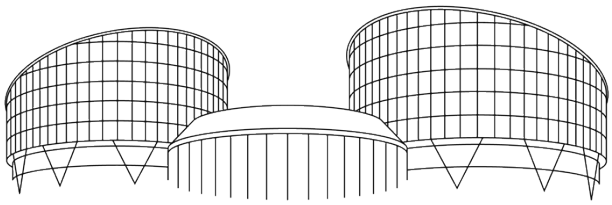

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TREPASHKIN v. RUSSIA (no. 2)

(Application no. 14248/05)

JUDGMENT

STRASBOURG

16 December 2010

FINAL

20/06/2011

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

In the case of Trepashkin v. Russia (no. 2),

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 14248/05) 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 Mikhail Ivanovich Trepashkin ("the applicant"), on 13 March 2005.

2. The applicant, who had been granted legal aid, was represented by Ms Y.L. Liptser, a lawyer practising in Moscow. The Russian Government ("the Government") were initially represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by their current Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that the conditions of his detention and his transfers to and from court between 1 December 2003 and 23 July 2005 had been contrary to Article 3 of the Convention, that the review of his appeal against the detention order of 1 December 2003 had not been speedy, and that he had been absent from the appellate hearing of 10 February 2004 concerning his detention, contrary to the requirements of Article 5 § 4 of the Convention; and also that he had not had enough time and facilities for the preparation of his defence, and had been unable to meet his lawyers in appropriate conditions, contrary to Article 6 §§ 1 and 3 (b) and (c) of the Convention. Furthermore, he complained that the Government had interfered with his right of individual petition under Article 34 of the Convention.

4. By a decision of 22 January 2009 the Court declared the application partly admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1) on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. The applicant is a former officer of the Federal Security Service of the Russian Federation (FSB). In 1998 he participated in a much publicised press conference together with three other FSB officers. Some time after the press conference the applicant remained in the country but was dismissed from the FSB. From 1998 to 2002 he served in the tax police and he later became a practising lawyer and a member of the bar association.

A. Criminal proceedings against the applicant and his detention

1. Criminal case no. 1

8. On an unspecified date the Chief Military Prosecutor's Office initiated an inquiry relating to the period of the applicant's service in the FSB. The inquiry concerned the alleged disclosure of certain classified material by the applicant.

9. On 22 January 2002 the prosecution carried out a search of the applicant's home and discovered certain documents allegedly containing classified information. Assorted cartridges for various types of weapons were also found in a cardboard box on a shelf above the applicant's writing table. The applicant alleged that the cartridges did not belong to him and had been planted by an FSB agent, posing as a plumber, shortly before the search.

10. During the search the prosecution also seized a video recording made by the applicant on 3 May 1999 in a forest near Bryansk. It showed the applicant and his friend Mr S. shooting for fun from the applicant's service weapon. The applicant explained that for the shooting he had used a gun cartridge he had received from Mr S.

11. On 28 January 2002 the prosecution charged the applicant with disclosure of State secrets and abuse of his official powers (“criminal case no. 1”) and unlawful possession of firearms (the ammunition found in his flat and the gun cartridge he had used to shoot in the forest).

12. From 24 March 2003 the applicant was under an obligation not to leave Moscow without authorisation from an investigator, a prosecutor or the court. On 18 April 2003 the investigation was completed and the prosecution handed the case file to the applicant and his lawyers for examination. The defence had the file at their disposal until 21 June 2003. On 24 June 2003 the case file was sent to the court. The date of the first hearing was set.

2. Criminal case no. 2 and the applicant's arrest on 22 October 2003

13. Pending the investigation in case no. 1, the applicant continued his professional activities as a lawyer. On the evening of 22 October 2003 his car was stopped by traffic police. The car was searched and a handgun was discovered on the back seat of the applicant's car. On 24 October the Dmitrov Town Court remanded the applicant in custody on the ground that he was suspected of committing a criminal offence punishable under Article 222 of the Criminal Code (unlawful possession of firearms and ammunition). The detention order was confirmed on 5 November 2003 by the Dmitrov Town Court, and, on 13 November 2003, by the Moscow Regional Court. The applicant was eventually acquitted of the charges against him in criminal case no. 2 (for more details see *Trepashkin v. Russia (no. 1)*, no. 36898/03, 19 July 2007).

3. Detention order of 1 December 2003

14. In November 2003 the file in criminal case no. 1 and the bill of indictment were forwarded to the Military Court of the Moscow Circuit. The Military Court, referring to certain classified information contained in the file, decided to examine case no. 1 in camera.

15. On 1 December 2003 the Military Court of the Moscow Circuit held a preparatory hearing in the applicant's case no. 1. The judge heard evidence from the parties and made certain procedural arrangements for the forthcoming trial. Most of the applications lodged by the defence were rejected; however, the applicant was granted additional time to examine the case file. Given that the file contained classified information, the applicant could have access to it only on the court's premises.

16. In the same ruling the judge ordered that the applicant be kept in custody. The judge observed that on 22 October 2003 the applicant had been arrested by the police on suspicion of committing another crime. The applicant had thus breached his undertaking not to leave his permanent place of residence. The judge also stated that the evidence in the case file included an invitation to visit the United Kingdom, which, in the court's view, indicated that the applicant intended to leave Russia.

4. Appeal against the detention order of 1 December 2003

(a) The applicant's account

17. On 3 December 2003 the applicant lodged an appeal against the detention order. He argued that the criminal cases against him had been fabricated by the authorities, and that there had been no evidence that he would flee or tamper with evidence or commit crimes. In addition, the applicant complained that the prosecution and the court had violated various provisions of domestic criminal procedural law in ordering his arrest.

18. On 19 December 2003 the judge of the Dmitrov Town Court decided not to extend the applicant's detention for the purposes of the proceedings in case no. 2. However, the applicant remained in the remand prison on the basis of the detention order of 1 December 2003, issued by the Military Court of the Moscow Circuit.

19. On an unspecified date in December the applicant requested the Military Court of the Moscow Circuit to release him. On 22 December 2003 the Military Court confirmed that the grounds for his detention, as set out in its earlier decision of 1 December 2003, were still valid.

20. On 10 February 2004 the Supreme Court examined an appeal by the applicant and dismissed it. The hearing took place in the absence of the applicant. The appellate court acknowledged that there had been minor irregularities in the detention order of 1 December 2003. Nevertheless, they were not such as to require the applicant's release. As to the substance of the case, the court upheld the reasoning of the first-instance court.

(b) The Government's account

21. According to the Government, the first grounds of appeal lodged by the applicant (on 3 December 2003) were addressed to the Supreme Court of the Russian Federation. On 4 December 2003 the grounds of appeal were dispatched by the prison administration to the Supreme Court. On 19 December 2003 the applicant filed supplementary grounds of appeal. They were also addressed to the Supreme Court of the Russian Federation. From the Supreme Court those grounds were transmitted to the Military Court of the Moscow Circuit.

22. Furthermore, on 10 and 16 December 2003 the applicant's lawyers (Ms Yulina and Mr Glushenkov) filed their own grounds of appeal against the detention order of 1 December 2003. Those grounds were addressed to the Military Court of the Moscow District. They were sent to the prosecutor's office for comment. On 23 December 2003 the Military Court of the Moscow District obtained written submissions from the prosecutor's office in reply to the grounds of appeal filed by the applicant's lawyers.

23. On 23 December 2003 and 6 January 2004 the applicant's original and supplementary grounds of appeal were received by the Military Court

of the Moscow Circuit. The Military Court sent them to the prosecutor's office for comments. On 12 and 15 January 2004 the prosecutor's office replied in writing to the grounds of appeal. On the next day the complete case file was dispatched to the Supreme Court of the Russian Federation.

24. On 19 January 2004 the appeal against the detention order of 1 December 2003 arrived at the Supreme Court of the Russian Federation. The hearing took place on 10 February 2004. The applicant was able to participate in the hearing via video link. The applicant's two lawyers (Mr Glushenkov and Mr Gorokhov) were present and made submissions. As indicated above (see paragraph 20) the Supreme Court dismissed the applicant's appeal and considered that the applicant should remain detained on remand for the period of the trial.

5. The applicant's contacts with his lawyers in the remand prison and in the court building

(a) The applicant's account

25. The applicant alleged that conditions in the meeting room where he had been allowed to talk to his lawyers and work on the case had been inappropriate. He explained that the room where the detainees met their lawyers was partitioned into six small booths for two people, with detainees being separated from their lawyers by a grille. This made it impossible to study documents, and detainees had to speak quite loudly to be heard. As a result, other detainees, and the warder walking along the line of booths, could hear conversations between the applicant and his lawyer. It was impossible to pass any document through the grille, even newspapers with the texts of newly enacted legislation. The applicant was unable to meet both of his lawyers at the same time, since the booth had room for only two persons.

26. On 18 March 2004 the applicant wrote a letter to the Director of the Execution Department of the Ministry of the Interior. In this letter the applicant submitted that he was unable to meet his lawyer out of the hearing of the prison warders and other detainees.

27. On the days when the applicant was transported to the courthouse to study the case file, he was so cold and exhausted that, when brought into the court building, he was unable to read the material in the file or prepare his defence: his only concern was to get warm. Moreover, in the courthouse he was kept handcuffed to a table leg or a chair, so that it was very difficult for him to read the case file or take notes. This position also caused severe pain in his back.

28. During the trial the applicant asked the court to lessen the frequency of the hearings, which were held almost every day. However, his request was refused. In such conditions, and having regard to the poor conditions of his detention and his transfers to the court building, he was unable to

prepare properly for the hearings. The applicant claimed that the case file contained objections lodged by him to that end.

(b) The Government's account

29. The Government described the meeting rooms as follows. In remand prison no. IZ-77/1 there had been fifty rooms "for investigative activities". The average size of the room had been 15 square metres. According to the Government, while in remand prison no. IZ 77/1 the applicant had met his lawyers ninety-six times. His defence team had included seven persons. The meetings had lasted about two hours on average. The applicant and his lawyers had been able to exchange documents and handwritten notes during those meetings. Each room had been equipped with a table, three chairs, a coat-hanger, an alarm button and a peephole. The meeting rooms had never been shared by several prisoners at once. There had been no glass partition or grille in the meeting rooms separating the defendant from his lawyers. The Government produced photos of a meeting room which corresponded to that description. During meetings between a detainee and his lawyers, the prison staff had been unable to hear them, but they had been able to observe the room through a peephole.

30. The Government denied that the applicant had been handcuffed in the court building while he studied the case file. In the courtroom during the hearings the applicant had been sitting one metre away from his lawyers, so it had been possible for them to talk in private. The trial had started on 15 December 2003. On 18 December 2003 the court had allowed the applicant to consult his lawyer in private before the start of each hearing, as well as during the breaks, in a special meeting room. The Government, referring to the verbatim record of the hearings, maintained that during the trial the applicant had had forty-six meetings with his lawyers in the meeting room in the court building. On 15 January 2004 the applicant had requested the court to allow him to have those meetings directly in the courtroom. That request had been granted by the court. On 5 March 2004 the applicant had asked the court to give him extra time to talk to his lawyers during the hearings. On 11 March 2004 the presiding judge had ruled that the applicant should be allowed to talk to his lawyers during the breaks.

6. Trial in case no. 1

31. The trial in case no. 1 was held behind closed doors. The applicant was represented by three lawyers: Mr Glushenkov, Mr Gorokhov and Ms Yulina.

32. The defence maintained that the cartridges had been planted by FSB agents. Since the much publicised press conference in 1998, FSB senior officials had wanted to settle old scores with him. The applicant asked the court to admit the videotape of the press conference in evidence.

33. The applicant further supposed that the gun cartridges found in his flat could have been planted by FSB agents who had visited him shortly before the search, disguised as plumbers. The defence asked the court to summon these "plumbers".

34. As to the allegedly "classified" documents discovered by the prosecution among his papers, the applicant did not deny that he had kept them. However, these files related to the period of his service in the KGB (the predecessor of the FSB) from 1984 to 1987. In his submissions, the documents were not secret.

35. The court examined Mr Sh., who had allegedly received the classified information from the applicant. The court also examined documents and other evidence discovered in the applicant's flat during the search of 22 January 2002, documents relating to the period of his service in the KGB, and the reports on the expert examination of the documents allegedly disclosed by the applicant, which concluded that these documents contained secret information. The court also called and questioned one of the participants in the 1998 press conference, Mr G., who denied the existence of any plan to eliminate the applicant. The court also examined the video record of the 1998 press conference.

36. The court further examined the record of the seizure of 22 January 2002, during which the police had discovered cartridges in the applicant's flat. The court also examined several witnesses who had visited the applicant's flat before the search. All of them denied having seen the ammunition in the applicant's flat, but they had not looked in the cardboard box where the cartridges had been discovered. The court called and questioned three persons working in the housing maintenance service. They confirmed that on several occasions between 2000 and 2002, plumbers on duty had visited the applicant's flat.

37. The court also examined several relatives of Mr S. They testified about the events of 3 May 1999, when the applicant and Mr S. had gone shooting for fun in a forest near Bryansk. The court also examined the video which showed Mr S. firing a shot with the applicant's gun.

7. Judgment in case no. 1

38. On 19 May 2004 the Military Court of the Moscow Circuit gave judgment in criminal case no. 1. The applicant was found guilty on two charges and was sentenced to four years' imprisonment, to be served in a "colony-settlement".

39. First, the court convicted the applicant of unlawful possession of the assorted gun cartridges found in his flat during the search (Article 222 of the Criminal Code). Further, the court referred to a videotape seized by the prosecution from the applicant's flat. The recording was made by the applicant on 3 May 1999 in a forest near Bryansk; it showed the applicant and his friend Mr S. shooting for fun from the applicant's service weapon.

The court established that the cartridge used by Mr S. to shoot had been unlawfully acquired by the applicant from him.

40. Second, the applicant was convicted of disclosure of State secrets. The court established that in the 1980s the applicant had served in the Soviet secret service, and had had access to certain classified documents. He had kept at his home a number of case files containing information about KGB informers. In July and August 2001 the applicant had shown these documents to his former colleague. Further, in February 2002 the applicant had handed the same person (his former colleague) four files containing information about the FSB's investigative activities in the mid-1990s. At the relevant time the applicant's former colleague had not been serving in the FSB; therefore, he had not had the necessary security clearance to have access to such documents. The court qualified the documents shown and given to the former colleague as "secret". Thus, the applicant's acts amounted to the "disclosure of State secrets".

41. The defence appealed. They alleged, in particular, that they had been placed in a disadvantageous position *vis-à-vis* the prosecution, and that the applicant had not had enough time and facilities to prepare his defence.

42. On 13 September 2004 the Military Division of the Supreme Court of the Russian Federation upheld the judgment of 19 May 2004. The Supreme Court did not find any major irregularity in the investigative proceedings and rejected the argument that the defence had not had sufficient time and facilities during the trial. The Supreme Court noted that the pace of the trial (seven to ten court hearings per month, each lasting about three to five hours) had been adequate and had not precluded the applicant from meeting his lawyers and preparing his defence. The Supreme Court noted that the applicant had not complained of any breaches of confidentiality during the meetings with his lawyers.

B. Conditions of detention and transfers to court

1. Conditions in remand prison no. IZ 77/1 in Moscow – cell no. 274

43. On 1 December 2003 the applicant was placed in remand prison no. IZ-77/1 in Moscow following the decision of the Military Court of the Moscow Circuit in connection with criminal case no. 1.

(a) The applicant's account

44. The applicant arrived at remand prison no. IZ-77/1 very late and spent the night in a cell measuring 1.5 by 1.8 square metres, which had no windows or ventilation, was filthy and smoky and was full of lice. Only on the morning of 2 December 2003 did he receive dried cereal.

45. From 2 December 2003 the applicant was detained in cell no. 274 of remand prison no. IZ-77/1. According to the applicant, the cell was unventilated, although most of his cellmates were heavy smokers. Moreover, some of the other detainees were convicted criminals. The cell was also overcrowded: there were fourteen detainees for eight sleeping places. As a result, the detainees had to sleep in turns. The applicant was unable to sleep more than two hours a day, and the rest of the time he had to stand, because all the beds were occupied by his sleeping cellmates, and there were no seats in the cell. The applicant shared his sleeping place with four other detainees, including one suffering from psoriasis; consequently, their shared sleeping place was constantly covered with this individual's scabs. The cell was not equipped with radio and the administration provided no newspapers. Although prison regulations provided for a shower once a week, the applicant was unable to wash himself for almost four weeks, despite his numerous complaints about that fact.

46. The applicant produced a written statement signed by Mr N., his cellmate in remand prison no. IZ-77/1, in which the latter confirmed that the applicant had had no individual sleeping place in the cell. Mr N. also testified that the applicant had often had no possibility of sleeping before going to the court in the mornings, and had not received adequate medical treatment. Depositions to the same effect were signed by the applicant's cellmates Mr Y., Mr Pt. and Mr Gb.

47. The applicant was detained in that cell until 30 December 2003.

(b) The Government's account

48. The Government maintained that between December 2003 and October 2004 the overall number of prisoners in remand prison no. IZ 77/1 had varied from 2,461 (October 2004) to 3,654 (in February 2004), with an average of 3,162. The overall number of sleeping places in remand prison no. IZ 77/1 was 2,686. Only on one occasion (in February 2004) had the number of sleeping places exceeded the number of inmates.

49. The Government further maintained that the applicant's description of conditions in cell no. 274 was inaccurate. They contended that the cell had a combined supply-and-exhaust ventilation system. The toilet and the water tap were separated from the residential area; the cell had a table, several benches, cupboards for the detainees' personal belongings, a wall cupboard for food, a mirror, a television set, a refrigerator and cold and hot water. The cell had a surface area of 12.27 square metres, had eight sleeping places and housed eleven detainees, including the applicant.

2. Conditions of detention after the applicant's transfer to another cell in remand prison no. IZ-77/1 (30 December 2003 to 8 October 2004)

(a) The applicant's account

50. On 24 December 2003 the applicant was summoned by the deputy chief administrator of the remand prison. The latter enquired about the applicant's complaints to the European Court of Human Rights concerning the conditions of his detention and threatened him with various disciplinary measures, in particular, placement in a strict isolation cell. The applicant immediately informed his lawyer of the conversation.

51. On 30 December 2003 the applicant signed a declaration in which he stated that he had no complaints about the conditions of detention. He was then transferred to cell no. 605 in building no. 6 of the remand prison. The conditions in that cell were better than in his previous one. It contained only five people and a hot shower was available twice a week for the detainees in that cell. However, the room was not ventilated and the other detainees smoked constantly. Moreover, the unit had no appropriate courtyard for outdoor exercise. Instead, the detainees were taken to a dusty and covered cubicle, made out of concrete, measuring 3.5 by 4.5 metres, under a roof. Walking in this room in clouds of concrete dust aggravated the applicant's asthma and various other health problems.

52. The applicant's lawyers complained to the prison authorities. As a result the applicant was examined by a general practitioner; the doctor diagnosed asthma and cardiological problems and prescribed glasses. At the same time, the doctor concluded that the applicant's state of health had not deteriorated during his detention in the remand prison.

53. On 5 January 2004 the applicant withdrew the declaration made on 30 December 2003. He explained to his lawyer that he had been given an opportunity to sign the declaration in return for his transfer to a cell where he would have an individual sleeping place and access to a hot shower.

54. On an unspecified date the applicant's counsel wrote to the Ministry of Justice complaining about the conditions of her client's detention.

55. In its reply of 29 January 2004 the Ministry confirmed that, on arrival at remand prison no. IZ 77/1, the applicant had been placed in a cubicle because no appropriate cells had been available. He had spent no more than two hours there. From 1 a.m. to 9 a.m. he had undergone, among other things, a medical examination, fingerprinting, photographing and a personal search. At 9 a.m. he had received a “bag meal” and had been conveyed to the court. On his return to the remand prison the applicant had been placed in a cell for eight people, although at that time twelve people had been detained there.

56. The Ministry explained that at the relevant time the population of the remand prison had exceeded its planned maximum capacity by 75%. The cell was not equipped with seats because it was too small.

57. As to the timing of the applicant's transfers to the court, detainees were usually woken up at 5.30 a.m. and were taken out of their cells at 6 a.m. Every day about 150 to 200 persons were conveyed from the remand prison to the courts. Convoy officers were always informed about detainees' illnesses or other special conditions.

58. According to the Ministry, time for visits by relatives was limited to forty minutes because of the lack of appropriate meeting rooms; as regards meetings with defence counsel, the applicant had experienced no restrictions in this respect. Thus, in December 2003 the applicant had had four meetings with his lawyers (on 3, 16, 15 and 20 December 2003) which had lasted nine hours on aggregate. The applicant had been unable to take a shower for four weeks because the "sanitary treatment" (washing) of detainees had taken place on the dates when the applicant had been in court.

59. On 19 May 2004 the Ministry of the Interior informed the applicant that his complaints about the delays in transporting detainees to and from the court had proved to be accurate, at least in part. The applicant was assured that the necessary measures would be taken to improve the situation in future.

60. On 22 June 2004 the applicant complained to the prison administration about the conditions in the room for physical exercise (or rather, the "walking room"). On 1 October 2004 he repeated his complaints, stressing that he suffered from asthma of allergic origin and could not breathe normally in the walking room, because of the clouds of concrete dust and the lack of fresh air arriving from outside. He also complained that patients from the prison hospital who suffered from infectious diseases, such as hepatitis, aseptic meningitis, dysentery, syphilis and Aids, were taken to the same room for exercise. They often had diarrhoea and vomited in this very room, but nobody cleaned up after them. In the letters he listed a total of seven cellmates who were willing to confirm the accuracy of his account. He did not receive a reply to his letters.

(b) The Government's account

61. The Government maintained that on 30 December 2003 the conditions of the applicant's detention had improved after he had been transferred to cell no. 605. On 13 May 2004 the applicant had been transferred to cell no. 603. Those cells had recently been renovated; his transfer was justified by the fact that he was a former law-enforcement official and suffered from chronic diseases. The surface area of the cells was 18.13 square metres each; they had five sleeping places for four inmates. According to the documents submitted by the Government, in remand prison no. IZ-77/1 it was impossible to detain smoking prisoners separately

from non-smokers. There was one window in the cell measuring 70 cm by 150 cm, which had a ventilation pane that could be opened from inside the cell. Both cells (nos. 605 and 603) had shower cubicles. The Government further maintained that at least once a week the detainees were given an opportunity to take a fifteen-minute shower.

62. Every day the detainees were taken out for a one-hour walk in a walking yard, normally during the daytime. Wing no. 2 of the remand prison had fifteen walking yards, measuring 426 square metres on aggregate, each ranging from 15.44 square metres to 39.91 square metres. The height of the walls of the walking yards was 2.8 metres.

63. Wing no. 6 of the remand prison had twelve walking yards, measuring 17.28 square metres each and 207.3 square metres on aggregate, with the walls 3 metres high.

64. The Government explained that the inmates detained together in the same cell were taken for a walk to the corresponding walking yard. All walking yards had benches and rain shelters. The top of the walking yards was covered by a metallic grille. Further, the Decree of the Ministry of Justice of 9 October 2003 (no. 254) provided that each detainee should have 2.5 to 3 metres of personal space in a walking yard. The Government produced photocopied photographs of some of the walking yards.

65. The Government produced a letter, signed by the head of the prison administration, dated 26 February 2009, which stated that on the days of the hearings the applicant had been entitled to a daily walk in accordance with the applicable rules during the daytime.

66. The Government further enumerated the measures taken by the authorities to improve conditions of detention in Russian remand prisons. They described the conditions in the meeting rooms, where detainees could study the case files, communicate with their lawyers, and so on. Each detainee was entitled to a private visit of at least forty minutes every day.

3. Conditions in the Volokolamsk remand prison no. IZ 50/2 and the Dmitrov detention centre (8 October 2004 to 7 June 2005)

67. On 6 September 2004 the judge of the Dmitrov Town Court of Moscow Region ordered the applicant's transfer from the remand prison in Moscow to a remand prison in Volokolamsk (no. IZ 50/2), in order to secure his appearance at the trial before the Dmitrov Town Court in connection with case no. 2. The applicant appealed against that decision, but to no avail: on 7 December 2004 it was upheld by the Moscow Regional Court.

(a) The applicant's account

68. On 8 October 2004 the applicant was transferred to remand prison no. IZ 50/2 in Volokolamsk. He was examined by a commission of doctors,

who concluded that he was suffering from bronchial asthma and chronic bronchitis.

69. The applicant submitted that he had first been placed in cell no. 66, measuring 15 square metres, with eight other people; some of them were heavy smokers. He had no individual sleeping place, the table was very small and inmates received no toilet paper. The drinking water tank was broken. On 12 October 2004 the applicant complained about the conditions of his detention to the administration of the remand prison. As a result, he was transferred to cell no. 123, where the conditions of detention were somewhat better.

70. Over the following months the applicant was detained in a number of other cells, which were always overcrowded and infested with lice and bugs. In December 2004 he was detained in a cell measuring 12 square metres with seven other detainees. His daily physical activity was limited to a walk of less than one hour in the prison courtyard, under the supervision of guards with Rottweiler dogs.

71. The applicant produced written statements by his cellmates, who submitted that he had been detained in cells nos. 66, 101 and 123 in the Volokolamsk remand prison in November 2003 (shortly after his arrest), and from 8 October 2004 until 27 October 2004 (after his definite transfer from the Moscow remand prison IZ 77/1). All of them confirmed that the cells were infested with lice and bugs and that the prison administration had done nothing to get rid of them. They also stated that the cell had been overcrowded: thus, in cell no. 66 the applicant had not had an individual sleeping place and there had been only three or four seats for nine or eleven inmates. Though the applicant was sick, he had not received the necessary medicines and had not been examined by a doctor. Their account was confirmed by four other inmates who had been detained with the applicant at the relevant time.

72. On several occasions, between November 2004 and 29 April 2005, the applicant was transferred to the Dmitrov Town detention centre in order to participate in the hearings in the Dmitrov Town Court. The conditions of detention in the Dmitrov detention centre were even worse than in the Volokolamsk remand prison. Thus, there was no opportunity for any physical exercise, the cells were always overcrowded and badly ventilated, there were no washtubs or seats and the lighting was poor. On each occasion when the applicant was transferred from the remand prison to the detention centre, he had to carry all his personal belongings and documents and travel in smelly, dark and unheated metallic compartments in the prison vans. On one occasion the applicant was placed in a cell with repeat offenders and "ordinary" criminals. He did not receive proper medical aid and his state of health deteriorated.

73. On 7 June 2005 the applicant was transferred from the remand prison in Volokolamsk to a remand prison in Moscow (no. IZ 77/7). On

23 July 2005 the applicant was transferred to a "colony-settlement" in Nizhniy Tagil, to serve the sentence imposed by the judgment of 19 May 2004.

(b) The Government's account

74. The Government submitted that the applicant had been detained in cell no. 66 only once, on the day of his arrival at remand prison no. IZ 50/2 (on 8 October 2004). The Government maintained that cell no. 66 was equipped with a water tank which contained boiled water. In addition, the tap water in the cell was drinkable. The cell measured 12.6 square metres and had nine sleeping places.

75. According to the Government, remand prison no. IZ 50/2 had about 875 sleeping places (the exact number varied slightly during 2004 and 2005). The number of inmates had not exceeded the number of sleeping places, except for three days in January 2005.

76. In the following months the applicant was detained in cells nos. 101 (18.91 square metres, eight sleeping places), 122 (12.22 square metres, six sleeping places), 123 (21.62 square metres, fifteen sleeping places), and then in cell no. 101 again (in April 2005 the number of that cell was changed to 321). The number of sleeping places in those cells was reduced after 2006.

77. The Government produced an official record indicating the number of persons detained in each cell together with the applicant. According to them, the number of inmates was always equal to or lower than the number of sleeping places. The applicant had spent most of the time in cells nos. 122 (from 12 October 2004 to 31 January 2004), and 101 (or 321, from 4 February 1005 until 7 June 2005). During the period under consideration the applicant was detained in cell no. 122 with five other people for forty-five days, and with four other people for twenty days. During the remaining time the applicant was detained with three other people or fewer. As to cell no. 101, the applicant was detained for one day with seven other people, fourteen days with six other people, one day with five other people, ten days with four other people, and the remaining time with three other people or fewer. From 4 March 2005 the number of the applicant's fellow detainees in cell no. 101 (321) did not exceed four.

78. The detainees in the remand prison were entitled to a shower once a week for a duration of fifteen minutes. The prison had twelve shower hoses for the detainees.

79. As to the daily walks, the Government produced a description of the walking yards. In addition, they produced two letters from the governor of the remand prison. In the first letter he had informed the Court that persons detained in the same cell were taken for a walk together. Consequently, the number of people in the same walking yard always corresponded to the number of people detained in a cell. In the second letter the governor of the

remand prison certified that detainees who were conveyed to the courts or to other places were given the possibility of a walk in the morning, before being transferred.

80. According to the Government, on thirteen occasions the applicant was transferred to the Dmitrov detention centre to take part in the proceedings before the Dmitrov Town Court (criminal case no. 2), and from there back to remand prison no. IZ 50/2. In total, he spent eighty-two days in the Dmitrov detention centre. His stays there varied from four to fifteen days; the last stay there was between 25 and 29 April 2005.

81. The Dmitrov detention centre was built in 1983. It was situated in a semi-basement under the Dmitrov police station. The Government admitted that at the relevant time the detention centre had had no walking yards, which were under construction. The applicant was detained in a single-occupancy cell measuring 6.6 square metres. The Government produced photos of that cell (cell no. 7). The cell was "equipped with a window opening" measuring 88 cm by 65 cm. The bed was a wooden deck, 50 cm from the floor. The cell was also equipped with a toilet with a combined "sink and toilet plumbing system". The toilet was separated from the other parts of the cell by a partition. Heating in the cell was provided by the town's central heating system. The cell was lit by a 150 Watt halogen lamp installed in the wall above the entrance. The cell had a cold-water supply; in addition, hot water was available in the shower room and in the "room for warming up food". The detainees were given the opportunity to use the shower. The cells were ventilated naturally and through a "forced exhaust ventilation" system. The applicant was given bedding. On arrival every detainee received soap and toilet paper.

82. On 2 December 2003 the cell was examined by the detention centre's administration. The examination did not reveal any problems with the sanitary conditions in the cell, which were described as "satisfactory". The administration noted that the cells had been cleaned with disinfectants.

83. While in detention, the applicant always received the necessary medical aid. Thus, during his stay in remand prison no. IZ 77/1 in Moscow the applicant was supervised by a doctor in connection with his bronchial asthma and received "supportive treatment". In April-May 2005 the applicant was examined by the doctors in remand prison no. IZ 50/2 in Volokolamsk. They concluded that the applicant was suffering from "vegetovascular dystonia" (autonomic neuropathy). The applicant received all the necessary treatment in connection with his diseases.

4. Conditions of the applicant's transfers and conditions in the court building

(a) The applicant's account

84. From December 2003 the applicant was regularly taken from the remand prison to the court to attend hearings and examine the case file. The transfers usually started at 5 a.m. However, in order to be able to wash himself or to go to the toilets, the applicant had to get up earlier, and wait his turn in a queue.

85. Between 5 and 9 a.m. the applicant, together with other detainees, waited for a prison van in a small, seatless and smoky cell in the remand prison. Whilst being transported, the applicant and other detainees were kept in the closed metal rear section of an unheated prison van. The van was so overcrowded that the detainees, some of them with active tuberculosis, had to stand face to face during the transfer. Although, in principle, a prison van should carry no more than six to eight detainees, in fact the applicant's van carried twenty people on average, convicted criminals as well as suspects.

86. The van arrived at the courthouse shortly after noon and the applicant had two to three hours to examine the case file. In the courthouse he was kept in a "convoy room", which was also overcrowded, unheated and smoke-filled. At about 3 p.m. the convoy officers collected the detainees from different courts and transported them in a van to a central collection point. There the detainees waited for several hours in the vans to be dispatched to their respective detention facilities. As a result, the applicant often arrived at his detention facility after 11 p.m., although a convoy officer recorded an earlier time in the register of detainees. According to the applicant, he spent an average of about fifteen hours in total per day in the van, convoy room and collection point. On several occasions, in particular on 4, 18 and 19 December 2003, he was left without food and water for the whole day.

87. On 5 December 2003, five days after his arrival at remand prison no. IZ 77/1, the applicant wrote a letter to the court in which he described the conditions of his detention in and transfers to and from the courthouse. He submitted that in these circumstances he was unable to examine the case file and prepare his defence properly. He also indicated that the convoy officers had refused to accept any written complaints from him. He sought permission to read the case file in the detention centre. By letters of 9 and 15 December 2003 the court explained that it had no control over the prison administration and convoy services and that all such complaints should be addressed directly to them. The court further stated that the case file had to be kept in the courthouse, since it contained classified documents and information.

88. On 10 December 2003 the applicant wrote a new letter to the court, asking it to provide him with additional time to read the case file. He repeated his complaints about the conditions of his detention and the transfers. He asked the court to order the guards not to handcuff him during the reading of the file.

89. On 26 December 2003, on his way back from the court to the collection point, the applicant was placed in the metal-clad compartment of a prison van with another detainee, a mentally disturbed person. The latter was on his way from the Serbskiy Institute of Psychiatry to the prison hospital. The compartment was so small that the applicant had to stand on one leg and then the other. After three hours of this very uncomfortable posture, the applicant asked the convoy officers to put him in a different compartment, but they refused. He then knocked on the door of the compartment, repeating his demand. In reply the convoy officers opened the door and hit him with a rubber stick.

90. Because of the conditions in which he was transported, the applicant had a constant cold, from which he would never have recovered without the medicines sent to him by his relatives. He stated that it was very hard to obtain an appointment with a prison doctor and that the quality of medical aid available in the detention facility was very poor.

(b) The Government's account

91. The Government specified the days on which the applicant had been in court. In December 2003 he had been taken to the court from the remand prison eighteen times. In January 2004 he had been taken to the court twelve times, in February 2004 nine times, in March fourteen times, and in April twelve times. In the following months he had no more than four visits to the courts per month. After his transfer to remand prison no. IZ 50/2 he was taken to various courts eighteen times.

92. Under the prison rules the applicant was woken up at 6 a.m. Most of the time he was supposed to arrive at the court by 10 or 11 a.m. The time of his return to the remand prison was not specified, since it varied depending on the circumstances. However, the applicant was always back in the remand prison before 10 p.m. (the “last post” hour).

93. Detainees were conveyed from and back to the prisons in prison vans measuring 3.8 by 2.35 by 1.6 (height) metres or 4.7 by 2.4 by 1.64 (height) metres. The prison vans were designed to hold twenty-five and thirty-six people respectively. They had two “shared” compartments for twelve (or seventeen) detainees each, one (or two, depending on the model) single-occupancy compartment(s), and a compartment for four (or three, depending on the model) prison warders.

94. The Government maintained that the detainees conveyed from the remand prison to the court were provided with an “individual daily ration of

food", in accordance with the rules in force. The Government referred to a certificate issued by the governor of the remand prison.

95. Detainees were transported in a separated compartment of the prison vans. According to reports by the two chief officers of the unit responsible for transfers, dated 5 and 14 March 2007, the number of detainees in the prison vans always corresponded to the rules then in force. The Government referred to photographs of prison vans and plans showing how the detainees were seated inside the vans. The vans corresponded to domestic standards in the field of transporting detainees. During the cold season they were kept overnight in a heated garage. Furthermore, the vans were heated with a heating system using the warmth of the engine. The temperature in the prison vans corresponded to the local regulations; in this connection, the Government referred to a document issued by the officers in charge. The inside of the vans was washed every day; furthermore, the vans were disinfected every week (the Government referred to a report of 6 March 2007).

96. During his detention in remand prison no. IZ 77/1 the applicant was taken to the court seventy-five times (on the whole, during the period of his detention in different remand prisons the applicant was taken to the court ninety-three times). The average duration of the transfer between remand prison no. IZ 77/1 and the court was thirty to fifty minutes (for a journey of 8 km). However, sometimes the convoy used an alternative route which was 15 km long.

97. Cells for the detainees in the court building were "of standard [dimensions]", and "suited different categories of detainees". The applicant was detained separately from other detainees. Handcuffs were applied only during embarkation of and disembarkation from the prison van. The detainees in the court cells were provided with boiled water.

98. In the remand prison there were thirteen "transition cells" for those being dispatched to other prisons, courts, and so on. Their overall size was 143 square metres.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Conditions of detention – international instruments

99. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955 and approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular:

"10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation...

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all time.

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness...

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

...

45. ...

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited ..."

100. The relevant extracts from the General Reports prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) state:

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... Prisoners 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... Even 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 ..."

B. Appeals against detention orders

101. Under paragraph 11 of Article 108 of the 2002 Code of Criminal Procedure of the Russian Federation, a judge's ruling remanding a person in custody (detention order) may be appealed against to a higher court within three days from the date on which the ruling was given. A judge of the appellate court (*кассационная инстанция*) must give a decision on any such complaint or representation within three days of the date of its receipt.

102. Appellate procedure in general is governed by Articles 354-389 of the Code of Criminal Procedure. Pursuant to Article 355 of that Code, all appeals must be lodged with the court which delivered the decision at issue. Under Article 356, that court keeps the case file until the expiry of the time-limits for the appeal. Under Article 358, after having received an appeal, the court must send a copy of it to the other parties, invite them to submit written replies and set the time-limits for any replies, where

appropriate. Article 374 provides that the overall length of the examination of the appeal may not exceed one month from the date when the case file is received by the court of appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

103. Under Article 3 of the Convention, the applicant complained about the conditions in the remand prisons in Moscow and Volokolamsk and the Dmitrov detention centre, and about the conditions in which he had been transferred from the remand prisons and the detention centre to the courts and back. He claimed that those conditions amounted to inhuman and degrading treatment.

Article 3 of the Convention reads as follows:

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

A. The parties' submissions

104. The Government claimed that the conditions of the applicant's detention in the remand prisons in Moscow and Volokolamsk and in the Dmitrov detention centre, as well as the conditions in which he had been transferred to the courts and back, were compatible with Article 3 of the Convention. They submitted their account of the conditions of detention in the above-mentioned facilities (see the "Facts" part above).

105. The applicant maintained that his description of the conditions of his detention was accurate.

B. The Court's analysis

1. General principles

106. As the Court has held on many occasions, legitimate measures depriving a person of his liberty may often involve an element of suffering and humiliation. Yet it cannot be said that detention on remand in itself raises an issue under Article 3 of the Convention. What the State must do under this provision is to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure do not subject him to distress or

hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII.). When assessing conditions of detention, one must consider their cumulative effects as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

2. Standard of proof

107. The Court notes that in the present case the parties disagreed as to many aspects of the physical conditions of the applicant's detention, and as to the conditions in which he had been transported to and from the prisons. However, the Court does not consider it necessary to establish the truthfulness of each and every allegation by the applicant. The Court will primarily base its conclusions on the facts that either have been submitted or were undisputed by the respondent Government. The Court may also need to examine certain facts on which the parties produced conflicting evidence. In doing so it will depart from the stringent standard of proof "beyond reasonable doubt". The Court reiterates that in the specific context of complaints about prison conditions this standard is not applicable (see, among other authorities, *Kokoshkina v. Russia*, no. 2052/08, § 59, 28 May 2009, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004; see also *Gultyayeva v. Russia*, no. 67413/01, § 151, 1 April 2010). In such cases the Court may draw adverse inferences from the Government's failure to produce sufficient evidence or explanations, and decide on the basis of preponderance of evidence.

3. Periods to be examined

108. The Court observes that the applicant complained that the conditions of his detention in at least three separate detention facilities had been appalling. Thus, from 1 December 2003 the applicant was detained in remand prison no. IZ 77/1 in Moscow. On 30 December 2003 the applicant was transferred to a cell in another wing of that prison, and then again to a new cell. On 8 October 2004 the applicant was transferred from remand prison no. IZ 77/1 to remand prison no. IZ 50/2 in Volokolamsk, where he was detained until 7 June 2005. While in the Volokolamsk remand prison, the applicant was repeatedly moved from one cell to another. Furthermore, on many occasions he was taken to the Dmitrov Town detention centre. As a result, the conditions of the applicant's detention varied at different times.

109. Nevertheless, those variations and interruptions should not affect the Court's analysis, seeing that the nature of the applicant's complaints about the conditions of his detention remained substantially the same. In such situations the Court should treat the applicant's allegations as reflecting

a "continuing situation" (see *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008; and contrast *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 82-84, 29 January 2009).

4. The period between 1 and 30 December 2003

110. Between 1 and 30 December 2003 the applicant was detained in cell no. 274 in remand prison no. IZ 77/1. In respect of that period his allegations primarily concerned overcrowding beyond the design capacity and the shortage of sleeping places in the cell.

111. As follows from the figures provided by the Government, the number of detainees in remand prison no. IZ 77/1 constantly exceeded the number of sleeping places (except for the month of February 2004). More specifically, in cell no. 274, where the applicant was detained between 1 and 30 December 2003, the number of sleeping places was eight for eleven inmates.

112. The Government claimed that the applicant had always had a personal sleeping place; however, given the figures they produced, that assertion seems difficult to accept, unless one supposes that the applicant was given preferential treatment for whatever reason within the same cell. The Government did not explain why the applicant was always given a sleeping place of his own, whereas other prisoners had to share beds. Further, it is worth noting that the figures provided by the Government somewhat contradict the information received by the applicant from the Ministry of Justice (see paragraph 56 above), which referred to an even higher rate of overcrowding in the remand prison.

113. Even assuming that the applicant was in a privileged position, it is still to be noted that between 1 and 30 December 2003 he had 1.1 square metres of personal space, without discounting the area occupied by the toilet, sink, table, refrigerator and other equipment in the cell, as described by the Government. The Court reiterates that in certain cases the lack of personal space afforded to detainees in Russian remand prisons has been found to be so extreme as to justify, in its own right, a finding of a violation of Article 3 of the Convention. In several previous cases against Russia where the applicants were held in cells with less than three square metres of personal space the Court found a violation of Article 3 on that account alone (see, for example, *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; see also the case of *Trepashkin (no. 1)*, cited above, § 92, which was brought by the same applicant as in the present case and which concerned his detention prior to 1 December 2003). Even though the period under consideration in the case at hand is shorter than in many of the cases cited above, in the Court's opinion it is still

sufficient to conclude that the applicant was subjected to "inhuman and degrading treatment" within the meaning of Article 3 of the Convention.

5. The period between 30 December 2003 and 8 October 2004

114. The Court is prepared to accept that after the applicant's transfer to wing no. 6 (cells nos. 605 and 603) the conditions of his detention improved somewhat. Thus, it appears that in those cells he always had a sleeping place of his own and had enough living space. The problem of severe overcrowding was henceforth solved, at least as regards the applicant's detention in remand prison no. IZ 77/1. It has therefore to be ascertained whether the other conditions of his detention were compatible with the requirements of Article 3 of the Convention.

115. Before embarking on an analysis of that period the Court would observe that it has previously found that such factors as access to natural light or air, adequacy of heating arrangements, compliance with basic sanitary requirements, the opportunity to use the toilet in private and the availability of ventilation are relevant to the assessment of whether the acceptable threshold of suffering or degradation has been exceeded (see, for example, *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III). That list is not exhaustive; other conditions of detention may lead the Court to the conclusion that the applicant was subjected to "inhuman or degrading treatment" (see, for example, *Fedotov v. Russia*, no. 5140/02, § 68, 25 October 2005; *Trepashkin (no. 1)*, cited above, § 94; and *Slyusarev v. Russia*, no. 60333/00, § 36, ECHR 2010-...)

116. The applicant maintained that he had been detained together with other people suffering from infectious diseases. In theory, such a situation may create a risk of contamination, and contact between healthy and ill prisoners should be excluded or minimised. However, in the present case there is no evidence that such contact had any negative consequences for the applicant, whose own medical condition did not prevent him from sharing the cell and the walking yard with ill detainees.

117. At the same time it was not disputed that the applicant, who had been suffering from asthma and bronchitis (see *Trepashkin (no. 1)*, cited above, § 94), shared his cell and the walking yard with heavy smokers. It is unclear whether cells nos. 603 and 605 had any ventilation other than through the window, and, if so, whether it functioned properly. From the documents submitted by the Government it appears that the only ventilation in the cell consisted of a pivoting ventilation pane, which was insufficient to properly ventilate the cell, which was filled with tobacco smoke and other bad smells. Even though the alleged inadequacy of the medical assistance provided to the applicant in detention, as such, does not appear to raise any issue, his detention together with heavy smokers in the absence of proper

ventilation could have caused him suffering, and, indeed, aggravated his medical condition.

118. As to the "walking yards" where the detainees were taken for a daily one-hour walk, the air there was admittedly fresher. However, those yards were too small to give the detainees a genuine opportunity to exercise. In addition, as can be seen from the photographs attached to the Government's submissions, the walking yards were almost completely covered by rain shelters. The Court refers to its findings in the case of *Moiseyev v. Russia* (no. 62936/00, 9 October 2008), which concerned, *inter alia*, the conditions of detention in another Moscow remand prison (Lefortovo) from 1998 to 2002 (ibid., § 125):

> "The exercise yards could hardly afford any real possibility for exercise, being just two square metres larger than the cells. They were surrounded by three-metre-high walls with the opening to the sky protected with metal bars and a thick net. Obviously the restricted space coupled with the lack of openings undermined the facilities available for recreation and recuperation. In addition, on the days of court hearings, the applicant forfeited the opportunity to go to the exercise yard".

As follows from the evidence in the case file, the walking yards in remand prison no. IZ 77/1 did not differ significantly from that description.

119. Further, it is doubtful whether the applicant was able to use the walking yards on the days of the court hearings. Between January and April 2004 the applicant was taken to the courts almost every second working day (see paragraph 91 above). As appears from the evidence in the case file, the logistical arrangements in the remand prison were such that groups of prisoners were dispatched to different courts in Moscow in the same prison van. As a result, the applicant was usually woken up early and returned to the remand prison quite late. This fact is confirmed by, amongst other sources, the letter from the Ministry of Justice concerning the delays in dispatching prisoners to and back from the Moscow courts (see paragraph 59 above).

120. The Government stated that detainees from the same cell were taken for walks together, normally during the daytime. However, the Government did not explain whether any special arrangements had been made for those returning from the courts in the evening, especially in winter, when the "daytime" is short. In sum, the Court concludes that on the days of the hearings the applicant was repeatedly (if not always) deprived of any possibility of physical exercise, however limited.

121. Having regard to the overall duration of the applicant's detention in such conditions, the Court concludes that they amounted to "inhuman and degrading treatment" within the meaning of Article 3 of the Convention.

6. The period between 8 October 2004 and 29 April 2005

122. From 8 October 2004 the applicant was detained in remand prison no. IZ 50/2 in Volokolamsk. As follows from the material produced by the

Government, the number of inmates in remand prison no. IZ 50/2 was generally lower than the number of sleeping places. It follows that the applicant did have an individual sleeping place while detained in that remand prison (except for one day when he was detained in cell no. 66). Thus, the overcrowding did not go beyond the design capacity of the remand prison (see, by contrast, *Grishin v. Russia*, no. 30983/02, § 89, 15 November 2007, and *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI).

123. However, for prolonged periods of time the applicant had less than three metres of personal space in the cells where he was detained. Thus, for forty-five days the applicant had only 2 square metres of personal space; for twenty days he had 2.44 square metres; and for fourteen days he had 2.7 square metres.

124. The Court observes that the number of persons detained together with the applicant varied significantly throughout his detention in remand prison no. IZ 50/2. As a result, periods of severe overcrowding alternated with periods when the applicant had at least three metres of personal space. Be that as it may, the overcrowding was not a temporary problem but a systemic one. Only in March 2005 did the number of inmates stabilise at acceptable levels (3.78 square metres or more – see paragraph 77 above), remaining the same until the applicant's transfer back to Moscow.

125. As to the sanitary conditions in those cells, the Court notes that the applicant produced a written statement by his cellmates, who confirmed that the cells had been infested with lice and bugs and that the prison administration had done nothing in this respect. There is nothing in the case file or in the Government's submissions to refute that assertion. Even assuming that the administration applied some pesticides, their effect would be very limited given the density of the prison population and the fact that the remand prison was always full or almost full.

126. Furthermore, the Court notes that between 8 October 2004 and 29 April 2005 the applicant spent eighty-two days in the Dmitrov detention centre, where he was detained in a cell measuring 6.6 square metres without any possibility of walks or physical exercise in the fresh air. The Government submitted that the detainees transferred from remand prison no. IZ 50/2 had been allowed to have a walk in the morning before their departure to other prisons. However, this assertion is not supported by any evidence. It is not consistent with the domestic prison rules, which provide that walks should take place during the daytime. Furthermore, as follows from the official reports submitted by the Government, all prisoners from the same cell always went for a walk together in the same walking yard. There is no evidence that special arrangements were made for those prisoners who were supposed to be transferred to another prison which did not have a walking yard. The Court concludes that on those days the applicant was deprived of any physical exercise.

127. Lastly, the Court has examined the photographs of cell no. 7 in the Dmitrov detention centre, produced by the Government. Admittedly, those photographs were not designed to show the situation in an unfavourable light for the authorities. Nevertheless, despite their poor quality, it is clear that cell no. 7 was hardly suitable even for an overnight stay, let alone the time spent there by the applicant. It was a small concrete cabin, with roughly painted walls, with a "squat toilet" in one corner and a low platform in another. That platform apparently served as a bed. No other furniture can be seen on the photographs. The flushing system for the toilet consisted of a water tap above it. Apparently, this was the only source of water, so the applicant had to drink and wash himself from that very same tap above the toilet. The platform on which the applicant had to sleep adjoined the toilet area and was separated from it by a low partition, which was only slightly above the level of the platform. The only window was very small and was covered with a dense grille from the inside and thick metal bars from the outside. The only heating appliance consisted of two parallel metal pipes, passing through at the level of the platform. The Court observes that the cells in the Dmitrov detention centre were located in the semi-basement of the building. In such circumstances it is doubtful whether those two pipes were sufficient to give enough heat, especially in winter, unless they were extremely hot. In the latter case it is unclear how the applicant was able to sleep next to those pipes without burning himself. In sum, conditions in the Dmitrov detention centre were very harsh.

128. The Court concludes that between 8 October 2004 and 29 April 2005 the applicant was detained in conditions which amounted to "inhuman and degrading treatment" within the meaning of Article 3 of the Convention.

7. The period after 29 April 2005

129. The Court notes that from 29 April 2005 (the last date on which the applicant returned from the Dmitrov detention centre) the conditions of the applicant's detention in remand prison no. IZ 50/2 improved. Thus, from that moment on the applicant had sufficient personal space in the cell. He was taken to the courts very rarely, and was not transferred to the Dmitrov detention centre again. He did not complain of a lack of physical exercise during that period. Admittedly, the conditions in the cells where he was detained were still quite uncomfortable, and some of the problems outlined above remained. However, they were not by themselves such as to bring the situation within the ambit of Article 3 of the Convention. The Court considers that after 29 April 2005 there was a significant and stable improvement in the conditions of the applicant's detention, which ended the "continuing situation" existing before that date.

130. The Court further notes that on 7 June 2005 the applicant was transferred from Volokolamsk to remand prison no. IZ 77/7 in Moscow,

where he was detained until his departure to the "colony-settlement" on 23 July 2005. In his original submissions and observations the applicant did not develop any specific complaints under Article 3 of the Convention concerning that remand prison. In such circumstances the Court concludes that as from 29 April 2005 onwards the applicant's conditions of detention did not breach Article 3 of the Convention.

8. Conditions of transfers

131. The applicant also complained about the conditions in which he had been transported to and from the prisons. As follows from the parties' submissions, the detainees were transported in prison vans measuring 11.3 square metres for thirty-six detainees or 8.9 square metres for twenty-five detainees. On the basis of these figures it is difficult to establish exactly how much floor space each detainee had; as follows from the plans of the prison vans provided by the Government, albeit not to scale, part of the floor space (about one-third) was taken up by one or two single-occupancy cells and the compartment for the guards. It appears that in the shared cells the detainees had between 0.2 and 0.3 square metres of floor space per person.

132. Further, it is questionable whether the design capacity of the prison vans was in fact complied with, as the Government suggested. In the case of *Starokadomskiy v. Russia*, (no. 42239/02, § 28, 31 July 2008) the authority in charge of remand centres in Moscow described the conditions of transportation in 2002 - 2003 as follows:

> " ... The Department of Execution of Sentences controls the [resolution of] problems relating to the existing breaches by the convoy regiment (late return from the courts, overcrowded prison vans, use of unauthorised routes). On many occasions in 2002 the established breaches of the procedure for transport of prisoners were brought to the attention of the command of the convoy regiment ... The assembly premises are indeed overcrowded if there are many defendants going to the courts ... up to 150 persons, whereas the assembly premises are designed ... to accommodate 75 to 80 persons."

It thus appears that overcrowding during transportation of the prisoners (both in the prison vans and in the assembly premises) was a well-known problem for the authorities.

133. Even assuming that the number of detainees in the prison van did not exceed twenty-five or thirty-six (depending on the model), this does not in itself refute the applicant's allegation that he was transported in "cramped conditions" (see the Court's findings in *Starokadomskiy*, cited above, § 55). The Court observes in this connection that the CPT has considered individual compartments measuring 0.4, 0.5 or even 0.8 square metres to be unsuitable for transporting a person, no matter how short the duration (see CPT/Inf (2004) 36 [Azerbaijan], § 152; CPT/Inf (2004) 12 [Luxembourg], § 19; CPT/Inf (2002) 23 [Ukraine], § 129; CPT/Inf (2001) 22 [Lithuania],

§ 118; CPT/Inf (98) 13 [Poland], § 68). In addition, the height of the compartments (1.6 or 1.64 metres) was clearly not sufficient for a man of normal stature to enter or stand up without hunching, which required the detainees to remain in a seated position at all times while inside the van.

134. Secondly, the Government submitted that it normally took thirty to fifty minutes for a prison van to reach the court. However, it is difficult to believe that the average journey time was as short as indicated by the Government. First of all, the Government admitted that on some occasions the prison van used a longer route. Further, it is unclear how many stops the prison van usually made between remand prison no. IZ 77/1 and the final destination. The Court recalls that in the *Starokadomskiy* case, which concerned the same remand prison and the same period of time, the Government admitted that the applicant had been transported by a route which included other courts and remand centres (ibid., § 52). Further, the applicant in that case was woken up at 6 a.m. The vans normally left the remand centre between 9 and 10.40 a.m. and returned before 6.30 p.m. (ibid., § 26). As follows from the Government's submissions in the present case, the applicant was woken up at about the same time and arrived at the courthouse at 10 a.m. (on twenty-four occasions), at 11 a.m. (on fifty-four occasions), or even later. The Court notes that the Government did not produce any logbooks for the transfers. In their absence it is difficult to establish the average duration of the journeys to the courthouse. However, it is clear that, with all the intermediate stops and "alternative routes" the average travel time was significantly longer than that indicated by the Government (see also the reply from the Ministry of Justice concerning the delays in transporting the detainees, cited in paragraph 59 above).

135. Thirdly, the Court observes that on the days of the hearings the applicant was deprived of any physical exercise. Furthermore, as transpires from the Government's observations, on the days of the hearings the applicant received a "daily ration" (or a "bag meal" – see paragraph 55 above). It is unclear what that evasive formula meant; in the absence of further clarifications from the Government the Court concludes that the detainees did not receive proper hot meals in the courthouses, but dry food only.

136. Finally, the Court observes that during the period under consideration (one year and a half) the applicant was transferred to and from the courts over ninety times (compare *Maltabar and Maltabar*, cited above, § 94, and *Khudoyorov*, cited above § 119). In such circumstances the Court concludes that the conditions in which the applicant was transferred to and from the remand prisons amounted to an "inhuman and degrading treatment" within the meaning of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

137. The applicant further complained that the review of his appeal against the detention order of 1 December 2003 had not been speedy enough, and that he had been absent from the appellate hearing of 10 February 2004. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

138. The Government contended that the Supreme Court had examined the applicant's appeal within one month of its receipt, that is, within the time-limits fixed by the law. The three-day time-limit set by the Code of Criminal Procedure for the examination of appeals against detention orders was not applicable, since the Supreme Court had examined not only the lawfulness of the applicant's detention but also his other complaints. Furthermore, the applicant himself and his lawyers had contributed to the delay: they had filed four different sets of appeal submissions, in addition, the applicant's own appeal had been sent to the Supreme Court, instead of the Military Court of the Moscow Circuit (see the Government's account in paragraph 21 above).

139. They further submitted that the applicant had been able to present his arguments to the court of appeal via video link. That form of communication had allowed the applicant to take part in the appeal proceedings, address the court and other participants in the proceedings, and expand on his arguments. It followed from the ruling of the Constitutional Court of the Russian Federation of 18 November 2004 (no. 370-O) that this form of participation by criminal defendants in proceedings was compatible with the requirements of the Russian Constitution.

140. The applicant maintained his original submissions.

B. The Court's analysis

1. Speediness of the review of the applicant's appeal

141. The Court reiterates that under Article 5 § 4 a detainee is entitled to take proceedings by which the lawfulness of his detention must be decided speedily by a court. In Russia detention orders are issued by the first-instance court at the request of the prosecution and are subject to appeal. It is the "speediness" of the review of the appeal which is at the

heart of the applicant's complaint under Article 5 § 4. The question whether a person's right to a "speedy review" of his applications for release has been respected will be determined in the light of the circumstances of each case; in complex cases the examination of an application for release may take more time than in simple ones. In *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III), it took the domestic courts five months to examine an application for release. In that case the Government showed that the domestic court had commenced the examination of the first application for release as early as the day after it had been submitted and that, subsequently, it had on five occasions adjourned the examination of the relevant applications because evidence had to be taken from three experts. However, despite these arguments, the Court found a violation of Article 5 § 4. In *Samy v. the Netherlands* ((dec.), no. 36499/97, 4 December 2001), concerning the detention of aliens for the purposes of expulsion, the Court found that a period of twenty-five days was compatible with Article 5 § 4. By contrast, in *Rehbock v. Slovenia* (no. 29462/95, § 85, ECHR 2000-XII) the Court found that the application for release had been examined twenty-three days after it had been lodged with the first-instance court, and that that was not a "speedy" examination as required by Article 5 § 4. A delay of seventeen days has also been declared incompatible with this provision (see *Kadem v. Malta*, no. 55263/00, § 43, 9 January 2003). In *Lebedev v. Russia* (no. 4493/04, §§ 98 et seq., 25 October 2007) the Court held that delays of forty and sixty-seven days constituted a breach of Article 5 § 4 as far as the appeal proceedings were concerned.

142. Turning to the present case, the Court notes that the detention order of 1 December 2003 by the Military Court of the Moscow Circuit was reviewed by the Supreme Court on 10 February 2004, seventy-two days after its delivery. The Government insisted that at least part of that delay was imputable to the defence, because the applicant and his lawyers had filed four sets of appeal submissions, and two of them had been sent to the wrong address. The applicant did not challenge the Government's factual account on this point, so the Court takes them at their word.

143. The Court observes that pursuant to the domestic rules on procedure, grounds of appeal should be lodged through the court which rendered the decision at issue. It appears that the applicant addressed both of his grounds of appeal directly to the Supreme Court, which was a mistake from the procedural point of view. In such situations the time needed to dispatch the appeals to the proper court should normally be deducted from the overall length of the appeal proceedings imputable to the authorities. Furthermore, the lodging of several consecutive grounds of appeal by the defence may also be a factor contributing to the overall length of the proceedings.

144. The Court notes that the Military Court of the Moscow Circuit received the last grounds of appeal from the defence, those of 19 December

2003, on 6 January 2004. It took the Military Court ten days to obtain a written reply from the prosecutor's office and send it with the case file and all previous observations and grounds to the Supreme Court. The case was heard in the Supreme Court on 10 February 2004. In sum, the period imputable to the authorities amounted to thirty-five days.

145. That period should be assessed in the light of all the relevant factors, in particular the complexity of the case. The Government stated that on 10 February 2004 the Supreme Court had also considered "other complaints" by the applicant and his lawyers. However, the Government did not specify what those "other complaints" were. Having examined the decision of 10 February 2004, the Court concludes that it was limited to the examination of the lawfulness of the applicant's detention in the context of criminal case no. 1. Indeed, the Supreme Court had to analyse various legal arguments submitted by the defence, which concerned the form and substance of the detention order of 1 December 2003. However, that is a normal task of any appellate court in such cases. The decision of the Supreme Court in the case at hand was fully based on the case file, no new evidence being produced by the parties or examined by the court; the decision was not very complicated and did not go beyond the examination of the issue of detention. The Court cannot find anything in the decision of the Supreme Court to show that the case was unusually complex.

146. The Court concludes that the delay of thirty-five days in the examination of the appeal against the detention order of 1 December 2003 was unreasonably long (compare *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006). There has therefore been a violation of Article 5 § 4 of the Convention on this account.

2. Absence of the applicant from the appellate hearing

147. The Court observes that in the last three decades the Commission and the Court have consistently interpreted Article 5 § 4 as providing certain procedural guarantees to a detainee, broadly similar to those under Article 6 § 1 of the Convention (see, for instance, *Winterwerp v. the Netherlands*, 24 October 1979, § 60, Series A no. 33; *Sanchez-Reisse v. Switzerland*, 21 October 1986, Series A no. 107; *Kampanis v. Greece*, 13 July 1995, Series A no. 318-B; *Ilijkov v. Bulgaria*, no. 33977/96, § 103, 26 July 2001; and *Garcia Alva v. Germany*, no. 23541/94, § 42, 13 February 2001).

148. At the same time it is important to remember that "the forms of the procedure required by the Convention need not ... be identical in each of the cases where the intervention of a court is required" (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 78, Series A no. 12). In other words, given the purpose of the detention proceedings, and the circumstances in which the courts have to take decisions, the procedural guarantees under Article 5 § 4 need not be the same as under Article 6 § 1 of the Convention (see, for example, *Wassink v. the Netherlands*,

27 September 1990, § 33, Series A no. 185-A). Therefore, the Court's case-law under Article 6 may be applied to the examination of the procedural guarantees under Article 5 § 4 only *mutatis mutandis*, with due regard to the specific characteristics of the detention proceedings.

149. The Court lastly notes that the Convention case-law under Article 6 does not require the same level of guarantees in the court of appeal as at the trial stage (see, among many other authorities, *Botten v. Norway*, 19 February 1996, § 39, *Reports of Judgments and Decisions* 1996-I). Thus, provided that a public hearing has been held at first instance, a less strict standard applies to the appellate level, at which the absence of such a hearing may be justified by the special features of the proceedings at issue (see, for instance, *Helmers v. Sweden*, 29 October 1991, § 36, Series A no. 212-A; *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 58, Series A no. 115; and *Fredin v. Sweden* (no. 2), 23 February 1994, §§ 21-22, Series A no. 283-A). In the Court's view, broadly similar principles apply in the context of appeal proceedings under Article 5 § 4 of the Convention: the procedural guarantees need not be of the same level as in the proceedings before the first-instance court.

150. Turning to the present case the Court notes that, according to the Government, the applicant participated in the proceedings via video link. The applicant did not contest that assertion. Furthermore, he did not claim that he had been unable to prepare for the hearing or to obtain access to the written submissions by the prosecution (contrast *Lamy v. Belgium,* 30 March 1989, § 29, Series A no. 151, and *Garcia Alva*, cited above, § 42). Apparently, his main concern was the form of the hearing. He considered that his physical absence as such from the courtroom prevented him from presenting his case in an adequate manner and on an equal footing with the opposite party. However, the Court does not share the applicant's view. The Court reiterates that "the physical presence of an accused in the courtroom is highly desirable, but it is not an end in itself: it rather serves the greater goal of securing the fairness of the proceedings, taken as a whole" (see *Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006). In the Court's view, the appeal proceedings of 10 February 2004 were compatible with the "fairness" requirement, applied in the context of Article 5 § 4 of the Convention.

151. At the outset the Court notes that its case-law does not require that hearings on the lawfulness of pre-trial detention should be public (see *Reinprecht v. Austria*, no. 67175/01, ECHR 2005-XII). In addition, in the present case the proceedings in the applicant's case were held in camera from the outset, which was quite natural given the character of some of the accusations against the applicant (disclosure of State secrets). In such circumstances the non-public nature of the hearing of 10 February 2004 does not raise any issue.

152. Admittedly, even where the hearing is not public, the defendant still has the general right to be present, to participate effectively in it, to hear and follow the proceedings and to make comments (see, *mutatis mutandis*, *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89, and *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 78, Series A no. 146). However, there is no evidence in the present case that the video-link system malfunctioned or otherwise prevented the applicant from following the course of the hearing, making oral remarks and putting questions to the participants in the proceedings when necessary.

153. The Court reiterates that in assessing whether any personal attendance was needed, regard must be had to, *inter alia*, the special features of the proceedings and the manner in which the defence's interests are presented and protected before the court of appeal, particularly in the light of the issues to be decided and their importance for the applicant (see *Belziuk v. Poland*, 25 March 1998, § 37, *Reports* 1998-II; see also, *mutatis mutandis, Fejde v. Sweden*, 29 October 1991, § 33, Series A no. 212-C). The Court notes that the scope of the examination of the case by the Supreme Court was somewhat limited. It did not examine any new evidence but simply reviewed the findings of the Military Court of the Moscow Circuit on the basis of the material in the case file, heard the parties' addresses and discussed their arguments. All the evidence was available to the defence and the appropriate arguments could have been prepared beforehand.

154. Finally, the Court stresses that the applicant was personally present at the hearing of 1 December 2003 before the first-instance court, and had three lawyers, two of whom assisted him in the courtroom during the appellate hearing of 10 February 2004 (compare *Golubev*, cited above). It should also be emphasised that the applicant himself was qualified to practise law. In such circumstances, and given the nature of the questions examined by the court of appeal, the Court does not consider that the applicant was placed at any significant disadvantage *vis-à-vis* the representative of the prosecution, even though the latter was physically present in the courtroom, whereas the applicant himself was not.

155. The Court concludes, against this background, that there has been no violation of Article 5 § 4 of the Convention on account of the participation of the applicant in the hearing of 10 February 2004 via video link.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

156. The applicant complained that he had not been given the time and facilities for the preparation of his defence, and had been unable to meet his lawyers in private and out of the hearing of the guards and to exchange

documents with them. He relied in this connection on Article 6 of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... .
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ..."

A. The parties' submissions

157. The Government asserted that the applicant's rights under Article 6 had not been breached. The applicant had not substantiated in what respect his defence had been hindered. Furthermore, the Government claimed that the applicant's account of the physical conditions of his meetings with his lawyers was incorrect. They submitted their own account of conditions in the meeting rooms (see paragraph 29 above).

158. The applicant maintained his original complaints and his description of the conditions in which he had had to communicate with his lawyers and study the case file.

B. The Court's analysis

159. The Court reiterates that one of the key elements in a lawyer's effective representation of a client's interests is the principle that the confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers. The Court observes that it has previously held that confidential communication with one's lawyer is protected by the Convention as an important safeguard of the rights of the defence (see, for instance, *Campbell v. the United Kingdom*, 25 March 1992, § 46, Series A no. 233).

160. The Court observes that the issues raised in the present case appear to be somewhat similar to those decided in the case of *Moiseyev* (cited above, §§ 213 et seq.). In that case the Court found a violation of Article 6 §§ 1 and 3 on account of a number of restrictions imposed on the defence lawyers (perusal of their notes, inability to consult the case file and their own notes on the case except in the court building or in a special department

of the prison, requirement to obtain special permits to visit and confer with the applicant, and so on), combined with the applicant's inability to prepare properly for the hearings because of the appalling conditions in which he had been transported to the courthouse and confined there. Further, in a number of cases against Moldova the inability of the defence lawyers to exchange documents with the applicant, as well as the impediments created by the glass partition separating lawyers from their clients in the meeting room, has given rise to a violation of Article 5 § 4 (see, for example, *Castravet v. Moldova*, no. 23393/05, §§ 37 et seq., 13 March 2007; see also *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, §§ 96 et seq., 27 March 2007). *A fortiori*, that case-law can be applied in the context of Article 6 of the Convention. However, several aspects of the present case prompt the Court to distinguish it from *Moiseyev* and *Castravet* or *Istratii and Others*.

161. First, the Court notes that the Government contested the applicant's description of the conditions in the meeting rooms in the remand prison. They produced photographs of a standard meeting room and several reports by prison officials, which asserted that the detainees using those rooms had always been alone with their lawyers, and that the prison warders had only been capable of seeing the inside of the rooms through a peephole, but not of overhearing the conversations. The Government also denied the existence of any partitions separating the applicant from his lawyers, or any restrictions on the use of notes or on the exchange of documents between the applicant and his lawyers. They also maintained that the applicant had been allowed to confer with his lawyers in private in the court building during breaks in the hearings.

162. The Court observes that the official reports relied on by the Government were produced in 2009. Further, it is unclear when the photographs of the meeting rooms were taken, and whether all the meeting rooms in remand prison no. IZ 77/1 looked the same as in the photographs. In other words, the reports and photographs do not constitute evidence of the highest quality. Nevertheless, the applicant did not produce any evidence in rebuttal. Neither did he explain why the evidence produced by the Government was unreliable, inaccurate or irrelevant. In such circumstances, and having in mind that the applicant himself is a practising lawyer, the Court accepts the evidence produced by the Government at its face value. The Court concludes that in remand prison no. IZ 77/1 the applicant was capable of conferring with his lawyers out of the hearing of third parties, and was capable of exchanging notes and documents with them freely and without perusal by the authorities.

163. Secondly, unlike in *Moiseyev* (cited above), the lawyers' access to the case file was not restricted. They were capable of using their own notes and consulting the case file when necessary, albeit in the court building only. The applicant did not specify how big the case file was. Furthermore,

there is no evidence that the applicant's lawyers were prohibited from making copies of the documents in it and giving them to the applicant.

164. Thirdly, it is important that the preliminary investigation was completed on 18 April 2003 and the defence had the relevant evidence at their disposal until 21 June 2003. Therefore, the applicant had adequate time before his arrest to read the case file, to make copies of the necessary documents, and to discuss the case with his lawyers.

165. Fourthly, the Court observes that while in detention the applicant was able to meet his lawyers regularly. He had seven representatives, most of whom were practising lawyers, and met them on ninety-six occasions between December 2003 and October 2005. In addition, the applicant was a practising lawyer himself.

166. As to the conditions in the hearing rooms, the Government contended that the applicant had been given the opportunity to talk to his lawyers in private during the breaks. They stated that he had used that opportunity forty-three times during the trial. The applicant did not comment on that allegation. It is unclear how easy it was for the applicant to speak to his lawyers on the spot, that is, during the actual hearings. However, this question is of marginal importance in the circumstances, because the applicant, as a lawyer, was capable of asking the court to order an adjournment if he felt that he needed to talk to his lawyers in private.

167. The Court lastly accepts that the conditions in which the applicant was transferred to and from the courthouse (see the findings under Article 3 above) could in some way have affected his capacity to defend himself (see *Moiseyev*, cited above; see also, *mutatis mutandis*, *Barberà, Messegué and Jabardo*, cited above, § 69). However, taken alone, those conditions were not such as to create a serious handicap for the defence.

168. In sum, the Court concludes, taking into consideration the proceedings as a whole, that the applicant was able to study the case file, to prepare for the trial and to discuss the case with his lawyers in private. Therefore, there has been no violation of Article 6 §§ 1 and 3 (b) and (c).

IV. ALLEGED BREACH OF ARTICLE 34 OF THE CONVENTION

169. The applicant submitted that on 24 December 2003 the administration of the remand prison had put pressure on him in connection with his complaint to the Court. In his opinion, this was in breach of Article 34 of the Convention, which provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

170. The Government claimed that the applicant's rights under Article 34 had not been breached. Under Rules 94-96 of the internal rules of remand prisons (enacted by Decree no. 148 of the Ministry of Justice of 12 May 2000), the prison administration was to visit the cells every day, so that detainees could submit complaints and proposals. Complaints were then forwarded to the governor of the remand prison, who decided on them. However, those routine visits were not recorded. Therefore, the Government were unable to say who had spoken to the applicant on 24, 30 December 2003 and 5 January 2004, and on what matter. As to the reasons for the applicant's transfer to another cell on 30 December 2003, the Government claimed that it had been due to the fact that the applicant was a former official of a law-enforcement agency, and, in addition, suffered from certain chronic diseases.

171. The applicant maintained that he had been pressured by the administration of the detention facility in connection with his complaints to the Court.

B. The Court's analysis

172. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition guaranteed under Article 34 of the Convention that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, 16 September 1996, *Reports* 1996-IV, § 105; *Aksoy v. Turkey*, 18 December 1996, *Reports* 1996-VI, § 105; and *Kurt v. Turkey*, 25 May 1998, *Reports* 1998-III, § 159). In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy.

173. Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this connection, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV). In previous cases the Court has had regard to the vulnerable position of applicant villagers and the reality that in south-east Turkey complaints against the authorities might well give rise to a legitimate fear of reprisals, and found that the questioning of applicants about their applications to the Commission amounted to a form of illicit and unacceptable pressure, which hindered the exercise of the right of individual

petition, in breach of former Article 34 of the Convention (ibid.). Even an informal "interview" of the applicant, let alone his or her formal questioning in respect of the Strasbourg proceedings, may be regarded as a form of intimidation (see, by contrast, *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 117 et seq,, ECHR 2007-II).

174. In the present case the Government admitted that contacts between the applicant and the prison administration officials might have taken place; however, if so, they had been informal, and, consequently, they had not been recorded. The Court cannot exclude that the authorities approached the applicant in connection with the subject matter of his complaints before the Court. However, not every inquiry by the authorities about an application pending before the Court can be regarded as "intimidation". The Court emphasises that Article 34 does not prevent the State from taking measures in order to improve the applicant's situation or even from solving the problem which is at the heart of the Strasbourg proceedings. As a result of the contacts between the applicant and the prison officials (if any) he was transferred to another cell on 30 December 2003, where conditions were somewhat better. In such circumstances the Court concludes that the actions of the authorities cannot be described as "improper". It follows that the Government have not breached their obligations under Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. 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

176. The applicant sought 50,000 euros (EUR) under the head of non-pecuniary damage. The Government argued that that amount was excessive, and that a finding of a violation would constitute sufficient just satisfaction.

177. The Court finds that the applicant must have been distressed by his prolonged detention in appalling conditions and by the conditions in which he was transferred to and from the courthouse, and must even have suffered physically during the period under examination as a result of those conditions. Further, he must have been frustrated by the delays in the examination of his appeal against the detention order. Making its assessment on an equitable basis, the Court awards the applicant

EUR 10,500 in respect of non-pecuniary damage, plus any tax that may be chargeable, and dismisses the remainder of his claims under this head.

B. Default interest

178. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention between 1 and 30 December 2003;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention between 30 December 2003 and 8 October 2004;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention between 8 October 2004 and 29 April 2005;

4. *Holds* that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 29 April 2005 onwards;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's transfers to and from various prisons between 1 December 2003 and 29 April 2005;

6. *Holds* that there has been a violation of Article 5 § 4 on account of the belated examination of the applicant's appeal against the detention order of 1 December 2003;

7. *Holds* that there has been no violation of Article 5 § 4 on account of the applicant's absence from the courtroom on the day of the appeal hearing of 10 February 2004;

8. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (b) and (c) in the criminal proceedings against the applicant in the context of criminal case no. 2;

9. *Holds* that the Government have not breached their obligations under Article 34 of the Convention;

10. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,500 (ten thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

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

11. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judges Kovler and Malinverni is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE KOVLER JOINED BY JUDGE MALINVERNI

I agree with the conclusions of the Court that the delay of thirty-five days in the examination of the appeal against the detention order of 1 December 2003 was unreasonably long and amounts to a violation of Article 5 § 4 of the Convention.

However, I am satisfied that the Court reduced the actual delay of seventy-two days, taking into account the fact that part of that delay was clearly imputable to the defence, because, as the Government insisted, the applicant and his lawyers had filed four sets of appeal submissions and two of them had been sent to the wrong address.

In another case (*Lebedev v. Russia,* no. 4493/04, §§ 98 et seq., 25 October 2007) the Court held that delays of forty and sixty-seven days constituted a breach of Article 5 § 4 as far as the appeal proceedings were concerned. In the present case the Court is dealing with a "borderline" situation as the delay of thirty-five days in the examination of the appeal against the detention order could be regarded as not unreasonable. However, paragraph 11 of Article 108 of the Code of Criminal Procedure (CCP) of the Russian Federation provides that a judge of the appellate court (*кассационная инстанция* or "cassation instance" in Russian) must give a decision on any complaint concerning detention orders within three days from the date of its receipt (see paragraph 101 of the judgment). Thus, the real problem here is the quality of the law applied because of the extremely short time-limits provided for by procedural law.

Perhaps the Court could have taken into account the argument submitted by the Government that the three-day time-limit set by the CCP for the examination of appeals against detention orders was not applicable in the present case since the Supreme Court had examined not only the lawfulness of the applicant's detention but also his other complaints (see paragraph 138 of the judgment). In this case Article 374 of the CCP provides that the overall length of the examination of the appeal may not exceed one month from the date when the case file is received by the cassation court. Once again, the problem of the realistic nature of time-limits provided for by national law arises...

In any event, neither of the time-limits provided for by national law were complied with in the present case.