed to demonstrate convincingly which legitimate aims had been pursued by monitoring detainees in their cells at all times by CCTV cameras.

66. The third applicant also pointed out that the authorities of his pre-trial detention centre had never informed him of the rules concerning the storage of CCTV camera recordings, and, in particular, who had access to them, how long they were to be kept and when, and under which conditions, they should be destroyed. He argued that the anxiety and humiliation he had suffered on account of the permanent video surveillance of his everyday life had been intensified by the fact that the recordings might be disclosed to the general public.

2. *The Government*

67. The Government acknowledged that the applicants' respective cells – in prison UP-288/T, in so far as the first applicant was concerned, in strict-regime correctional colony IK-5, in so far as the second applicant was concerned, and in pre-trial detention centre IK-2, in so far as the third applicant was concerned – had been equipped with CCTV cameras, and that they had remained under permanent video surveillance when in their cells. They pointed out that the administrations of penal institutions and pre-trial detention centres had an obligation under domestic law and regulations to install CCTV cameras in each cell.

68. They further acknowledged that such practice of the administrations of pre-trial detention centres and penal institutions had led to an interference with the applicants' right to respect for their private life guaranteed by Article 8 of the Convention, but argued that, being part of the mechanism which ensured the personal safety of suspects, accused persons and convicts, observance of the regime of their detention, respect for their rights, and performance by them of their obligations, it had been justified under the second paragraph of that provision.

69. They argued that the impugned measure was established by law, and more specifically, in so far as it concerned detainees of pre-trial detention centres, by section 34 of the Pre-trial Detention Act (see paragraph 34 above), and, as regards post-conviction detainees, by Article 83 § 1 of the Code of Execution of Criminal Sentences (see paragraph 33 above). These provisions vested in the administrations of penal institutions the right to use technical means of surveillance with a view to ensuring the safety of detainees and staff, preventing escapes and other offences or breaches of the established order of serving the sentence, and obtaining necessary information about convicts' conduct.

70. The Government submitted that, in compliance with the relevant requirement of Article 83 § 2 of the Code of Execution of Criminal Sentences, the administration of prison UP-288/T had informed the first applicant on the day of his arrival at that institution that "technical means of surveillance" would be used; he had also signed a document to that effect. The Government did not specify whether any such information had been given to the second or third applicants, or whether either of them had signed a document to that effect.

71. The Government further submitted that a list of technical means of supervision and control, the number per penal institution and the manner of their use were set out in executive orders nos. 759 and 533 of the Federal Service for the Execution of Sentences dated 13 August 2005 and 25 August 2008 respectively (see paragraph 41 above). The manner and standards of installation of technical means of surveillance and control in penal institutions were defined in executive order no. 279 of the Ministry of Justice dated 4 September 2006 (see paragraphs 39-40 above).

72. According to the Government, the provisions in question provided that all areas (living, common and service areas) within a penal institution to which detainees in pre-trial or post-conviction detention had access should be equipped with CCTV cameras. The administrations of penal institutions had an obligation to install CCTV cameras on premises where detainees were being held. A sufficient number of cameras had to be installed, in such a way as to avoid any blind zones. The Government also pointed out that all newly constructed penal institutions were to be equipped with CCTV cameras installed in accordance with the relevant construction documents, whereas in existing penal institutions it was the administrations who determined the location of CCTV cameras outside and inside the premises.

73. The Government went on to argue that, as the applicable legislation made it clear, the impugned interference pursued a number of legitimate aims. Firstly, it aimed to prevent escapes from penal institutions and pre-trial detention centres. In this connection, they relied on information provided by the Federal Service for the Execution of Sentences stating that, prior to the installation of CCTV cameras in penal institutions in Russia in 2010, there had been ten escapes, seven of which had been from pre-trial detention centres. In 2011 there had been seven escapes, and in 2013 there had been twenty-seven escapes.

74. Secondly, video surveillance of individuals in pre-trial and post-conviction detention aimed at preventing crimes that could be committed by and against them. In this connection, the Government referred to the case of *Buntov*, cited above, in which the applicant had claimed that, for several weeks, he could not take walks in a courtyard not equipped with CCTV cameras, as he had feared being attacked by other detainees.

75. The third aim of the interference complained of was to monitor the conduct of detainees as individuals under the State's control. The Government referred to the case of *Trubnikov v. Russia* (no. 49790/99, 5 July 2005), where the applicant had committed suicide whilst in detention. They argued that video surveillance made it possible to monitor the conduct of a person under the State's control, and to take necessary measures in case of emergency in order to prevent negative consequences. In that connection, they also relied on Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe adopted on 9 October 2003 (see paragraph 56 above), which listed CCTV cameras as an additional security measure.

76. The Government further acknowledged that, at times, video surveillance of the applicants' cells had been performed by female operators of CCTV cameras. They argued that this had been standard practice compatible with the requirements of Article 8 of the Convention. In this connection, they pointed out that, under the relevant regulations regarding the recruitment of staff of law-enforcement agencies, any Russian national, irrespective of, among other things, his or her gender, who met specific requirements and was capable of performing the relevant professional duties, could be employed as an officer of such agencies.

77. They also generally argued that the sanitary facilities in the applicants' cells had been separated by partitions and had offered privacy, as they had been shielded from the view of the CCTV cameras. They submitted that the partitions in the first applicant's cells had been 1.7 m high and had had wooden doors, but did not provide any additional details regarding the second and third applicants' cells.

78. The Government also argued, in so far as the first applicant's detention in prison UP-288/T was concerned, that the recordings made by the CCTV cameras had only been accessible to a restricted circle of officers of that institution (irrespective of gender), and only during the performance

of their professional duties. The recordings had never been made available to the public or used for any public purposes.

79. Lastly, the Government referred to the case of *Van der Graaf v. the Netherlands* ((dec.), no. 8704/03, 1 June 2004) in which the Court had accepted that permanent video surveillance of the applicant in his cell for a period of approximately four months had constituted a serious interference with his right to respect for his private life, but had found that the measure had been justified, as it had had a basis in national law, had pursued the aims of preventing the applicant from escaping from detention or inflicting harm to his health, and had thus been necessary in a democratic society in the interests of public safety and for the prevention of disorder or crime.

B. The Court's assessment

1. Admissibility

80. 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) General principles

81. At the outset, the Court reiterates its consistent case-law that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, ECHR 2005-IX). Whilst detention, like any other measure depriving a person of his or her liberty, entails various limitations of his or her rights and freedoms, that person does not forfeit his or her Convention rights merely because of his or her status as a detainee, including the rights guaranteed by Article 8 of the Convention, so that restrictions on those rights must be justified in each case (see *Khoroshenko v. Russia* [GC], no. 41418/04, §§ 106 and 116-17, ECHR 2015, and the authorities cited therein).

82. In the context of a detainee's right to respect for his or her private life, the Court has held that placing a person under permanent video surveillance whilst in detention – which already entails a considerable limitation on a person's privacy – has to be regarded as a serious interference with the individual's right to respect for his or her privacy, as an element of the notion of "private life", and thus brings Article 8 of the Convention into play (see *Van der Graaf* (dec.), cited above, and *Vasilică Mocanu v. Romania*, no. 43545/13, § 36, 6 December 2016).

(b) Application of the general principles in the present case*i. Existence of interference*

83. In the present case, the Government acknowledged that in the relevant penal institutions (see paragraphs 16, 20 and 21 above) the applicants had remained under permanent video surveillance when confined to their cells (see paragraph 67 above). They also pointed out that the administrations of penal institutions and pre-trial detention centres had an obligation to install CCTV cameras in each cell, and that permanent CCTV monitoring of detainees in their cells was an integral part of the security mechanism in penal institutions and pre-trial detention centres (see paragraphs 67-68 above). They also acknowledged that CCTV camera monitoring was routinely carried out by female officers (see paragraph 76 above).

84. It was furthermore not in dispute between the parties that the impugned measure constituted an interference with the applicants' right to respect for their private life, within the meaning of Article 8 § 1 of the Convention (see paragraph 68 above). Such interference will breach Article 8 of the Convention unless it was "in accordance with the law", pursued one or more of the legitimate aims set out in paragraph 2 of that provision, and was "necessary in a democratic society" to attain the aim or aims (see *Van der Graaf* (dec.), cited above).

ii. Whether the interference was "in accordance with the law"

85. The Court further reiterates that the expression "in accordance with the law", within the meaning of Article 8 § 2 of the Convention, requires the impugned measure to have some basis in domestic law and be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct. For domestic law to meet these requirements, it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise (see, among many other authorities, *M.M. v. the United Kingdom*, no. 24029/07, § 193, 13 November 2012). The Court must thus also be satisfied that there exist adequate and effective guarantees against abuse. This assessment depends on all the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national law (see *Benedik v. Slovenia*, no. 62357/14, § 125, 24 April 2018, and the authorities cited therein).

86. The Court also reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law.

However, it is required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the principles of the Convention as interpreted in the light of the Court's case-law (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 81 and 82, ECHR 2006-V).

87. In the instant case, the Government relied on Article 83 of the Code of Execution of Sentences (see paragraph 33 above), section 34 of the Pre-trial Detention Act (see paragraph 34 above), executive order no. 279 of 4 September 2006, as amended on 17 June 2013, of the Ministry of Justice (see paragraphs 39-40 above), and executive orders nos. 759 and 533 of the Federal Service for the Execution of Sentences, dated 13 August 2005 and 25 August 2008 respectively (see paragraph 41 above), as the legal basis for the measure complained of (see paragraphs 69 and 71 above).

88. The Court observes that Article 83 of the Code of Execution of Sentences vests in administrations of penal institutions the right to use audiovisual, electronic and other technical means of surveillance and control of detainees. Similarly, section 34 of the Pre-trial Detention Act establishes that “audio and video equipment may be used for the purposes of surveillance” of individuals in pre-trial detention. Whilst those legal provisions set forth a general rule enabling the administrations of penal institutions and pre-trial detention centres to have recourse to video surveillance, they provide no further details in that respect. They do not specify, for example, whether both the common parts and residential areas should be subject to surveillance; at which time of the day it should be operational; its conditions and length; the applicable procedures, and such like. The only obligation imposed on the administrations of penal institutions by Article 83 § 2 of the Code of Execution of Sentences is to inform convicts, obtaining their signature as acknowledgment, of the use of the above-mentioned means of control and surveillance.

89. The Court accepts that it is difficult to attain absolute certainty in the framing of laws, and that the need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 88, Series A no. 61). The criterion of foreseeability cannot be interpreted as requiring that all detailed conditions and procedures governing the interference be laid down in the substantive law itself, and the requirements of “lawfulness” can be met if points which cannot be satisfactorily resolved on the basis of substantive law are set out in enactments of lower rank than statutes (*ibid.*, §§ 88-89 and 93-94; *Association Ekin v. France*, no. 39288/98, § 46, ECHR 2001-VIII; and *Lebois v. Bulgaria*, no. 67482/14, § 66, 19 October 2017). It is noteworthy in the present case that Article 83 § 3 of the Code of Execution of Sentences provides that a list of technical means of control and surveillance as well as the procedure for their use is to be established by other legal instruments and regulations (see paragraph 33 above).

90. As to the Government's reliance on executive order no. 279 of 4 September 2006, as amended on 17 June 2013, of the Ministry of Justice (see paragraphs 39-40 above), and executive orders nos. 759 and 533 of the Federal Service for the Execution of Sentences, dated 13 August 2005 and 25 August 2008 respectively (see paragraph 41 above), the Court notes that the instruments in question provide purely technical specifications for security and control systems in penal institutions and pre-trial detention centres. They set out a list of technical means for guarding, surveillance and control, CCTV systems being amongst them, in such institutions, and detailed technical and engineering standards in respect of those means. They provide, in particular, that each cell in penal institutions and pre-trial detention centres should be equipped with a CCTV camera, and describe the technical requirements and characteristics which every camera should satisfy (see paragraph 40 above). The documents in question, however, do not establish any methods, conditions or procedures for the use of CCTV cameras, and therefore cannot be regarded as a legal basis for the measure complained of in the present case.

91. The Court further notes that, in their relevant decisions the domestic courts also relied on executive order no. 204-dsp ("for internal use only") of 3 November 2005, as amended by executive order no. 166-dsp ("for internal use only") on 25 May 2011, of the Ministry of Justice (see paragraphs 27, 30, 35-38 and 44-55 above). It observes, firstly, that the executive order in question only concerns pre-trial detention centres and prisons, and thus clearly cannot serve as a legal basis for the impugned measure, in so far as it is applied in penal institutions of other types (see paragraph 32 above), such as the one in which the second applicant has been detained (see paragraph 20 above).

92. Furthermore, the document in question is classified as being "for internal use only", with the result that its contents are not accessible to the general public. At the same time, the applicants acknowledged that, upon their arrival at the relevant detention facilities, they had been made aware of the fact that would be placed under permanent video surveillance (see paragraph 63 above). Against this background, the Court finds it reasonable to assume that the contents of the document under examination, at least the relevant part, was made sufficiently accessible to the applicants (compare *Pasko v. Russia*, no. 69519/01, §§ 81-83, 22 October 2009, and contrast *Lebois*, cited above, § 67).

93. It further observes that, in so far as the relevant part of the executive orders under examination is quoted in the court decisions (see paragraphs 46 and 52 above), it only contains a general provision stating that "for the purposes of surveillance [CCTV] cameras may be used". In essence, that provision does no more than reproduce the provisions of Article 83 of the Code of Execution of Sentences and section 34 of the Pre-trial Detention Act, but does not elaborate on them. It does not set out any specific rules governing the conditions in which the impugned measure may be applied

and revoked, the duration or the procedures for review. It is also noteworthy in this connection that the Supreme Court of Russia, at two levels of jurisdiction, stated that the executive order under examination established general rules aimed at ensuring the observance of the regime in pre-trial detention centres and penal institutions, but did not establish any particular procedure for the use of CCTV cameras (see paragraphs 49 and 54 above).

94. So far as post-conviction penal institutions are concerned, Article 83 § 1 of the Code of Execution of Sentences provides for the use of audiovisual, electronic and other technical means of surveillance and control for the purposes of, among other things, “obtaining necessary information about convicts’ conduct” (see paragraph 33 above). Neither this Article nor any other legal instruments available to the Court specify, however, whether the obtaining of such information is limited to monitoring by CCTV cameras, or whether that information is recorded and kept, and, if so, what the applicable safeguards and rules are governing the circumstances in which such data may be collected, the duration of their storage, the grounds for their use, and the circumstances in which they may be destroyed (compare *M.M. v. the United Kingdom*, cited above, §§ 199-206). It is relevant that the technical specifications approved by the Ministry of Justice provide for the technical possibility of keeping the recordings from a CCTV system for a period of thirty days (see paragraph 40 above). The Court recalls that the domestic law must also afford adequate guarantees that retained personal data are efficiently protected from misuse and abuse (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 103, ECHR 2008).

95. As to the Government’s reference to the inadmissibility decision in the case of *Van der Graaf* (see paragraph 79 above), where the applicant’s placement under permanent video surveillance for a period of about four and a half months had been found to be “necessary in a democratic society in the interests of public safety and for the prevention of disorder or crime”, the Court notes that this case is distinguishable from the present one. In that case, the contested measure had been applied in respect of a detainee held under an individual detention regime, charged with the murder of a well-known politician. It had been based on detailed domestic regulations, which, in particular, had provided an exhaustive list of grounds for the application of such a measure and established an applicable procedure. In accordance with those regulations, the applicant’s placement under permanent video surveillance had been ordered by individualised and reasoned decisions of a competent official, corroborated with necessary medical documents attesting to the state of the applicant’s mental health and assessing the presence of suicidal tendencies in his behaviour. Furthermore, each decision ordering the applicant’s placement under permanent video surveillance had been limited to two weeks at a time, with the result that there had been a regular review of the measure (see *Van der Graaf* (dec.), cited above).

96. In the present case, however, the applicants' placement under permanent video surveillance was not based on an individualised and reasoned decision providing reasons which would have justified the measure in question in the light of the legitimate aims pursued; the contested measure was not limited in time, and the administrations of the penal institutions or pre-trial detention centre as the case may be were not under an obligation to review regularly (or at all) the well-foundedness of that measure. Indeed, there does not appear to exist any basis in national law for the adoption of such individualised decisions, the Supreme Court of Russia noting in its decision of 12 March 2014 that the existing legal framework "[did] not provide for the adoption of any [individualised] decision [authorising] the use of technical means of control and supervision" (see paragraph 48 above).

97. In such circumstances, whilst the Court is prepared to accept that the contested measure had some basis in national law, it is not convinced that the existing legal framework is compatible with the "quality of law" requirement. Whilst vesting in the administrations of pre-trial detention centres and penal institutions the right to use video surveillance, it does not define with sufficient clarity the scope of those powers and the manner of their exercise so as to afford an individual adequate protection against arbitrariness. In fact, as interpreted by the domestic courts, the national legal framework vests in the administrations of pre-trial detention centres and penal institutions an unrestricted power to place every individual in pre-trial or post-conviction detention under permanent – that is day and night – video surveillance, unconditionally, in any area of the institution, including cells, for an indefinite period of time, with no periodic reviews. As it stands, the national law offers virtually no safeguards against abuse by State officials.

98. In the light of the foregoing considerations, although the Court is prepared to accept, having regard to the ordinary and reasonable requirements of detention, that it may be necessary to monitor certain areas of pre-trial and penal institutions, or certain detainees on a permanent basis, including by a CCTV system, it finds that the existing legal framework in Russia cannot be regarded as being sufficiently clear, precise and detailed to have afforded appropriate protection against arbitrary interference by the authorities with the applicants' right to respect for their private life.

99. It therefore finds that the measure complained of was not "in accordance with the law" as required by Article 8 § 2 of the Convention. Accordingly, there is no need to examine whether it pursued any of the legitimate aims and was "necessary in a democratic society", being proportionate to those aims. In particular, the Court will leave open the question of whether the fact that the permanent video surveillance was carried out by female operators of CCTV cameras was compatible with the requirements of Article 8 § 2 of the Convention, as, in its view, this is an element of the proportionality of the alleged interference.

100. The Court thus concludes that there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

101. The second and third applicants complained that, in breach of Article 13 of the Convention, they had had no effective remedies in connection with the breach of their right to respect for their private life, as guaranteed by Article 8 of the Convention, on account of the permanent video surveillance of their cells. Article 13 of the Convention reads as follows:

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

A. Submissions by the parties

102. The Government argued that the second and third applicants had had at their disposal effective remedies as they could challenge any actions of the administrations of their penal institutions or pre-trial detention centre in court, including the lawfulness and well-foundedness of the permanent video surveillance of their cells. The Government provided no further details, and, despite an explicit request by the Court to that effect, gave no examples of relevant judicial practice.

103. The second and third applicants argued that the Government had failed to point out any of the effective remedies that had allegedly been available to the applicants, and to give examples of judicial practice which would illustrate the practical effectiveness of such remedies in their situation. The third applicant furthermore argued that he had in fact brought proceedings against the detention centre authorities in connection with the video surveillance, but to no avail.

B. The Court’s assessment

1. Admissibility

104. The Court reiterates that Article 13 of the Convention applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). In view of its above finding concerning Article 8 of the Convention, it considers that the second and third applicants have such a claim for the purposes of Article 13 of the Convention.

105. It further finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is furthermore

not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

106. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Voynov v. Russia*, no. 39747/10, § 38, 3 July 2018, and the authorities cited therein).

107. In the present case, whilst generally arguing that the second and third applicants had had at their disposal effective domestic remedies in respect of their complaint under Article 8 of the Convention, the Government did not specify which meaningful avenues of redress had been open to them, nor provide any examples of judicial practice capable of demonstrating the effectiveness of those avenues in practice. In particular, it was not shown that an individual in pre-trial or post-conviction detention placed under permanent video surveillance might obtain a judicial review of the impugned measure on account of considerations relating to the right to respect for his or her private life.

108. The Court reiterates that, in accordance with its established case-law, the effective remedy required by Article 13 of the Convention is one where the domestic authority examining the case has to consider the substance of the Convention complaint. In cases involving Article 8 of the Convention, this means that the authority has to carry out a balancing exercise and examine whether the interference with the applicants' rights answered a pressing social need and was proportionate to the legitimate aims pursued; that is, whether it amounted to a justifiable limitation of their rights (see *Voynov*, cited above, § 42). As regards the impugned measure in the present case, the relevant court decisions reveal that the national courts, including those of the highest level – the Constitutional Court and Supreme Court of Russia – generally considered permanent video surveillance to be a necessary element of convicts' punishment in the form of imprisonment as well as part of the mechanism which ensured the personal safety of detainees and staff of the relevant institutions, performance by detainees of their duties and obligations and observance of the regime of detention (see paragraphs 28, 43, 48 and 53 above). It is thus clear that the domestic law, as interpreted by the courts, does not presuppose any balancing exercise or enable an individual to obtain a judicial review of the proportionality of his or her placement under permanent video surveillance to the vested interests in securing his or her privacy.

109. The Court is mindful of the fact that it has previously found on a number of occasions that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law, as otherwise the Court would be imposing on Contracting States a requirement to incorporate the Convention into domestic law (see *Ostrovar v. Moldova*, no. 35207/03, § 113, 13 September 2005; *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, §§ 90-92, ECHR 2010 (extracts); and *Szabó and Vissy v. Hungary*, no. 37138/14, § 93, 12 January 2016). However, the thrust of the applicants' complaint in the present case is the absence of any meaningful avenues of redress open to them at the national level in respect of their particular situation, that is, their placement under permanent video surveillance in their penal institution and pre-trial detention centre, which adversely affected their privacy.

110. In the light of the foregoing, the Court finds that the second and third applicants did not have at their disposal an effective domestic remedy for their complaint under Article 8 about a permanent video surveillance, in breach of Article 13 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Application no. 27057/06

111. The first applicant complained under Article 3 of the Convention about the conditions of his detention in UP-288/T prison. He complained, in particular, of a lack of electricity in the electric sockets between 10 p.m. and 6 a.m., poor toilet facilities in his cell and too loud music being played during his daily walks. He also complained that the floor in his cell had been made of concrete and that his bed had been too short for his height. The first applicant furthermore complained under Articles 6, 7 and 14 of the Convention about the outcome of the criminal proceedings in his case. In particular, he was dissatisfied with the incorrect application of the law and the fact that he had received a life sentence in a strict-regime facility instead of a fixed sentence with a less stringent regime. He also complained that the composition of the first-instance court in his case had been unlawful and that the substantive criminal law was discriminatory in that he would have never received a life sentence had he been a woman.

112. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Application no. 56443/09

113. The second applicant complained under Articles 3 and 8 of the Convention that he had been unable to take walks and outdoor exercise in prison UP-288/T during wintertime, as he had not been provided with suitable winter footwear by the administration of that institution.

114. The Government contested the second applicant's allegations as unreliable and unsubstantiated. They submitted a copy of his prison file (*камерная карточка*), which shows that, upon his arrival at the relevant penal institution, he received, and signed a file to that effect, a number of items of clothing and footwear, including a pair of boots and shoes.

115. The Court observes that the second applicant failed to corroborate his relevant allegations with any documentary evidence, for instance, statements written by his cellmates or, if that was impossible, copies of his complaints to the authorities. The Government provided evidence that showed that the second applicant had been provided with the standard clothing and footwear, and thus refuted his allegations. In such circumstances, the Court is not in a position to conclude that the second applicant has made a *prima facie* case as regards the alleged failure of the administration of prison UP-288/T to provide him with suitable winter footwear (compare *Bragin v. Russia* (dec.), no. 8258/06, 28 January 2010).

116. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

117. The relevant parts of Articles 41 and 46 of the Convention provide:

Article 41

“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.”

Article 46

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution...”

A. Damage

118. The applicants sought compensation in respect of the non-pecuniary damage they had suffered as a result of the violations. In particular, the first applicant claimed 71,400 euros (EUR), the second

applicant claimed EUR 20,000 and the third applicant claimed EUR 10,000 under this head.

119. The Government contested the claims as unsubstantiated and obviously excessive. They argued that, if the Court were to find any violation in the present case, the finding of a violation would suffice.

120. The Court has found above that the existing legal framework in Russia cannot be regarded as being sufficiently clear, precise and detailed to have afforded appropriate protection against arbitrary interference by the authorities with the applicants' right to respect for their private life, guaranteed by Article 8 of the Convention. It has also found that they had no effective domestic remedies under Article 13 in respect of their complaint under Article 8 of the Convention. It will be for the respondent State to implement, under the supervision of the Committee of Ministers, such measures as it considers appropriate to secure the right of the applicants and other persons in their position to respect for their private life, in order to discharge its legal obligation under Article 46 of the Convention. It is thus inevitable that the Court's judgment will have effects extending beyond the confines of this particular case. In such circumstances, the Court considers that the finding of a violation, with the consequences which will ensue for the future, constitutes sufficient just satisfaction in the present case for any non-pecuniary damage sustained by the applicants (compare *Norris v. Ireland*, 26 October 1988, § 50, Series A no. 142; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI, and *S. and Marper* [GC], cited above, § 134).

B. Costs and expenses

121. The second and third applicants also claimed reimbursement of the costs and expenses incurred before the Court.

122. In particular, the second applicant claimed EUR 1,800, which represented twelve hours of his representative's work at a rate of EUR 150 per hour. The relevant claim specified that the amount included EUR 300 for two hours studying the case file, EUR 300 for two hours of written correspondence and EUR 1,200 for preparing observations and studying domestic and international practice.

123. The third applicant claimed EUR 2,850, which represented nineteen hours of his representative's work at a rate of EUR 150 per hour, which included studying documents, written correspondence, preparing observations and studying international and domestic practice.

124. The Government contested the two applicants' claims. They pointed out, in particular, that they had not been corroborated by any formal documents confirming the representatives' rates of pay and showing the amount of work performed by them.

125. 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 have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI, and *Tarakhel v. Switzerland* [GC], no. 29217/12, § 142, 4 November 2014). In the present case, regard being had to the documents in its possession and the above criteria, the Court is satisfied that the second and third applicants' claims meets the above-mentioned criteria and considers it reasonable to allow their claims in full. It therefore awards EUR 1,800 to the second applicant and EUR 2,000, which represents the requested sum less EUR 850, already paid to the third applicant's lawyer in legal aid, to the third applicant respectively for the costs incurred before the Court, to be transferred directly to their representatives' bank accounts.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;
2. *Declares*, unanimously, the complaint under Article 8 of the Convention concerning permanent video surveillance in the applicants' cells as well as the complaint under Article 13, taken in conjunction with Article 8 of the Convention about the lack of effective remedies in that respect, admissible and the remainder of the applications inadmissible;
3. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;
4. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention taken in conjunction with Article 8;
5. *Holds*, by five votes to two, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
6. *Holds*, unanimously,
 - (a) that the respondent State is to pay the second and third applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros) and EUR 2,000 (two thousand euros)

respectively, plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and transferred directly to the representatives' bank accounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses*, by five votes to two, the remainder of the applicants' claim for just satisfaction.

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

Stephen Phillips
Registrar

Vincent A. De Gaetano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Keller, joined by Judge De Gaetano, is annexed to this judgment.

V.D.G.
J.S.P.

**PARTLY DISSENTING OPINION OF JUDGE KELLER,
JOINED BY JUDGE DE GAETANO**

1. I respectfully disagree with paragraph 120 of the judgment and with the conclusion that finding a violation of Articles 8 and 13 constitutes sufficient just satisfaction for any non-pecuniary damage sustained.

2. The Court found that the permanent CCTV camera monitoring of the applicants, all in detention, breached their right to private life in contravention of Article 8 of the Convention (see paragraphs 98-100 of the judgment). In particular, the Court held that the Russian legal framework concerning video surveillance in prisons did not meet the “quality of law” requirements of the Convention. The framework at issue gave unrestricted power to administrators of pre-trial detention centres and penal institutions “to place every individual in pre-trial or post-conviction detention under permanent – that is day and night – video surveillance, unconditionally, in any area of the institution, including cells, for an indefinite period of time, with no periodic reviews” (paragraph 97). No judicial or other safeguards against abuse were provided for in the law. In addition, the Court found a violation of Article 13 on the ground that there was no effective remedy at the domestic level to enable those affected to contest video surveillance on considerations related to the right to respect for private life (paragraph 110). We agree with these conclusions. However, to our surprise, no award has been made for non-pecuniary damage by way of just satisfaction. That, in my view, is a grave error.

3. The majority explain that since the “judgment will have effects extending beyond the confines of this particular case” (i.e. changing the relevant legal and/or administrative framework in Russia), “the finding of a violation, with the consequences which will ensue for the future, constitutes sufficient just satisfaction ... for any non-pecuniary damage sustained by the applicants” (paragraph 120). This reasoning is unconvincing. It amounts to penalising applicants whose complaints are seen by the Court as requiring structural changes in the State party concerned. On the contrary, the Court should support such applicants who shed light on systemic violations of the Convention while also seeking individual justice.

4. A grotesque implication of the majority’s conclusion in this case is that a systemic violation of the Convention becomes cheaper for States than a violation affecting only certain individuals. I cannot agree with such impunity for States. Given their widespread effect, States should be discouraged through all available means from engaging in systemic violations of the Convention. These means should include, if the circumstances of the case so require, an award in respect of non-pecuniary damage. Such award would not only compensate for the harm suffered by individual applicants, but also incentivise States to comply with their Convention obligations in a speedy and efficient manner.

5. The failure to make an award for non-pecuniary damage also contradicts numerous judgments of this Court in which surveillance activities taking place outside a clear and comprehensive legal framework led to a finding a violation of Article 8 and an award for non-pecuniary damage (see *Vukota-Bojić v. Switzerland*, no. [61838/10](#), §§ 73-77, 105, ECHR 2016; *Valentino Acatrinei v. Romania*, no. [18540/04](#), §§ 61, 96, ECHR 2013; *Copland v. the United Kingdom*, no. [62617/00](#), §§ 45-49, 53-55, ECHR 2007; and *Halford v. the United Kingdom*, no. [20605/92](#), § 75, ECHR 1997). It is true that these cases concerned surveillance outside the prison system. Yet, as the Court itself mentions in paragraph 81 of the instant judgment, it is a well-established principle “that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention (see *Hirst v. the United Kingdom (no. 2)* [GC], no. [74025/01](#), § 69, ECHR 2005-IX).” In other words, an individual in detention “does not forfeit his or her Convention rights merely because of his or her status as a detainee, including the rights guaranteed by Article 8 of the Convention, so that restrictions on those rights must be justified in each case (*Khoroshenko v. Russia* [GC], no. [41418/04](#), §§ 106 and 116-17, ECHR 2015, and the authorities cited therein).” Thus, the right to respect for the private life of such applicants should not be treated any differently from that of those outside the prison system.

6. A straightforward reading of Article 41 further supports this position. The problem of the Article 41 wording was previously discussed in a dissenting opinion in *Nikolova v Bulgaria* [GC] (no. [31195/96](#), ECHR 1999-II), as well as in *Gafà v. Malta* (no. [54335/14](#), ECHR 2018). Article 41 reads: “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” (emphasis added). Thus Article 41 imposes two conditions for an award of just satisfaction. First, a violation of the Convention must be found, which in the instant case is undisputed; and second, it must be impossible for the applicants to receive full redress in the national system. This second condition is also met in the case at hand, as the Court found Russia to have breached Article 13 of the Convention for not providing any effective remedy for the Article 8 violation. Therefore, we cannot but agree with Judge Bonello’s conclusion in his dissenting opinion in *Nikolova*:

“In cases like the present one, in which the internal law provides for no satisfaction at all, the ‘if necessary’ condition [from the wording of Article 41] becomes irrelevant

and the Convention leaves the Court no discretion at all as to whether to award compensation or not.”

7. For the reasons set out above, the Court should have granted full justice to the applicants by awarding them a sum for non-pecuniary damage, regardless of the broader, systemic effects of the Article 8 violation.

APPENDIX
List of applications

1. 27057/06 Gorlov v. Russia
2. 56443/09 Vakhmistrov v. Russia
3. 25147/14 Sablin v. Russia