



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

FIRST SECTION

CASE OF SHCHERBAKOV v. RUSSIA

(Application no. 23939/02)

JUDGMENT

STRASBOURG

17 June 2010

FINAL

17/09/2010

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

In the case of Shcherbakov 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 23939/02) 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 Igor Nikolayevich Shcherbakov (“the applicant”), on 15 May 2002.

2. 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 applicant alleged that the conditions of his detention in remand prison IZ-71/1 had been appalling, that his detention had been unlawful and too lengthy, that some of his appeals had remained unanswered, that the criminal proceedings had been too long and that the lengthy detention had prevented him from having contact with the family.

4. On 21 October 2005 the President of the First Section decided to communicate the application to the Government. 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 1955 and lives in the town of Tula.

A. Criminal proceedings against the applicant

6. On 23 May 1995 the applicant was arrested and detained on suspicion of involvement in a murder. From that date and until the decision of 15 July 2002 to discontinue the proceedings the applicant remained in custody.

7. In July 1996 he was charged with several counts of murder, abduction, bribery, unlawful possession of firearms and participation in a criminal gang.

8. Between July 1996 and July 2002 various trial courts examined the applicant's case on six occasions, but each time they either returned it for an additional investigation or declined to examine it with reference to various reasons relating to jurisdiction.

9. By a decision of 15 July 2002 the Tula Regional Court (*Судебная коллегия по уголовным делам Тульского областного суда*, “the Regional Court”) discontinued the criminal proceedings against the applicant for lack of evidence of his involvement in the imputed crimes. The court ordered the applicant's release and recognised his right to claim damages in connection with a wrongful prosecution.

B. Conditions of the applicant's detention

10. The authorities placed the applicant in remand prison IZ-71/1 (*Следственный изолятор ИЗ-71/1*, “the remand prison”) of the town of Tula on 31 October 1995.

11. Between 28 November 1999 and 12 May 2000 the applicant was held in a detention facility in the town of Ryazan. Thereafter he was returned to the remand prison and stayed there until his release on 15 July 2002.

12. The parties presented different accounts of the conditions of detention in the remand prison.

1. The applicant's account

13. The applicant's cells were overcrowded. The detainees had to take turns to sleep because there was usually one sleeping place for two to three of them. There was almost no light in the cells because of the metal shutters on the windows, as well as no fresh air. The lack of air was aggravated by the detainees' smoking and the applicant, a non-smoker, became a passive smoker. There was one hour of daily exercise. The applicant's eyesight deteriorated and he developed respiratory problems. In summer the average air temperature was around thirty degrees which, combined with the high humidity level, caused skin conditions to develop. The sanitary conditions were below any reasonable standard. In particular, the cells were supplied with water for only one or two hours a day and on some days there was no

water supply at all. The lack of water caused intestinal problems and in 1999 the administration had to announce quarantine in that connection.

14. The lavatory pan usually stank. It was separated from the living space by a partition which was one metre high and offered no privacy. The cells were infested with bugs, lice, cockroaches and rats and the administration did nothing to disinfect the facility. The applicant contracted scabies on two occasions. The quality of food was wholly unsatisfactory. The medical assistance was grossly inadequate. Finally, the applicant was usually convoyed by a prison officer with a dog, which he considered particularly humiliating.

15. In his observations the applicant submitted a number of statements from his acquaintance Mr S. and fellow prisoners Mr K. and Mr M.

(a) Statement by Mr S.

16. In a statement dated 29 March 2007 Mr S., who at the time was a police officer employed in the department of criminal investigations of the Soviet District Department of the Interior of the town of Tula and frequently visited IZ-71/1 for professional reasons, submitted that between 1996 and 1999 he had personally witnessed overcrowding in that prison, lack of ventilation, lack of natural lighting, lack of hot water, and generally poor condition of the building and the cells. The statement mentioned specifically that cell no. 57, in which the applicant was being held at the time, measured 10 square metres and held no fewer than ten inmates.

(b) Statement by Mr K.

17. In a statement dated 28 March 2007 Mr K. submitted that he had been detained in this prison along with the applicant in cell no. 12. According to him, the detainees took turns to sleep, as there were 33 sleeping places on three level beds for 28 to 36 people in the cell, which measured some thirty square metres. The windows were covered at all times and the lights were on constantly. Many inmates smoked and no ventilation system was installed in the cell to evacuate the smoke. It was stiflingly hot during summer and fresh water was only available a few hours a day. The cell was infested with lice, cockroaches and rats. Mr K. also submitted that cell no. 57 was situated in an annex building. All cells in that building were of the same size and measured 10 to 12 square metres. Cells nos. 19 and 83 were of the same size as well. No special measures had been taken by the prison administration in respect of the mentioned problems at the time of his detention.

(c) Statement by Mr M.

18. In a statement dated 30 March 2007 Mr M. submitted that between February 1997 and August 2002 he had been detained in this prison along with the applicant, but in different cells. Mr M. confirmed that the prison

had been constantly overcrowded, with the inmates taking turns to sleep. All the cells he occupied were unventilated and poorly lit, with limited access to water and inmates who smoked heavily. The cells were infested with various insects and the inmates were given poor quality food. Mr M. also confirmed that cell no. 57 had been situated in an annex building and measured only 10 to 12 square metres.

2. The Government's account

19. According to certificates issued on 23 December 2005 by remand prison IZ – 71/1, the applicant was kept in nine cells described as follows: cell no. 12 (31 sq. m, twenty-two bunks, average population eight inmates), cell no. 19 (9.1 sq. m, six bunks, three inmates), cell no. 36 (33.8 sq. m, twenty-one bunks, nine inmates), cell no. 53 (9.8 sq. m, six bunks, three inmates), cell no. 57 (37.8 sq. m, six bunks, three inmates), cell no. 70 (35.7 sq. m, twenty-two bunks, ten inmates), cell no. 73 (28.3 sq. m, fourteen bunks, eight inmates), cell no. 83 (11.8 sq. m, nine bunks, four to ten inmates) and cell no. 139 (22.52 sq. m, eight bunks, six inmates). The certificate concerning the number of inmates per cell contains handwritten and illegible notes with numbers of inmates.

20. Relying on a certificate issued by the remand prison administration on 23 December 2005, the Government submitted that in each of the cells and at each period of his detention the applicant had been provided with an individual sleeping place, bedding and cutlery.

21. With reference to a report on the measurement of light levels issued on 19 June 2002 by the Sanitary and Epidemiological Supervision Centre of the Department of Execution of Sentences (*Центр Госсанэпиднадзора при Управлении исполнения наказаний*, “the supervision centre”), the Government stressed that the light level in the cells (in particular in cell no. 12) had been above the required minimum. In 2003 the metal shutters were removed from the windows. There was natural and combined extract-and-input ventilation. According to the report on measurement of the microclimate factors carried out by the supervision centre on 19 June 2002, the average air temperature in the cells during the relevant period was between +22°C and +25°C. The humidity level was in conformity with the relevant requirements.

22. According to a certificate issued by the remand prison on 23 December 2005, there were no interruptions in water supply throughout the applicant's detention, except for cases of routine repairs. In those situations the cells were provided with water from special reservoirs.

23. In a record produced on 23 December 2005 the head of the remand prison attested that there had been no insects or rodents in the applicant's cells. Another certificate issued by him on the same date specified that rat extermination in the remand prison common spaces had been carried out

monthly. In addition, it was possible to exterminate rats in the cells on the inmates' request but the applicant had failed to make any such requests.

24. A record produced on 23 December 2005 by the remand prison further indicated that the applicant had addressed the medical unit with complaints concerning viral infections, gastritis, headache, dystonia, dyspepsia and contact dermatitis. On each occasion the applicant had been provided with the necessary medication. The contact dermatitis was an allergic reaction to an unspecified detergent.

C. Proceedings for compensation

25. According to the applicable domestic rules, the applicant was to make his claims for pecuniary and non-pecuniary damages separately in two different courts.

1. Proceedings for pecuniary damages before the Regional Court

26. In October 2002 the applicant requested the Regional Court to compensate him for pecuniary damage in connection with the criminal prosecution. In particular, he claimed lost earnings and legal costs.

27. On 7 February 2003 the Regional Court partly granted the applicant's claims and awarded him 442,962.41 roubles (RUB, approximately 12,900 euros (EUR)) in lost earnings for the period of his prosecution from May 1995 to July 2002 and three subsequent months. The amount was to be paid by the Ministry of Finance. The court established that the applicant's wife had borne all the legal costs in connection with the criminal proceedings against him and dismissed the applicant's claims in that respect. It advised the applicant that it was open to his wife to apply to the courts of ordinary jurisdiction to recover legal costs. By the same decision the court dismissed the rest of the applicant's claims as unfounded.

28. On 6 May 2003 the Supreme Court upheld this decision on appeal.

29. According to the applicant, the decision of 7 February 2003, as upheld on 6 May 2003, was enforced shortly after it had become final.

2. Proceedings for non-pecuniary damages before the Zarechenskiy District Court

30. In July 2003 the applicant lodged with the Zarechenskiy District Court of Tula ("the District Court") a civil action for non-pecuniary damages in connection with his unlawful prosecution and detention. He complained that he had been unlawfully held in detention without a court decision on the merits of the charges against him for 2,610 days. Moreover, he alleged that the courts had failed to examine his complaints about unlawfulness of his detention and the fact that his case had been on several occasions remitted for an additional investigation.

31. The applicant further complained that the conditions of his detention had been appalling. He described in detail the measurements of the cells in which he had been detained and claimed that they had been overcrowded, that he had been afforded less than 1.1 sq. m. of personal space and had had to take turns to sleep. He further described in detail other conditions of his detention which he considered degrading and humiliating. The applicant stressed that the Court had found a violation of Article 3 on account of inhuman and degrading conditions of detention in the *Kalashnikov* case. He submitted that the appalling conditions of pre-trial detention in that case had not been an isolated situation and referred to the Government's admissions that "... for economic reasons, conditions of detention in Russia were very unsatisfactory and fell below the requirements set for penitentiary establishments in other member States of the Council of Europe".

32. The applicant also submitted that his unlawful prosecution and that he had been charged with particularly serious crimes had caused him mental and emotional suffering. The applicant finally noted that his suffering had been aggravated by the fact that it had been impossible for him to communicate with his family and relatives and participate in the upbringing of his children. He claimed RUB 45,521,416 (approximately EUR 1,321,760).

33. By a judgment of 13 August 2004 the District Court examined and allowed the applicant's claims, ordering the treasury to pay the applicant RUB 783,000 (approximately EUR 22,735).

34. On 10 August 2004 the Civil Chamber of the Tula Regional Court (*Судебная коллегия по гражданским делам Тульского областного суда*) quashed the judgment on the parties' appeals and remitted the case to the first-instance court.

35. On 19 December 2005 the District Court again examined and allowed the applicant's claims. The introductory part of the judgment referred in detail to the applicant's submissions concerning the conditions of his detention. Then the court reasoned as follows:

"Pursuant to Section 1070 of the Civil Code, damage sustained by a citizen as a result of his unlawful conviction, criminal prosecution, unlawful application of measures of restraint, such as detention on remand or an undertaking not to leave a place of residence, unlawful imposition of an administrative punishment, such as arrest or correctional works, shall be compensated in full in accordance with the procedure prescribed by law by the Treasury of the Russian Federation, and, where the law so provides, by the treasury of the subject of the Federation or the municipal treasury, irrespective of whether they occurred as a result of the misconduct of investigating officials, the prosecutor's office or the courts.

Under Section 151 of the Civil Code, if a citizen sustained non-pecuniary damage (physical or psychological suffering) as a result of actions violating his or her non-pecuniary rights or interests, and also where it is expressly provided for by law, the court may order the wrongdoer to pay him monetary compensation.

In assessing the amount of the compensation for non-pecuniary damage, the court takes into account the degree of the wrongdoer's fault and all other relevant circumstances. The court must also take account of the intensity of physical and moral suffering relating to personal characteristics of the person who sustained the damage.

Under Section 1100 of the Civil Code, compensation of non-pecuniary damage to the citizen is effected irrespective of the wrongdoer's fault if the damage was inflicted by [the citizen's] unlawful conviction, prosecution, unlawful application of a measure of restraint, such as detention or an undertaking not to leave their place of residence, unlawful imposition of an administrative punishment in the form of arrest or correctional service and dissemination of information damaging to the [citizen's] reputation.

Section 1101 of the Civil Code provides that in assessing the amount of compensation to be awarded, the court must take into account the nature of the physical and psychological suffering inflicted upon the victim, and also the degree of fault on the part of the wrongdoer in cases of fault-based liability.

The court assesses the intensity of the physical and psychological suffering on the basis of the factual circumstances in which the harm was caused and also the personal characteristics of the victim.

According to the record of arrest issued on 23 May 1995 and the decision of 19 June 1995 remanding [the applicant] in custody, the plaintiff was placed in custody.

The plaintiff's place of residence was searched on 23 May 1995.

By a decision of 26 July 1996 the prosecutor's office of the Tula Region charged the plaintiff with participation in a criminal gang, robbery, concerted and aggravated murder, abduction, bribery and unlawful possession of arms.

By a decision of 15 July 2002 the Tula Regional Court terminated the criminal case against [Mr] Shcherbakov...with reference to Section 24 § 1 (2) of the Code of Criminal Procedure (lack of *corpus delicti*). By the same decision the court lifted [Mr] Shcherbakov's measure of restraint, namely remand in custody, and recognised his right to rehabilitation.

The court has established beyond doubt that [Mr] Shcherbakov's unlawful prosecution and detention had caused him mental and emotional suffering, which is to be compensated by the Treasury of the Russian Federation irrespective of the fault of the investigation and prosecution officials and in accordance with the procedure established by law. Examining the respondent's argument that the applicant had failed to prove the alleged non-pecuniary damage, the court considers that the fact of [the applicant's] criminal prosecution and lengthy detention had caused him mental and emotional suffering. The parties did not contest the unlawfulness of the plaintiff's prosecution and detention, which is also confirmed by the Tula Regional Court decision to discontinue the criminal proceedings [against him]. Furthermore, the court finds unsustainable the defendant's argument that the Ministry of Finance is not the appropriate defendant. The applicable legislation, in particular Articles 1070 and 1071 of the Civil Code, provide that compensation for non-pecuniary damage in comparable situations is recoverable from the Ministry of Finance of the Russian Federation at the expense of the Treasury of the Russian Federation.

In assessing the amount of compensation to be awarded for non-pecuniary damage the court takes account of the degree of a wrongdoer's fault and other relevant circumstances, and also the intensity of the physical and moral suffering of a victim, factual circumstances which the harm was caused and personal characteristics of the victim. As to the amount of compensation, the court does not find it possible to grant [the plaintiffs] claims in full, considering the amount claimed to be excessive and rejecting the plaintiff's reference to several legal writers' works as unsustainable.

Accordingly, taking into account the requirements of reasonableness and justice, the court considers it appropriate to order the defendant to pay [Mr] Shcherbakov compensation for non-pecuniary damage in connection with his criminal prosecution and detention in the amount of RUR 300,000 [approximately EUR 8,733]."

36. The parties appealed against the judgment. The applicant challenged the amount of the court award as insufficient and insisted on a larger sum. It appears that the respondent submitted, among other things, that the applicant had failed to substantiate his allegations concerning the allegedly appalling conditions of his detention. In his objections to the respondent's appeal the applicant stressed that his submissions represented well-known facts and needed no proof, because they had been acknowledged by the Russian Government in the *Kalashnikov* case.

37. On 2 March 2006 the Tula Regional Court examined and dismissed the parties' appeals against the District Court judgment. It appears that at the time of the appeal hearing the applicant was under criminal prosecution for extortion and was being held in detention. His counsel was present and made submissions to the appeal court on the applicant's behalf.

38. The appeal decision referred to the applicant's detailed submissions concerning the conditions of his detention. The court reasoned as follows:

"It follows from the materials of the case and was established by [this] court that claimant Shcherbakov was in detention from 23 May 1995 to 15 July 2002. During that period his place of residence was searched.

By a decision of 26 July 1996 the prosecutor's office of the Tula Region charged the plaintiff with participation in a criminal gang, robbery, concerted and aggravated murder, abduction, bribery and unlawful possession of arms.

By a decision of 15 July 2002 the Tula Regional Court terminated the criminal case against [Mr] Shcherbakov ... by reference to Section 24 § 1 (2) of the Code of Criminal Procedure (lack of *corpus delicti* in his actions).

By the same decision the court lifted [Mr] Shcherbakov's measure of restraint, namely remand in custody, and recognised his right to rehabilitation.

Under Section 151 of the Civil Code, if a citizen sustained non-pecuniary damage (physical or moral suffering) as a result of actions violating his or her non-pecuniary rights or interests, and also where it is expressly provided by law, the court may order the wrongdoer to pay him monetary compensation.

Under Section 1070 (1) of the Civil Code, damage sustained by a citizen as a result of his unlawful conviction, criminal prosecution, unlawful detention and so on, shall

be compensated in full in accordance with the procedure prescribed by law by the Treasury of the Russian Federation, irrespective of whether the damage occurred as a result of misconduct on the part of investigating officials, the prosecutor's office or the courts.

Pursuant to Section 1100 (3) of the Civil Code, the citizen is compensated for non-pecuniary damage irrespective of the wrongdoer's fault if the damage was inflicted as a result of his unlawful conviction, criminal prosecution, unlawful detention or an undertaking not to leave a place of residence, applied as a measure of restraint, unlawful imposition of an administrative punishment in the form of arrest or correctional works.

When partly allowing [Mr] Shcherbakov's claims, the [first-instance] court correctly relied on the above-mentioned legal provisions and Section 1069 of the Civil Code of the Russian Federation and also correctly proceeded from the fact that plaintiff Shcherbakov had been unlawfully prosecuted and unlawfully detained.

By decisions of 25 July 2002 the Tula Regional Court discontinued criminal proceedings against [Mr] Shcherbakov in accordance with Section 24 § 1 (2) of the Code of Criminal Procedure of the Russian Federation (lack of *corpus delicti* in his actions).

Accordingly, the [first-instance] court's judgment ordering the Ministry of Finance of the Russian Federation to pay plaintiff Shcherbakov non-pecuniary damages in the amount of RUB 300,000 is correct.

When resolving the dispute as to the amount of the compensation, the court correctly fixed it at RUB 300,000. It arrived at that conclusion in accordance with Articles 151 (2) and 1101 of the Civil Code and having taken into account specific circumstances in which the harm had been caused and evidence produced by the plaintiff and concerning the nature of physical and moral suffering inflicted on him as a result of his unlawful criminal prosecution and unlawful detention, and also the requirements of reasonableness and justice.

...

As to the plaintiff's argument that, the [first-instance] court had refused to apply [a particular method] in calculating the amount of the award, it is unsustainable because, according to Article 1101 of the Civil Code, in each particular case the courts take into account particular circumstances in which mental and emotional harm had been caused, as well as the personal characteristics of the victim and the requirements of reasonableness and justice".

II. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure

1. Termination of criminal proceedings

39. Article 24 § 1 (2) of the Code provides that criminal proceedings should be terminated if there is lack of *corpus delicti* (evidence of a crime).

2. The right to rehabilitation

40. The right to rehabilitation is governed by Chapter 18 of the Code.

41. Article 133 § 2 (3) provides that a person accused of or charged with a criminal offence, against whom the criminal proceedings were terminated for, in particular, the lack of *corpus delicti*, has the right to rehabilitation, i.e. the right to claim damages in connection with his criminal prosecution.

42. Article 133 § 1 establishes that the right to rehabilitation includes the right to claim pecuniary and non-pecuniary damages and also the entitlement to have one's labour-, pension-, housing- and other rights restored.

(a) Compensation for pecuniary damage

43. Article 135 § 2 provides that the rehabilitated person is to address his or her claims for compensation for pecuniary damage to the body which issued the decision to discontinue the criminal proceedings against him or her.

44. Under Article 135 § 1, a rehabilitated person may recover in compensation for pecuniary damage, among other things, (a) salary, pension and other payments of which he or she was deprived in connection with his or her criminal prosecution, (b) legal costs.

(b) Compensation for non-pecuniary damages

45. Article 136 § 2 provides that monetary claims for compensation for non-pecuniary damage in connection with a person's criminal prosecution are brought before civil courts under the rules of civil procedure.

B. The Civil Code

46. Articles 151 and 1101 of the Civil Code provide that a person may claim compensation for non-pecuniary damage (physical and psychological suffering) sustained as a result of actions violating his or her personal non-pecuniary rights and interests. In assessing the amount of compensation to be awarded a court should take into account, in particular, the intensity of

a person's physical and psychological suffering, his or her personal characteristics and the particular circumstances in which the harm was caused.

47. Under Articles 1070 and 1100 of the Civil Code, the State may be held liable for damage inflicted as a result of unlawful prosecution and detention irrespective of whether they occurred as a result of relevant officials' misconduct.

48. Articles 1069 and 1070 § 2 also provide that damage sustained by a person in connection with his unlawful prosecution and detention is recoverable from the Treasury of the Russian Federation.

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

49. Rule 42 provided that all suspects and accused persons in detention had to be given, among other things: a sleeping place, bedding, including one mattress, a pillow and one blanket; bed linen, including two sheets and a pillow case; a towel; tableware and cutlery, including a bowl, a mug and a spoon; and clothes appropriate to the season (if the inmate had no clothes of his own).

50. Rule 44 stated that cells in pre-trial detention centres were to be equipped, among other things, with a table and benches with a number of seating places corresponding to the number of inmates, sanitation facilities, tap water and lamps to provide day-time and night-time illumination.

51. Rule 46 provided that prisoners were to be given three not meals a day, in accordance with the norms laid down by the Government of Russia.

52. 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 linen after taking their shower.

53. Rule 143 provided that inmates could be visited by their lawyer, family members or other persons, with the written permission of an investigator or an investigative body. The number of visits was limited to two per month.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

54. 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 (eight 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 APPLICANT'S VICTIM STATUS

55. In their observations dated 13 February and 25 April 2006 the respondent Government drew the Court's attention to the fact that on 15 July 2002 the criminal proceedings against the applicant had been discontinued and that as a result of two sets of court proceedings which had ended on 6 May 2003 and 2 March 2005 respectively the applicant had been fully compensated for any damage he had sustained during his criminal prosecution. Accordingly, the Government invited the Court to discontinue the proceedings in the applicant's case for the loss of the victim status.

56. The applicant disagreed and argued that the amount of compensation awarded to him by the national courts had been insufficient. He further emphasised that the domestic law had not provided for compensation in cases of appalling conditions of detention.

57. The Court observes that according to its well-established case-law an individual can no longer claim to be a victim of a violation of a Convention when the national authorities have acknowledged, either directly or in substance, a breach of the Convention and afforded appropriate redress (see,

among other authorities, *Amuur v. France*, 25 June 1996, § 36, Reports of Judgments and Decisions 1996-III). Thus, in principle, where domestic proceedings include an admission of the breach by the national authorities and the payment of a sum of money amounting to redress, the dual requirements established in *Amuur* are satisfied and the applicant can no longer claim to be a victim of a violation of the Convention (see *Rechachi and Abdelhafid v. the United Kingdom* (dec.), no. 55554/00, 10 June 2003). The Court also notes that, as a general rule, an acquitted defendant or a person against whom criminal proceedings have been discontinued cannot claim to be a victim of violations of the Convention which, according to him, took place in the course of proceedings against him (see *Osmanov and Husseinov v. Bulgaria* (dec.), no. 54178/00, 4 September 2003). However, this conclusion can only be drawn where the applicant is no longer affected at all by the proceedings in question, having been relieved of any effects to his disadvantage (see *Correia de Matos v. Portugal* (dec.), no. 48188/99, ECHR 2001-XII).

58. Turning to the circumstances of the present case, the Court observes the following. The applicant brought two actions for pecuniary and non-pecuniary damages in connection with his unlawful prosecution and detention and the domestic courts awarded him RUB 742,962.41 in total (approximately EUR 21,633). In both decisions the courts emphasised that, in assessing the amount of compensation to be awarded to the applicant, they took account of particular circumstances in which the harm had been caused and the evidence submitted by the applicant and concerning his physical and psychological suffering sustained as a result of his unlawful prosecution and detention. The Court further finds that the judgment of 19 December 2005, as upheld on appeal, declared the applicant's detention and criminal prosecution unlawful in their entirety, from the applicant's arrest until the discontinuation of the criminal proceedings against him and his release. The Court also notes that the domestic courts specifically emphasised the length of the applicant's detention when assessing the intensity of his physical and moral suffering. Furthermore, by decision of 7 February 2003, as upheld on appeal on 6 May 2003, the Regional Court compensated the applicant for lost earnings for the whole period of the criminal proceedings against him and three subsequent months and held that it was open to the applicant's wife to recover legal costs incurred in connection with the applicant's criminal prosecution.

59. The Court further notes that the applicant was able to participate in the proceedings for compensation, personally and through his counsel, and the domestic courts, in two sets of proceedings and at two instances, carefully examined the applicant's situation, took into account his personal characteristics, the intensity of his psychological and physical suffering, the particular circumstances in which the harm had been caused and the evidence submitted by the applicant to that effect. The Court finds that the

domestic courts reached reasoned conclusions as to the amount of the compensation and their award does not appear unreasonable or arbitrary even in domestic terms.

60. Further, the Court observes that the court decision of 7 February 2003 awarding the applicant pecuniary damages, as upheld on appeal on 6 May 2003, was fully enforced shortly after it had become final and there is nothing in the case file to suggest that the applicant was unable to obtain enforcement of the judgment of 19 December 2005, as upheld on appeal on 2 March 2006 within a reasonable time after its entry into force.

61. In view of the finding that the applicant's detention and criminal prosecution were unlawful in their entirety, the Court is prepared to accept that as a result of these proceedings the domestic courts explicitly recognised violations of the applicant's rights under Articles 5, 6 and 8 of the Convention.

62. At the same time, the Court is unable to reach the same conclusion in respect of his complaints under Article 3. Despite the applicant's claims in this respect, the domestic courts failed to examine his allegations concerning the conditions of his detention in remand prison IZ 71/1 and there is nothing in their decisions to suggest that they took account of them in assessing the overall amount of compensation to be paid to the applicant in connection with his unlawful prosecution.

63. Thus, the Court finds that the domestic authorities acknowledged, in substance, violations of the applicant's rights under Articles 5, 6 and 8 of the Convention and afforded him appropriate and sufficient redress. The Court thus accepts the Government's argument concerning the loss of the applicant's victim status in respect of these complaints. Accordingly, this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 35, §§ 3 and 4. Accordingly, the Court need not examine the rest of the parties' arguments in respect of this part of the application.

64. The Court rejects the Government's request in respect of the applicant's Article 3 complaints and finds that the applicant may still claim to be a victim within the meaning of Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

65. The applicant complained about the conditions of his detention in the Tula IZ-71/1 remand centre. He relied on Article 3 of the Convention, which, in so far as relevant, reads as follows:

Article 3

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

A. Admissibility

66. The Government submitted that the applicant had failed to exhaust domestic remedies in so far as he had never complained about the conditions of his detention to a competent domestic authority, such as a local prosecutor's office or the prison administration.

67. The applicant disagreed, having maintained his initial submissions. He specified that he had never complained about conditions of his detention to the prosecutor's office or the prison administration because the complaints would not have brought about any tangible results.

68. The Court would underline that the Government merely noted that the applicants had not lodged any complaints with the domestic authorities concerning the conditions of detention. The Government neither specified what type of representation would, in their view, have been an effective remedy, nor did they provide any further information as to how such a representation 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 make use of 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).

69. The Court accordingly rejects the Government's objection.

70. The Court finds that it needs to examine the applicant's compliance with the six-month rule, laid out in Article 35 § 1 of the Convention (see *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 79-81, 29 January 2009).

71. The Court notes that in his application the applicant complained about the conditions of his detention in Tula IZ-77/1, without giving the exact dates of his detention and details concerning prison transfers. Having examined the parties' submissions in this connection, the Court finds that the applicant was in fact detained in IZ-77/1 on two occasions, first between 31 October 1995 and 28 November 1999, and then from 12 May 2000 to 15 July 2002. During the period between these terms the applicant was held in a different prison, in respect of which he made no specific complaints or allegations. Given the date of introduction of the case to the Court and the fact that the mentioned two terms are separated by a sufficiently lengthy stretch of time, the Court finds that the applicant has complied with the six-month rule only in respect of the period between 12 May 2000 and 15 July 2002. Accordingly, it will examine the applicant's allegations and grievances only concerning this term of his detention.

72. The Court notes 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

73. The Government contested the applicant's submissions concerning the overcrowding of cells in that prison. The Government were unable to provide the Court with copies of original prison documentation, relying on prison records confirming the destruction of these documents on 15 April 2002, 28 March 2004 and 13 June 2006.

74. The applicant disagreed and maintained his complaints.

75. The Court would note that the parties disagree on just about every aspect of the applicants' conditions of detention, including the size of the cells and the number of beds. 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 applicant insisted on his initial account of events.

76. The Court observes that in certain instances the respondent Government alone have access to information capable of firmly corroborating or refuting allegations under Article 3 of the Convention and that a failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). Thus, the first issue to be examined is whether on the basis of the facts of the present case the Government's failure to submit copies of the relevant prison documentation has been properly accounted for.

77. In this connection, the Court would note that the destruction of the relevant documents due to expiry of the time-limit for their storage, albeit regrettable, cannot in itself be regarded as an unsatisfactory explanation for the failure to submit them relevant documents. The Court also has to look at the timing of that act as well as other relevant factual circumstances. In particular, regard should be had whether the authorities appeared to have been acting with due care in this respect (see, for example, *Oleg Nikitin v. Russia*, no. 36410/02, §§ 48 and 49, 9 October 2008).

78. Having examined the copies of materials submitted by the Government, the Court notes with regret that they reveal that the authorities did not display sufficient diligence in handling the relevant prison documentation in the Strasbourg proceedings, since some of the relevant documents were destroyed in June 2006, that is to say after the case had been communicated to the respondent Government for comments on 28 October 2005.

79. In so far as the Government referred to the certificates issued by the prison administration and dated 23 December 2005 as having evidentiary value and acting as a substitute for the original prison documentation, the Court would reiterate that on several previous occasions it has declined to accept the validity of similar statements on the ground that they could not be viewed as sufficiently reliable given the lapse of time involved (see *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007, and *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007). The Court finds that these considerations hold true in the circumstances of the present case, since the events at issue had taken place several years before, and it is clear that these statements are not based on any objective data. Furthermore, the Government were requested to provide data in respect of each day of the applicant's detention in IZ-71/1, whereas the certificates merely stated that the applicant had been provided with an individual sleeping place. The Court finds that in the circumstances of the case and given the lack of any original prison documentation, such an answer is too vague and unspecific to enable the Court to make a firm finding regarding the alleged lack of overcrowding in the facility in question. Thus, the Court takes note of these certificates, but it finds no objective reason to attach greater weight to them than to the statements made by the persons referred to by the applicant. Overall, the Court finds that the Government have not accounted properly for their failure to submit detailed information supported by copies of the original prison documentation, with the result that the Court may draw inferences from their conduct.

80. 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-71/1, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

81. In the light of the above finding and having regard also to the evidence submitted by the parties, the Court observes that the case file contains sufficient indication that the prison in question was experiencing severe overcrowding of its premises during the applicant's stay there. In particular, former detainees K. and M. and police officer S. (see paragraphs 16-18 above) in their uncontested statements relating to various dates between 1996 and 2002, all confirmed the fact that IZ-71/1 was severely overcrowded during his stay there. Being mindful of the objective difficulties experienced by applicants in substantiating their grievances in respect of the conditions of pre-trial detention in Russia, 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 for a number of years before, during and after the applicant's detention there.

82. 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).

83. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court finds that the fact that the applicant had to spend two years, two months and three days in the overcrowded cells of the Tula IZ-71/1 was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of anguish and inferiority capable of humiliating and debasing him.

84. There has therefore been a violation of Article 3 of the Convention in that the Court finds that the applicant's detention was inhuman and degrading within the meaning of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 10,000 euros (EUR) in compensation for pecuniary damage sustained as a result of the criminal proceedings against him and EUR 1,600,000 in compensation for non-pecuniary damage.

87. The Government contested these claims as unsubstantiated.

88. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court further notes that the applicant was detained over two years in overcrowded cells in a remand prison and thus indisputably sustained non-pecuniary damage which cannot be compensated solely by a finding of a violation. Deciding on an equitable basis, it awards him EUR 18,000 for non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

89. The applicant also claimed EUR 5,700 in respect of costs and expenses incurred before the Court.

90. The Government contested the applicant's claims.

91. 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 are 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

92. 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 complaint concerning the conditions of the applicant's detention in IZ-71/1 between 12 May 2000 and 15 July 2002 admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 3 of the Convention;
3. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and costs and expenses, to be converted into Russian roubles at the rate applicable on 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;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President