



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

FIRST SECTION

CASE OF GULIYEV v. RUSSIA

(Application no. 24650/02)

JUDGMENT

STRASBOURG

19 June 2008

FINAL

19/09/2008

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

In the case of Guliyev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 24650/02) 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 of Azeri ethnic origin, Mr Magsud Moysum-Ogly Guliyev (“the applicant”), on 18 April 2002.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and subsequently by Mrs V. Milinchuk, the Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of appalling conditions of his pre-trial detention and about the conditions of his transport to a correctional colony.

4. On 10 November 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in the village of Zheshart in the Komi Republic.

A. Criminal proceedings against the applicant

7. On 24 January 2000 policemen of the Ukhta Town Police Department arrested the applicant pursuant to an international arrest warrant issued by the Khanlarskiy District Prosecutor's Office of Azerbaijan. Azeri authorities suspected the applicant of theft and abuse of position. The applicant was placed in the Ukhta Town temporary detention unit.

8. On the same day the Ukhta Town Prosecutor's Office instituted criminal proceedings against the applicant on suspicion of involuntary manslaughter.

9. The applicant was apprised of his rights as a defendant, including the right to have the assistance of a lawyer and interpreter free of charge. He waived his right to interpretation services, insisting that he spoke Russian fluently, but he accepted the assistance of legal aid counsel Ms G.

10. On 4 February 2000 the applicant's detention was authorised and he was transferred to detention facility no. IZ-7/2 in Sosnogorsk.

11. The Ukhta Town Prosecutor extended the applicant's detention a number of times, relying on the gravity of the charges against him. The applicant unsuccessfully challenged the extension orders before the Sosnogorsk Town Court.

12. On 7 May 2001 the Ukhta Town Court found the applicant guilty of involuntary manslaughter and sentenced him to seven years' imprisonment. On 9 November 2001 the Supreme Court of the Komi Republic upheld the conviction.

13. On 26 November 2004 the applicant was released on probation.

B. Conditions of the applicant's detention

1. Ukhta Town temporary detention unit

14. From 24 January to 4 February 2000 the applicant was held in the Ukhta Town temporary detention unit.

(a) Number of inmates per cell

15. According to extracts from a registration log drawn up by the administration of the detention unit, and produced by the Government, from

24 January to 3 February 2000 the applicant was kept in cell no. 12 which measured 10.4 square metres and usually accommodated 3 to 4 inmates. On 3 and 4 February 2000 the applicant stayed in cell no. 8 which measured 10.1 square metres. On 3 February 2000 he shared that cell with two other detainees and on 4 February 2000 he was detained alone. The Government, relying on inspection certificates of 12 May and 30 November 2000, 16 April 2001 and 14 December 2005, argued that the design capacity of the cells had not been exceeded, although due to the large number of detainees it had been impossible to provide them with personal space in accordance with hygiene standards. The Government further submitted that cell no. 12 had had four sleeping places and at all times the applicant had had an individual bunk. The Government produced copies of black-and-white photos of the cell showing two single-tier metal bunks.

16. The applicant did not dispute the cell measurements. He alleged, however, that he had shared cell no. 12 with eight detainees. That cell had had two single-tier metal bunks and inmates had to take turns to sleep.

(b) Sanitary conditions, installations, temperature and water supply

17. The Government, relying on the inspection certificates (cited above) and identical reports drawn up by warders in 2005, submitted that all cells were equipped with a lavatory pan, a tap, a sink and ventilation shaft. The lavatory pan was placed in the corner of the cell, near the door. The Government produced photos showing that the “lavatory pan” mentioned by them had in fact been a hole in the floor of the cell which had been separated from the living area by a metal partition. Cell no. 12 had a window which measured 170 centimetres in length and 85 centimetres in width. Photos produced by the Government show that the window had been covered with two layers of thick horizontal and vertical bars blocking access to natural air and light. The window was double glazed and had a casement which measured 30 centimetres in length and 26 centimetres in width. Inmates could request warders to open the casement to bring in fresh air. Twice a day warders turned on a ventilation system. The cells were constantly lit by a bulb placed in a niche above the door. The walls were covered with so-called “shuba”, a sort of abrasive concrete lining, designed to prevent detainees from leaning on the walls or writing on them. Inmates were allowed to take a shower once a week for fifteen minutes. A central-heating system was installed in the building. However, there had been no hot water since 1996. Warders boiled water and gave it to detainees on request. The applicant was not provided with bedding because the detention ward had scarce financial resources. The Government also submitted copies of contracts according to which the disinfection and extermination of insects had been done twice a month and twice a year respectively.

18. The applicant disagreed with the Government’s description and submitted that the sanitary conditions had been unsatisfactory. The cells were infested with insects but the administration did not provide any

insecticide. It was extremely cold because the casement was open all the time and warders refused to close it. It was impossible to take a shower as the shower room was permanently closed. Inmates had to sleep either on metal bunks or on the floor using their clothes as bedding. No toiletries were provided.

2. Facility IZ-7/2 in Sosnogorsk

19. From 4 February 2000 to 25 January 2002 the applicant was detained in facility no. IZ-7/2 in Sosnogorsk.

20. According to certificates issued on 20 December 2005 by the director of the facility and produced by the Government, the applicant occupied three cells which measured 32.3, 16.2 and 32.3 square metres respectively. The two larger cells had eight sleeping places and housed eight detainees. The smaller cell had four bunks and accommodated four inmates. In their plea concerning the number of detainees in the cells the Government also relied on statements by warders who had worked in the facility while the applicant had been detained there.

21. The Government further submitted that each cell had a large window which measured 110 centimetres in width and 120 to 130 centimetres in length. Windows were covered with metal bars and were triple-glazed. Inmates could easily open windows to allow fresh air into the cells. The cell was equipped with ventilation shafts situated above the door and in the ceiling. The cells were constantly lit with artificial lighting. Two cells had a lavatory pan and a sink. The lavatory pan was separated from the living area with a two-metre-high tile brick wall. Inmates could take a shower once a week for fifteen minutes. The applicant was provided with bedding. He could also use his own bedding. The applicant was given food three times a day “in accordance with the established norms”.

22. The applicant contested the Government’s description, save for the information on the size of the cells. He further submitted that he had been detained in severely overcrowded cells. He stated that the cell population was two or three times greater than the capacity for which the cells had been designed. The applicant produced a written statement by an inmate, Mr G., who had been detained with him in one of the bigger cells. Mr G. attested that the cell had had eight bunks but it had housed 12 to 20 detainees. The applicant further provided an identical description of the conditions of his detention in facility no. IZ-7/2 to those in the Ukhta Town temporary detention unit. Mr G. affirmed the accuracy of the applicant’s description.

C. Conditions of the applicant’s transport to a correctional colony

23. On 25 January 2002 the applicant, pursuant to the judgment of 7 May 2001, was sent from detention facility no. IZ-7/2 to serve his sentence in a correctional colony in the Mordoviya Republic. On 28 January

2002 he arrived to the town of Nizhniy Novgorod, where he was placed in detention facility no. 1. On 5 February 2002 the applicant was sent to the village of Ruzayevka in the Mordoviya Republic where he arrived the following day.

24. The Government, relying on itineraries and certificates issued in December 2005 by various officials of the Federal Service for Execution of Sentences, submitted that the applicant had been transported in a special security compartment in a railway carriage. Before placement on a train the applicant was body searched. The Government further noted that pursuant to legal regulations every two hours in the course of the transport a sentry had been relieved and a new sentry had checked and “moved around” detainees in order to “check doors, walls, the ceiling and presence of detainees”. During his sixty-five hour trip from Sosnogorsk to Nizhniy Novgorod the applicant was detained alone in compartment no. 7, which measured two square metres and had three sleeping places. In the course of his twelve-hour transport from Nizhniy Novgorod to Ruzayevka the applicant stayed in a similar compartment with four other detainees. Before his transport to Nizhniy Novgorod the applicant was provided with a two-day dry ration which included 1000 grams of bread, 1400 grams of tinned vegetables and meat, 30 grams of sugar, 20 grams of salt and four grams of tea. Before his transport to Ruzayevka he was given a one-day dry ration. The carriage was naturally ventilated. It was equipped with two lavatories which detainees could use. There was also a boiler which warders used to boil water. The applicant was allowed to use the lavatory on request and was provided with drinking water. The compartment had a lattice door but no window. The compartment was constantly lit by lighting strips and bulbs.

25. The applicant disputed the number of inmates transported in one compartment. He argued that at all times he had been kept with five other detainees in compartments which had been designed to accommodate three persons. He was not provided with food or hot water during the transport. He and his fellow inmates were constantly checked and body searched by wardens.

II. RELEVANT DOMESTIC LAW

26. 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. Section 23 provides that 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.

III. RELEVANT INTERNATIONAL DOCUMENTS

27. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

“b. temporary holding facilities for criminal suspects (IVS)

26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.

...

45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the

supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private “because they know that all complaints usually pass through the colony’s administration”.

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT’S DETENTION

28. The applicant complained that the conditions of his detention from 24 January 2000 to 25 January 2002 in the Ukhta Town temporary detention unit and detention facility no. IZ-7/2 were in breach 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.”

A. Submissions by the parties

29. The Government argued that the applicant had not exhausted the domestic remedies available to him. In particular, he had not complained to a court about the conditions of his detention. The Government further commented on the conditions of the applicant’s detention. In particular, they submitted that the applicant had been detained in satisfactory sanitary conditions. They pointed out that the applicant had not been detained in overcrowded cells. At all times he had enjoyed at least eight hours’ sleep. He had been given food which had met applicable standards. They further noted that certain “inconveniences” which the applicant had experienced during his detention had been caused by “objective reasons” and had had “short-term character”.

30. The applicant submitted that he had not applied to a prosecutor or court because he had considered that such a complaint would not have any prospect of success. On numerous occasions, however, he had complained to the administrations about certain aspects related to the conditions of his detention. Thus they were sufficiently aware of his situation but no changes followed. He further challenged the Government’s description of his

conditions of detention as factually inaccurate. He insisted that the cells had at all times been severely overcrowded.

B. The Court's assessment

1. Admissibility

(a) Simultaneous examination of the complaints about the conditions of detention in the both detention facilities

31. The Court observes at the outset that the applicant complained of appalling conditions of his detention in two separate detention facilities, the Ukhta Town temporary detention unit and facility no. IZ-7/2 in Sosnogorsk, in which he was detained from 24 January to 4 February 2000 and from 4 February 2000 to 25 January 2002 respectively. The applicant provided identical descriptions of the conditions of his detention, primarily alleging overcrowding beyond the design capacity and shortage of sleeping places in the both facilities. According to the applicant, during those two years of his detention he was usually afforded less than 3.5 square metres of personal space, irrespective of the place of his detention.

32. In this connection, the Court reiterates that in a number of cases in which detained applicants usually disposed of less than three and a half square metres of personal space it has already found that the lack of personal space afforded to them was so extreme as to justify, in its own right, a violation of Article 3 of the Convention (see *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Igor Ivanov v. Russia*, no. 34000/02, §§ 37-38, 7 June 2007; *Benediktov v. Russia*, no. 106/02, §§ 36-38, 10 May 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia*, no. 63378/00, §§ 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, §§ 44, 16 June 2005, among others). The Court also found that the problems arising from overcrowding in Russian pre-trial detention facilities were of a structural nature (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006).

33. Having regard to the Court's approach laid down in the above-mentioned cases, the Court finds that the continuous nature of the applicant's detention, his identical descriptions of the general conditions of his detention and the allegation of severe overcrowding as the main characteristic of the conditions of his detention in the both facilities warrant examination of the applicant's detention from 24 January 2000 to 25 January 2002 without dividing it into separate periods (see, for similar reasoning, *Benediktov*, cited above, § 31). The Court does not lose sight of the Government's argument that certain aspects of the conditions of the

applicant's detention varied in the two facilities. However, it does not consider that differences in the measurements of the windows or availability of bedding are characteristics which allow distinctions to be made between the conditions of the applicant's detention or the separation of his detention into two periods depending on the facility where he was detained.

(b) Non-exhaustion issue

34. The Court notes the Government's argument that the applicant failed to lodge an action before a court complaining about the appalling conditions of his detention. In this connection, the Court observes that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it. In particular, the Court held in the relevant cases that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; and *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). The Court sees no reason to depart from that finding in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

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

2. Merits

36. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in the Ukhta Town temporary detention unit and detention facility no. IZ-7/2 in Sosnogorsk. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government did not refute.

37. The main characteristic which the parties did agree upon was the size of the cells. However, the applicant claimed that there had usually been two or three times more inmates in his cell than the number it had been fit to accommodate. The Government, relying on the extracts from the registration log drawn up in the Ukhta Town detention unit (see paragraph 15 above), the certificates issued by the director of facility no. IZ-7/2 and written statements by the warders of that facility (see paragraph 20 above), argued that the applicant had usually been detained with two or three other inmates in the first facility and either with three inmates in the smaller cell or with seven inmates in the bigger cells in the second facility.

38. The Court accepts the Government's submissions concerning the number of inmates detained together with the applicant in the Ukhta Town

temporary detention unit. Those submissions were corroborated by the extracts from the registration log recording names of detainees and their allocation to the cells in the ward. These extracts state that the applicant was usually held with two or three other detainees in ten-square-metre cells. Thus, the living area per inmate varied from 2.6 to 3.4 square metres. At the same time, the Court is not convinced by the Government's argument that the applicant had his own "sleeping place" throughout his detention in the ward. The Government alleged that there were four sleeping places in the cells. However, the photos of the cell produced by the Government (see paragraph 15 above) show only two single-tier metal bunks. It follows that the number of detainees was greater than the number of available bunks and the detainees, including the applicant, had to share the sleeping facilities, taking turns to rest.

39. As regards the conditions of the applicant's detention in facility no. IZ-7/2, the Court notes that the Government, in their plea concerning the number of detainees, cited statements by the warders and the facility's director indicating the number of the applicant's fellow inmates. The Court considers it extraordinary that in December 2005, that is almost four years after the applicant's detention in that facility had come to an end, the officials were able to recollect the exact number of inmates who had been detained together with the applicant. The Court observes that it was open to the Government to submit copies of registration logs showing names of inmates detained with the applicant. However, no such documents were presented. The Court finds it peculiar that the Government preferred to submit the extracts from the registration logs to support their allegations concerning the conditions of the applicant's detention in the first detention facility, but failed to do so to corroborate their statements pertaining to the second detention facility.

40. In this connection, the Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

41. Having regard to the principle cited above, together with the fact that the Government did not submit any convincing relevant information and that the applicant provided the Court with a written statement by one of his inmates corroborating his assertions (see paragraph 22 above), the Court will examine the issue concerning the number of inmates in the cells in facility no. IZ-7/2 on the basis of the applicant's submissions.

42. The applicant argued that the number of inmates had exceeded the design capacity of the cells by two or three times. It follows that the personal space afforded to inmates in facility no. IZ-7/2 varied from 1.4 to 2.7 square metres. There was a clear shortage of sleeping places and the applicant had to share a bed with other detainees.

43. Hence, taking into account the findings made in paragraphs 38 and 42 above, the Court concludes that during the two years of his detention in the Ukhta Town temporary detention unit and subsequently in facility no. IZ-7/2 in Sosnogorsk the applicant had no more than 3.5 square metres of personal space. Furthermore, for most of his detention period he was afforded less than 2.7 square metres of living area in the cell to which he was confined day and night.

44. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

45. Having regard to its case-law on the subject and the material submitted by the parties, 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. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates for two years was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

46. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to degrading treatment on account of the conditions of the applicant's detention from 24 January 2000 to 25 January 2002 in the Ukhta Town temporary detention unit and facility no. IZ-7/2 in Sosnogorsk.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S TRANSPORT

47. The applicant complained under Article 3 of the Convention that the conditions of his transport from facility no. IZ-7/2 in Sosnogorsk to a correctional colony in the Mordoviya Republic had been inhuman and degrading. He had been deprived of sleep, denied food and transported in

severely overcrowded compartments. In his view such treatment amounted to torture.

A. Submissions by the parties

48. The Government provided arguments along two general lines. Firstly, they submitted that the applicant had been able to lodge an action with a court complaining about the poor conditions of his transport to the correctional colony. He had had an effective remedy at his disposal but had never made use of it. Therefore, his complaint should be dismissed for failure to exhaust domestic remedies.

49. If, however, the Court were to decide otherwise, the Government insisted that the applicant's complaint was manifestly ill-founded as the conditions of his transport had corresponded to every existing requirement. He had been provided with dry rations and water and had been allowed to use the lavatory during his transport. In the course of the longest part of his journey he was alone in the compartment, which was designed to accommodate five detainees. The Government argued that minor inconveniences that the applicant had experienced during the transport, such as being checked on regularly, had been conditioned by security considerations.

50. The applicant averred that he had not been able to lodge a complaint with a court for fear of reprisal. Furthermore, the procedure for lodging such a complaint was complicated by the fact of his transfer from one place of detention to another. He was unaware of any effective domestic remedy.

A. The Court's assessment

1. Admissibility

51. The Government raised the objection of non-exhaustion of domestic remedies by the applicant. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*,

judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, §§ 65-67; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

52. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68, or *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

53. Furthermore, the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, p. 1211, § 69, and *Aksoy*, cited above, p. 2276, §§ 53-54).

54. Turning to the facts of the present case, the Court notes that the Government, without providing any further explanation, suggested that a court could have been an effective remedy in the applicant's case for his complaints about the poor conditions of his transport. In this connection, the Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning a complaint of inhuman and degrading treatment is whether the applicant could have raised that complaint before domestic courts in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. The remedy can be either preventive or compensatory in nature (see, among other authorities, *Koval v. Ukraine*, no. 65550/01, § 94, 19 October 2006). The Court notes that the Government did not explain whether a complaint to a court could have offered the aforementioned preventive or compensatory redress or both for allegations of the conditions of transport which had been contrary to Article 3 of the Convention. The Government did not make reference to any legal norm on the possibility of lodging an action seeking damages for treatment already suffered as a result of the conditions of

transport, or on the possibility of such an action being preventative of further sufferings. Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such redress.

55. Furthermore, the Court does not lose sight of the Government's argument that "inconveniences" experienced by the applicant during his trip to the correctional colony were conditioned by security considerations and complied with applicable legal regulations. The Court finds it hardly questionable whether, in a situation where domestic legal norms prescribed such conditions of detainees' transport, the applicant would have been able to argue his case before a court or even state the cause of action to pass the admissibility stage. In other words, the Court has strong doubts that the applicant would have had a realistic opportunity to apply effectively to a court.

56. In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government had a reasonable prospect of success. The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

57. The Court further notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

58. The Court observes that the parties gave different descriptions of the general conditions of the applicant's transport from detention facility no. IZ-7/2 in Sosnogorsk to the correctional colony in the Mordoviya Republic. At the same time, both parties agreed upon and the Court finds it established that the applicant had been transported in two-square-metre security compartments having three benches and designed to accommodate five detainees. His journey was divided into two parts with a provisional stop in Nizhniy Novgorod. The travel time from Sosnogorsk to Nizhniy Novgorod amounted to sixty-five hours. The transport from Nizhniy Novgorod to the destination point lasted twelve hours. Every two hours warders entered the compartment, checked the detainees, including the applicant, and forced them to move around the compartment.

59. The Court further notes that the Government submitted copies of the itineraries registering the number of inmates received for transport, their names and allocation of the compartments (see paragraph 24 above). It therefore accepts the Government's assertion that the applicant was detained alone during the first part of the journey and that he was kept with four other inmates for the remaining part.

60. In their further submissions, the Government relied on certificates issued in December 2005 (see paragraph 24 above) which purported to

clarify that the sanitary conditions on the train had been satisfactory, that the train compartments had been sufficiently ventilated and lit, and that the applicant had been provided with food and hot water. These certificates are of little evidential value for the Court because they did not refer to any sources of information, such as train inventories or records of provision of food rations bearing detainees' signatures, on the basis of which those assertions could be verified. The Court reiterates that the parties disagreed as to those specific conditions of the applicant's detention. However, there is no need for the Court to establish the truthfulness of each and every allegation, because it finds that there has been a violation of Article 3 on the basis of the facts, which have not been disputed by the parties, for the following reasons.

(a) Conditions of transport from Sosnogorsk to Nizhniy Novgorod

61. The Court observes that in the course of the sixty-five-hour transport from Sosnogorsk to Nizhniy Novgorod the applicant remained alone in the two-square-metre compartment. Every two hours he was checked upon and forced to change his position, thus being denied uninterrupted eight-hour sleep. The Court finds it particularly striking that those regular "checks" are prescribed by domestic legal regulations governing transport of detainees. The applicant's sleeping conditions were further aggravated by the constant lighting in the cell. The resulting deprivation of sleep must have constituted a heavy physical and psychological burden on the applicant (see *Yakovenko v. Ukraine*, no. 15825/06, § 85, 25 October 2007).

62. Furthermore, the Court is not satisfied that the applicant was provided with food during his transport as the Government failed to present any documents having evidentiary value (see paragraph 60 above). However, even proceeding on the assumption that the Government's assertion is correct, the Court does not lose sight of the fact that the applicant was allegedly provided with a two-day food ration for the journey that lasted almost three days. In this connection, the Court reiterates that the clear insufficiency of food given to an applicant may in itself raise an issue under Article 3 of the Convention (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 55, 4 May 2006, and *Stepuleac v. Moldova*, no. 8207/06, § 55, 6 November 2007). Moreover, while in the present case it cannot be established "beyond reasonable doubt" that the ventilation, lighting and sanitary conditions on the train were unacceptable from the standpoint of Article 3, the Court nonetheless notes that the Government did not dispute that there was no window or other opening in the compartment giving access to natural light or ventilation. The conditions of the applicant's transport thus could have been further exacerbated by that aspect.

63. The Court reiterates that the assessment of the minimum level of severity which a given form of treatment must attain if it is to fall within the scope of Article 3 depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases,

the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162; and *Kudla*, cited above, § 91). The Court has considered treatment to be “inhuman” because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudla*, cited above, § 92).

64. Having regard to the cumulative detrimental effect which conditions of the transport, and in particular the duration of the journey, confined space, sleep deprivation, insufficiency of food and possibly inadequate ventilation and lighting, must have had on the applicant, the Court finds that the conditions of transport from the detention facility in Sosnogorsk to Nizhniy Novgorod amounted to “inhuman” treatment within the meaning of Article 3 of the Convention.

65. There has therefore been a violation of Article 3 of the Convention because the applicant was subjected to inhuman treatment on account of the conditions of his transport from Sosnogorsk to Nizhniy Novgorod.

(b) Conditions of transport from Nizhniy Novgorod to Rusayevka

66. The Court notes that during the twelve-hour transport from Nizhniy Novgorod to Ruzayevka, the destination point, the applicant was detained in the standard two-square-metre compartment with four other inmates. It follows that he was afforded 0.4 square metres of personal space in the course of the journey.

67. In this respect, the Court reiterates that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considered individual compartments measuring 0.4, 0.5 or even 0.8 square metres to be unsuitable for transporting a person, no matter how short the duration (see CPT/Inf (2004) 36 [Azerbaijan], § 152; CPT/Inf (2004) 12 [Luxembourg], § 19; CPT/Inf (2002) 23 [Ukraine], § 129; CPT/Inf (2001) 22 [Lithuania], § 118; and CPT/Inf (98) 13 [Poland], § 68). CPT also found unacceptable transportation of six prisoners in a compartment measuring two square metres for periods of up to four hours, recommending that no more than three persons should be transported in two-square-metre compartments (see CPT/Inf (2002) 23 [Ukraine] § 130).

68. The Court further reiterates that it has found a violation of Article 3 in a case where an applicant was afforded 0.4 square metres of personal space in the course of his transport. It considered such travel arrangements impermissible, irrespective of the duration (see *Yakovenko*, cited above, §§ 108-113). The Court has also found a violation of Article 3 in a case where an applicant was transported together with another detainee in a single-occupancy cubicle which measured one square metre. Even though the travel time did not exceed one hour, the Court considered such transport

arrangements unacceptable (see *Khudoyorov v. Russia*, no. 6847/02, §§ 118-120, ECHR 2005-X).

69. The Court does not see any reason to depart from those findings and apply different criteria in the present case. The Court considers that the fact that the applicant was obliged to stay in a confined space for twelve hours in very cramped conditions must have caused him intense physical suffering. The Court also recalls its findings concerning inadequate food arrangements, lighting and ventilation (see paragraph 62 above) on the train. Those aspects are relevant in addition to the focal factor of the severe overcrowding to show that the applicant's transport conditions went beyond the threshold tolerated by Article 3 of the Convention (see, *mutatis mutandis*, *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005).

70. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's transport from Nizhniy Novgorod to the correctional colony in the Mordoviya Republic, which the Court considers to have been inhuman.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

71. The applicant further complained under Article 5 § 1 (c), 2, 3 and 4 of the Convention that there had been no grounds for his arrest and subsequent detention, that he had not been informed of the reasons for his arrest in the Azeri language, that no judge had remanded him in custody, and that his appeals against the extension orders had not been examined speedily and fairly. Article 5, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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

72. The Court observes that it is not required to decide whether or not the applicant’s complaints concerning his detention disclose an appearance of a violation of Article 5 of the Convention. It reiterates that, according to Article 35 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. It observes that the applicant’s pre-trial detention ended on 7 May 2001 when the Ukhta Town Court convicted him (see *Labita v. Italy* [GC], no. 26772/95, § 147, ECHR 2000-IV). After that date his detention no longer fell within the ambit of Article 5 § 1 (c), but within the scope of Article 5 § 1 (a) of the Convention (see, for instance, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). The applicant lodged his application with the Court on 18 April 2002, which is more than six months after his pre-trial detention had ended.

73. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. The applicant complained under Articles 3, 6 and 14 of the Convention that the courts had refused to hear certain witnesses, that one of the witnesses had been forced to slander him, that the criminal proceedings had been extremely long and that the authorities had discriminated against him on the ground of his ethnic origin.

75. However, having regard to all the material in its possession, 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 773,630 euros (EUR) in respect of non-pecuniary damage.

78. The Government averred that the claim was unreasonable and unsubstantiated.

79. The Court accepts that the applicant suffered humiliation and distress because of the inhuman and degrading conditions of his detention and transport. Making its assessment on an equitable basis, having regard to its case-law on the subject and, taking into account, in particular, the length of the applicant's detention, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

80. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter for the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

81. 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. *Declares* the complaints concerning the conditions of the applicant's detention from 24 January 2000 to 25 January 2002 and the conditions of the applicant's transport admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's transport from Sosnogorsk to Nizhniy Novgorod;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's transport from Nizhniy Novgorod to the correctional colony in the Mordoviya Republic;
5. *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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President