



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

FIRST SECTION

**CASE OF MALTABAR AND MALTABAR v. RUSSIA**

*(Application no. 6954/02)*

JUDGMENT

STRASBOURG

29 January 2009

**FINAL**

***29/04/2009***

*This judgment may be subject to editorial revision.*



**In the case of Maltabar and Maltabar v. Russia,**

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 January 2009,

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

## PROCEDURE

1. The case originated in an application (no. 6954/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Aleksey Aleksandrovich Maltabar and Mr Anton Aleksandrovich Maltabar (“the applicants”), on 30 December 2001.

2. The applicants were represented before the Court by Mrs N.S. Maltabar, a lawyer practising in Tver. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that the conditions of their detention and transportation pending criminal proceedings had been appalling.

4. By a decision of 28 June 2007, the Court declared the application partly admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1969 and live in the town of Tver.

### **A. Criminal proceedings against the applicants**

7. On an unspecified date the authorities brought proceedings against the applicants on suspicion of fraud.

8. On 17 April 2001 the Moskovskiy District Court of the town of Tver tried and convicted both applicants on a charge of attempted large-scale fraud. Both applicants were also tried on a charge of forgery. On the latter charge, the court acquitted the first applicant and found the second applicant guilty. They were sentenced to three years and six months and four years and six months' imprisonment respectively.

9. The applicants appealed against the judgment. Their appeal was examined and dismissed by the Tver Regional Court on 3 July 2001.

10. On 18 December 2002 the Deputy President of the Supreme Court of Russia applied for supervisory review of the judgment of 17 April 2001, requesting a milder sentence.

11. By decision of 20 January 2003 the Supreme Court examined and allowed the arguments set out in the special appeal. It reduced the applicants' sentences to two years and two years and six months' imprisonment respectively and ordered that the first applicant be released accordingly.

12. By decision of 11 March 2003 the Torzhokskiy Town Court released the second applicant on parole before the expiry of his prison sentence.

### **B. Conditions of the applicants' pre-trial detention**

13. On 15 December 2000 the applicants were arrested and placed in detention.

#### *1. The detention in a local police station*

14. The applicants specified that between 11 a.m. on 15 December and 3 a.m. on 16 December 2000 they had first been held in a local police station before being transferred to IZ-69/1. According to both applicants, they were refused food and an opportunity to sleep. They did not make any allegations concerning the overcrowding of cells in that facility.

15. Both parties agreed that the applicants had been transferred to pre-trial detention centre IZ-69/1 on 16 December 2000 and that they had first been held in the local police station.

#### *2. The detention in pre-trial detention centre IZ-69/1*

16. The applicants arrived at the pre-trial detention centre IZ-69/1 in the town of Tver on 16 December 2000. The first applicant remained there until 24 July 2001 and the second applicant until 31 July 2001.

**(a) The first applicant**

17. According to the first applicant, between 16 and 19 December 2000 he had been detained in cell no. 42.

18. On 20 December 2000 he was transferred to cell no. 60. Between 30 December 2000 and 23 January 2001 he was held in cell no. 42. From 23 January to 11 March 2001 he was detained in cell no. 54. For eleven days between 11 and 22 March 2001 he was detained in a punishment cell. On 22 March 2001 he was transferred back to cell no. 54 and remained there until 17 April 2001. Between 17 April and 24 July 2001 he was detained in cell no. 23. On 24 July 2001 the first applicant left facility no. IZ-69/1 for another penitentiary establishment to serve his prison sentence.

19. The Government submitted that the dates of detention in the various cells in facility no. IZ-69/1 given by the first applicant were erroneous. The first applicant had been placed in cell no. 42 on 15 December and had remained there for only one day. He was then transferred to cell no. 60, where he stayed until 19 December 2000. Between 20 and 24 December 2000 the first applicant was detained in cell no. 42. He was transferred to cell no. 54 on 25 December 2000 and remained there until 22 January 2001. Between 23 January and 10 March 2001 the first applicant was held in cell no. 120. From 11 to 18 March 2001 he was held in cell no. 54. On 19 March 2001 the first applicant was transferred to cell no. 23, where he remained until he left facility no. IZ-69/1 on 24 July 2001.

20. From the above, it follows that the parties agreed that the first applicant has been detained in cells no. 23, 42, 54 and 60. In addition, the first applicant maintained that he had spent 11 days in a punishment cell and the Government maintained that he had spent some 45 days in cell no. 120.

*(i) Conditions of detention in cell no. 23*

21. The applicant submitted that cell no. 23 measured 30 square metres. It had twenty-five sleeping places and accommodated between eighty and ninety detainees.

22. The Government submitted that the cell measured 45.3 square metres and had eleven sleeping places. It had a system of artificial and natural ventilation and was lit by four 40-watt daylight lamps. The prison administration submitted a letter in which it certified that there had been eleven inmates in the cell on 17 April 2001.

*(ii) Conditions of detention in cell no. 42*

23. According to the first applicant, the cell measured 24 square metres, had nineteen bunk beds and was occupied by between 45 and 50 detainees at all times during his stay there.

24. According to the Government, the cell measured 31.9 square metres, had eight bunk beds and was lit by four 80-watt day lamps. The prison administration submitted a letter in which it certified that there had been seven inmates in the cell on 16 December 2000. The cell had both natural and artificial ventilation systems.

25. According to the prison administration, on 25 December 2000, the date of the first applicant's departure from cell no. 42, there had been eight inmates in the cell.

*(iii) Conditions of detention in cell no. 54*

26. According to the first applicant, cell no. 54 measured 16 square metres, had nine beds and accommodated between ten and twelve detainees.

27. The Government submitted that the cell in question measured 27.6 square metres and had seven sleeping places. It had a system of natural and artificial ventilation and was lit by four 40-watt day lamps. The prison administration submitted a letter in which it certified that there had been seven inmates in the cell on 23 January 2001 and that on 19 March 2001, the date of the first applicant's departure from cell no. 54, there had been six inmates in the cell.

*(iv) Conditions of detention in cell no. 60*

28. According to the first applicant, cell no. 60 measured 16 square meters, with six beds, and had held between twelve and fourteen infected detainees at the time of the applicant's detention. It had a constantly high level of humidity as it was situated right above the prison baths. Also, every other night the only toilet in the cell was decontaminated with half a bucket of chlorine-based reagent. Since the toilet flush was inactive during the night, the chlorine-based reagent combined with the humidity and urine caused corrosive damage to detainees' lungs and eyes.

29. According to the Government, the cell in question measured 22.4 square metres, had both artificial and natural ventilation systems and five sleeping places and was lit by four 80-watt day lamps. The prison administration submitted a letter in which it certified that there had been three inmates in the cell on 20 December 2000.

*(v) Conditions of detention in punishment cell*

30. The first applicant submitted that the punishment cell measured 4 square metres, with only one sleeping place and eleven inmates. The applicant submitted that there had no toilet in the cell and that detainees had used a bucket, which had been emptied once a day but had never been washed or decontaminated.

31. The Government submitted that this cell measured 8.8 square metres, had two sleeping places, both natural and artificial ventilation, and was lit by one 150-watt bulb. The prison administration submitted a letter in

which it certified that on 11 March 2001 there had been two inmates in the cell.

**(b) The second applicant**

32. Between 16 December 2000 and 17 April 2001 the second applicant was detained first in cell no. 102 and then in no. 84. During the period between 17 April and 30 July 2001 he was held in cell no. 21. For fourteen days in May 2001 the second applicant was detained in the punishment cell.

33. The Government submitted that on 16 December 2000 the second applicant had been detained in cell no. 102. As of 28 December 2000 he was placed in cell no. 84. On 17 April 2000 he was transferred to cell no. 21. As of 17 May 2001 he was transferred to cell no. 117. From 24 May to 31 July 2001 he was detained in cell no. 21.

34. From the above it follows that the parties agree that the second applicant spent some time in cells nos. 21, 84 and 102. In addition, the second applicant maintains that he had spent 14 days in a punishment cell and the Government maintained that he had spent some seven days in cell no. 117.

*(i) Conditions of detention in cell no. 21*

35. The second applicant submitted that cell no. 21 measured 17 square metres, had twelve sleeping places and was occupied by more than 43 inmates.

36. The Government submitted that the same cell measured 20.7 square metres, had five sleeping places, artificial and natural ventilation systems, and was lit by two 150-watt bulbs. On 17 April 2001 it had accommodated four inmates. The prison administration submitted a letter in which it certified that on 24 May 2001 there had been four inmates in the cell.

*(ii) Conditions of detention in cells nos. 102 and 84*

37. The second applicant submitted that cells no. 102 and no. 84 measured 7.5 square metres, had four bunk beds and accommodated more than six detainees.

38. The Government submitted that cell no. 102 measured 9 square metres and had two sleeping places. Cell no. 84 measured 9.8 square metres and had two bunk beds. Both cells had natural and artificial ventilation and were lit by two 40-watt day lamps. On 16 December 2000 there had been two inmates in cell no. 102. The prison administration submitted a letter in which it certified that on 28 December 2000 there had been two inmates in cell no. 84.

*(iii) Conditions of detention in the punishment cell*

39. According to the second applicant, he had been detained for fourteen days in May 2001 in a punishment cell measuring approximately 4 square metres, with one bed and twelve detainees.

40. According to the Government, the cell no. 117 measured 8.2 square metres, had two sleeping places and, according to the prison administration, on 17 May 2001 had contained two inmates.

**(a) General information on establishment IZ-69/1**

41. The applicants submitted that they had taken walks in the detention centre courtyard every day. The walks had lasted between ten minutes and one hour depending on the guards' mood. The courtyard was exposed to the elements and had no roof, and in bad weather the walks usually lasted at least an hour.

42. The Government did not comment on these allegations.

43. According to the applicants, detainees could not take a shower more than twice or three times a month and the water in the shower was barely warm.

44. The Government submitted that the applicants had been allowed to take a shower once a week for at least fifteen minutes.

45. The applicants also submitted that all the cells they had described lacked proper ventilation systems and were very hot in summer and cold in winter.

46. According to the Government, all the cells referred to above had both artificial and natural ventilation systems. The windows in all of the applicants' cells were double glazed and had a window leaf for ventilation. Furthermore, the heating system in the prison was fully operational and the temperature in the cells was within the permissible range (+20° C in winter and +24° C in summer).

47. According to the applicants, all the cells were infected with lice, fleas and bugs, none of the toilets in the cells offered detainees any privacy and the authorities had failed to provide them with fresh linen, blankets or crockery. They submitted three photographs of a cell in the detention centre in question. None of the beds in the photographs had any bed linen on them.

48. The Government submitted that both applicants had been provided with an individual sleeping place and had a mattress, a pillow with two pillowcases, two blankets, two sheets and three towels. In addition, they were given a mug, a spoon and a bowl. The bed linen was changed once a week after the inmates had taken a shower. There was a brick wall 1.20 metres high separating the toilet area from the living area in all the cells. The authorities submitted plans of the interior of all the cells and their dimensions. They further submitted that during the relevant period they had carried out disinfection works, including fumigating and disinfecting each cell twice a month.

49. The applicants alleged that the catering had been extremely poor.

50. The Government submitted that inmates were given food three times a day, in accordance with the relevant norms.

51. The applicants further submitted that all the cells had been heavily overcrowded and that during the preliminary stage of the proceedings visits to the prison by an investigator had coincided with their turn to sleep and their lunchtime, so that they were effectively deprived of sleep and food. The detainees had to sleep in turns and had no way of washing themselves or shaving.

52. The Government submitted that the cells in question had not been overcrowded. They referred to statements of the prison authority in this regard (see, for more details, the sections below on specific cells).

53. The Government submitted in respect of the period between 15 December 2000 and 31 July 2001 that the number of bunk beds in the establishment had remained constant, that there had been 536 sleeping places in total, that 127 cells (nos. 1-14, 15-25, 25a, 26-34, 34a, 35-57, 63-110, 112-20, 124-34, with a capacity ranging from 2 to 14 sleeping places) had been used in that prison, and that the daily total number of detainees during that period had been on average around 2,300 (ranging from 1,423 on 28 December 2000 to 2,589 on 27 April 2001).

54. The Government submitted detailed plans and dimensions in respect of each of the cells mentioned by the applicants.

### *3. The conditions of transportation and detention in the courthouse*

55. The applicants submitted that for attendance at court hearings they had usually been taken out of the detention centre early in the morning, at around 5 a.m., and were not brought back until 8.30 or 9 p.m. While they were being moved, the applicants were kept either in a small space measuring 0.5 m x 0.65 m along with another detainee, or in a bigger space measuring 2 m x 0.65 m containing between seven and twelve detainees. No warm food or toilet facilities were provided during transport or in the detention cells of the court. While waiting for a hearing, between court sessions or while waiting for other detainees after the hearing, each of the applicants had been kept for hours in a small unventilated cell in the courthouse measuring approximately 1.5 m x 1.5 m, together with up to two other prisoners.

56. According to the applicants, they were transported to the courts on eleven occasions each: 29 December 2000, 16 and 24, January, 8 February, 9, 10, 11, 12, 13 and 17 April, and 3 July 2001. They also submitted that the prison vans had been unsuitable for transportation of prisoners because of the lack of artificial and natural ventilation or toilet facilities and overcrowding. They also pointed out that the actual distance travelled had been longer because the prison van had had both to deliver detainees to and collect them from five different regional courts around the city. They

submitted that it had taken six hours: three for delivery and three for collection and the return journey.

57. The Government submitted that the inmates had breakfast before going to court, were returned to the detention centre for lunch and had dinner after the court sessions. The Government submitted a statement by Mr I. B., an official in charge of transportation of detainees, dated 9 August 2007, in which he certified that his convoy teams had never exceeded the limits of transport capacity of the prison vehicles. The Government also submitted drawings of the interior of such vehicles. They could not provide more detailed information on the exact number of transported detainees as the relevant archived documents had been destroyed on 11 August 2005 on the expiry of the storage time-limit.

58. The Government submitted that the first applicant had made ten return journeys on the following dates: 29 December 2000 (the District Court), 24 January 2001 (the District Court), 8 February 2001 (the District Court), 9, 10, 11, 12 and 13 April 2001 (the District Court), 17 April 2001 (the District Court), and 3 July 2001 (the Regional Court). The second applicant made nine return journeys on the following dates: 29 December 2000 (the District Court), 24 January 2001 (the District Court), 9, 10, 11, 12 and 13 April 2001 (the District Court), 17 April 2001 (the District Court), and 3 July 2001 (the Regional Court).

59. The distance between facility no. IZ-69/1 and the District and Regional Courts was three and four kilometres respectively.

60. As regards the detention cells in the District Court, the Government submitted that there were six of them, each designed for two persons, containing benches, artificial lighting, natural ventilation and measuring 5.26, 3.56, 3.86, 3.73, 3.71, 3.8 square metres respectively. The detainees were allowed to go to the WC room upon request.

#### *4. Statements by various officials and human rights NGO reports*

61. The applicants referred to reports on human rights in Russia by the Moscow Helsinki Group NGO of 1999, 2000 and 2001. A 2000 report on the events of 1999 stated that the situation in pre-trial detention centres in Russia was very bad overall, as the detention centres contained four times more detainees than the number of places available (2,765 detainees and 680 places). The 2001 report on the events of 2000 mentioned the Tver Region as being affected by the issue of overcrowded pre-trial detention centres and complaints about deficient catering. The 2002 report on the events of 2001 referred to dozens of former inmates who spoke of arbitrariness and “lawlessness” in the detention centre in question.

62. According to the applicant, the newspaper *Nezavisimaya gazeta* published an interview given by a number of officials, including Minister of Justice Yu. Chayka, his deputy Yu. Kalinin and the head of the Department of Execution of Penalties of the Ministry of Justice, during a press

conference in the Butyrskaya pre-trial detention centre. The applicant claimed that they had admitted that the numbers of inmates in Russian SIZOs and prisons exceeded capacity by 52.2%, the most difficult situation being in the cities of Moscow and St Petersburg, the towns of Tver and Tula and the republic of Chuvashiya.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### **A. Rules on the detention regime in pre-trial detention centres (as approved by Decree no. 148 of the Ministry of Justice of 12 May 2000)**

63. Rule 42 provided that all inmates, whether suspects or defendants, had to be given, among other things: a sleeping place; bedding consisting of one mattress, one pillow and one blanket; bed linen consisting of two sheets and a pillowcase; a towel; crockery and cutlery, including a bowl, a mug and a spoon; and seasonal clothes (if the inmate had no clothes of his own).

64. Rule 44 stated that cells in pre-trial detention centres must be equipped, among other things, with a table and benches with enough seating for the number of inmates, sanitation facilities, tap water, day lamps and night-time lighting.

65. Rule 46 provided that prisoners were to receive food three times a day, with warm meals provided in accordance with the norms laid down by the Government of Russia.

66. Under Rule 47, inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh bed linen after they had taken a shower.

67. Rule 143 provided that an inmate could receive visits from his lawyer, family members or other persons, subject to written permission from an investigator or an investigative body, the number of visits being limited to two per month.

### **B. Order no. 7 of the Federal Service for the Execution of Sentences dated 31 January 2005**

68. Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 deals with implementation of the “Pre-trial detention centres 2006” programme.

69. The programme is aimed at improving the functioning of pre-trial detention centres so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in pre-trial detention centres and seeks to reduce and stabilise the number of detainees in order to resolve the problem.

70. The programme mentions pre-trial detention centre IZ-69/1 amongst the ones affected. In particular, the programme states that, on 1 July 2004, the detention centre had a capacity of 1,160 inmates and in reality accommodated 1,587 detainees, in other words, 36.8% more than the permitted number.

### III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

71. The relevant extracts from the General Reports of the European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) read as follows:

#### **Extracts from the 2nd General Report [CPT/Inf (92) 3]**

“46. Overcrowding is an issue of direct relevance to the CPT’s mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ...”

**Extracts from the 7th General Report [CPT/Inf (97) 10]**

“13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee’s mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ...”

**Extracts from the 11th General Report [CPT/Inf (2001) 16]**

“28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ...”

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

72. In their observations on the merits of the case the Government argued that the complaint about the conditions of transportation was inadmissible on grounds of the applicant's failure to exhaust domestic remedies in that connection.

73. The Court observes that a similar argument has already been examined and rejected by it in its admissibility decision of 28 June 2007.

74. The Court would again underline that the Government merely noted that the applicants had not lodged any complaints with the domestic authorities concerning the conditions of transportation. The Government neither specified what type of petition would, in their view, have been an effective remedy nor provided any further information as to how such a petition could have prevented the alleged violation or its continuation or provided the applicants with adequate redress. In the absence of such evidence, the Court finds that the Government have not substantiated their claim that the remedy the applicants had allegedly failed to exhaust was an effective one (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004; *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003; and *Maltabar and Maltabar v. Russia* (dec.), no. 6954/02, 28 June 2007).

75. The Court rejects the Government's preliminary objection accordingly.

### II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. Relying on Article 3 of the Convention, the applicants complained of the appalling conditions of their detention pending trial. They also specifically mentioned the allegedly deplorable conditions of their transportation to and from court hearings. Article 3 provides as follows:

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

#### A. The parties' submissions

77. The Government submitted that the applicants' conditions of detention and transportation had been satisfactory. They commented on the applicants' factual allegations (see the statement of facts above) and denied any issues under Article 3.

78. The applicants disagreed and maintained their initial position. They referred to human rights reports of 1999, 2000 and 2001 by the Moscow Helsinki Group, to the order of the Federal Service of Execution of Sentences and to statements made by various officials which, in their view, confirmed their allegations. They also argued that the data and figures provided by the Government were erroneous.

## **B. The Court's assessment**

79. The Court notes that the question of the applicants' compliance with the six-month rule in respect of the events in the local police station on 15 December 2000 arises.

80. The Court observes that it has previously held that it cannot set aside the application of the six-month rule solely because a government has not made a preliminary objection to that effect (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I and, more recently, *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-...).

81. Thus, the Court finds it necessary to examine whether the applicants' allegations in respect of their stay in the local police station on 15 December 2000 were lodged in time. The Court will then turn to the complaints about the conditions of detention in facility no. IZ-69/1 and the conditions of the applicants' transportation to and from court hearings.

### *1. The applicants' compliance with the six-month time-limit*

82. The applicants' detention in the local police station ended on 16 December 2000, whereas the application was not lodged with the Court until 30 December 2001, which is more than six months later (see, *inter alia*, *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

83. Having regard to the difference in nature of the applicants' allegations in respect of the local police station, which concerned the deprivation of food and sleep, and their complaints in respect of facility no. IZ-69/1, the bulk of which dealt with the overcrowding in cells, the Court does not find any special circumstances which would enable it to construe the detention in the local police station and their subsequent detention in facility no. IZ-69/1 as a "continuing situation" which could bring the events complained of by the applicants within the Court's competence (see, by contrast, *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; and *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008).

84. It follows that the complaint in respect of the local police station was introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

*2. The conditions of detention in pre-trial detention centre IZ-69/1*

85. The Court would note that the parties disagree on just about every aspect of the applicants' conditions of detention, including the dates of their detention in various cells of the detention centre, the size of the cells, the number of beds, and so on. Most importantly, the Government deny that the cells in question were overcrowded or cramped, and have submitted official certificates and drawings of the cells provided by the authorities of the detention centre in question to that effect, whereas the applicants insist on their initial account of events.

86. Having observed the documents submitted by the parties, the Court finds that it need not resolve the parties' disagreement on all of the aforementioned aspects as the case file contains sufficient documentary evidence to confirm the applicants' allegations of severe overcrowding in pre-trial detention centre IZ-69/1, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

87. Firstly, the Court would point out a very obvious discrepancy between the information submitted by the prison authority and the Government's position expressed in their observations on the merits of the case denying any overcrowding in that prison. In fact, the prison authority certified that the applicants' cells had not been overcrowded on certain specific days, but there is nothing in the statements by the prison authority to confirm the lack of overcrowding in respect of each day of the applicants' detention in facility no. IZ-69/1. Thus, the Government's reference to the certificates submitted by the prison administration, whilst informative, is not entirely conclusive.

88. Secondly, and most importantly, the Court notes that from the general information on the functioning of facility no. IZ-69/1 at the relevant time (see paragraph 53) it cannot avoid the impression that the pre-trial detention centre was severely overcrowded. If the data submitted by the prison authority is correct and at the time the centre did indeed have a total of 536 sleeping places in 127 cells for an average daily number of detainees of around 2,300, then the only conclusion to be drawn from this information is that the centre contained well over four times more inmates than the number it was designed for. In such circumstances, the applicants, who spent around seven months there and frequently changed cells, could not have remained unaffected by the problem. In the light of this finding, the Court – even proceeding on the assumption that the information on the dimensions and capacity of the cells in question submitted by the Government was correct – cannot but accept the applicants' allegations concerning the severe overcrowding of the cells as, depending on the exact dimensions of the cell in question, the detainees would have had around one square metre of space per person.

89. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see

*Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

90. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicants, the Court finds that the fact that the applicants were obliged to live, sleep and use the toilet in the same cell as so many other inmates for over seven months was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in them feelings of fear, anguish and inferiority capable of humiliating and debasing them.

91. There has therefore been a violation of Article 3 of the Convention because the applicants were subjected to inhuman treatment on account of the conditions of their detention from 16 December 2000 to 24 and 31 July 2001 (for the first and second applicant respectively) in facility no. IZ-69/1.

### 3. *The conditions of transportation*

92. The Court notes that the parties submitted different accounts of the conditions of the applicants' transport to the courthouse and their stay there. In particular, they disagreed on the number, duration and dates of these journeys, the passenger capacity of the prison vans, the number of prisoners travelling with the applicants, the dimensions of the cells in the courthouses and the number of detainees kept there at the same time as the applicants (see paragraphs 55-60).

93. Nevertheless, the parties' submissions on the number of journeys in the prison van did not diverge substantially. The applicants stated that they had both travelled on eleven occasions (see paragraph 56), whereas according to the documents submitted by the Government the first and second applicants travelled ten and nine times respectively (see paragraph 58).

94. The Court has previously found a violation of Article 3 of the Convention in a Russian case where the applicant was transported in an overcrowded prison van (see *Khudoyorov*, cited above, §§ 112-20); however, the applicant in that case was transported in the van no fewer than 200 times in four years of detention. In the instant case the applicants were taken to various courts eleven times at the most, with the bulk of such trips taking place only once or twice a month.

95. Furthermore, in the present case it cannot be established “beyond reasonable doubt” that the ventilation, lighting or sanitary conditions in the court cells or prison vans, the overall daily duration of transportation and the catering arrangements were unacceptable from the standpoint of Article 3; nor is it possible to contest the information produced by the Government with respect to access to toilet facilities (see paragraphs 57 and 60).

96. The Court reiterates that it must be satisfied, on the basis of the materials before it, that the conditions of the applicants’ detention constituted treatment which exceeded the minimum threshold for Article 3 of the Convention to apply. In that connection, it notes that the applicants’ allegations about the overcrowding of prison vans and court cells have not been sufficiently substantiated. In fact, nothing in the case file or the documents submitted by the parties confirms them either in whole or in part. The applicants neither raised their grievances in this respect before any of the competent domestic authorities, including the prison administration, so as to be able to furnish the Court with their answers in this respect (*ibid.*), nor submitted statements or the names of their fellow inmates who could confirm their allegations (compare *Starokadomskiy v. Russia*, no. 42239/02, § 56, 31 July 2008, and *Vlasov v. Russia*, no. 78146/01, § 67, 12 June 2008). Thus, the crucial evidence which could have supported their claims is missing. Furthermore, the Court has no reason to doubt the Government’s intentions in so far as they did not furnish it with data concerning the number of detainees transported with the applicants during the relevant period of time. The archived documents containing that information were destroyed due to the expiry of the storage time-limits on 11 August 2005, that is, a few months before 4 November 2005, which is the date on which the case was communicated to the respondent Government. Thus, the Court does not find it necessary to draw any negative inferences from their conduct. It should also be noted that the Government and the relevant prison authority consistently denied all of the applicants’ factual allegations in this respect and seem to have provided the Court with all information that remained available, such as pictures of the inside and outside of prison vans, dimensions of the court cells, dates of journeys and statements of participating officials (see paragraphs 57-60).

97. Given the above considerations, the Court concludes that it has not been established “beyond reasonable doubt” that the applicants endured any distress and hardship during their transportation to the District and Regional Court and their detention in the courthouse premises capable of attaining the minimum level of severity sufficient to bring the complaint within the scope of Article 3 of the Convention.

98. Accordingly, there has been no violation of Article 3 of the Convention in this respect.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicants claimed 66,000 and 33,000 euros (EUR) respectively in respect of non-pecuniary damage.

101. The Government considered the applicants’ claims unsubstantiated and excessive.

102. Making its assessment on an equitable basis, the Court awards the applicants EUR 3,000 each under this head, plus any tax that may be chargeable.

#### B. Default interest

103. 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. *Dismisses* the Government’s preliminary objection;
2. *Declares* the complaint concerning the events in the local police station on 15 December 2000 inadmissible on account of the applicants’ failure to comply with the six-month rule;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the appalling conditions of the applicants’ detention in facility no. IZ-69/1 between 16 December 2000 and late July 2001;
4. *Holds* that there has been no violation of Article 3 of the Convention on account of the conditions of the applicants’ transportation to and from the courthouse pending the criminal proceedings against them;

5. *Holds*

(a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

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

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President