



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

SECOND SECTION

CASE OF BUZYCHKIN v. RUSSIA

(Application no. 68337/01)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Buzychkin v. Russia,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Anatoly Kovler,

Vladimiro Zagrebelsky,

Dragoljub Popović,

András Sajó, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 68337/01) 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 Viktor Mikhaylovich Buzychkin (“the applicant”), on 9 November 1999.

2. The applicant was represented by Ms O. Sadovskaya, a lawyer practising in Nizhniy Novgorod. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 18 May 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.

4. The Government having raised an objection concerning the application of Article 29 § 3 of the Convention to the present case, the Court decided to dismiss their objection.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1959 and lives in Dzerzhinsk, the Nizhniy Novgorod region.

A. The applicant's criminal conviction

6. On 26 May 1998 the applicant was arrested, charged with the unlawful possession of firearms and attempted murder of a police officer, and remanded in custody.

7. On 12 October 1998 the Criminal Section of the Nizhniy Novgorod Regional Court, composed of a professional judge and two lay assessors, convicted the applicant as charged and sentenced him to fifteen years and six months' imprisonment. The court referred to statements from five witnesses: two eyewitnesses, two forensic medical examination reports and a ballistic expert's report. The applicant had extensive opportunities to cross-examine those witnesses and challenge other pieces of evidence throughout the trial. It appears that the court refused the applicant's request to call two more witnesses.

8. The applicant appealed against the first-instance judgment. In his appeal submission he argued that the trial court had made wrong findings of fact and had assessed the evidence incorrectly. He did not raise any objections as to the composition of the first-instance court.

9. On 26 April 1999 the Supreme Court of Russia examined the applicant's appeal and reduced the sentence to eight years and six months' imprisonment. The applicant was present at the hearing, at the end of which the operative part of the decision was read out. According to the applicant, he obtained a copy of the decision on 12 May 1999.

10. The applicant's attempts to avail himself of supervisory review proved unsuccessful.

11. On 17 March 2004 the applicant was released on parole.

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

1. Detention in Nizhniy Novgorod

(a) The applicant's account

(i) General conditions of detention

12. According to the applicant, he was held in remand prison IZ – 32/1 in the city of Nizhniy Novgorod (*CHZO – 32/1*) from 26 May 1998 to 16 March 1999.

13. The applicant was kept in a cell designed to hold 24 inmates. During the applicant's detention the cell accommodated 120 inmates, and therefore he could only sleep taking turns, for no more than four hours a day. Due to lack of space, detainees had to remain standing the rest of the day.

14. The window of the cell was covered with metal grilles supplemented with “eyelashes”, that is metal strips covering the grille, which let no daylight in. The cell was lit only by a single light bulb. As there was no ventilation, the air was stale and musty. The cell was overrun with cockroaches and bloodsucking insects. Neither the cell nor detainees’ personal belongings were ever sanitised.

15. Detainees were able to take a shower every eight days. However, only a few of the shower cabins functioned properly, and therefore the detainees did not have enough time to wash themselves. The scarce meals were of poor quality, and the detainees had to eat standing, as the only table in the cell was designed for eight inmates.

(ii) Medical assistance

16. In December 1998 the applicant was diagnosed with tuberculosis and underwent medical treatment until 16 March 1999.

(b) The Government’s account

(i) General conditions of detention

17. According to the Government, the applicant was held in remand prison IZ – 32/1 in the city of Nizhniy Novgorod from 5 June 1998 to 16 March 1999. From 26 May to 5 June 1998 he was held in a temporary detention centre of the Dzerzhinsk Directorate of the Interior, Nizhniy Novgorod Region.

18. During his placement in remand prison IZ – 32/1 the applicant was held in cell no. 3/19, which measured 40.1 square metres and had 20 beds; cell no. 9/69, which measured 40.6 sq. m and had 24 beds; cell no. 19/266, which measured 34.1 sq. m and had 22 beds; and cell no. 1/3, which measured 40.9 sq. m and had 20 beds.

19. The Government submitted that they were not in a position to provide information about the number of inmates held in the cells at the same time as the applicant because the relevant documents had been destroyed due to the expiry of their storage term.

20. Every inmate was provided with an individual bed and bedding. The cells had glass windows which measured 1.6 m by 1.4 m. The windows provided natural light sufficient for reading and working. A ventlight ensured natural ventilation in addition to the mandatory ventilation system installed in the cells. The cells were also equipped with central heating. The average temperature in the cells was 18 to 20 degrees Centigrade. Every cell had a washbasin and a lavatory pan separated by a brick partition. The inmates could wash once a week. None of the cells was infested with insects or rodents.

(ii) *Medical assistance*

21. On 5 June 1998, during a medical check conducted upon the applicant's arrival at the remand prison, he complained of a stomach ache and loss of vision in his right eye.

22. On 7 June 1998 the applicant underwent fluorography, which showed the following changes in his lungs: limited fibrosis of the right side and minor calcification in the roots. A tuberculosis doctor regarded these changes as post-specific and recommended supervision by a radiologist.

23. On 1 December 1998 the applicant again underwent fluorography which showed a minor infiltration in the first intercostal space on the right side with focal shadows. A tuberculosis doctor diagnosed the applicant with focal tuberculosis of the upper part of the right lung in the infiltration phase. *Mycobacterium tuberculosis* was not found.

24. The applicant was first placed in a specialised cell for treatment for tuberculosis. He was mainly treated with rifampicin (an antibiotic).

25. On 22 August 1999 the applicant was placed in medical penitentiary institution no. 10 (*ИИВ-10*). An X-ray showed improvement following the treatment.

26. On an unspecified date the acting deputy head of the Medical Department of the Federal Service of Execution of Sentences issued a medical certificate as to the possibility of the applicant having contracted tuberculosis while in detention. The certificate read, in particular:

“- [According to the] anamnesis (the patient's recollection), [the applicant had] peptic ulcer disease, chronic gastroduodenitis since 1996, which is a risk factor for the development of tuberculosis;

- post-specific changes in the lungs were revealed upon [the applicant's] arrival at the remand prison [on 1 December 1998] – such changes prove that the applicant had had tuberculosis earlier;

- the patient's attitude towards treatment was highly negative, which exacerbated the condition and caused escalation of the tuberculosis process.

Having regard to the foregoing, it is possible to assert that previous convictions, presence of risk factors, post-specific changes in the lungs as well as [the applicant's] placement in cells for detainees in good health before he was diagnosed with active tuberculosis, are evidence of endogenous reactivation of the tuberculosis process and not of [the tuberculosis] being contracted in the remand prison in 1998.”

2. *Detention in Moscow*

(a) **The applicant's account**

27. According to the applicant, he was transferred to remand prison IZ – 48/3 in Moscow (*ИЗ – 48/3*) on 17 March 1999 and held there until 28 May 1999.

28. Despite the fact that he was suffering from tuberculosis, the applicant was placed in a cell with detainees in good health. The cell, measuring approximately 11 square metres (2.5 m by 4.5 m) and designed for seven inmates, held 14 to 16 detainees. The ventilation did not function properly and therefore the cell was hot and damp.

29. The applicant submitted that he did not remember further details of the conditions of his detention in Moscow.

30. Following his transfer to Moscow, the applicant did not receive any medical treatment for tuberculosis, since remand centre IZ – 48/3 had no facilities for such treatment. According to the applicant, he complained about the lack of any medical assistance to the local authorities and various State bodies, but his complaints remained unanswered. However, the applicant only furnished the Court with an uncertified handwritten copy of one of those complaints.

(b) The Government's account

31. According to the Government, the applicant was held in remand prison IZ – 48/3 in Moscow between 16 March and 28 May 1999. However, according to the certificate dated 16 June 2005 issued by the head of remand prison IZ-77/3 (former IZ-48/3), the applicant was held there between 17 March and 28 May 1999.

32. During his placement in remand prison IZ – 48/3 the applicant was held in cell no. 417, which measured 14.98 square metres, and cell no. 419, which measured 14.9 sq. m. The applicant was provided with an individual bed and bedding. The cells had glass windows which measured 0.89 m by 0.94 m. During the daytime the windows provided natural light sufficient for reading and working. The cells also had artificial light provided by luminescent lamps. A ventlight ensured natural ventilation in addition to the mandatory ventilation system installed in the cells. Every cell had a tap, a lavatory pan separated by a brick partition and a tank with drinkable water. The average temperature in the cells was never below 18 Centigrade. The inmates could wash once a week and took at least an hour's daily exercise.

33. The Government submitted that they were not in a position to provide information about the number of inmates held in the cells simultaneously with the applicant and the medical assistance available to him because the relevant documents had been destroyed due to the expiry of their storage term.

3. Subsequent developments

34. It appears that from remand prison IZ-48/3 the applicant was transferred to penitentiary institution LIU-10 where he served his sentence.

35. In January 2000 the applicant was diagnosed with focal tuberculosis of the upper part of the right lung in the carnification phase.

36. In September 2000 his condition worsened and the applicant was prescribed treatment for tuberculosis. Until March 2003 the applicant's condition was stable; however in April 2003 his condition worsened further.

37. On 17 April 2003 the applicant was admitted to the hospital of penitentiary institution LIU-10.

38. In the course of a search conducted on 20 August 2003 prison officers found and seized over one hundred anti-tuberculosis and ranitidine (anti-histamine) tablets, which the applicant had not taken despite having been prescribed them by the doctor.

39. The applicant was released on 17 March 2004.

4. Civil claim for damages caused by inadequate medical assistance in remand prison IZ – 32/1 in Nizhniy Novgorod

40. On 21 January 2002, while the applicant was serving his sentence, he lodged a claim for damages caused by the alleged infection with tuberculosis and deterioration of his health due to inadequate treatment while in detention in remand prison IZ – 32/1. By this time the number of the remand prison had been changed to IZ – 52/1.

41. On 22 August 2002 the Sovetskiy District Court of Nizhniy Novgorod dismissed the claim as unsubstantiated. The judgment read, in particular:

“On 5 June 1998 [the applicant] was placed in cell 3/19 of remand prison IZ – 52/1 where he remained until 28 August 1999.

Fluorogram no. 33-34 of 7 June 1998 made on [the applicant's] admittance to remand prison IZ – 52/1 showed post-specific changes in his right lung in the form of limited fibrosis and minor calcification in the roots.

Fluorogram no. 25-26 of 1 December 1998... showed a minor infiltration with focal shadows in the first intercostal space on the right side [and] minor calcification in the roots.

...on 1 December 1998 [the applicant] was diagnosed with “focal tuberculosis of the upper part of the right lung in the infiltration phase”...

The report of the medical commission [included in the materials of the case], concluded that “taking into account post-specific changes in his right lung and the lung's roots that had been stated earlier as well as such risk factors as a duodenal ulcer and stress reaction to the arrest, the tuberculosis process in the right lung has reactivated.

Immediately after the disease had been diagnosed, remand prison IZ – 52/1 took measures for the plaintiff's treatment: [he was] prescribed medication, provided with special] nutrition, [and] subjected to regular medical examinations, which is confirmed by... the plaintiff's medical file. ...

Having analysed the evidence submitted by the defendant (the plaintiff submitted no evidence that he had contracted tuberculosis through the fault of the administration of

remand prison IZ – 52/1), the court has not found the administration of remand prison IZ – 52/1 responsible for [the applicant] having contracted tuberculosis...

In his statement of claim the plaintiff submitted that he had not suffered from tuberculosis before, which is refuted by the medical file provided by the defendant... According to the medical file, on 7 June 1995 the applicant was admitted for treatment to the surgical department... with the diagnosis: “Dystrophy of the retina of the right eye following thrombosis of the central vein with extensive extravasation, myopia... of the right eye.” ... Fluorography showed limited fibrosis on the right, calcification in the roots. ...[S]uch changes were post-specific... [The applicant] refused further examination and left the hospital. ...

Tuberculosis is an infectious disease which nowadays is spread not only in detention facilities. The court found no evidence to support [the claim] that actions or omissions of the administration of remand prison IZ – 52/1... caused damage to the plaintiff’s health.”

42. The applicant appealed against the judgment.

43. On 4 April 2003 the Nizhniy Novgorod Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

44. In accordance with Article 339 of the 1960 Code of Criminal Procedure, which remained in force until 1 July 2002, appeal decisions should be read out in the hearing room by the president or a member of the court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE GENERAL CONDITIONS OF DETENTION IN THE REMAND PRISONS IZ – 32/1 AND IZ – 48/3.

45. The applicant complained under Article 3 of the Convention that in remand prison IZ – 32/1 in Nizhniy Novgorod and in remand prison IZ – 48/3 in Moscow he had been held in appalling conditions of detention. Article 3 of the Convention reads as follows:

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

A. Admissibility

1. *The parties' submissions*

46. The Government submitted that the applicant had not raised the complaint before either the prosecuting authorities or the domestic courts. They enclosed a letter from the President of the Nizhniy Novgorod Regional Court of 5 August 2005 to the effect that the applicant had brought proceedings for compensation for damage to health against remand prison IZ – 32/1, but had not brought any claims concerning the conditions of detention or the alleged lack of adequate medical assistance. They also enclosed a letter from the President of the Moscow City Court of 22 June 2005 to the effect that the applicant had not brought any claims concerning the conditions of detention in remand prison IZ – 48/3. The Government claimed that the applicant had thus failed to exhaust the domestic remedies available to him.

47. The applicant contested the Government's arguments. He stated that on 21 January 2001 he had instituted proceedings for damages against remand prison IZ – 32/1. His claim had finally been dismissed by the Nizhniy Novgorod Regional Court on 4 April 2003. Therefore, he had complied with the requirement to exhaust domestic remedies.

2. *The Court's assessment*

48. The Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

49. The Court notes that the applicant did not invoke the issue before the domestic authorities, his claim for damages having related solely to the alleged infection with tuberculosis. The Court observes that in the case of *Benediktov v. Russia* (no. 106/02, §§ 29-30, 10 May 2007), in comparable circumstances, it found that the Government had failed to demonstrate what redress could have been afforded to the applicant by a prosecutor or a court, taking into account that the problems arising from the conditions of the applicant's detention had been apparently of a structural nature and had concerned not only the applicant's personal situation. Furthermore, in the

case at hand, the Government submitted no evidence to enable the Court to depart from these findings with regard to the existence of an effective domestic remedy for the structural problem of overcrowding in Russian detention facilities (see *Benediktov v. Russia*, cited above, § 30).

50. Accordingly, the Court dismisses the Government's objection in so far as it concerns the applicant's complaint about the general conditions of his detention on remand.

B. Merits

51. The applicant maintained his complaint.

52. The Government submitted that the applicant's complaint concerning general conditions of detention in remand prisons IZ – 32/1 in Nizhniy Novgorod and IZ-48/3 in Moscow was manifestly ill-founded and that the authorities had not infringed his rights under Article 3 of the Convention.

53. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100–101, ECHR 2001-VIII).

54. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, as a recent authority, *Labzov v. Russia*, no. 62208/00, § 42, 16 June 2005). Measures depriving a person of his liberty may often involve such an element. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the detainee's health and well-being are adequately secured by, among other things, the provision of the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

55. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR

2001-II). The Court considers that the applicant's detention from 5 June 1998 to 28 May 1999 constituted a continuous situation and will examine it as a whole without dividing it into separate periods (see *Benediktov v. Russia*, cited above, § 31, *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007 and, *mutatis mutandis*, *Novinskiy v. Russia* (dec.), no. 11982/02, 6 December 2007).

56. The Court first notes that, in his application form, the applicant submitted that he had been held in remand prison IZ – 32/1 from 26 May 1998 to 16 March 1999. In their observations the Government stated that the applicant had been held in this remand prison from 5 June 1998 to 16 March 1999, whereas from 26 May to 5 June 1998 he had been held in the temporary detention centre of the Dzerzhinsk Directorate of the Interior. The applicant made no further submissions in this regard. Accordingly, the Court will assume that the applicant's detention in remand prison IZ – 32/1 started on 5 June 1998. The Court further notes that it is not disputed between the parties that the applicant was held in remand prison IZ – 48/3 between 17 March and 28 May 1999.

57. The parties disagreed as to the specific conditions of the applicant's detention. However, there is no need for the Court to establish the truthfulness of each and every allegation, as it finds that there has been a violation of Article 3 on the basis of the facts which have been presented and which the respondent Government have failed to refute.

58. The applicant alleged that the cell population considerably exceeded the capacity for which the cells had been designed. The Government submitted that they were not in a position to provide the information about the number of inmates held at the same time as the applicant, since the relevant documents had been destroyed due to the expiry of their storage term.

59. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees and reached the conclusion that the problem was apparently of a structural nature (see, among other authorities, *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006).

60. 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 fact that the applicant was obliged to live in the same cell as so many other inmates within such a limited space was 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.

61. Therefore, there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prisons IZ – 32/1 in Nizhniy Novgorod and IZ – 48/3 in Moscow between 5 June 1998 and 28 May 1999.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE COMPLAINT CONCERNING THE GENERAL CONDITIONS OF DETENTION IN REMAND PRISONS IZ – 32/1 AND IZ – 48/3.

62. The applicant complained that he had no effective domestic remedy in respect of his complaints under Article 3 of the Convention concerning the general conditions of detention in remand prisons IZ – 32/1 and IZ – 48/3. Article 13 of the Convention reads as follows:

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

A. Admissibility

63. The Court notes that the 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.

B. Merits

64. The applicant did not make any further submissions.

65. The Government contended that the applicant had effective domestic remedies available to him and that the complaint was, therefore, manifestly ill-founded.

66. The Court reiterates that in *Benediktov v. Russia* (cited above, §§ 29-30) it found that there were no effective domestic remedies in respect of the complaint relating to overcrowding of cells. The Government submitted no evidence to enable the Court to depart from these findings in the present case.

67. Accordingly, the Court finds that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible domestic remedy in respect of the applicant's complaint concerning the general conditions of his detention in remand prisons IZ – 32/1 and IZ – 48/3.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF AN ALLEGED INFECTION WITH TUBERCULOSIS IN REMAND PRISON IZ – 32/1.

68. The applicant complained under Article 3 of the Convention that in remand prison IZ – 32/1 in Nizhniy Novgorod he had contracted tuberculosis and his health had deteriorated.

1. The parties' submissions

69. The Government submitted that the applicant had not raised the complaint before either the prosecuting authorities or the domestic courts. Having regard to the letter from the President of the Nizhniy Novgorod Regional Court of 5 August 2005 (see paragraph 46 above), they claimed that the applicant had failed to exhaust the domestic remedies available to him.

70. The Government stated that, from the results of the fluorography examinations conducted on 7 June and 1 December 1998, it followed that the applicant had not been infected with tuberculosis in remand prison IZ – 32/1, but that his previous condition had been reactivated. The Government submitted that, during his placement in remand prison IZ – 32/1, the applicant had undergone intensive treatment for tuberculosis and his state of health had been monitored at all times. However, he often refused to take the medicines prescribed for him. The Government further pointed out that the applicant's claim for damages caused by the alleged infection with tuberculosis and the deterioration of his health in remand prison IZ – 32/1 had been dismissed by domestic courts at two instances since his allegations had been unsubstantiated. Therefore, in the Government's view the complaint was manifestly ill-founded.

71. The applicant contended that he had complied with the requirement to exhaust domestic remedies. He referred to his claim for damages against remand prison IZ – 32/1 dismissed by the Nizhniy Novgorod Regional Court on 4 April 2003.

72. The applicant submitted that, before his placement in remand prison IZ – 32/1, he had never suffered from tuberculosis. He averred that the fluorography which, according to the Government, had been conducted on 7 June 1998 and showed changes in his lungs, had never taken place. This was supported by the Government's failure to submit a copy of the related medical report. He insisted that he had been admitted to remand prison IZ – 32/1 in good health and had been diagnosed with tuberculosis for the first time on 1 December 1998 after having been infected in the remand prison. The applicant further stated that he had known contra-indications to certain medication prescribed by remand prison doctors, which had not been taken into account by the latter. The applicant enclosed an undated statement by his former cellmate who submitted that, at an unspecified time before the

applicant's placement in remand prison IZ – 32/1, he had been healthy, but, at an unspecified time after the placement, he had been suffering from tuberculosis. The cellmate also stated that the applicant had never related to him the circumstances in which he had contracted tuberculosis.

2. The Court's assessment

73. The general principles are set out in paragraph 48 above.

74. The Court observes that, in contrast to the applicant's complaint about general conditions of detention (see paragraph 49 above), his complaint about the alleged infection with tuberculosis while in remand prison IZ – 32/1 did not concern a structural problem but clearly related to his personal situation. The Court considers that, in those circumstances, where the applicant was no longer held in the detention facility where damage had allegedly been caused to his health, a civil claim for damages was capable of providing redress in respect of his complaint and offered reasonable prospects of success.

75. The Court notes that on 21 January 2002 the applicant instituted civil proceedings against remand prison IZ – 32/1 claiming damages caused by the alleged infection with tuberculosis and deterioration of his health while in that prison. The claim was dismissed by the final decision of the Nizhniy Novgorod Regional Court on 4 April 2003. Accordingly, the Court finds that the applicant has complied with the requirement to exhaust domestic remedies enshrined in Article 35 § 1 of the Convention and dismisses the Government's objection.

76. As regards the substance of the complaint, the Court observes that on 7 June 1998, two days after his admittance to remand prison IZ – 32/1, the applicant underwent fluorography which showed post-specific changes in his right lung. The Court takes note of the applicant's submission that this examination never took place and of the Government's failure to submit a copy of the report. However, the results of the fluorography conducted on 7 June 1998 were referred to in the judgment of the Sovetskiy District Court of Nizhniy Novgorod of 22 August 2002. Therefore, the Court has no reason to doubt that the fluorography was indeed conducted on 7 June 1998 and that it showed the results submitted by the Government. Furthermore, from the judgment of the Sovetskiy District Court, it follows that the applicant was diagnosed with post-specific changes in his right lung as early as 1995. The Court considers the statement of the applicant's cellmate to be too vague and insufficient to corroborate the applicant's allegations. Accordingly, the Court finds that it follows from the evidence available to it that the applicant had suffered from tuberculosis before his placement in remand prison IZ – 32/1, where the illness was reactivated.

77. The Court further observes that, after the applicant had been diagnosed with tuberculosis on 1 December 1998, his state of health was monitored; he was given medication and, following the worsening of his

condition, he was placed in a specialised medical penitentiary institution for treatment. There was no evidence submitted to the Court to show that the medical assistance available to the applicant had been untimely or inadequate. The applicant's allegations that his health had deteriorated due to the actions or omissions of the administration of remand prison IZ – 32/1 were found to have been unsubstantiated by the domestic courts at two instances. Nothing has been submitted to the Court to enable it to depart from these findings. Consequently, it accepts the Government's argument that there are no grounds to hold the authorities responsible for the fact that the applicant redeveloped tuberculosis while in the detention facility.

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

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGEDLY INADEQUATE MEDICAL ASSISTANCE IN REMAND PRISON IZ – 48/3

79. The applicant complained under Article 3 of the Convention that in remand prison IZ – 48/3 in Moscow he had not been provided with adequate medical treatment.

1. The parties' submissions

80. The Government submitted that the applicant had not raised this complaint before either the prosecuting authorities or the domestic courts. They enclosed a certificate from the head of remand prison IZ – 77/3 (former IZ – 48/3) to the effect that, between 17 March and 28 May 1999, the applicant had made no complaints concerning the medical assistance in the remand prison, as well as a letter from the President of the Moscow City Court of 22 June 2005 to the effect that the applicant had not brought any claims concerning conditions of detention in remand prison IZ – 48/3. The Government claimed that the applicant had thus failed to exhaust the domestic remedies available to him.

81. The applicant disagreed. Having referred to the proceedings for damages he had brought against remand prison IZ – 32/1, he maintained that he had complied with the requirement to exhaust domestic remedies.

2. The Court's assessment

82. The general principles are set out in paragraph 48 above.

83. The Court observes that the applicant's complaint about the allegedly inadequate medical assistance in remand prison IZ – 48/3 did not concern a structural problem, but related to the applicant's personal situation. It further notes that the present application was lodged after the applicant had been transferred from the detention facility in question. In

such circumstances the applicant should have had recourse to domestic remedies capable of providing redress for the violation which had allegedly occurred, rather than to those preventing the violation. Having regard to its finding in paragraph 74 above, the Court considers that, in these circumstances, where the applicant was no longer held in the detention facility where allegedly no adequate medical assistance had been made available to him, a civil claim for damages was capable of providing redress in respect of his complaint and offered reasonable prospects of success.

84. However, the applicant did not institute proceedings for compensation for damage caused by the allegedly insufficient medical assistance in remand prison IZ – 48/3. In principle, the Court recognises the vulnerability of detainees and the difficulty which they face in pursuing complex legal proceedings. These considerations may be taken into account in the flexible approach to be adopted in such circumstances. Nevertheless, in the present case the Court finds no reason to dispense the applicant from availing himself of a domestic remedy that was available to him. The Court notes that in similar circumstances the applicant had instituted civil proceedings for damages against remand prison IZ – 32/1. The domestic courts at two instances examined his claim and reached reasoned conclusions as to its merits. The applicant did not explain why he had not brought a civil claim for damages against remand prison IZ – 48/3, and the materials of the case contain no indication that it had been impossible or even impractical (see, *mutatis mutandis*, *Slyusarev v. Russia* (dec.), no. 60333/00, 9 November 2006). Accordingly, the Court finds that the applicant failed to exhaust domestic remedies.

85. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE COMPLAINTS CONCERNING THE ALLEGED INFECTION WITH TUBERCULOSIS IN REMAND PRISON IZ – 32/1 AND THE ALLEGEDLY INADEQUATE MEDICAL ASSISTANCE IN REMAND PRISON IZ – 48/3.

86. The applicant complained that he had had no effective domestic remedy in respect of his complaints under Article 3 of the Convention concerning the alleged infection with tuberculosis in remand prison IZ – 32/1 and the failure to provide him with adequate medical assistance in remand prison IZ – 48/3.

A. Admissibility

87. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the

Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order, where there is an “arguable claim” of a violation of a substantive Convention provision (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

88. The Court notes that in paragraphs 78 and 85 above it has declared inadmissible these elements of the applicant’s complaints under Article 3 of the Convention. Accordingly, the applicant did not have an “arguable claim” of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable to this part of the application. It follows that this aspect of the applicant’s complaint under Article 13 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. The applicant complained that the domestic courts had failed to review promptly the lawfulness of his detention, in breach of Article 5 § 4 of the Convention. He further complained under Article 6 § 1 of the Convention that the first-instance court could not be considered to have been a “tribunal established by law”, since it had been composed of a professional judge and two lay assessors instead of three professional judges, which rendered his post-conviction detention unlawful. The applicant also complained that he had not been tried by a jury. He further complained that the first-instance court had been biased in that it had assessed witnesses’ statements incorrectly, having rejected those parts of them which were favourable to him. Finally, the applicant complained about the refusal of the first-instance court to call two witnesses of his choosing, in breach of Article 6 § 3 (d).

90. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter which has been brought to its attention within six months of the decision or incident which constitutes the subject-matter of the complaint. The Court notes that the final decision in the applicant’s criminal case was delivered by the Supreme Court of Russia at a hearing on 26 April 1999, the subsequent applications for supervisory review not being a remedy for the purposes of Article 35 § 1 of the Convention (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999, and *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004). The Court further notes that the applicant was present at the hearing on 26 April 1999 and that, according to him, he received a copy of the Supreme Court’s decision on 12 May 1999.

91. The Court reiterates that the first day of the six-month time-limit is considered to be the day following the final decision. The date of the final decision is the day on which the judgment is rendered orally in public, or, where judgment has not been publicly pronounced, the day on which the

applicant or his representative are informed of it, whichever is earlier (see *Loveridge v. The United Kingdom* (dec.), no. 39641/98, 23 October 2001). Where, pursuant to domestic law and practice, the applicant is entitled to be served automatically with a written copy of the judgment, the time starts to run on the date the judgment is received (see *Worm v. Austria*, § 33, 29 August 1997, *Reports of Judgments and Decisions* 1997-V).

92. The Court observes that there was no obligation under domestic law or practice requiring the Supreme Court's judgment to be served on the applicant by the court (see *Worm*, cited above). The judgment did not involve complex or lengthy reasoning and the applicant did not contend that he had not been aware, on 26 April 1999, of the content of the court's decision delivered at the oral hearing on that date.

93. The Court thus finds that the date of the final domestic decision for the purposes of Article 35 § 1 of the Convention is 26 April 1999, whereas the application was lodged with the Court on 9 November 1999. Accordingly, the Court considers that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of the Convention, as the complaint was lodged outside the prescribed six-month period.

94. It follows that this part of the application must be rejected for having been being introduced outside the six-month time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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.”

96. The Court notes that the applicant made no claims for just satisfaction. In these circumstances, the Court makes no award under Article 41 of the Convention (see *Timofeyev v. Russia*, no. 58263/00, §§ 51–52, 23 October 2003).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Articles 3 and 13 of the Convention concerning the general conditions of detention in remand prisons IZ – 32/1 in Nizhniy Novgorod and IZ – 48/3 in Moscow, and inadmissible the remainder of the application;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the general conditions of detention in both these remand prisons;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective domestic remedy in respect of the applicant's complaints concerning the general conditions of detention in these remand prisons.

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President