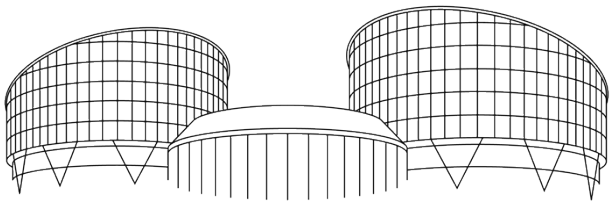

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GELD v. RUSSIA

(Application no. 1900/04)

JUDGMENT

STRASBOURG

27 March 2012

FINAL

27/06/2012

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

In the case of Geld 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,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 1900/04) 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 Sergey Ivanovich Geld ("the applicant"), on 19 November 2003.

2. The applicant was represented by Mr P. Finogenov, a lawyer practising in 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 alleged, in particular, that he had been detained in extremely poor conditions in facility no. 1 in Perm.

4. On 4 September 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Perm.

A. Criminal proceedings against the applicant

6. On 30 December 2002 criminal proceedings were initiated against the applicant, a traffic police officer at the time, and his partner on suspicion of theft and abuse of office. In February 2003 the applicant was served with the bill of indictment. An undertaking not to leave his place of residence was imposed on him.

7. On 21 March 2003 the applicant was arrested and placed in detention facility no. 1 in Perm.

8. Four months later the Motovilikhinskiy District Court of Perm found the applicant guilty as charged and sentenced him to four years' imprisonment. The court relied on numerous witness testimonies and forensic evidence. The applicant appealed. In his grounds of appeal he complained that the trial court had incorrectly assessed the facts and applied the law, and that it had not thoroughly examined the evidence, thus failing to take into account certain important issues. The judgment became final on 11 September 2003 when the Perm Regional Court upheld it on appeal.

B. Conditions of the applicant's pre-trial detention

9. From 21 March to 25 September 2003 the applicant was held in facility no. 1 in Perm. In particular, from 21 March to 19 May 2003 he was kept in cell no. 26 and from 19 to 20 May 2003 he stayed in cell no. 19. On 20 May 2003 he was transferred to cell no. 84 from which, on the following day, he was taken to cell no. 144, having remained there until 25 September 2003.

10. Relying on a certificate prepared by the director of the detention facility on 17 October 2008, the Government submitted that cell no. 26 measured 59.4 square metres and accommodated, in general, thirteen inmates. Cell no. 19 measured 25.9 square metres and on average housed twelve inmates. The average number of detainees staying in cell no. 84 of 22.2 square metres was ten, and seven inmates were usually kept in cell no. 144 which measured 23.1 square metres. The Government stressed that at all times the applicant had an individual sleeping place and bedding.

11. Citing the information provided by the director of the facility, the Government further argued that the sanitary conditions in the cells were satisfactory. In particular, the Government submitted that the cells received natural light and ventilation through a window measuring approximately 1.2 square metres. The cells also had artificial ventilation. Each cell was equipped with a lavatory pan, a sink and a tap with running water. The lavatory pan was separated from the living area of the cell by a partition measuring between 1.33 and 1.42 metres in height. Inmates were allowed to take a shower once every seven days for no less than fifteen minutes. The cells were regularly disinfected. The cells were equipped with lamps which

functioned day and night. The Government, relying on the information provided by the director of the facility, further stated that the applicant was given food "in accordance with the established norms".

12. The applicant disputed the Government's submission, arguing that the four cells had been smaller and had accommodated a far greater number of inmates than the Government had described. Relying on written statements by Mr U. who had also been detained in cell no. 144 in the summer of 2003, the applicant submitted that that cell had measured approximately sixteen metres, had eleven sleeping places and housed thirteen to fourteen inmates. Given the lack of beds, inmates had slept in shifts. They were not provided with bedding. He had had to stay in overcrowded conditions for the entire day, save for an hour-long outdoor walk in the recreation yard.

13. The applicant further submitted that the sanitary conditions had been appalling. The cells were infested with insects but the management had not provided any insecticide. The walls in the cells were covered with fresh paint. Given the absence of natural or artificial ventilation, the strong smell of paint lingered in the cells. The applicant stressed that the windows were covered with metal blinds blocking access to natural light and air. It was extremely hot during the summer with the metal blinds turning into heated "radiators" under the direct sunlight. Inmates were allowed to smoke in the cells, which was an additional aggravated circumstance for the applicant, a non-smoker. The lavatory pan was placed on a concrete block elevated fifty centimetres above the floor and situated between 0.8 to 1 metre from the dining area. The toilet was not separated from the living area and emitted an unpleasant odour in the cell. At no time did inmates have complete privacy. Anything they happened to be doing – using the toilet, sleeping – was in view of the guard or fellow inmates. No toiletries were provided. The food was of very poor quality and in scarce supply.

14. Relying on inmate U.'s written statement, the applicant concluded by noting that complaints to the administration of the detention facility had been to no avail.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW REPORTS

15. The relevant provisions of domestic and international law on conditions of detention are set out, for instance, in the Court's judgment in the case of *Gladkiy v. Russia* (no. 3242/03, §§ 36, 38 and 50, 21 December 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicant complained that the conditions of his detention in facility no. 1 in Perm had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

17. In their first line of argument, the Government submitted that the applicant had failed to exhaust domestic remedies. In particular, they stressed that the applicant could have lodged an action with a competent court, complaining about the conditions of his detention. The Government stressed that there existed an effective judicial practice of tort actions in the Russian Federation, by which detainees were able to obtain compensation for damage resulting from their detention in unsatisfactory conditions. The Government cited the case of a Mr D., who had been awarded 25,000 Russian roubles (RUB) against the Federal Service for Execution of Sentences in compensation for damage following his being infected with scabies in a remand prison. They also noted that another Russian detainee, Mr R., had been awarded RUB 30,000 for his unlawful detention for more than fifty-six days and his not being provided with food during five days of his detention.

18. In the alternative, the Government, while alleging that the applicant's complaint was manifestly ill-founded, acknowledged that the domestic sanitary norm of four square metres of personal space per inmate had not always been respected in detention facility no. 1. However, they stressed that a failure to respect such a sanitary norm should not immediately lead to the finding of a violation of Article 3 of the Convention, as the Court should take into account the remaining features of the conditions of the applicant's detention (such as lighting, sanitary conditions, privacy, *inter alia*) which had complied with domestic legal requirements and the guarantees of Article 3 of the Convention.

19. In their further observations, the Government cited two more judgments by Russian courts, with a view to supporting their initial argument as to the effectiveness of the tort action in question. In particular, relying on a short article from an Internet source, they submitted that a Mr T. had obtained compensation in the amount of RUB 25,000 for having contracted tuberculosis during his almost three-year detention in facility

no. 1 in Perm. They further cited another case which had led to an award of RUB 1,500 in compensation for non-pecuniary damage sustained as a result of the plaintiff's detention for more than a year in overcrowded conditions.

20. Relying on the written statement by his fellow inmate, Mr U., the applicant insisted that the conditions of his detention had been inhuman and degrading. He steadfastly maintained his description of the detention conditions, alleging severe overcrowding, poor sanitary conditions, insufficient lighting, inadequate food, and so on.

B. The Court's assessment

1. Admissibility

Exhaustion issue

21. As to the Government's objection concerning the applicant's alleged failure to exhaust domestic remedies, the Court has already rejected identical objections by the Russian Government in a number of cases regarding conditions of detention, having found that neither a complaint to the administration of a detention facility (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007, with further references) nor a tort action (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009; *Artyomov v. Russia*, no. 14146/02, § 112, 27 May 2010; *Arefyev v. Russia*, no. 29464/03, § 54, 4 November 2010; and, most recently, *Gladkiy*, cited above, § 55) could be regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention. Moreover, in the case of *Nazarov v. Russia* (no. 13591/05, § 77, 26 November 2009) the Court dealt with the Government's argument on the basis of the reference to the awards that had been made by the Russian courts in favour of a Mr D. and a Mr R. The Court noted that the problems arising from the conditions of the applicant's detention had apparently been of a structural nature, for which no effective domestic remedy had been shown to exist, and that the cases to which the Government had referred did not concern detention in overcrowded cells but rather a detainee's infection with scabies and the authorities' failure to provide a detainee with food (see, for similar reasoning, *Nedayborshch v. Russia*, no. 42255/04, § 21, 1 July 2010, and *Arefyev*, cited above, § 54). The Court sees no reason to depart from its previous findings in the present case. Accordingly, it dismisses the Government's objection as to non-exhaustion of domestic remedies. This conclusion is not altered by the Government's reference to two more judgments awarding compensation to former inmates. Both cases provide little evidentiary support for the Government's argument and have weak

relevance to the present case (see, *mutatis mutandis, Shilbergs v. Russia*, no. 20075/03, §§ 66-79, 17 December 2009).

22. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

23. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. 1 in Perm. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of the facts which have been presented to it and which the respondent Government did not refute.

24. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The applicant claimed that the number of detainees in the cells had considerably exceeded their design capacity. Although in their final observations to the Court the Government no longer disputed the overcrowding in the majority of the cells, the Court still considers it necessary to address the evidence presented to it by the Government in support of their description of the conditions of the applicant's detention.

25. The Court notes that in their initial observations the Government, relying on certificates issued by the director of the detention facility five years after the applicant's detention in that facility had come to an end, submitted that the applicant had had an individual sleeping place at all times. At the same time they did not refer to any original source of information on the basis of which their assertion could be verified. In this connection, the Court notes that on several previous occasions when the Government have failed to submit original records it has held that documents prepared after a considerable period of time cannot be viewed as sufficiently reliable, given the length of time that has elapsed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009, and *Shilbergs*, cited above, § 91). The Court is of the view that these considerations hold true in the present case. The certificates prepared by the Russian authorities five years after the events in question cannot be regarded as sufficiently reliable sources of data.

26. Accordingly, having regard to the Government's admission in their observations (see paragraph 18 above), as well as, their failure to submit any convincing relevant information, the Court finds it established that the cells in facility no. 1 were overcrowded. The Court also accepts the applicant's submissions that, owing to the overpopulation in the cells and the resulting lack of sleeping places, he had to take turns with other inmates to rest.

27. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

28. The applicant's situation was further exacerbated by the fact that the opportunity for outdoor exercise was limited to one hour a day, leaving him with twenty-three hours per day of detention in facility no. 1 without any kind of freedom of movement. The Court also does not lose sight of the applicant's argument, as supported by the written statements of his fellow inmate, that the windows in the cells were covered with metal shutters. In these circumstances, the Court is not convinced by the Government's argument that the windows had given access to natural light and air. The metal construction on the windows, as described by the applicant, significantly reduced the amount of daylight that could penetrate into the cell, and cut off fresh air. It therefore appears that the applicant had to spend a considerable part of each day in the facility in a cramped cell with no window in the proper sense of the word (compare *Peers v. Greece*, no. 28524/95, § 75, ECHR 2001-III). Furthermore, the Court notes that the fact that the applicant had access to a shower and could wash his linen and clothes only once a week raises serious concerns as to the conditions of hygiene and sanitation, given the acutely overcrowded accommodation in which he found himself (see, for similar reasoning, *Melnik v. Ukraine*, no. 72286/01, § 107, 28 March 2006). Lastly, the Court is particularly concerned with the authorities' failure to separate non-smoking detainees from smoking ones. On a number of occasions the Court has already treated exposure of a non-smoking detainee to environmental tobacco smoke in overcrowded cells as an additional aggravating circumstance (see, for instance, *Pavalache v. Romania*, no. 38746/03, § 94, 18 October 2011).

29. To sum up, the Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers*, cited above, §§ 69 et seq.).

30. 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 he was obliged to live, sleep and use the toilet in the same cell as so many other inmates for more than

six months was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

31. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in facility no. 1 in Perm.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 250,000 euros (EUR) in respect of non-pecuniary damage.

35. The Government contended that the claim was unsubstantiated and unreasonable.

36. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he has sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It further notes that it has found a grave violation in the present case. In these circumstances, the Court considers that the applicant's suffering and frustration, caused by the inhuman conditions of his detention, cannot be compensated for by a mere finding of a violation. However, the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

37. The applicant did not make any claims for costs and expenses incurred before the domestic courts and the Court.

38. Accordingly, the Court does not award anything under this head.

C. Default interest

39. The Court considers it appropriate that the default interest rate 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 conditions of the applicant's detention in facility no. 1 in Perm admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand and five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of the 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;

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

Done in English, and notified in writing on 27 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President