



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

FIRST SECTION

CASE OF SUDARKOV v. RUSSIA

(Application no. 3130/03)

JUDGMENT

STRASBOURG

10 July 2008

FINAL

01/12/2008

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 Sudarkov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 19 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 3130/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vladimir Anatolyevich Sudarkov (“the applicant”), on 15 December 2002.

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

3. The applicant alleged, in particular, appalling conditions of his detention, poor conditions of his transport to a correctional colony and conditions of the detention in “transit” remand centres.

4. On 6 December 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 applicant and the Government each filed written observations. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

6. 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

7. The applicant was born in 1949 and lives in the town of Mineralniye Vody in the Stavropol Region.

A. Criminal proceedings against the applicant

8. On 12 May 2000 the applicant was arrested and charged with passing counterfeit money. His detention was extended a number of times.

9. The applicant was committed to stand trial before the Gagarinskiy District Court of Moscow. According to the applicant, he was brought from the detention facility a number of times to the Gagarinskiy District Court to take part in trial hearings. On the day of a court session he was allegedly woken up at 5 or 6 a.m. and taken to a small room on the ground floor of the detention facility where he remained for several hours. The room was cold in winter. It was dirty and poorly lit. At about 11 a.m. the transportation of inmates to the courthouse began. Inmates were placed in an overcrowded van and transported in inhuman conditions for many hours; the van called in on the way at several courthouses until the inmates reached their destination. Throughout the entire day inmates, including the applicant, received no food.

10. On 5 April 2002 the Gagarinskiy District Court found the applicant guilty as charged and sentenced him to nine years' imprisonment.

11. The applicant appealed, alleging that the trial court had incorrectly assessed the facts and applied the law, that it had not thoroughly examined the case, and that his case should have been tried in another court having territorial jurisdiction.

12. On 28 August 2002 the Moscow City Court upheld the judgment, endorsing the reasons given by the District Court.

B. Conditions of the applicant's pre-trial detention

13. From 22 May 2000 to 6 September 2002 the applicant was detained in facilities nos. IZ-77/2 (commonly known as "Butyrka") and IZ-77/3 (also known as "Krasnaya Presnya") in Moscow.

1. Detention in facility no. IZ-77/2

(a) Number of inmates per cell

14. According to certificates issued on 12 January 2006 by the director of the facility and produced by the Government, the applicant was kept in four different cells. From 22 May to 8 June 2000 and from 27 July 2000 to 17 April 2001 he stayed in cell no. 144 which measured 56.4 square metres and housed on average 48 inmates. From 8 June to 27 July 2000 he was kept in cell no. 129 which measured 13.8 square metres and accommodated six detainees. From 17 April 2001 to 7 April 2002 the applicant remained in cell no. 94 measuring 58.7 square metres. The average occupancy rate in that cell was 48 detainees. After 7 April 2002 he was kept in cell no. 137 with 51 inmates. Cell no. 137 measured 55.9 square metres. The Government supported their assertions with copies of extracts from registration logs showing the number of detainees on 23 May, 9 June and 28 July 2000 and 17 April 2001 and 11 April 2002.

The Government, relying on the certificates of 12 January 2006, further submitted that the applicant had had an individual bunk and bedding at all times.

15. The applicant did not dispute the cell measurements. However, he alleged that the bigger cells had had thirty-two sleeping places. Furthermore, the cell population changed two or three times a week. There were usually from 60 to 80 inmates in the bigger cells. Given the lack of beds, inmates had slept in shifts. No bedding or blankets were provided.

(b) Sanitary conditions, installations, food and medical assistance

16. The Government, relying on the information provided by the director of the facility, submitted that the cells received natural light and ventilation through large windows, which were glazed and measured 2.5 metres in width and 1.15 metres in height. The windows were covered with metal shutters which were removed after November 2002. The cells also had an artificial ventilation system. The average temperature in the cells was between 20 and 28 degrees Celsius in summer and between 19 and 24 degrees Celsius in winter. The cells were equipped with lamps which functioned day and night. Each cell was equipped with a lavatory pan, a sink and a tap for running water. The pan was separated from the living area by a one-and-a half-metre-high concrete wall. Inmates were allowed to take a shower once a week. The cells were disinfected once a week. The Government, relying on the information provided by the director of the facility, further stated that the applicant was given food “in accordance with the established norms”. According to the Government, detainees, including the applicant, were provided with medical assistance. They had regular medical check-ups, including X-ray examinations, blood tests, and so on.

The applicant did not make any complaints about the state of his health and did not ask for particular medical services.

17. The applicant disagreed with the Government's description and submitted that the sanitary conditions had been unsatisfactory. The cells were infected with bed-bugs and lice but the administration did not provide any insecticides. It was extremely cold in the cells. The windows were not glazed and were covered with metal blinds which blocked access to natural light and air. The applicant pointed out that the Government did not dispute that the blinds had only been removed sometime after November 2002, that is after his detention in that facility had come to an end. He further submitted that the lavatory pan had been separated from the living area by a one-metre-high wall, thus affording no privacy to inmates. The food was of poor quality and in scarce supply. The applicant noted that the certificates provided by the Government could only attest to the sanitary conditions in the facility in January 2006, when the director of the facility had issued them.

(c) Complaints about the poor conditions of detention

18. The applicant alleged that detention facility no. IZ-77/2 had been under the rule of so-called "legitimised thieves" (*«воры в законе»*). Each cell had an "overseer" (*«смотрящий»*). If a detainee wanted to complain about poor detention conditions or unlawful actions of the administration he had to obtain permission from an "overseer". Only collective complaints initiated by "legitimised thieves" were allowed. The applicant further submitted that he had been unable to complain to the facility administration because he would have been subjected to a punishment. The administration could start transferring him to a new cell every second day, as had happened to other detainees. In that way he would have been completely deprived of sleep because he would have lost his place in the "sleeping queue".

19. The Government submitted a certificate issued by the facility director on 12 January 2006. The certificate read as follows:

"[I] inform you that in detention facility no. IZ-77/2 in Moscow individuals, who reckon themselves to be so-called "legitimised thieves", do not control complaints lodged by detainees."

2. Detention in facility no. IZ-77/3

20. On 23 April 2002 the applicant was transferred to facility no. IZ-77/3 where he remained until 6 September 2002. He was placed in cell no. 217, measuring 21.1 square metres.

21. The Government, relying on a certificate issued by the director of the facility on 11 January 2006, argued that the cell housed from five to eight detainees in the period from 12 June to 6 September 2002. They also provided extracts from registration logs showing the number of detainees on

21 June 2002. As follows from the extracts, there were seven inmates in cell no. 217. The Government further submitted that the information on the number of inmates in cell no. 217 in the period from 23 April to 12 June 2002 was not available. The Government provided a description of the conditions of the applicant's detention in facility no. IZ-77/3, which was similar to the description of the conditions in facility no. IZ-77/2 except for one aspect: the cell windows measured 0.89 metres in width and 0.94 metres in height.

22. The applicant submitted that the sanitary conditions of his detention in facility no. IZ-77/3 had been slightly better than those in facility no. IZ-77/2. However, the cells were still severely overcrowded; he was afforded less than one square metre of personal space, and he did not have an individual sleeping place. Inmates had no privacy as the lavatory pan was not separated from the living area. The cell was infested with insects and food was very scarce.

C. Conditions of the applicant's transport to the correctional colony and conditions of his detention in the Volgograd "transit" remand centre

23. On 6 September 2002 the applicant's journey from detention facility no. IZ-77/3 in Moscow to a correctional colony in the Stavropol Region began. On the following day he arrived in Voronezh where he was placed into a "transit" remand centre. On 8 September 2002 the applicant was put on another train heading to a "transit" remand centre in Volgograd where he arrived on the following day. He remained in the Volgograd "transit" centre until 27 September 2002 when he was taken by train to Pyatigorsk. In Pyatigorsk the applicant was also detained in a "transit" remand centre. On 9 October 2002 he was placed on a train and taken to the correctional colony in the Stavropol Region where he arrived on the same day.

1. Conditions of transport

24. The Government, relying on certificates issued in January 2006 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 train carriage. Before being placed on the train he was body searched. The Government further noted that during his trip from Moscow to Voronezh the applicant was detained with ten other inmates in compartment no. 5. The Government did not indicate the measurements of the compartment and submitted that itineraries and other documents pertaining to the conditions of the applicant's transport had been destroyed.

25. The applicant argued that he had been transported with 12 to 15 detainees in a four-seat train compartment measuring 1.8 metres in

length and 1.6 metres in width. Inmates were allowed to use a toilet once or twice a day. Sometimes they had to urinate in plastic bottles.

2. Conditions of detention in the Volgograd “transit” remand centre

26. On 9 September 2002 the applicant arrived at the Volgograd “transit” remand centre. The Government, relying on certificates issued by the facility director in June 2006 and written statements by warders drawn up in June 2006, submitted that on 9 September 2002 the applicant had been placed in cell no. 2 which measured 18.1 square metres. The cell had four sleeping places. The number of inmates corresponded to the number of bunks. The Government noted that registration logs bearing names and placement of detainees had been destroyed on 5 June 2006. They further submitted that on 10 September 2002 the applicant had complained to a warder of pain in the right ankle. He was taken to the prison hospital where, following an X-ray examination, he was diagnosed with an ankle fracture. Until 24 September 2002 he remained in a hospital cell, measuring 19.4 square metres and accommodating four detainees. The Government gave a detailed description of the treatment the applicant had been provided with, including the type of medical procedures and medicine, dose and frequency. On 24 September 2002 the applicant was transferred back to the “transit” centre and again placed in cell no. 2. The Government further submitted that the applicant had had an individual sleeping place and had been provided with bedding. The food complied with sanitary norms.

27. According to the applicant, he was placed in cell no. 2, measuring approximately 18 square metres and having 12 sleeping places. The cell housed 32 inmates. There were so many inmates that they even had to take turns to sleep on the concrete floor. The cell was located in the basement and had a small window on the ground level. There was no fresh air and the cell was very dark. There was a bucket in the corner which doubled a lavatory pan. There were lice and other insects in the cell. The applicant argued that he had remained in cell no. 2 until 12 September when, after complaints of severe pain in the right ankle, he was taken to the hospital. The applicant alleged that after a doctor had put his leg in a plaster cast he had been taken back to the “transit” remand centre and placed in cell no. 2.

28. The applicant did not make separate complaints pertaining to the conditions of his detention in other “transit” remand centres.

II. RELEVANT DOMESTIC LAW

29. . 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

30. 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 ARTICLES 3 AND 13 OF THE CONVENTION IN RELATION TO CONDITIONS OF THE APPLICANT’S DETENTION IN FACILITES NOS. IZ-77/2 AND IZ-77/3

31. The applicant complained that his detention from 22 May 2000 to 6 September 2002 in appalling conditions had been in breach of Article 3 of the Convention. Relying on Article 13 of the Convention, he further complained that he had not had at his disposal an effective remedy to obtain an improvement in the conditions of his detention. The Articles relied on read as follows:

Article 3 (Prohibition of torture)

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

Article 13 (Right to an effective remedy)

“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

32. The Government argued that the applicant had not exhausted the domestic remedies available to him. The Government further commented on the conditions of the applicant's detention. In particular, they pointed out that the fact that the applicant had been detained in overcrowded cells in the both detention facilities could not serve as the basis for finding a violation of Article 3 of the Convention because the remaining aspects of the detention conditions (availability of an individual sleeping place, bedding, compliance with sanitary norms, etc.) had been satisfactory. The Government further noted that the problem of overcrowding exists in the detention facilities of many member States of the Council of Europe. In Russia the overcrowding in detention facilities has objective justification: high crime rate and limited capacity of detention facilities.

33. The applicant submitted that he had not applied to a prosecutor or court for fear of reprisal from the administration of the facilities and the "legitimised thieves" who controlled the complaints procedure. Furthermore, such a complaint would not have any prospect of success. He further challenged the Government's description of his conditions of detention as factually inaccurate.

B. The Court's assessment

1. Admissibility

34. The Government raised the objection of non-exhaustion of domestic remedies by the applicant. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for complaining about inhuman and degrading conditions of his detention. Thus, the Court finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

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

2. Merits

(a) Article 13 of the Convention

36. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of

Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

37. The Court reiterates that it has already concluded a violation of Article 13 on account of the absence of an effective remedy for inhuman and degrading conditions of detention, finding as follows (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007):

“[T]he Government did not demonstrate what redress could have been afforded to the applicant by a prosecutor, a court or other State agencies, taking into account that the problems arising from the conditions of the applicant’s detention were apparently of a structural nature and did not only concern the applicant’s personal situation (cf. *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and, most recently, *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006). The Government have failed to submit evidence as to the existence of any domestic remedy by which the applicant could have complained about the general conditions of his detention, in particular with regard to the structural problem of overcrowding in Russian detention facilities, or that the remedies available to him were effective, that is to say that they could have prevented violations from occurring or continuing, or that they could have afforded the applicant appropriate redress (see, to the same effect, *Melnik v. Ukraine*, no. 72286/01, §§ 70-71, 28 March 2006; *Dvoynych v. Ukraine*, no. 72277/01, § 72, 12 October 2006; and *Ostrovar v. Moldova*, no. 35207/03, § 112, 13 September 2005).”

38. These findings apply *a fortiori* to the present case, in which the Government did not point to any domestic remedy by which the applicant could have obtained redress for the inhuman and degrading conditions of his detention or put forward any argument as to its efficiency.

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

(b) Article 3 of the Convention

40. The Court observes that the continuous nature of the applicant’s detention, his identical descriptions of the general conditions of the detention in the both facilities and the allegation of severe overcrowding as the chief characteristic of the conditions of his detention in both the facilities warrant the examination of the applicant’s detention from 22 May 2000 to 6 September 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 the difference in the windows' measurements is a sufficient characteristic to allow to distinguish between the conditions of the applicant's detention or for his detention to be separated into two periods depending on the facility where he was detained.

41. The parties have disputed certain aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government have failed to refute.

42. The focal point for the Court's assessment is the living space afforded to the applicant in the both detention facilities. The main characteristic, which the parties agreed upon, is the size of the cells. However, the applicant submitted that they had accommodated up to eighty persons, thus substantially exceeding their design capacity. The Government acknowledged that the cells in both the facilities had occasionally been overcrowded. They provided information on the average number of inmates detained together with the applicant in facility no. IZ-77/2 and indicated the average occupancy rate in the applicant's cell in facility no. IZ-77/3 in the period from 12 June to 6 September 2002.

43. The Court notes that the Government, in their plea concerning the number of detainees, cited statements by the directors of the facilities indicating the average number of the applicant's fellow inmates. Those statements were supported by extracts from the registration logs showing the number of detainees for certain dates: one date in respect of each cell where the applicant had been detained (see paragraphs 14 and 21 above). The Court finds it peculiar that the Government preferred to submit the extracts for certain dates only. It reiterates the Government's argument that the number of detainees fluctuated and that they only indicated the average occupancy rate for each cell. The Court observes that the Government did not refer to any source of information on the basis of which they had made the assertion on the average numbers of inmates in the cells and did not submit any documents on the basis of which that assertion could be verified. The directors' certificates and extracts from the logs are therefore of little evidential value for the Court. The Court further notes that the Government was unable to indicate the exact number of inmates in facility no. IZ-77/3 in the period before 12 June 2002 owing to a lack of documents.

44. 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).

45. Having regard to the principle cited above, together with the fact that the Government did not offer any convincing relevant information and that they agreed in principle that the cells had been overcrowded (see paragraph 32 above), the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions.

46. According to the applicant, he was afforded less than one square metre of personal space throughout his detention in both the detention facilities. The number of detainees was always greater than that of available bunks. It follows that the detainees including the applicant had to share the sleeping facilities, taking turns to rest. Thus, for approximately two years and three months the applicant was confined to his cell day and night.

47. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

48. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-X; *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). More specifically, the Court reiterates that it has recently found a violation of Article 3 on account of an applicant's detention in overcrowded conditions in the same detention facilities and at the same time (see *Benediktov*, cited above, §§ 31-41, and *Igor Ivanov v. Russia*, no. 34000/02, §§ 16-18 and §§ 30-41, 7 June 2007).

49. 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. The Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was in itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

50. Furthermore, while in the present case it cannot be established "beyond reasonable doubt" that the ventilation, heating, lighting or sanitary conditions in the facilities were unacceptable from the standpoint of

Article 3, the Court nonetheless notes that the cell windows had been covered with metal shutters blocking access to fresh air and natural light. They were removed some time after November 2002, that is several months after the applicant's transfer out of the detention facilities. The parties also did not dispute that the applicant had not had any opportunity for outdoor exercise. The Court considers that these aspects, while not in themselves capable of justifying the notion of "degrading" treatment, are relevant in addition to the focal factor of the severe overcrowding, to show that the applicant's detention conditions went beyond the threshold tolerated by Article 3 of the Convention (see *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005).

51. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in detention facilities nos. IZ-77/2 and IZ-77/3 which the Court considers to be inhuman and degrading.

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

52. The applicant complained under Article 3 of the Convention that the conditions of his transport from facility no. IZ-77/3 in Moscow to a correctional colony in the Stavropol Region had been inhuman and degrading. He had been transported in severely overcrowded compartments. In his view such treatment amounted to torture.

A. Submissions by the parties

53. The Government provided arguments along two general lines. Firstly, they submitted that the complaints about the conditions of the applicant's transport had not been examined on national level. Therefore, his complaints should be dismissed for failure to exhaust domestic remedies.

54. 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 had an individual sleeping place and had been given bedding and food which had complied with sanitary requirements.

55. The applicant averred that he had not been able to lodge a complaint. 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.

B. The Court's assessment

1. Admissibility

56. 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).

57. 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).

58. 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).

59. The Court further 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 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).

60. Turning to the facts of the present case, the Court notes that the Government did not indicate any domestic authority which had competence to examine a complaint of inhuman and degrading treatment. They merely suggested that the applicant should have exhausted domestic remedies. The Government did not explain whether a complaint to any domestic authority 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. They did not make reference to any legal norm on the possibility of bringing such a complaint seeking damages for the treatment already suffered as a result of the conditions of the transport, or on the possibility of such a complaint being preventative of further sufferings. Nor did the Government supply any example from domestic practice showing that it was possible for the applicant to obtain such redress.

61. In the light of the foregoing, the Court considers that it has not been established that there existed a remedy which had offered a reasonable prospect of success for the applicant to complain about the conditions of his transport. The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

62. 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

63. The Court observes that the parties gave different descriptions of the general conditions of the applicant's transport. The applicant alleged that he had been transported in four-seat train compartments which measured 2.9 square metres and accommodated 12 to 15 detainees. The Government did not provide any information on the compartment measurements. They only noted that during the first part of his trip, from Moscow to Voronezh, the applicant had been transported in compartment no. 5 with 10 detainees. No information on the remaining part of the applicant's journey was given. The Government cited the destruction of relevant documents as the reason for their failure to provide relevant information.

64. In these circumstances, relying on the principle cited in paragraph 44 above, the Court will examine the merits of the applicant's complaints in respect of the conditions of his transport solely on the basis of his submissions (see *Fedotov v. Russia*, no. 5140/02, § 61, 25 October 2005, and *Staykov v. Bulgaria*, no. 49438/99, § 75, 12 October 2006).

65. According to the applicant, he was afforded less than 0.3 square metres of personal space in the course of the journey, even during the first part of the journey, when there were 11 inmates in the compartment, as submitted by the Government.

66. 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). The CPT also found unacceptable the 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).

67. 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 v. Ukraine*, no. 15825/06, §§ 108-113, 25 October 2007). 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).

68. The Court does not see any reason to depart from those findings and apply different criteria in the present case. It considers that the fact that the applicant was obliged to stay in the confined space for many hours in very cramped conditions must have caused him intense physical suffering. Furthermore, the Court reiterates the applicant's argument that he was not allowed to use the lavatory more than twice a day and that he had to use a plastic bottle instead of a lavatory pan. While in the present case it cannot be established "beyond reasonable doubt" that the sanitary conditions on the train were unacceptable from the standpoint of Article 3, the Court nonetheless notes that the conditions of the applicant's transport thus could have been further exacerbated by that aspect.

69. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's transport from Moscow to

the correctional colony in the Stavropol Region, which the Court considers to be inhuman and degrading

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RELATION TO CONDITIONS OF THE APPLICANT'S DETENTION IN THE VOLGOGRAD "TRANSIT" REMAND CENTRE

70. The applicant complained that the conditions of his detention in the Volgograd "transit" remand centre were in breach of Article 3 of the Convention.

A. Submissions by the parties

71. The Government merely submitted that the conditions of the applicant's detention had complied with the guarantees of Article 3 of the Convention. He had an individual sleeping place and bedding and received food which corresponded to sanitary norms. Relying on medical records and reports, they further argued that the applicant had received necessary medical assistance and had only been released from the prison hospital after his leg had recovered.

72. The applicant averred that he had not stayed in the hospital and had spent the entire time in cell no. 2 of the "transit" remand centre in degrading conditions. He was deprived of sleep, had no privacy and very limited personal space.

B. The Court's assessment

1. *Admissibility*

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

2. *Merits*

74. The Court notes that the applicant arrived at the Volgograd "transit" remand centre on 9 September 2002. Both parties agreed that he had been placed in cell no. 2 measuring 18.1 square metres. The applicant claimed that he had remained in that cell throughout his detention. The Government, relying on medical records and reports pertaining to the applicant's accident, argued that he had stayed in the prison hospital from 10 to 24 September 2002. The Court, therefore, finds it established that the

applicant stayed in cell no. 2 in the Volgograd “transit” remand centre from his arrival on 9 September 2002 until his transfer to the prison hospital on 10 September 2002 and from 24 September 2002 when he was transferred back from the hospital to 27 September 2002 when he was again placed on a train.

75. According to the applicant, the cell had 12 sleeping places and housed 32 inmates. The Government disputed that description, claiming that the cell had had four sleeping places and that the number of detainees had not exceeded the design capacity. They relied on certificates from the facility director and written statements by warders issued in June 2006 (see paragraph 26 above). These certificates cannot constitute evidential material for the Court because they did not refer to any sources of information, such as registration logs, on the basis of which those assertions could be verified. The Court reiterates the Government’s submission that the registration logs were destroyed in June 2006, that is at the same time the facility director drew up his certificates and the warders made their statements. The Court finds it peculiar that the Government preferred to submit circumstantial evidence instead of extracts from the logs, which could have corroborated the Government’s assertion.

76. The Court considers that in the present case the respondent Government alone had access to information capable of disproving the applicant’s allegations. They did not submit such information and did not provide any convincing explanation for their failure to do so. The Court is therefore bound to draw inferences from the Government’s failure and will examine the issue on the basis of the applicant’s assertions.

77. The applicant argued that he was detained in cell no. 2 together with 32 inmates. It follows that he was afforded less than 0.6 square metres of personal space. The Court notes that he was confined to his cell for 24 hours a day as there was no daily outdoor exercise. Inmates had to take turns to sleep taking into account the lack of sleeping places. According to the applicant, the number of detainees was so big that they even had to take turns to sleep on the concrete floor.

78. The Court further observes that the Government did not dispute the general description of the applicant’s conditions of detention in cell no. 2. It therefore finds established that the applicant’s situation was further exacerbated by the insufficient ventilation, lighting and sanitary conditions. The Court also finds it striking that inmates had to use a bucket as a lavatory pan, with no privacy.

79. The Court observes that the period of the applicant’s detention in such conditions was relatively short. However, having regard to the cumulative effect of such factors as poor ventilation, insufficient lighting, appalling sanitary conditions, absence of outdoor exercise and the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other detainees, the Court considers that the distress and hardship

the applicant endured as a result of his detention in such conditions exceeded the unavoidable level of suffering inherent in detention and the resulting anguish went beyond the threshold of severity under Article 3. It follows that the conditions of his detention amounted to inhuman and degrading treatment.

80. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Volgograd "transit" remand centre.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

81. The applicant further complained under Article 5 § 1 (c) and 3 of the Convention that there had been no grounds for his arrest and subsequent detention and that his pre-trial detention had been excessively long. 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;

...

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."

82. 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 detention during judicial proceedings ended on 5 April 2002 when the Gagarinskiy District Court of Moscow 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 15 December 2002, which was more than six months after his detention had ended.

83. 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.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. In his application form lodged with the Court on 15 December 2002 the applicant complained under Articles 3, 6, 7, 10, 13 and 14 of the Convention and Article 2 of Protocol No. 7 that the conditions of his transport to the Gagarinskiy District Court had been appalling, that the criminal proceedings against him had been extremely long, that the domestic courts had incorrectly applied the law and assessed the facts, that they had been partial, that the trial court had not been a “tribunal established in accordance with the domestic law”, that the burden of proof had been on him, that the legal assistance had been ineffective, that the domestic courts had committed various procedural violations, that his punishment had been more severe than the one prescribed by law and that he had been punished for an act which had not been criminal under the law, that he had not been able to apply effectively for a supervisory review of his conviction, that his requests for a supervisory review had been dismissed and that authorities had disregarded his various complaints. In his observations lodged with the Court on 10 April 2006 the applicant complained that he had not been provided with necessary medical assistance in the prison hospital of the Volgograd “transit” remand centre.

85. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 398,100 euros (EUR) in respect of pecuniary damage. He submitted that that sum represented capital losses accrued during his detention. The applicant argued that he had not been able to work during the criminal proceedings, he had sold property before his conviction as he had not expected to use it during the detention, his relatives had borne the expenses of his detention and conviction and his health had significantly deteriorated as a result of the detention and conviction. He further claimed EUR 1,000,000 in respect of non-pecuniary damage.

88. The Government contested the existence of a causal link between the alleged violation and the pecuniary loss alleged by the applicant, as the decision to prefer criminal charges against the applicant was not the subject of the Court's review in the present case. They further argued that the applicant had not submitted any receipts or any other documents to substantiate his claims for compensation for pecuniary damage. As regards the claim pertaining to non-pecuniary damage, the Government considered it to be excessive and unreasonable. In any event, a finding of a violation would constitute sufficient just satisfaction.

89. The Court notes that the decision to prefer criminal charges against the applicant was not the subject of its review in the present case. It shares the Government's view that there is no causal link between the violations found and the pecuniary damage claimed (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). Furthermore, the applicant did not submit any document confirming expenses which he allegedly accrued. Consequently the Court finds no reason to award the applicant any sum under this head.

90. As to non-pecuniary damage, the Court observes that it has found a combination of particularly grievous violations in the present case. The Court accepts that the applicant suffered humiliation and distress because of the inhuman and degrading conditions of his detention and transport and the absence of an effective remedy in respect of his complaints about the conditions of his pre-trial detention. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, and taking into account in particular, the length of the applicant's detention, it 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

91. The applicant also claimed EUR 15,000 for the costs and expenses incurred before the domestic courts and the Court.

92. The Government submitted that the claim was unsubstantiated and unreasonable.

93. 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 were reasonable as to quantum. In the present case, the applicant did not submit any evidence (bill, receipts, etc.) in support of his claim. Accordingly, the Court rejects it.

C. Default interest

94. 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. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about the inhuman and degrading conditions of his detention in facilities nos. IZ-77/2 and IZ-77/3 in Moscow and rejects it;
2. *Declares* the complaints concerning the conditions of the applicant's detention in facilities nos. IZ-77/2 and IZ-77/3 in Moscow, conditions of his transport from facility no. IZ-77/3 in Moscow to a correctional colony, conditions of his detention in the Volgograd "transit" remand centre and the absence of an effective remedy in respect of his complaint about the conditions of his detention in facilities nos. IZ-77/2 and IZ-77/3 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facilities nos. IZ-77/2 and IZ-77/3 in Moscow;
5. *Holds* that there has been a violation of Article 3 of the Convention on account of conditions of the applicant's transport from the facility no. IZ-77/3 in Moscow to a correctional colony;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Volgograd "transit" remand centre;
7. *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;
8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André WAMPACH
Deputy Registrar

Christos ROZAKIS
President