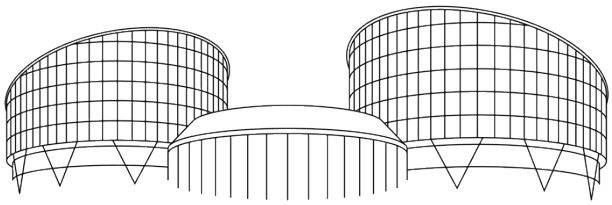

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VALERIY LOPATA v. RUSSIA

(Application no. 19936/04)

JUDGMENT

STRASBOURG

30 October 2012

FINAL

30/01/2013

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

In the case of Valeriy Lopata v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 9 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 19936/04) 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 Valeriy Mikhaylovich Lopata ("the applicant"), on 14 May 2004.

2. The applicant was represented by Mr A. Yu. Yablokov, a lawyer practising in the city of Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that the conditions of his detention on remand had been appalling and that the criminal proceedings against him had been unfair in that he could not attend the hearings in his case.

4. On 10 September 2008 the President of the First Section decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in the town of Troitsko-Antropovo, the Moscow Region.

A. Criminal investigation and detention

1. Background information

6. The applicant is a military doctor, with the rank of colonel, in the medical military service. Prior to his criminal prosecution, he was head of the department of dermatology of the hospital of military unit no. 93240 based in the town of Krasnoznamensk, the Moscow Region.

7. On 22 February 2002 criminal proceedings were instituted in connection with the death of one E., whose body had been found on the outskirts of the town of Krasnoznamensk.

2. The applicant's arrest and events in his criminal case before his release in April 2002

8. At 4 p.m on 1 March 2002 the applicant was arrested in his office by colonel B., head of the Department of the Interior of the town of Krasnoznamensk, on suspicion of involvement in the above-mentioned incident.

9. Thereafter the applicant was escorted to the Temporary Detention Unit of the Krasnoznamensk Town Department of the Interior and remained there for the next eight hours.

10. The applicant submitted that colonel B. and officer A. interrogated him for four hours. They allegedly delivered blows to his feet with a rubber truncheon and to his head with a bullet-proof jacket and demanded he confess.

11. At around 11.30 p.m. a doctor arrived and gave him an injection of what the applicant believed was a "psychoactive drug". The interrogation then resumed.

12. The next morning the applicant's condition had deteriorated and the doctor gave him another injection of the same "psychoactive drug". It appears that both injections were related to the applicant's diabetes.

13. The applicant alleged that he had been transported to a hospital where he was given some medicines in connection with his diabetes and then at once transported back to the Town Department of the Interior.

14. On 4 March 2002 the applicant's detention on remand was ordered by investigator D. This order was approved by the prosecutor on the same date.

15. On the same day a medical report was issued by a doctor, in which the applicant was diagnosed with type 2 diabetes. The applicant alleged that the ambulance had come six times on that day in connection with his diabetes condition.

16. On 5 March 2002 the military prosecutor of the Krasnoznamenskiy Garrison K. identified the applicant and two other individuals as suspects in

the case. On the same date he questioned the applicant as a suspect in the presence of his counsel.

17. On 6 March 2002 charges of intentional infliction of serious bodily harm leading to death were brought against the applicant. As of that date he became the accused in that criminal case.

18. As the applicant's medical condition deteriorated, on 10 April 2002 the investigator, acting with the consent of the prosecutor, changed the preventive measure applied to the applicant from detention on remand to an undertaking not to leave the hospital in which he would receive his medical treatment for diabetes or his home town of Krasnoznamensk. It was noted specifically that the change was due to the applicant's poor state of health.

3. The conditions of the applicant's detention in March-April 2002

19. It appears that between 2 and 6 March 2002, except for a stay for a few hours in an unspecified hospital on 2 March 2002 (see paragraph 13), the applicant was held in the Temporary Detention Ward of the Department of the Interior of the Town of Odintsovo of the Moscow Region. He submitted that there had been no proper beds or bedding, that the temperature in the cell had been very low all the time, that there had been no windows to allow fresh air to enter, there had been no proper food and that he had been denied treatment for his diabetes.

20. It appears that from 6 March to 1 April 2002 the applicant was held in remand prison IZ-50/10 located in the town of Mozhaysk, the Moscow Region. According to the applicant, the cells there lacked a separate toilet area, were constantly overcrowded and lacked heating and daylight. Furthermore, he received no treatment for his diabetes.

21. Between 1 and 10 April 2002 the applicant was apparently held in remand prison IZ-77/2 in the city of Moscow because the authorities wanted him to undergo a psychiatric examination in a specialised clinic in that prison.

22. According to him, for the first three days in the latter prison he had been denied food, there had been no heating in the cell, the toilet had been out of order, requiring him to use the floor of the cell as a toilet. His cellmates had slept taking three turns per day, there had been no bedding, the cell designed for thirty-five inmates measuring thirty-two square metres had contained eighty people, and there had been no daylight or any possibility of obtaining medicine, even with the assistance of his family.

23. As indicated above, the applicant was released on 10 April 2002 due to his poor state of health.

4. The applicant's medical treatment and various events leading to his second arrest

24. On 10 April 2002 the applicant was admitted to a military hospital for treatment of his diabetes.

25. On 21 April 2002 the applicant apparently left the hospital contrary to the conditions of his release (see paragraph 18 above) and subsequently lived in hiding at friends' places in Moscow and Krasnoznamensk.

26. On 6 May 2002, having learned about the applicant's disappearance, the investigator changed the preventive measure back to detention on remand and ordered that the applicant be searched for, arrested and detained in remand prison IZ-50/10.

27. The applicant's name appeared on the fugitives list that same day.

28. On 24 September 2002 the authorities brought new charges against the applicant. These now included abuse of power through unlawful use of the services of two soldiers for personal purposes during a fight, theft of ID cards and money from the victims of that fight and negligent infliction of death, since following the scuffle the applicant and the two soldiers had transported the victims to a nearby forest and left them there, as a result of which one of them died.

29. On 26 September 2002 the criminal case was separated into two parts, one relating solely to the applicant and the other relating to the acts of the two soldiers who had been involved in the incident in question.

30. On 30 September the investigation in the criminal case was suspended pending the search for the applicant; it resumed on 25 October only to be suspended on 30 October 2002 due to the authorities' inability to locate him.

31. According to the applicant, on 15 May 2003 he gave himself up to an officer of the Federal Security Service who then passed him on to the police. The Government submitted that the applicant had not given himself up but rather had been arrested by a policeman in the street during an ID check. The applicant was taken into custody and escorted to the temporary detention unit of the police station Odintsovo.

5. The criminal investigation of the applicant's case after his second arrest on 15 May 2003

32. On 16 May 2003 the suspended criminal proceedings were resumed.

33. On 20 May 2003 the investigator decided to order a comprehensive forensic examination of the applicant's mental condition in a specialised institution (the Scientific Centre of Social and Forensic Psychiatry, named "the Serbskiy Centre"). The investigator also decided to request the competent court to extend the applicant's detention on remand until 5 August 2003.

34. On 3 June 2003 the Krasnoznamenskiy Garrison Military Court ("the Garrison Court") examined the motion of the investigator and, having heard the applicant in person, extended his detention on remand until 5 August 2003.

35. The decision of 3 June 2003 was appealed against by the applicant, but later upheld by the Third Circuit Military Court ("the Circuit Court") on 16 July 2003.

36. Between 26 June and 22 July 2003 the applicant underwent a medical examination in the Serbskiy Centre. This examination was concluded on the latter date with a final report diagnosing him as suffering from an organic delusionary schizoid disorder. Among other things, the report also mentioned that the applicant was suffering from type 2 diabetes.

37. On 1 August 2003 the Garrison Court, having heard the applicant and his lawyer, extended the applicant's detention until 5 October 2003.

38. On 6 August 2003 the investigator recognised the applicant's mother as his sole legal guardian and representative for the purposes of the criminal proceedings because the applicant had been diagnosed as mentally ill. It appears that from that moment on, the applicant did not participate in the investigation or the criminal proceedings, with the applicant's mother and his lawyers replacing him and acting on his behalf.

39. On 13 August 2003 the Garrison Court, referring to his mental condition, ordered the applicant's transfer to the psychiatric ward of the clinic in remand prison IZ-77/2. The court took this decision in the presence of the applicant's mother and one of his lawyers.

40. On 1 October 2003 the Garrison Court extended the applicant's detention on remand until 5 December 2003. The hearing took place with the participation of the applicant's mother.

41. The decision of 1 October 2003 was appealed against by the applicant's defence and was upheld by the Circuit Court on appeal on 17 October 2003. The appeal hearing took place with the participation of his mother and one of his lawyers.

42. On 12 November 2003 the investigation of the applicant's criminal case was finalised and it was sent to the Garrison Court for examination on the merits. The investigation concluded that the applicant had committed the crimes in question, whereas he had later become insane, which again excluded holding him criminally liable. The prosecution proposed to relieve the applicant of criminal liability and punishment and to apply a compulsory measure of a medical nature (Article 439 of the Code of the Criminal Procedure of Russia, see "Relevant Domestic Law" below).

43. The applicant's mother and his lawyers were notified of the outcome of the investigation and received a copy of the decision of 12 November 2003 containing, among other things, an attachment, which listed the people to be summoned in person in court. The list included the applicant's mother

and his two lawyers, the victims and their families and various witnesses, but not the applicant himself.

6. The conditions of the applicant's detention after his arrest on 15 May 2003

44. According to the applicant, after his arrest on 15 May 2003 and onwards he was detained in the temporary detention ward of the police station Odintsovo and then in IZ-50/10, IZ-77/1 and IZ-77/2. Throughout this time, the conditions of his detention were consistently dire on account of severe overcrowding of the cells. He also claimed that he had been denied medical treatment on account of his diabetes and that the conditions of his transportation to and from the remand centres had been appalling. The applicant stated that he had been transported on eight occasions, but failed to provide approximate dates of his journeys.

45. The Government submitted the following information about the dates and locations of the applicant's detention.

Dates	Facilities
15 May-6 June 2003	Detention units of the Ministry of the Interior
6-16 June 2003	IZ-50/10
16-26 June 2003	IZ-77/2
26 June-24 July 2003	The Serbskiy Centre
24 July 2003-30 October 2003	IZ-77/2
30 October-14 November 2003	IZ-77/1
14 November 2003-28 January 2004	IZ-77/2
28 January 2004-4 December 2005	IZ-50/10
4 December 2005-16 January 2006	IZ-77/2
16 January 2006-8 February 2006	The Serbskiy Centre
8 February 2006-16 February 2006	IZ-77/2
16 February 2006-12 April 2006	IZ-50/10

46. The Government submitted the following information concerning the detention facilities IZ-50/10, IZ-77/1 and IZ-77/2.

(a) IZ-50/10

47. According to the Government, the applicant was held in the following cells:

Cell no.	Surface area in m^2	Number of inmates	Dates of detention
322	19	No more than 4	29 January-25 February 2004, 10-16 March 2004
325	17	No more than 4	25 February-10 March 2004

336	31	No more than 6	16 March-1 December 2004
346	17	No more than 4	1 December 2004-4 December 2005
309	42	No more than 10	As of 16 February 2006

48. The above data was contained in a certificate of 18 November 2008 no. 51/49-5414 issued by the administration of prison IZ-50/10 and did not refer to original prison documentation. In addition, the Government produced original prison logs in respect of the following five dates, 24 February 2004 (the overall number of detainees in the prison was 396 and the number of inmates in cell 322 was four), 10 March 2004 (the overall number of detainees in the prison was 406 and the number of inmates in cell no. 322 was four), 16 March 2004 (the overall number of detainees in prison was 405 and the number of inmates in cell no. 336 was six), 1 December 2005 (the overall number of detainees was 570 and the number of inmates in cell no. 346 was four) and 18 December 2006 (the overall number of detainees was 552 and the number of inmates in cell no. 309 was ten).

49. According to the Government, all cells were sufficiently well-lit and aerated. The toilet in all of them was in working order and partitioned from the living area by a wall of a metre and a half high. The cells were centrally heated and regularly disinfected. The applicant received hot food three times a day and also had adequate access to medical assistance. The Government maintained that the applicant had received all the medical aid he required for his diabetes, noting (with reference to a copy of his medical card) that the applicant had asked for it on 25 February and 26 March 2004.

(b) IZ-77/1

50. The Government submitted that between 30 October and 14 November 2003 the applicant was held in cell no. 719 of that remand prison, along with three other inmates. The cell measured 20 square metres and was designed for four people. They did not submit the original prison documentation to confirm this information.

51. According to the Government, the cell was sufficiently well-lit and aerated. The toilet was in working order and partitioned from the living area by a wall of a metre and a half. The cell was centrally heated and regularly disinfected. The applicant received hot food three times a day and also had adequate access to medical assistance. The Government maintained that the applicant had been provided with all the medical aid he required for his diabetes, having mentioned (with reference to a copy of his medical card) that the applicant had refused such treatment on two occasions, once on an unspecified date and once on 4 November 2003.

(c) IZ-77/2

52. According to the Government, the applicant was held in the following cells:

Cell no.	Surface area in m²	Number of inmates	Dates of detention
8	80	No more than 20	16-26 June 2003
409	52	No more than 13	24 July-30 October 2003, 14 November 2003-28 January 2004
95	84	No more than 21	10-16 January 2006
159	80	No more than 20	4 December 2005-10 January 2006
401	84	No more than 35	8-16 February 2006

53. The above data was contained in a certificate issued by the administration of prison IZ-77/2 and did not refer to original prison documentation. In addition, the Government produced original prison logs in respect of the following four dates, 24 June 2003 (cell no. 8 contained 20 inmates), 10 January 2006 (cell no. 95 contained 21 inmates), 8 December 2005 (cell no. 159 contained 20 inmates), 10 February 2006 (cell no. 401 contained 35 detainees).

54. According to the Government, all cells were sufficiently well-lit and aerated. The toilet in all of them was in working order and partitioned from the living area by a wall of a metre and a half high. The cells were centrally heated and regularly disinfected and disinfested. The applicant had received hot food three times a day and had also had adequate access to medical assistance. The Government also submitted that the applicant had been provided with all the medical aid he required for his diabetes. The applicant's medical file shows that he was examined and received medical treatment in therapeutic ward 2 of the prison hospital of remand prison IZ-77/2. He was diagnosed with chronic diabetes and visited various doctors in this connection. He was regularly provided with medicine and was discharged in a satisfactory condition. The medical file does not refer to any complaint by the applicant about his mental health.

(d) Conditions of the applicant's transportation

55. The Government submitted that the applicant's description of the conditions of his transportation was erroneous and that he had never complained about such conditions at the domestic level. They were unable to submit any specific information concerning the dates and destinations of the applicant's journeys because the relevant documents had been destroyed

due to the lapse of the statutory time-limit for storage. The Government submitted that the applicant must have been transported in prison vans ZIL-4331 (measuring 4.7x2.4 metres and designed for 36 inmates), GAZ-3307 "AZ" and GAZ-3309 "AZ" (measuring 3.8x2.35 metres and designed for 25 inmates).

B. Court proceedings

1. First round of proceedings

56. As indicated above (see paragraph 42), the investigation was finalised on 12 November 2003. On 1 December 2003 the Garrison Court examined the case file received from the prosecution and decided to hold a preliminary hearing in the case on 10 December 2003. The court also ordered that the applicant remain in custody pending the court proceedings.

57. On 10 December 2003 the Garrison Court held a preliminary hearing in the case and, having perused the charges against the applicant, made various preparations to hear the case. The court noted that the applicant's interests in the proceedings would be secured by his mother and his two lawyers. By the same decision the court ordered again that the applicant stay in custody pending the proceedings.

58. On 23 December 2003 the Garrison Court, in the presence of the applicant's lawyers, examined the charges against him and rendered a judgment in the case. The court established that the applicant had beaten to death a third person, battered another person and had used fake ID documents but had subsequently developed a psychiatric disorder. In view of the above, the court decided to relieve the applicant from criminal liability and, regard being had to his condition and the dangerous nature of the acts he had committed, to apply a "compulsory measure of a medical nature" and commit him to a specialised institution. The court ordered that the applicant stay in detention pending the appeal proceedings.

59. The applicant's mother and his lawyers appealed against the judgment of 23 December 2003.

60. On 30 January 2004 the Garrison Court, acting of its own motion, amended the judgment of 23 December 2003. It acknowledged that its earlier decision ordering that the applicant stay in custody had been erroneous and replaced it with a decision to transfer the applicant to a specialised hospital.

61. On 17 March 2004 the Circuit Court examined and rejected all of the appeals of the defence against the judgment of 23 December 2003. The applicant was represented in those proceedings by his mother and his lawyers.

62. The appeal of the defence against the decision of 30 January 2004 was rejected by the Circuit Court on 19 May 2004.

63. It appears that on an unspecified date in 2005 the applicant's lawyers requested a judge of the Circuit Court to initiate supervisory review proceedings in respect of the judgment of 23 December 2003, the decision of 30 January 2004 and the appeal decisions of 17 March and 19 May 2004. This request was accepted on 4 May 2005.

64. On 27 May 2005 the Presidium of the Circuit Court, acting as a supervisory court, examined and quashed all of the above-mentioned decisions in the applicant's case with reference to the lower courts' failure to establish the date of the onset of the applicant's mental condition. The court remitted the case for a fresh examination on the merits at first instance.

2. Second round of proceedings

65. On 1 November 2005 the Garrison Court ordered the applicant's detention on remand until 17 December 2005.

66. On 16 December 2005 the Garrison Court extended his detention until 17 March 2006.

67. On 13 March 2006 the Garrison Court examined the applicant's case on the merits in the presence of his mother and his two lawyers. The applicant was partly acquitted because of the lack of evidence of a crime and partly because of the expiry of the statutory time-limits for prosecution. By the same judgment the court decided to apply a "compulsory measure of a medical nature" and commit him to a specialised institution. The court ordered the applicant's transfer to Psychiatric Clinic no. 5 pending the entry into force of the judgment.

68. No appeal was submitted against that judgment and on 12 April 2006 he was escorted to Psychiatric Clinic no. 5 for treatment.

69. On 24 April 2008 the Garrison Court examined the request of Psychiatric Clinic no. 5 and medical examination report no. 119 dated 11 March 2008 recommending the applicant's release on the grounds that he was in remission and could be treated at home.

70. The decision to grant the request was not appealed against by the applicant and on 7 May 2008 he was released from the clinic.

II. RELEVANT DOMESTIC LAW

A. Detention

71. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the CCrP").

1. Preventive measures

72. "Preventive measures" or "measures of restraint" include an undertaking not to leave a town or region, a personal guarantee, bail and detention on remand (Article 98 of the CCrP).

2. Authorities ordering detention on remand

73. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

The CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1, 3-6).

3. Grounds for ordering detention on remand

74. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

75. The CCrP lays down a general rule permitting defendants to be detained on remand if the charge against them carries a sentence of at least two years' imprisonment. In exceptional cases, the Code permits detention of defendants on a charge carrying a sentence of less than two years' imprisonment, if they have previously defaulted, have no permanent residence in Russia or if their identity cannot be ascertained. A defendant should not be detained on remand if a less severe preventive measure is available (Articles 97 § 1 and 108 § 1).

4. Proceedings to examine the lawfulness of detention

(a) As regards detention "during the investigation"

76. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention on remand. The appeal court must rule on the appeal within three days of its receipt (Article 108 § 10). The right to appeal against a judicial decision belongs to a defendant, his representative and legal guardian, a prosecutor, a victim and his representative (Articles 127 § 1 and 354 § 4).

(b) During the judicial proceedings

77. At any time during the judicial proceedings the court may order, vary or revoke any preventive measure, including detention on remand

(Article 255 § 1). Any such decision must be given in the deliberation room and signed by all the judges on the bench (Article 256).

78. An appeal against such a decision lies to a higher court. It must be examined within the same time-limit as an appeal against the judgment on the merits (Article 255 § 4).

B. Compulsory measures of a medical nature

79. The Criminal Code of the Russian Federation, in force since 1 January 1997, and the Code of Criminal Procedure of the Russian Federation set out the grounds and procedure for the application of compulsory measures of a medical nature.

1. Criminal Code of the Russian Federation

Article 97. Grounds for the application of compulsory measures of a medical nature

"1. Compulsory measures of a medical nature may be applied by a court to individuals:

(a) who, in a state of insanity, committed an offence described in [...] the ... present Code;

(b) who, after having committed a criminal offence, became mentally ill, making it impossible to sentence him and execute that sentence;

(c) who committed a criminal offence and who suffer from a mental illness, which does not [reach the level of insanity];

(d) who committed a criminal offence and who were considered in need of treatment for alcoholism or drug abuse.

2. Compulsory measures of a medical nature shall only be applied to people [falling within the categories] listed in the first paragraph of the present Article in cases where the mental disorders are linked to the ability of those persons to cause substantial damage or to present a danger to themselves or other individuals."

2. The Code of Criminal Procedure of the Russian Federation

Article 435. Placement in a psychiatric hospital

"1. When it is established that a person to whom detention on remand has been applied as a preventive measure suffers from a mental illness, a court, upon a prosecutor's motion and in accordance with the procedure laid down in Article 108 of the present Code, shall take a decision authorising the transfer of that person to a psychiatric hospital.

2. Placement of a person who is not detained on remand in a psychiatric hospital may be authorised by a court in accordance with the procedure laid down in Article 203 of the present Code."

Article 443. A court decision

"1. When a court finds it proven that a criminal offence was committed by that person in a state of insanity or that after having committed a criminal offence the person became mentally ill, making it impossible to sentence him and execute the sentence, the court shall take a decision in accordance with Articles 21 and 81 of the Criminal Code of the Russian Federation relieving that person from criminal responsibility or from serving the sentence and authorising the application of compulsory measures of a medical nature to him ..."

Article 444. Procedure for lodging appeals against a court decision (as in force at the relevant time)

"A court decision may be appealed against by a representative, a victim and his representative, a legal guardian or close relative of a person in respect of whom a criminal case was examined, and by a prosecutor in accordance with Chapter 45 of the present Code."

Article 444. Procedure for lodging appeals against a court decision (as amended by Federal Law dated 29 November 2010 no. 323-FZ)

"A court decision may be appealed against ... by a victim, his or her representative, a person in respect of whom [a criminal case] was examined, his or her representative, a legal guardian or close relative of that person, and by a prosecutor in accordance with Chapter 45 of the present Code."

C. Judicial proceedings

The Code of Criminal Procedure of the Russian Federation

80. Section 51 of the Russian Code of Criminal Procedure lays down procedural norms for the examination of a criminal case against a person who is charged with having committed a criminal offence in a state of insanity or who became mentally ill after having committed a criminal offence when he can no longer bear criminal responsibility and serve a sentence.

81. By virtue of Section 51 of the CCrP, the courts shall examine a criminal case against such a person in an ordinary manner, save for specific exceptions laid down in that provision. Section 51 as in force at the relevant time did not set any specific rules concerning the presence of a mentally ill person at trial and appeal hearings and did not actually require such presence. By decision of the Constitutional Court of Russia dated 20 November 2007 no. 13-P Article 437 of Section 51 of the CCrP was declared unconstitutional in so far as it impeded the persons in question from taking part in the judicial proceedings in person. This provision was amended by Federal Law of 5 June 2007 no. 87-FZ and Federal Law of 29 November 2010 no. 323-FZ. The wording of that provision as it is now in force gives full procedural rights to a person in respect of whom the relevant proceedings are pending to participate in those proceedings, if his or her mental condition so permits.

D. Confinement to a psychiatric hospital

82. The Psychiatric Assistance Act of 2 July 1992, as amended ("the Act"), provides that any recourse to psychiatric care should be voluntary. However, a person declared fully incapacitated may be subjected to psychiatric treatment at the request or with the consent of his official guardian (section 4 of the Act).

83. Section 5 of the Act establishes that individuals suffering from mental disorders have all the human rights and freedoms guaranteed by the Russian Constitution and federal laws. Limitations of their rights and freedoms are only allowed when specifically provided for by laws of the Russian Federation. Section 5(3) of the Act provides that the rights and freedoms of persons with mental illnesses cannot be limited solely on the grounds of their diagnosis, or the fact that they have undergone treatment in a psychiatric hospital.

84. Under section 5 of the Act, a patient in a psychiatric hospital can have a legal representative. However, pursuant to point 2 of section 7, the interests of a person declared fully incapacitated are represented by his official guardian.

85. Section 34 regulates the procedure for involuntary placement of a mentally ill individual in a psychiatric hospital. A judge is to examine a request for involuntary admission to a psychiatrist hospital in the presence of an individual whose placement in the hospital is sought. Section 35 provides that only a judicial order may serve as grounds for the admission of an individual to a psychiatric hospital. Such an order may be appealed against within ten days by the individual whose detention in a psychiatric hospital was authorised, his representative, the head of the psychiatric hospital or a prosecutor (section 35(3) of the Act).

86. Section 37 (2) of the Act establishes the list of rights of a patient in a psychiatric hospital. In particular, the patient has the right to communicate with his lawyer without censorship. However, under section 37(3) the patient's doctor may limit the patient's rights to correspond with other persons, have telephone conversations and meet visitors.

87. Section 47 of the Act provides that the doctors' actions can be challenged before the courts.

E. Changes in the application of Russian law on mentally ill individuals following the Court's judgment in the case of *Shtukaturov v. Russia* (no. 44009/05, 27 March 2008)

88. In Resolution no. 6 of 7 April 2011 the Plenary Supreme Court of the Russian Federation held that a person whose admission to a psychiatric hospital was authorised or whose detention in hospital was extended by a court has the right to appeal against that decision, along with his lawyer,

legal guardian or other persons authorised to do it by the Russian Code of Criminal Procedure (§ 8). The Plenary Supreme Court also stressed that, unless the accused's state of mental health precludes it, an individual against whom criminal proceedings are pending should have the opportunity to make use, personally, of every procedural right guaranteed by Articles 46 and 47 of the Code of Criminal Procedure (the right to be informed of the charges against him and to receive related procedural documents, the right to give explanations and make statements or to remain silent, the right to legal assistance, the right to submit evidence, the right to lodge requests, complaints, and so on, and to participate in their examination by a court, the right to an interpreter, the right to appeal against actions/inaction on the part of, *inter alia*, the courts, prosecutors and investigators, the right to attend hearings before the trial and appeal courts as well as hearings concerning detention matters, and so on). The courts should take into account expert reports, medical and other evidence, including that provided by the psychiatric hospital, to determine whether the individual's state of mental health permits him or her to fully benefit from his or her procedural rights (§ 10).

89. The Plenary Supreme Court held that it was the trial court's task to duly and timeously inform the person of the date, time and place of any court hearing so as to provide him or her with an opportunity to submit various procedural requests, including a request to attend (§ 13).

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

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

91. Rule 44 stated that cells in pre-trial detention centres were to be equipped, among other things, with a table and benches to seat the number of inmates detained there, sanitation facilities, running water and lighting for use in the daytime and at night.

92. Rule 46 provided that prisoners were to be given three warm meals a day, in accordance with the norms laid down by the Government of Russia.

93. Under Rule 47 inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh bed linen and towels after taking their shower.

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

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

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

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

97. Amongst those most affected, the programme mentions remand prison IZ-50/10, IZ-77/1 and IZ-77/2. In particular, the programme states that on 1 July 2004 remand prison IZ-77/2 had a capacity of 2,120 inmates and in reality housed 2,715 detainees, in other words 28.1% more than the permitted number. On the same date remand prison IZ-77/1 had a capacity of 2013 inmates and in reality contained 2675 detainees, or 32.9% more than the permitted number.

98. The Order estimates the average rate of overpopulation of remand prisons in the city of Moscow at 116%, whilst the average rate of overpopulation of remand prisons in the Moscow Region was of 119%. Nine out of the thirty-six most "problematic" remand prisons in Russia were situated in the Moscow Region.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

99. The relevant extracts from the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

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

> "46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.
>
> 47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

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

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

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

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

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

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

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

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

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

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

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

100. The applicant complained that the conditions of his detention in various detention centres and remand prisons from 15 May 2003 until 12 April 2006 had been deplorable.

The Court will examine these grievances under Article 3, which provides as follows:

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

A. Submissions of the parties

101. The Government submitted that the Court was precluded from examining most of the detention period referred to by the applicant because of his failure to introduce the complaint in time. The Government also considered that the conditions of detention in the prisons concerned had not been incompatible with Article 3 of the Convention.

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

B. The Court's assessment

1. Admissibility

103. The Court accepts the accuracy of the dates of the applicant's detention as submitted by the Government, and notes that during the detention period from 15 May 2003 until 12 April 2006 referred to by the applicant he was transferred from one detention facility or remand prison to another and that the applicant initially complained that the conditions of his detention in all these facilities had been similarly appalling on account of severe overcrowding.

104. The Court would point out that according to its constant case-law a period of detention in various remand prisons and detention centres with essentially similar conditions of detention could be regarded as a

"continuing situation" for the purposes of the calculation of the six-month time-limit, unless the period in question is interrupted by an applicant's release or transfer to a facility with improved conditions of detention (see *Benediktov v. Russia*, no. 106/02, § 12, 10 May 2007; *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Guliyev v. Russia*, no. 24650/02, § 31, 19 June 2008; *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 82-84, 29 January 2009; and *Aleksandr Matveyev v. Russia*, no. 14797/02, §§ 67-68, 8 July 2010).

105. The information submitted by the Government revealed, however, that the period referred to by the applicant was interrupted by his stay in the Serbskiy Centre twice, first from 26 June to 24 July 2003 and then from 16 January 2006 to 8 February 2006. In his submissions the applicant never mentioned any dissatisfaction with the conditions of detention in that institution. Given the one month duration of that stay on the first occasion and the date of introduction of the case to the Court on 14 May 2004, the Court considers that the applicant's grievances relating to his detention prior to his transfer to the Serbskiy Centre on 26 June 2003 have been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

106. As regards the period starting from his transfer to IZ-77/2 on 24 July 2003 and until his second placement in the Serbskiy Centre on 16 January 2006 as well as his detention after he left the Centre again on 8 February 2006 and until 12 April 2006, the Court notes that the applicant's grievances about IZ-77/1, IZ-77/2 and IZ-50/10, in which he was held during this time period, all concern the same problem, namely, overcrowding and the general lack of living space. In view of this, the Court finds that the said period of detention should be regarded as a "continuing situation" for the purposes of the calculation of the six-month time-limit. It thus finds that the applicant lodged his complaints about the conditions of his detention during that period in good time.

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

2. Merits

108. The Court would note that the parties disagree on many aspects of the conditions of the applicant's detention, including the size of the cells, the number of beds, and the number of detainees in the cells. Most importantly, the Government deny that the cells in question were overcrowded or cramped, and have submitted official certificates to that effect provided by the authorities of the detention centres in question and

partly covering the period in question, whereas the applicant insists on his initial account of events.

109. Having studied the documents submitted by the parties, the Court finds that it need not resolve the parties' disagreements on all of the aforementioned points as the case file contains sufficient documentary evidence to confirm the applicant's allegations of severe overcrowding in remand prisons IZ-77/1 and IZ-77/2 located in Moscow and IZ-50/10 located in the Moscow Region, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

110. The Court would note that the existence of a deplorable state of affairs in all three detention facilities may be inferred from the information contained in Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 (see paragraphs 95-more than the permitted number.

98 above), which expressly acknowledges the issue of overcrowding in all three detention centres and, more generally, in the remand prisons in Moscow and the Moscow Region in 2004.

111. The Court also observes that it has previously examined the question of the conditions of detention in IZ-77/1 and IZ-77/2 in 2003 and 2004 in its judgments in the cases of *Popov v. Russia*, no. 26853/04, §§ 210-20, 13 July 2006, *Lind v. Russia*, no. 25664/05, §§ 58-63, 6 December 2007, *Starokadomskiy v. Russia*, no. 42239/02, §§ 35-46, 31 July 2008, *Andreyevskiy v. Russia*, no. 1750/03, §§ 83-88, 29 January 2009, *Gubin v. Russia*, no. 8217/04, §§ 51-62, 17 June 2010, *Skachkov v. Russia*, no. 25432/05, §§ 45-60, 7 October 2010, *Romokhov v. Russia*, no. 4532/04, §§ 77-86, 16 December 2010, *Trepashkin v. Russia (no. 2)*, no. 14248/05, §§ 106-30, 16 December 2010, *Ilyadi v. Russia*, no. 6642/05, §§ 30-34, 5 May 2011 and *Khodorkovskiy v. Russia*, no. 5829/04, §§ 103-19, 31 May 2011, and found them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding.

112. The Court next notes that the Government's descriptions for the years 2003-2004 rely on incomplete data in respect of some of the cells in which the applicant was detained on some of the dates. Since the Government did not support their own submissions with reference to original documentation covering in full the period in question, the Court is prepared to accept the aforementioned indications as sufficient confirmation of the applicant's point that the overcrowding of cells was a problem in all three detention facilities at the time he was detained there.

113. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*,

no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov*, cited above, §§ 97; and *Ananyev v. Russia*, no. 20292/04, §§ 121-66, 30 July 2009).

114. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant had to spend two years and almost eight months (between 24 July 2003 and 16 January 2006 and from 8 February to 12 April 2006) in the overcrowded cells of IZ-77/1, IZ-77/2 and IZ-50/10 was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of anguish and inferiority capable of humiliating and debasing him.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

116. The applicant further complained of the authorities' failure to ensure his presence before the trial and appeal courts which had examined the criminal case against him. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which, insofar as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (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. Submissions by the parties

117. The Government submitted that the applicant's criminal case had been heard in compliance with the requirements of Section 51 of the Russian Code of Criminal Procedure and that Article 6 of the Convention in its criminal limb was inapplicable to these proceedings. In the latter connection, they referred to the cases of *Antoine v. the United Kingdom* ((dec.), no. 62960/00, ECHR 2003-...) and *Kerr v. the United Kingdom* (dec.), no. 63356/00, 23 September 2003) and maintained that the procedure

under section 4A of the 1964 Act was similar in operation to the procedure in the case at hand. The Government argued that the purpose of the compulsory medical measures was curing the persons who had committed a socially dangerous act or improvement of their mental health as well as preventing them from commission of other such acts. According to the Government, the applicable domestic legal provisions did not prescribe mandatory attendance at court hearings by a mentally ill defendant. At the same time, they guaranteed the protection of the interests of a mentally ill defendant through mandatory legal assistance and representation by a legal guardian. Furthermore, on the facts of the case, the applicant's lawyer had attended the hearings and had ensured the applicant's defence.

118. The applicant maintained his complaint, arguing that he should have had an opportunity to attend the trial and appeal hearings in person but had been denied that possibility.

B. The Court's assessment

1. Admissibility

119. The Court notes that the Government contested the applicability of Article 6 of the Convention in its criminal limb to the proceedings against the applicant, having relied on the *Antoine* and *Kerr* cases, in which the Court found that from the time that the applicant was found by a jury to be unfit to plead, the criminal proceedings against him had come to an end. This conclusion was reached with reference to a procedure under section 4A of the 1964 Act and the Government were drawing parallels between that procedure and the one described in the relevant parts of Section 51 of the CCrP.

120. The Court notes that by contrast to the above mentioned cases, the applicant's situation in the case at hand did not change substantially after the investigator's decision of 6 August 2003, in which the applicant was found to be mentally ill. He remained in custody as an accused in the criminal case for another two years and nine months and had to await the conclusion of the procedure against him as any other defendant in ordinary criminal proceedings. Even despite some similarities in the essential purpose of the procedures in question, the Court cannot but notice the differences in their practical operation and, accordingly, concludes that the proceedings in respect of the applicant in the present case were "criminal" within the meaning of Article 6 § 1 of the Convention.

121. The Court notes that the reopening of the proceedings by way of supervisory review after the first round of examination of the case failed to provide appropriate and sufficient redress for the applicant and he may therefore still claim to be a victim within the meaning of Article 34 of the Convention in respect of the entirety of the criminal proceedings against

him (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 82-84, 2 November 2010). It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds and that it must therefore be declared admissible.

2. Merits

122. The Court reiterates that it flows from the notion of a fair trial that a person charged with a criminal offence should, as a general principle, be entitled to be present and participate effectively in the criminal proceedings (see *Colozza v. Italy*, 12 February 1985, §§ 27 and 29, Series A no. 89). In the present case, this requirement was not satisfied because the District Court decided the applicant's case in his absence. The applicant was also not given an opportunity to appear before the appeal court. The Court has, therefore, to decide whether the instant case involved any circumstances which were capable of justifying a complete loss by the applicant of the entitlement to be present.

123. The Court reiterates that the object and purpose of Article 6 §§ 1 and 3 (c) presuppose the accused's presence. The State is under an obligation to secure the attendance of an accused who is in custody (see, *mutatis mutandis*, *Goddi v. Italy*, 9 April 1984, § 29, Series A no. 76). It is of capital importance that a defendant appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of witnesses (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 33, ECHR 1999-I). The Court reiterates further that the trial court may exceptionally continue hearings where the accused is absent on account of illness, provided that his or her interests are sufficiently protected (see *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, p. 351, ECHR 1999-V). However, where proceedings involve an assessment of the personality and character of the accused and his state of mind at the time of the offence and where their outcome could be of major detriment to him, it is essential to the fairness of the proceedings that he be present at the hearing and afforded the opportunity to participate in it together with his counsel (see *Kremzow v. Austria*, 21 September 1993, § 67, Series A no. 268-B; *Zana v. Turkey*, 25 November 1997, §§ 71-73, *Reports of Judgments and Decisions* 1997-VII; and *Pobornikoff v. Austria*, no. 28501/95, § 31, 3 October 2000).

124. In the present case the authorities did not ensure the applicant's appearance before the trial and appeal courts, alleging that domestic law did not call for his presence in view of his mental condition. It is not in dispute between the parties that starting from 6 August 2003, the date on which the investigator recognised the applicant's mother as his sole legal representative for the purposes of the criminal proceedings, the applicant was personally excluded from participation in the proceedings, including his

ability to study the case file, be directly informed of the relevant events in the case and be summoned and to attend the court hearings in the case. It is unclear whether the applicant had any say in the choice of his legal representative for the purposes of that decision, but the parties seem to be in agreement that his mother and his two lawyers acted in the applicant's interests throughout the proceedings in this case (see, by contrast, *Shtukaturov v. Russia*, no. 44009/05, § 124, ECHR 2008).

125. The Court finds that, although not having an absolute character, the right of being heard enjoys such a prominent place in a democratic society and has such a fundamental value for the protection of an individual against arbitrariness on the part of public authorities, that the mere fact of the individual suffering from a mental illness, as well as his being declared legally incapacitated, cannot automatically lead to the exclusion of the exercise of that right altogether. It is the very weakness of a mentally ill defendant which should enhance the need for supporting his rights. In this context, authorities must show requisite diligence in ensuring the accused's right to be present in an effective manner and must act particularly carefully when infringing upon that right, so as not to place the mentally ill at a disadvantage when compared with other defendants who do enjoy such a right (see, *mutatis mutandis*, *F.C.B. v. Italy*, 28 August 1991, § 33, Series A no. 208-B). The Court is not convinced that the Russian courts complied with that responsibility in the present case.

126. In particular, there is no indication that the Russian courts have made a proper assessment of the applicant's ability to participate at a qualified level in the criminal proceedings against him. The applicant did not appear before the Garrison Court even once. The absence of a formal decision dealing with the issue of the applicant's attendance does not escape the Court's attention either. Furthermore, the applicant never appeared before the Circuit Court judges. In turn, the Court does not see any evidence convincingly demonstrating that the applicant's behaviour or his mental condition precluded his stating his case in open court. The Court would add that the applicant's inability to participate in the proceedings in person seemed to have resulted not from the seriousness of his mental condition, but rather from the lack of a legal provision in the domestic law which would recognise his right to attend the court hearings even in a limited number of situations. The domestic law replaced the applicant with his legal representative for all purposes relating to procedural participation in those proceedings and simply did not provide a possibility for the applicant to be present in person.

127. The Court further notes that the domestic courts decided on the criminal charge against the applicant, found him unfit to bear criminal responsibility owing to his mental health and ordered his confinement in a psychiatric institution. Their argument that the applicant's presence was not required purely on the grounds of his being a mentally disturbed person is

striking, given that it was for the courts to determine whether he had committed the offence in a deranged state of mind and to assess whether his mental condition required compulsory medical care (see, *Romanov v. Russia*, no. 63993/00, § 109, 20 October 2005).

128. In view of what was at stake for the applicant the courts could not, if the criminal proceedings were to be fair, have decided on his case without observing the applicant's demeanour and directly assessing the evidence submitted by him. The presence of the applicant's lawyer and mother could not compensate for the applicant's inability to state his own case by appearing before the court (see, for similar reasoning, *Romanov,* cited above, § 112, and, *mutatis mutandis, Mamedova v. Russia*, no. 7064/05, 1 June 2006, and *Duda v. Poland*, no. 67016/01, 19 December 2006).

129. In view of the above considerations the Court finds a breach of Article 6 §§ 1 and 3 (c) of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

130. In addition, the applicant complained under Articles 3, 5, 6 and 13 of the Convention that he had been ill-treated after his first arrest, that the arrest had been unlawful, that he had been repeatedly transferred by the prison authorities in appalling conditions, that he had been denied medical treatment during his detention, that his detention on remand between 15 May and 23 December 2003 had been unlawful, that he had been unable to appeal against the decision of 30 January 2004, that some third persons had disseminated alleged falsehoods about him to his neighbours, that the criminal proceedings against him (the period referred to lasted between 2002 and early 2004) had been too lengthy and generally unfair and that he had been unable to participate in person in the detention hearings (raised for the first time in his observations of 21 March 2009).

131. However, having regard to all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that the applicant's complaints are unsubstantiated and do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The applicant claimed compensation of 613,884 euros (EUR) in respect of his alleged pecuniary losses and EUR 66,567 in respect of non-pecuniary damage.

134. The Government submitted that this claim was unfounded and generally excessive.

135. The Court does not find any causal link between the alleged pecuniary losses and the violations found. It therefore dismisses the applicant's pecuniary claim. As regard his claim in respect of non-pecuniary damage, the Court considers that the applicant must have sustained stress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

136. The applicant also claimed EUR 5,973 for the legal and various other costs incurred in the domestic proceedings and also before this Court.

137. The Government submitted that the lawyer's fees were excessive and that in any event it had not been demonstrated that the fees in question had actually been paid.

138. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the material in its possession, the Court considers it reasonable to award the applicant the sum of EUR 1,000 for the legal and other expenses incurred in relation to the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

139. 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. *Declares* the complaint concerning the allegedly appalling conditions of the applicant's detention between 24 July 2003 and 16 January 2006 and from 8 February to 12 April 2006 as well as the applicant's inability to attend the hearings in his criminal case in person admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the remand facilities between 24 July 2003 and 16 January 2006 and from 8 February to 12 April 2006;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the applicant's inability to participate in the proceedings against him;

4. *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 12,000 (twelwe thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 1,000 (one thousand euros) in respect of legal and other costs, plus any tax that may be chargeable to the applicant, both sums to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President