



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

FIRST SECTION

CASE OF MUKHUTDINOV v. RUSSIA

(Application no. 13173/02)

JUDGMENT

STRASBOURG

10 June 2010

FINAL

10/09/2010

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

In the case of Mukhutdinov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 13173/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Albert Narikhmanovich Mukhutdinov (“the applicant”), on 26 June 2000.

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

3. The applicant complained about the outcome of the criminal case against him and his inability to take part in the supervisory-review hearing. The applicant alleged that the conditions of his detention in various detention facilities pending criminal proceedings from September 1998 to January 2002 had been appalling. He also alleged that the prison authorities had restricted his communication with the Court and that the domestic authorities had denied him an opportunity to participate in the civil proceedings brought against him by the victims. In his letter of 25 April 2006 the applicant also complained about the allegedly unlawful composition of the trial court

4. On 4 November 2005 the President of the First Section decided to communicate to the Government the complaints concerning the conditions of the applicant's detention, his inability to take part in the proceedings before the Supreme Court on 24 October 2001 and the alleged unfairness of the civil proceedings for damages brought against him by the victims. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lived in the town of Kazan of the Republic of Tatarstan.

6. The applicant is currently serving his sentence of imprisonment in penitentiary facility ZhKh-385/5 in the Republic of Mordoviya.

A. Criminal proceedings against the applicant

7. On 29 August 1998 the applicant was detained on suspicion of having committed a number of serious crimes.

8. By a judgment of 11 June 1999 the Supreme Court of the Republic of Tatarstan, consisting of two lay assessors and a professional judge, convicted the applicant of murder, affray, abuse of office, a traffic offence and illegal use of firearms. The court sentenced the applicant to twenty-one years of imprisonment. The conviction was based on various items of evidence including testimony from a number of witnesses and expert examinations. It does not appear that the applicant challenged the participation of the two lay assessors sitting in the trial court in his case.

9. The applicant appealed against the judgment, having maintained that the proceedings had been unfair and that he had not been guilty of the crimes in question. The applicant did not challenge the participation of the lay assessors.

10. On 18 January 2000 the Supreme Court of Russia examined and rejected appeals lodged by the applicant and his counsel against the judgment of 11 June 1999. On the same day the judgment came into force.

11. On 21 September 2001 the Deputy Prosecutor General lodged a special appeal with the Presidium of the Supreme Court. In the appeal he argued that the lower courts had erred in the application of the domestic law and invited the Presidium of the Supreme Court to reduce the applicant's overall sentence of imprisonment.

12. On 24 October 2001 the Presidium of the Supreme Court of Russia examined the Deputy Prosecutor's special appeal and reopened the applicant's criminal case by way of supervisory review. Having examined the case, the Supreme Court on the same date upheld the conviction, but reduced the applicant's sentence by one year.

13. The applicant was not notified of that hearing or given an opportunity to participate.

14. The applicant was notified about the decision of 24 October 2001 by letter of 1 November 2001.

B. Conditions of the applicant's detention

15. In his application form the applicant submitted that he had been detained in pre-trial detention facilities IZ-16/1 and IZ-16/2 in the town of Kazan. Thereafter he was transferred to remand prison IZ-77/3 in Moscow and remained there until February 2000. After his criminal case had been heard on appeal by the Supreme Court, the applicant was transferred through prisons situated in Kazan, Ekaterinburg, and Krasnoyarsk to penitentiary establishment UK-272/3 in Irkutsk.

16. The applicant submitted in respect of the above-mentioned detention facilities that the conditions had been appalling, that cells had been overcrowded and that there had been a lack of fresh air and sleeping space.

17. The Government submitted that from 9 to 24 September 1998, 5 October to 29 November 1998, 29 January to 5 September 1999, as well as from 8 to 16 February 2000, the applicant had been held in pre-trial detention centre IZ-16/2 situated in the town of Kazan. From 28 December 1998 to 29 January 1999 he was detained in pre-trial detention centre IZ-16/1, also located in the town of Kazan. Between 7 September 1999 and 7 February 2000, the applicant was held in IZ-77/3 in the city of Moscow. From 18 February to 1 March 2000 the applicant was detained in pre-trial detention centre IZ-66/1 in the town of Ekaterinburg. On 5 March 2000 the applicant was held in pre-trial detention centre IZ-24/1 in the town of Krasnoyarsk. Between 14 March 2000 and 16 January 2002 the applicant was detained in penitentiary establishment UK-272/3 located in the town of Irkutsk. Since 16 January 2002 the applicant has been serving his sentence of imprisonment in penitentiary establishment ZhKh-385/5 in the Republic of Mordoviya.

18. The applicant essentially did not contest these dates and locations.

1. Pre-trial detention centre IZ-16/2

19. The Government submitted the following information in respect of pre-trial detention centre IZ-16/2 in the Republic of Tatarstan. The applicant was held in cell no. 60 measuring 23 square metres and containing six sleeping places; cell no. 4/3 measuring 7.8 square metres and containing two sleeping places; cell no. 13 measuring 19.9 square metres and containing six sleeping places; cell no. 2/4 measuring 7.8 square metres and having two sleeping places; cell no. 52 measuring 24.9 square metres and containing six places. The Government did not specify the dates on which the applicant had been held in these cells.

20. The applicant did not contest this description, but submitted that the facility was heavily overcrowded.

2. Pre-trial detention centre IZ-16/1

21. As regards pre-trial detention centre IZ-16/1 located in the Republic of Tatarstan, the Government submitted that the applicant had been held in cell no. 125 measuring 39.6 square metres and containing ten sleeping places.

22. According to the applicant, the cell had twenty sleeping places for thirty-five inmates.

3. Pre-trial detention centre IZ-77/3

23. As to pre-trial detention centre IZ-77/3 in the city of Moscow, the Government submitted that the applicant had been detained in cells no. 508 and 525, each measuring 32 square metres and designed to contain thirty-two sleeping places.

24. The applicant agreed with this description, having argued that it only confirmed his allegations.

4. Pre-trial detention centre IZ-66/1

25. The Government submitted in respect of pre-trial detention centre IZ-66/1 in the town of Sverdlovsk that the applicant was held in cell no. 152 measuring 29 square metres and containing twelve sleeping places; cell no. 704 measuring 16.6 square metres and containing four sleeping places; cell no. 711 measuring 19 square metres and containing six sleeping places; and cell no. 710 measuring 17 square metres and containing four sleeping places.

26. According to the applicant, the Government's data relating to the number of inmates in the cells was wrong in that the cells had usually contained three to four times more people than there were sleeping places.

5. Pre-trial detention centre IZ-24/1

27. The Government submitted that in IZ-24/1 in the town of Krasnoyarsk the applicant had been held in cell no. 22 designed to contain 28 sleeping places.

28. The applicant submitted that in cell no. 22 there had been 40 inmates.

6. Penitentiary establishment UK-272/3

29. The Government submitted that in UK-272/3 in the town of Irkutsk the applicant had been part of team no. 10 and had been held in a cell measuring 46 square metres and containing up to thirteen persons.

30. The Government submitted a certificate dated 23 September 2000 and issued by the prison administration, according to which the housing capacity of the facility amounted to 1,252 inmates. At the same time, the

certificate stated that there were 1,375 inmates in the prison grouped into ten teams on that date.

31. The applicant disagreed with the Government's calculations and submitted that the cell had contained at least twenty-eight persons. He further argued that the overcrowding of the cell in question had been obvious, since the documents submitted by the Government indicated ten teams in UK-272/3 for an overall number of 1,357 inmates. In the applicant's view, on the assumption that all teams were of the same size, the figure showed that there had been around 137 persons per team.

7. General comments of the parties

32. The Government argued that the conditions of the applicant's detention had been satisfactory and that the applicant, as a former law-enforcement officer, had been kept in special cells throughout his detention on remand. At the same time, they submitted that the original documentation in this connection had been destroyed owing to the expiry of time-limits for storage in August 2004.

33. The Government relied on the statements of prison officials P, B, Pe and K in respect of IZ-16/2, prison officials Sh and T in respect of IZ-16/1 and prison officials B, Ya, O, G, Ba and Yash in respect of IZ-66/1, confirming that the applicant's cells during his stay there had not been overcrowded.

34. The applicant disagreed and submitted that all the facilities mentioned had been seriously overcrowded during his stay there. He also disagreed with the Government's allegation that he had been kept in special cells for former law-enforcement officials throughout his detention on remand. He provided the Court with the supporting hand-written statements of the following persons who had been detained along with him.

35. On 3 April 2006 Mr S.N. gave a statement, in which he confirmed that prisons in Irkutsk (in particular, UK-272/3 in November-December 1998), Astrakhan, Volgograd, Perm, Vologda, Ekaterinburg (IZ-66/1) and Novosibirsk were all overcrowded.

36. On 3 April 2006 Mr U.K. gave a statement, in which he confirmed that the pre-trial detention centre in Ekaterinburg (IZ-66/1) had been overcrowded and that the inmates had to sleep taking turns.

37. The applicant also submitted that the following persons could confirm his submissions about UK-272/3: Mr I.S., Mr D.T., Mr A.S., Mr M.M., Mr S.K., Mr V.Kh., Mr N.B. and Mr N.R.

C. Civil case of the victims against the applicant

38. It appears that on 14 December 2000 S. and Kh., the victims in the applicant's criminal case, sued the applicant for damages in connection with the murder charge.

1. First-instance proceedings

39. By letter of 19 December 2000 judge S. informed the head of the prison administration of UK-272/3 ("the prison authority") about these claims, forwarded a copy of the plaintiffs' statement of claim to the applicant for information and requested the head of the prison administration to seek the applicant's comments on the plaintiffs' claims.

40. It does not appear that the statement of claim forwarded to the applicant was accompanied by copies of supporting documents.

41. According to the Government, between 3 and 5 January 2001 the prison authority apprised the applicant of the content of the claims.

42. According to the applicant, he was allowed to read the claims, but was not allowed to have prolonged access to the document or to have a copy.

43. The applicant submitted that the authority had asked him to indicate his agreement to answer in writing. It appears that the statement of claim was put into the applicant's personal prison file to which he had no free access.

44. The applicant submitted that he had drafted a response to the claims on 5 January 2001. He disagreed with the list of items lost and destroyed as a result of his criminal activity and also disagreed with the plaintiffs' assessment of their value. In his response, the applicant also specifically requested the civil court to provide him with copies of the documents in its case file.

45. According to the Government, this response was dispatched on 11 January 2001.

46. On 5 February 2001 the Soviet District Court of the town of Kazan, having heard representations from the plaintiffs' counsel, gave a judgment in respect of the civil claims of the applicant's victims. The court decided to order the applicant and the co-accused jointly to pay the three plaintiffs 2,900, 135,899 and 85,809 roubles respectively (around 108, 5,087 and 3,212 euros respectively), in damages and for legal costs and expenses.

47. The court reiterated that as a result of the applicant's criminal actions the son of one of the plaintiffs had been kidnapped and killed. The court listed the clothes worn by the victim on that day as well as the funeral expenses, and made an assessment of the non-pecuniary damage inflicted by the applicant. The list of personal belongings and clothes was taken entirely from the applicant's criminal case file. The court carried out its own assessment of the value of these items on the basis of the certificates submitted to the court by the plaintiffs. It does not appear that the applicant was sent a copy of this evidence for comment.

48. On the same date the court also turned down the applicant's request for personal appearance and for the appointment of a lawyer. The court explained the refusal by reference to the domestic law, which did not provide for mandatory legal representation of a party in civil proceedings.

2. Appeal proceedings

49. On 12 February 2001 Judge S. forwarded a copy of the judgment of 5 February 2001 to the applicant for information.

50. On 2 and 3 April 2001 the prison authorities notified the applicant of the judgment of 5 February 2001. It does not appear that they provided him with a copy of the judgment or that he was in a position to use a copy of the judgment of 5 February 2001 to draft appeal arguments.

51. On 9 April 2001 he lodged an appeal in which he referred to his inability effectively to take part in the first-instance proceedings and requested to be summoned to the appeal hearing.

52. On 10 May 2001 the applicant learned through the prison administration that his appeal had been disallowed as time-barred on 24 April 2001.

53. The applicant then applied to the Supreme Court of the Republic of Tatarstan, which instructed the Soviet District Court of the town of Kazan to accept the appeal statement and to forward it for examination to the Supreme Court of the Republic of Tatarstan.

54. According to the Government, by decision of 12 July 2001 the Supreme Court of the Republic of Tatarstan rejected the applicant's appeal against the judgment of 5 February 2001. It does not appear that the applicant knew about the hearing before the appeal court, was present or represented.

55. Thereafter the applicant was unsuccessful in challenging the decisions of the lower courts by way of supervisory-review proceedings.

II. RELEVANT DOMESTIC LAW

A. Provisions regulating conditions of detention pending criminal proceedings

56. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) and the Internal Rules for Remand Centres of the Ministry of the Interior (Order no. 486 of 20 December 1995, in force until 12 May 2000) provided that detainees were to be given free food sufficient to maintain them in good health according to the standards established by the Government of the Russian Federation. Section 23 provided that detainees were to 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 had no less than four square metres of personal space in his or her cell.

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

57. 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.

58. 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.

59. The programme mentions pre-trial detention centres IZ-16/1, IZ-16/2, IZ-77/3 and IZ-66/1 among those affected with a number of detainees seriously exceeding the housing capacity (up to 140%).

C. Legal provisions on participation of prisoners in supervisory-review proceedings in their criminal cases

60. Section VI, Chapter 30 of the Code of Criminal Procedure of 1960 (*Уголовно-процессуальный кодекс РСФСР*), in force at the material time, allowed certain officials to challenge a judgment which had become effective and to have the case reviewed.

61. Pursuant to Article 356 of the Code of Criminal Procedure of 1960, a judgment became effective and enforceable as of the day when the appellate court gave its decision or, if the judgment had not been appealed against, when the time-limit for appeal expired.

Article 379

Grounds for setting aside judgments which have become effective

“The grounds for quashing or changing a judgment [on supervisory review] are the same as [those for setting aside judgments which have not become effective on cassation appeals].”

Article 342

Grounds for quashing or changing judgments [on cassation appeal]

“The grounds for quashing or changing a judgment on appeal are as follows:

- (i) prejudicial or incomplete inquiry, investigation or court examination;
- (ii) inconsistency between the facts of the case and the conclusions reached by the court;

(iii) serious violation of procedural law;

(iv) misapplication of [substantive] law;

(v) inappropriate sentence considering the gravity of the offence and the convict's personality.”

62. Article 371 of the Code of Criminal Procedure of 1960 provided that the power to lodge a request for supervisory review could be exercised by the Prosecutor General, the President of the Supreme Court of the Russian Federation and their respective Deputies in relation to any judgment other than those of the Presidium of the Supreme Court, and by the Presidents of the regional courts in respect of any judgment of a regional or subordinate court. A party to criminal or civil proceedings could solicit the intervention of such officials for a review.

63. Under Articles 374, 378 and 380 of the Code of Criminal Procedure of 1960, the request for supervisory review was to be considered by the judicial panel (“the Presidium”) of the competent court. The court could examine the case on the merits, and was not bound by the scope and grounds of the extraordinary appeal. The Presidium could dismiss or uphold the request. If the request was dismissed, the earlier judgment remained in force. If it upheld the request, the Presidium could decide whether to quash the judgment and terminate the criminal proceedings, to remit the case for a new investigation, or for fresh judicial examination at any instance, to uphold a first-instance judgment reversed on appeal, or to amend or uphold any of the earlier judgments.

64. Article 380 §§ 2 and 3 of the Code of Criminal Procedure of 1960 provided that the Presidium could in the same proceedings reduce a sentence or amend the legal classification of a conviction or sentence to the defendant's advantage. If it found a sentence or legal classification too lenient, it had to remit the case for fresh examination.

65. Under Article 377 § 3 of the Code of Criminal Procedure of 1960, a public prosecutor took part in a hearing before a supervisory-review body. The convicted person and his or her counsel could be summoned if the supervisory-review court found it necessary. If summoned, they were to be given an opportunity to examine the application for supervisory review and to make oral submissions at the hearing. On 14 February 2000 the Constitutional Court of the Russian Federation ruled that the convicted person's presence was not optional but mandatory if the grounds for initiating the supervisory-review proceedings could worsen his personal situation.

66. Under Article 407 of the new Code of Criminal Procedure of 2001, which entered into force on 1 July 2002, the convicted person and his counsel are notified of the date, time and place of hearings before the supervisory-review court. They may participate in the hearing provided they have made a specific request to do so.

D. Legal provisions on attendance of prisoners who are parties to civil proceedings

67. Under sections 73 and 76 of the Penitentiary Code, sentences of imprisonment are served in penitentiary establishments and throughout their detention inmates are transported under convoy.

68. Section 43 of the Civil Procedure Code of the RSFSR of 1964, as in force at the relevant time, provided that everyone was entitled to participate in court proceedings personally or through a representative.

69. Under sections 157-161 of the Civil Procedure Code, in cases where a party was properly informed of the date of the hearing but failed to appear or excuse himself for a good reason, a court could either adjourn the proceedings, leave the claim without examination (in the event of the plaintiff's repeated failure to appear after notification) or examine the claim in the party's absence.

70. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witness, victim or suspect in connection with certain investigative measures (Article 77 § 1). The Code does not mention any possibility for a convicted person to take part in civil proceedings, whether as plaintiff or defendant.

71. On several occasions the Constitutional Court has examined complaints by convicted persons whose requests for leave to appear in civil proceedings were refused by the courts. It has consistently declared the complaints inadmissible, finding that the impugned provisions of the Code of Civil Procedure and the Penitentiary Code did not, as such, restrict the convicted person's access to court. It has emphasised, nonetheless, that the convicted person should be able to make submissions to the civil court, either through a representative or in any other manner provided for by law. If necessary, the hearing may be held at the location where the convicted person is serving his or her sentence, or the court hearing the case may instruct the court with territorial jurisdiction for the correctional colony to obtain the applicant's submissions or take any other procedural steps (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004 and no. 94-O of 21 February 2008).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

72. 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

73. Under Article 3 of the Convention the applicant complained that the conditions of his detention in pre-trial detention centres IZ-16/1, IZ-16/2, IZ-77/3, IZ-66/1, IZ-24/1 from 9 September 1998 to 5 March 2000 and penitentiary establishment UK-272/3 from 14 March 2000 to 16 January 2002 had been deplorable. Article 3 provides as follows:

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

A. Admissibility

74. The Government submitted that the applicant had failed to exhaust available domestic remedies. According to them, he could have applied to

the domestic courts with claims for compensation in respect of any non-pecuniary damage allegedly resulting from the conditions of his detention.

75. The applicant disagreed and maintained his complaints.

76. At the outset the Court finds it necessary to determine the applicant's compliance with the six-month rule, laid out in Article 35 § 1 of the Convention in so far as his grievances about IZ-16/2 and IZ-16/1 are concerned.

77. In this connection, the Court first notes the continuous character of the applicant's detention from 9 September 1998 to 1 March 2000 covering his detention in the mentioned facilities and also in IZ-77/3 and IZ-66/1. It further notes that his grievances about the mentioned detention facilities all concern the same problem of overcrowding and the general lack of living space. The Court also takes account of the Government's failure to provide the Court with copies of original prison records with detailed information about the number of inmates in respect of each and every day of the applicant's stay in the prisons in question. Lastly, the Court would underline that the Government did not raise a six-month argument and did not argue that the conditions of detention in those facilities had been dissimilar. In view of these considerations, the Court finds that the interval stretching from 9 September 1998 and 5 March 2002 should be regarded as a "continuing situation" for the purposes of calculation of the six-month time-limit. It thus finds that the applicant lodged his complaints about the conditions of detention in IZ-16/2 (from 9 to 24 September and from 5 October to 19 November 1998 and from 29 January to 5 September 1999) and in IZ-16/1 (between 28 December to 29 January 1999) in good time.

78. In as much as the Government claim that the applicant has not complied with the rule on exhaustion of domestic remedies, the Court finds that the Government did not specify with sufficient clarity the type of action which would have been an effective remedy in their view, nor did they provide any further information as to how such action could have prevented the alleged violation or its continuation or provided the applicant with adequate redress. Even if the applicant had been successful, it is unclear how the claim for damages could have afforded him immediate and effective redress. In the absence of such evidence and having regard to the above-mentioned principles, the Court finds that the Government did not substantiate their claim that the remedy or remedies the applicant had allegedly failed to exhaust were effective ones (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003). For the above reasons, the Court finds that this part of the application cannot be rejected for non-exhaustion of domestic remedies (see also *Popov v. Russia*, no. 26853/04, §§ 204-06, 13 July 2006; *Mamedova v. Russia*, no. 7064/05,

§§ 55-58, 1 June 2006; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)).

79. In the light of the parties' submissions, the Court finds that the applicant's complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established.

B. Merits

80. The Government did not accept that any of the facilities referred to by the applicant had been overcrowded and also argued that the applicant had been allowed to take a shower once a week for at least fifteen minutes and that the cells in those facilities had both artificial and natural ventilation systems. The windows in all of the applicant's cells were double-glazed and had a window leaf for ventilation. Furthermore, the heating systems in the prisons were fully operational and the temperature in the cells was within the permissible range (20° C in winter and 24° C in summer).

81. The applicant disagreed and maintained his complaints. He argued that the data and figures provided by the Government were inaccurate and incomplete.

82. The parties disagreed as to the specific conditions of the applicant's detention in IZ-16/1, 16/2, IZ-77/3, IZ-66/1, IZ-24/1 and UK-272/3. However, there is no need for the Court to establish the veracity of each and every allegation, as it has sufficient documentary evidence in its possession to confirm the applicant's allegations of severe overcrowding in these facilities, and this in itself is sufficient to conclude that Article 3 of the Convention has been breached.

83. Firstly, the Court would note that the Government's allegation that the applicant was kept in cells specifically designated for former law-enforcement officials has been contested by the applicant and remains unsupported by any of the documents submitted by the Government.

84. The Court would further note that as regards the detention centres IZ-16/1, 16/2, IZ-77/3 and IZ-66/1 the existence of a deplorable state of affairs may be inferred from the information contained in Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 (see paragraphs 57-59 above), which expressly acknowledges the issue of overcrowding in these detention centres.

85. The Court also recalls that in its judgments in the cases of *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007, and *Novinskiy v. Russia*, no. 11982/02, §§ 106-108, 10 February 2009, it has previously examined the conditions of detention in facility IZ-77/3 in 2001 and 2002 and found

them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding.

86. Also, the Court has previously examined the conditions of detention in facility IZ-24/1 in the town of Krasnoyarsk and found them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding. In the case of *Grishin v. Russia* (no. 30983/02, §§ 85-97, 15 November 2007), the complaints related to the period of time between 23 September 1999 and 26 October 2000, that is to say at around the same time as the period in the present case.

87. The overcrowding of the detention facility IZ-66/1 is further confirmed by the statements of the applicant's cellmates, Mr S.N. and Mr U.K. (see paragraphs 35 and 36 above). Since the Government did not contest the veracity of these statements and furthermore did not support its own submissions by referring to any original documentation, the Court is prepared to accept the above statements as sufficient confirmation of the applicant's point that the overcrowding of cells was a problem in pre-trial detention centre IZ-66/1 for a number of years before, during and after the applicant's detention there.

88. Finally, as regards penitentiary establishment UK-272/3 in the town of Irkutsk, the Court would refer to the prison certificate of 23 September 2000, which indirectly acknowledged the issue of overcrowding by giving the figure of 1,252 inmates as the housing capacity and the figure of 1,375 as the actual number of inmates in the prison in September 2000. Further, the Court would again refer to the uncontested statements of the applicant's cellmate Mr S.N., who also submitted that the prison was overcrowded in November-December 1998. Since the Government did not contest the veracity of these statements and furthermore did not support its own submissions by referring to any original documentation, the Court is prepared to accept the above indications as sufficient confirmation of the applicant's point that the overcrowding of cells was a problem in establishment UK-272/3 for some time before, during and after his detention there.

89. In view of the above and having regard also to the evidence submitted by the parties, the Court observes that the case file contains sufficient indication that the prisons in question were experiencing severe overcrowding of their premises during the applicant's time there. In this respect, the Court cannot accept the statements made by various prison officials (see paragraph 33) as sufficiently conclusive, as they lack any reference to the original prison documentation and are apparently based on personal recollections and not on any objective data (see *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007, and *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007).

90. 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 (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).

91. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant had to spend 3 years, 2 months and 5 days in overcrowded cells of those prison facilities was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

92. There has therefore been a violation of Article 3 of the Convention, as the Court finds the applicant's detention to have been inhuman and degrading within the meaning of this provision.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

93. The applicant complained under Article 6 of the Convention about the outcome of the criminal proceedings against him. In particular, he complained that his inability to take part in the supervisory-review proceedings before the Presidium of the Supreme Court of Russia had rendered those proceedings unfair. The Court is of the view that this complaint falls to be examined under Article 6 § 1 of the Convention, which provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal ...”

A. Admissibility

94. In so far as the applicant complained about the outcome of the main set of the criminal proceedings against him which ended on 18 January 2000, the Court notes that it is not called upon to examine alleged errors of fact and law committed by the domestic judicial authorities, provided there is no indication of unfairness in the proceedings concerned and provided the decisions reached cannot be considered arbitrary. On the basis of the materials submitted by the applicant, the Court notes that he, personally and through his defence counsel, was fully able to present his case and contest

the evidence that he considered false. Having regard to the facts as submitted by the applicant the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention.

95. Turning to his grievances about the subsequent supervisory review proceedings, the Court notes that the Supreme Court examined the request for supervisory review lodged by the Deputy Prosecutor General, reopened the proceedings in the case and amended the lower courts' decisions. It upheld the conviction, having slightly reduced the applicant's sentence. The Court is of the view that, in so far as the Supreme Court reopened the proceedings in the applicant's case and amended the decisions of the lower courts, the supervisory-review proceedings concerned the determination of a criminal charge against the applicant. Accordingly, it finds that Article 6 § 1 of the Convention under its criminal head applies to those proceedings (see, among other authorities, *Vanyan v. Russia*, no. 53203/99, §§ 56-58, 15 December 2005).

96. The Court observes that this part of the application 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

97. The Government submitted that no fresh charge had been brought against the applicant in the supervisory-review procedure, in which the initial conviction had merely been re-characterised as the less serious offence.

98. The Government further stated, with reference to Article 377 of the Code of Criminal Procedure as amended by a Decision of the Constitutional Court of 14 February 2000, that the summoning of parties to a supervisory-review hearing remained at the discretion of the relevant court, provided the review procedure was not triggered by an application that would be to the applicant's detriment. The Government noted that the application for supervisory review, like the prosecutor's pleadings at the hearing, was not to the applicant's detriment. Given that the supervisory-review procedure had benefited the applicant by entailing a shorter term of imprisonment as a result of a new legal classification of his acts, the Government were of the view that the Supreme Court's failure to secure the attendance of the applicant and his counsel had not breached Article 6 of the Convention.

99. The applicant contended that he had not had a fair trial in the proceedings before the supervisory-review court. The applicant stated that he had been deprived of an opportunity to appear in person and to submit arguments. In view of the above and having regard to the fact that the

prosecution had participated in the hearing, the applicant considered that there had been a breach of Article 6 of the Convention.

100. The Court reiterates that it flows from the notion of a fair trial that a person charged with a criminal offence should, as a general principle, be entitled to be present and participate effectively in the first-instance hearing (see *Colozza v. Italy*, 12 February 1985, §§ 27 and 29, Series A no. 89).

101. The personal attendance of the defendant does not necessarily take on the same significance for an appeal hearing, even where the appellate court has full jurisdiction to review the case on questions of both fact and law. Regard must be had in assessing this question to, among other things, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant (see *Belziuk v. Poland*, 25 March 1998, § 37, *Reports of Judgments and Decisions* 1998-II).

102. It is also of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal (see *Lala v. the Netherlands*, 22 September 1994, § 33, Series A no. 297-A).

103. The principle of equality of arms is only one feature of the wider concept of a fair trial, which also includes the fundamental right that criminal proceedings should be adversarial. The latter means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (see *Brandstetter v. Austria*, 28 August 1991, §§ 66 and 67, Series A no. 211).

104. The Court observes that the supervisory-review proceedings under the Code of Criminal Procedure of 1960 were different from "ordinary" appeal proceedings in that, among other things, the power to initiate them was vested with certain senior judicial and prosecution officers, and not with the parties.

105. The fact remains, however, that the supervisory-review court was not bound by the scope of the request for supervisory review but had the power to carry out a full-scale judicial review of the decisions in the case by quashing or amending them, remitting the case to lower courts or an investigator, or terminating the criminal proceedings partly or altogether (see paragraph 63). The Supreme Court did exercise its power by amending the conviction and the applicant's sentence, thereby determining a criminal charge against him (see paragraph 12).

106. Having regard to the above, the Court considers that in order to satisfy the principle of fairness enshrined in Article 6 of the Convention the Supreme Court should have notified the applicant or his defence lawyer of the content of the prosecution's supervisory-review request and the date and place of the hearing. In such circumstances, the Court rejects as irrelevant

the Government's reference to the fact that the absence of the applicant and his counsel from the hearing was not unlawful under domestic law. On the facts, the Court notes that the applicant was denied a proper opportunity to familiarise himself with the content of the Deputy Prosecutor's supervisory-review request, to comment on the points raised in this request and was not notified of the date and location of the supervisory-review hearing (see paragraphs 13 and 14 above).

107. In such circumstances, the Court finds that the supervisory-review proceedings before the Supreme Court did not comply with the requirements of fairness.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE CIVIL PROCEEDINGS

108. The applicant complained that the courts had refused to secure his effective participation in the civil case brought by the victims. He relied on Article 6 § 1, which provides, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public ... hearing ... by [a] ... tribunal ...”

A. Admissibility

109. The Court considers that the applicant's complaints 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.

B. Merits

110. The Government argued that the applicant's absence had been objectively justified by the fact that he had been serving his prison sentence in a correctional colony and that it had been impossible to transport him to the hearings owing to the absence of an established legal procedure for the transfer of detainees to hearings in civil cases.

111. The applicant averred that he had not been brought to the hearings because Russian law on civil procedure did not guarantee such a right. He further stated that he had been unable to appoint counsel because he had limited financial resources. At the same time, Russian law did not provide for free legal aid in similar cases.

112. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence

adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

113. The Court has previously found a violation of the right to a “public and fair hearing” in a case where a Russian court, after refusing the imprisoned applicants leave to appear when they had sought to make oral submissions on their defamation claim, failed to consider other legal possibilities for securing their effective participation in the proceedings (see *Khuzhin and Others v. Russia*, no. 13470/02, §§ 53 et seq., 23 October 2008). It also found a violation of Article 6 in a case where a Russian court refused an imprisoned applicant leave to appear when he had sought to make oral submissions on his claim that he had been ill-treated by the police. Despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim had been largely based on his personal experience and that his submissions would therefore have been “an important part of the plaintiff’s presentation of the case and virtually the only way to ensure adversarial proceedings” (see *Kovalev v. Russia*, no. 7814/01, § 37, 10 May 2007).

114. The Court observes that neither the Code of Civil Procedure nor the Penitentiary Code makes special provision for the exercise by individuals who are in custody, whether in pre-trial detention or serving a sentence, of a right to attend hearings in civil cases to which they are parties. In the present case the applicant’s requests for leave to appear were denied precisely on the ground that the domestic law did not make provision for convicted persons to be brought from correctional colonies to the place where a civil claim concerning them was being heard. The Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one’s case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

115. The issue of the exercise of procedural rights by detainees in civil proceedings has been examined on several occasions by the Russian Constitutional Court, which has identified several ways in which their rights can be secured (see paragraph 71 above). It has consistently emphasised representation as an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting convicted persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the plaintiff’s personal experiences, as in the above-mentioned *Kovalev* case,

representation of the detainee by counsel would not be in breach of the principle of equality of arms.

116. In the instant case, the claims brought against him by the victims of his criminal activity involved by their nature an assessment of the amount of damage he had inflicted and, as such, arguably may not have required the applicant's personal participation in the hearings. Since the option of legal aid was not open to the applicant (see paragraphs 67-71 above), the only possibility for him was to appoint a relative, friend or acquaintance to represent him in the proceedings. However, as is clear from the domestic courts' decisions, the court did not even consider the issue of the applicant's effective participation in the proceedings. They did not enquire whether the applicant was able to designate a representative and in particular whether, having regard to the time which he had already spent in detention, there was still someone willing to represent him before the domestic courts and, if so, whether he had been able to contact that person and give him or her authority to act. Moreover, the applicant did not learn that he had been refused leave to attend the hearing until he found out about the judgment in which the civil claims against him were examined on the merits and accepted (see paragraphs 48-50 above). Thus, the applicant was obviously unable to decide on a further course of action for the defence of his rights until such time as the decision refusing him leave to appear was communicated to him (see *Khuzhin and Others v. Russia*, no. 13470/02, § 107, 23 October 2008) and the appellate court did nothing to remedy that situation.

117. The Court therefore concludes that the fact that the applicant's civil claims were heard without his being present or represented deprived him of the opportunity to present his case effectively before the courts (see, *mutatis mutandis*, *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, § 22, 5 October 2006).

118. In conclusion, the Court finds that the principle of equality of arms was not observed in the civil proceedings under consideration, owing to the domestic courts' failure to ensure the effective representation of the applicant's interests in those proceedings.

119. There has therefore been a violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

120. The Court has also examined the applicant's complaint about interference with his correspondence with the Court. However, having regard to the materials in its possession, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Lastly, as to the applicant's complaint about the

trial court's allegedly unlawful composition, the Court notes that the grievance was brought out of time, as the last decision in the applicant's criminal case was taken on 24 October 2001, and the applicant complained about it in his letter of 25 April 2006.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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.”

123. The applicant claimed compensation of 500,000 euros (EUR) in respect of non-pecuniary damage as well as legal costs.

124. The Government submitted that these claims were unfounded and excessive.

A. Non-pecuniary damage

125. The Court considers that the applicant must have sustained stress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards the applicant EUR 26,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

126. According to the Court's case-law, an applicant is entitled to 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. Regard being had to the fact that the applicant failed to submit any documents in support of his claims or even specify the exact amounts spent by him in this connection, the Court rejects the applicant's claims under this head.

C. Default interest

127. 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

1. *Declares* unanimously the complaints about the conditions of the applicant's detention between 9 September 1998 and 16 January 2002, his inability to participate in the supervisory-review proceedings in his criminal case and his inability to participate in the civil proceedings brought by the victims, admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;
3. *Holds* unanimously that there has been a violation of Article 6 of the Convention on account of the applicant's inability to participate in the supervisory-review examination of his criminal case;
4. *Holds* unanimously that there has been a violation of Article 6 of the Convention on account of the applicant's inability to participate in the civil proceedings brought by the victims;
5. *Holds*, by six votes to one,
 - (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 26,500 (twenty six thousand five hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President