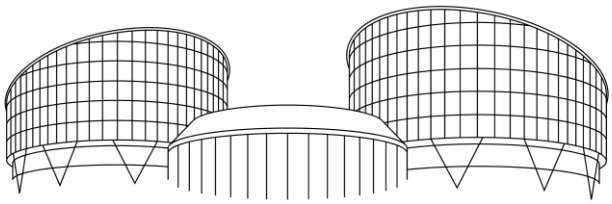

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DMITRIY ROZHIN v. RUSSIA

(Application no. 4265/06)

JUDGMENT

STRASBOURG

23 October 2012

FINAL

23/01/2013

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

In the case of Dmitriy Rozhin 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 2 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 4265/06) 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 Dmitriy Igorevich Rozhin ("the applicant"), on 8 December 2005. On 28 March 2011 the applicant introduced a further complaint concerning the conditions of his detention in correctional facility no. IK-13 in the Sverdlovsk Region in respect of the period between 15 August 2005 and 17 February 2006.

2. The applicant was represented by Ms L. Churkina, a lawyer practising in Yekaterinburg. 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 overcrowded cells and that his detention from 3 to 15 August 2005 had been unlawful.

4. On 30 August 2010 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 1980 and lives in Yekaterinburg.

A. Criminal proceedings against the applicant

6. On 6 March 2003 the applicant, an investigator with the prosecutor's office, was charged with abuse of power. In particular, he was accused of having forged a court decision ordering the release of a rape suspect, and subsequent concealment and theft of the relevant criminal case-file. On an unspecified date the applicant signed an undertaking not to leave town.

7. From 27 January to 5 February 2004 the applicant, who had earlier been diagnosed with bladder cancer, was placed in hospital.

8. On 9 February 2004 the Verkh-Yesetskiy District Court of Yekaterinburg remanded the applicant in custody pending investigation. The court considered that the applicant's failure to notify the investigator of his admission to hospital was in contravention of his undertaking not to leave town. The applicant was arrested on the same day.

9. On 5 March 2004 the Sverdlovsk Regional Court quashed the decision of 9 February 2004 on appeal. The appeal court considered that the court's findings and its decision to remand the applicant in custody had been "premature". The applicant was released on 10 March 2004.

10. On 11 March 2004 the applicant was admitted to hospital, where he underwent surgery. He was discharged from hospital on 24 March 2004.

11. On 14 March 2005 the Leninskiy District Court of Yekaterinburg found the applicant guilty as charged and sentenced him to one year's detention in a correctional settlement. The applicant was remanded in custody on the same day.

12. On 29 June 2005 the Regional Court upheld the applicant's conviction on appeal. The applicant and his lawyer participated in the hearing by means of a video teleconference.

B. Conditions of detention

1. Remand prison no. IZ-66/1 in Yekaterinburg

13. From 9 February to 10 March 2004 and from 15 March to 3 August 2005 the applicant was detained in remand prison no. IZ-66/1 in Yekaterinburg.

(a) Period from 9 February to 10 March 2004

14. According to the applicant, from 9 February to 10 March 2004 he was detained in cell no. 602, which was severely overcrowded. The cell was infested with bed bugs and other insects. The food was of very poor quality. He did not have access to any medical assistance.

(b) Period from 15 March to 3 August 2005

(i) The description provided by the Government

15. According to the Government, on 15 March 2005 the applicant was placed in cell no. 311, which measured 30 sq. m and was equipped with twelve sleeping places. According to the remand prison population register submitted by the Government, the number of inmates held in the cell during the period in question varied from 13 to 27, with three exceptions when the cell held twelve inmates on 1 April, 11 June and 2 August 2005.

16. The cell was equipped with natural and artificial ventilation which was in good working order. The cell had two windows covered with metal bars which did not prevent access of daylight. The artificial lighting was in compliance with the applicable specifications and was on from 6 a.m. to 10 p.m. At night low-voltage bulbs were used to maintain lighting in the cell. The toilet was located in the corner of the cell near the entrance door and was separated from the living area of the cell by a brick wall which was one metre high and ensured the privacy of the person using it. The distance between the toilet and the dining table was 3 m. The closest sleeping place was located 2.5 m away from the toilet. The applicant was at all times provided with an individual sleeping place, bed sheets and cutlery. The applicant was allowed one hour's exercise per day. The cell was disinfected once a month.

17. During the period in question, the applicant met with his family and relatives six times.

(ii) The description provided by the applicant

18. According to the applicant, at all times the number of sleeping places in the cell was insufficient and the inmates had to take turns to sleep. Bed sheets, towels and cutlery were supplied by the applicant's family. The light was constantly on. The cell was infested with bed bugs and lice. The ceiling leaked. There was no ventilation in the cell. All the inmates smoked and the applicant, a non-smoker, was exposed to tobacco smoke. He was allegedly denied medical assistance.

2. Correctional settlement no. IK-13 in Nizhniy Tagil

(a) The description provided by the Government

19. According to the Government, on 4 August 2005 the applicant arrived at correctional settlement no. IK-13 in Nizhniy Tagil and was placed in a disciplinary cell measuring 8 sq. m, where he was held until 15 August 2005, together with two other inmates. There were four sleeping places in the cell. The hygiene conditions in the cell were in compliance with applicable standards. The cell was equipped with natural and artificial

ventilation in good working order. The cell was well lit. The window ensured sufficient access of daylight. The toilet was separated from the rest of the cell by a wall which was 1.1 m high and ensured the privacy of the person using it. The applicant was allowed two hours' of exercise per day.

20. On 15 August 2005 the applicant was moved from the disciplinary cell to dormitory no. 3 in section no. 19. The dormitory measured 23.1 square meters and had six sleeping places. The number of inmates assigned to the dormitory was six at all times. The applicant was provided with an individual sleeping place, bed sheets and cutlery. The dormitory had two bathrooms. The first one had three sinks and two toilets and the second one had four sinks and three toilets. There was also a separate shower room. Section no. 19 of the correctional settlement had a surface area of 2,498 square metres and was equipped with basketball and volleyball grounds, and an area specially designed for weightlifting and training on pull-up bars. It was open to the applicant to move freely within the settlement.

(b) The description provided by the applicant

21. According to the applicant, the disciplinary cell where he was detained from 4 to 15 August 2005 had no access to natural light. The window was covered with metal bars and shutters. The food was of very poor quality. The applicant was allowed only brief daily walks and had to remain standing for the rest of the day. The beds were pulled up and fastened against the wall during the day time. The cell was infested with mice. The ceiling leaked. The toilet was located 0.1 metres away from the nearest bed.

22. There were seven inmates assigned to dormitory no. 3 while there were only six sleeping places. The applicant conceded that he had an individual sleeping place and bed sheets.

23. The proper temperature was not maintained in the cells and dormitories of the settlement. It was very cold in the winter and too hot in the summer inside the premises. They were infested with mice. The floors were rotten. The ceiling was covered with mould and fungus.

24. On 17 February 2006 the applicant was released, having served his sentence.

C. Civil claims brought by the applicant

1. Complaint against correctional settlement no. IK-13 in Nizhniy Tagil

25. On 23 June 2006 the Chkalovskiy District Court of Yekaterinburg considered the applicant's claims against correctional settlement no. IK-13

in Nizhniy Tagil in part. As regards the applicant's allegations concerning a lack of medical assistance in the ensuing period, the court dismissed them as unsubstantiated. It noted that the applicant had been able to consult medical professionals from both the medical unit of the penal establishment and the municipal outpatient clinic and hospital where he had undergone an examination and surgery in December 2005. As to the applicant's detention in a disciplinary cell from 4 to 15 August 2005, the court noted as follows:

> "The [applicant's] argument that his right to be detained in normal conditions ... was infringed by the administration of correctional settlement no. IK-13 in Nizhniy Tagil has been confirmed. According to the letters of the Nizhniy Tagil Prosecutor's Office ... of 19 December 2005 and 25 October 2005, it was established in the course of the inquiries that, on 4 August 2005, upon arrival [to the correctional settlement] [the applicant] was placed in the quarantine section ... in contravention of Article 79 § 2 of the Code on the Execution of Criminal Sentences. On the basis of the inquiries' findings, the Nizhniy Tagil Prosecutor's Office sent a citation to the head of the [regional department of corrections]. The inquiry has established that the quarantine section, where the applicant was held, was located in the disciplinary cell, where the conditions of detention were close to those maintained in prisons, that is the conditions of detention in the quarantine section were similar to the one appropriate for a disciplinary cell.
>
> ...
>
> The [applicant's] argument that the personal space afforded to him while he was detained in the quarantine section was [below the statutory standards] has been confirmed. According to Article 99 § 1 of 2 of the Code on the Execution of Criminal Sentences, the personal space afforded to one person serving a criminal sentence should not be less than 2 square metres. According to the findings of the Nizhniy Tagil Prosecutor's Office ... of 14 April 2006 ..., the quarantine section where [the applicant] was detained measured overall 8 square metres. There were from 2 to 3 other persons detained together with [the applicant]. This fact was not disputed by the administration of correctional settlement no. IK-13 in Nizhniy Tagil. It follows that the personal space afforded to the detainees was below 2 square metres in contravention of Article 99 of the Code on the Execution of Criminal Sentences ... .
>
> ...
>
> Having regard to the above ..., the Court has decided
>
> To consider unlawful the following actions of the administration of correctional settlement no. IK-13 in Nizhniy Tagil:
>
> 1. [The applicant's] detention in conditions which did not correspond to the normal regime of serving a sentence;
>
> ...
>
> 3. The failure to ensure that the personal space afforded to [the applicant] during his detention in the quarantine section was in compliance with the statutory requirements."

26. On 15 August 2006 the Regional Court upheld the decision of 23 June 2006 on appeal.

2. Action for damages in connection with the applicant's detention in remand prison no. IZ-66/1 and correctional settlement no. IK-13 in Nizhniy Tagil

27. In July or August 2006 the applicant brought a claim for damages in connection with (a) his allegedly unlawful detention and the alleged lack of medical assistance in remand prison no. IZ-66/1 from 9 February to 10 March 2004, and (b) his unlawful detention in correctional settlement no. IK-13 in Nizhniy Tagil from 4 to 15 August 2005, and the alleged lack of medical assistance in the ensuing period.

28. On 25 December 2006 the Leninskiy District Court of Yekaterinburg dismissed the applicant's claim. In particular, the court found that the applicant's detention from 9 February to 10 March 2004 in remand prison no. IZ-66/1 had not been unlawful, even though the relevant court order had subsequently been quashed on appeal. The court also dismissed the applicant's allegations about lack of medical assistance in correctional settlement no. IK-13 as unsubstantiated. As regards the applicant's claim for damages in connection with the unlawful actions of the administration of correctional settlement no. IK-13 in Nizhniy Tagil, the court noted as follows:

> "Even though, according to the judgment of the Chkalovskiy District Court of Yekaterinburg [of 23 June 2006], the actions of the administration of the correctional settlement were found to be unlawful, [the court] discerns nothing for it to award non-pecuniary damages to [the applicant]. The factors to be taken into consideration for such an award are the existence of physical and mental suffering, the unlawfulness of the action (failure to act), and the link between the action and resulting damage, the wilful behaviour on the part of the wrongdoer.
>
> Having regard to the material [before the court], it does not discern that [the applicant] had sustained any physical or mental suffering resulting from the violation of his rights as established in the judgment of the Chkalovskiy District Court of Yekaterinburg."

D. Petition for expungement of the applicant's criminal record

29. On an unspecified date the applicant filed an application for expungement of his criminal record. He referred to his positive character references, his employment and his family.

30. On 18 October 2006 the Chkalovskiy District Court of Yekaterinburg refused to grant the applicant's petition.

31. On 6 December 2006 the Regional Court upheld the decision of 18 October 2006 on appeal.

II. RELEVANT DOMESTIC LAW

A. Conditions of pre-trial detention

32. Section 23 of the Detention of Suspects Act of 15 July 1995 provides that detainees should be kept in conditions which satisfy sanitary and hygiene requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

33. Moreover, detainees should be given, free of charge, sufficient food for the maintenance of good health in line with the standards established by the Government of the Russian Federation (Section 22 of the Act).

34. Article 99 of the Russian Code on the Execution of Criminal Sentences of 8 January 1997, as amended, provides that the personal space allocated to each individual in a dormitory should be no less than two square metres. The inmates are to be provided with individual sleeping places, bed sheets, toiletries and seasonal clothes.

B. Types of detention regimes

35. The Russian Code on the Execution of Criminal Sentences provides for five main types of penal institutions for convicted criminals: correctional settlement, general regime colony, strict regime colony, special regime colony, and prison.

36. The conditions imposed on an inmate serving a sentence in a correctional settlement are the mildest. In particular, the convicts do not live in cells or barracks but in unguarded dormitories. They have the right to move freely within the correctional settlement during the day. The number and length of family visits are not limited, nor is the possibility of receiving parcels and money from home. As an incentive for good behaviour, and subject to approval by the administration, the convicts may, *inter alia*, live outside the correctional settlement with their families, live in rented flats, leave the correctional settlement for holidays and weekends, and move freely within the city or district where the settlement is situated. They do not wear a uniform and can dispose of their money as they please. The convicts may even be granted leave to work in another town or district, or participate in distance-learning programmes of higher education establishments.

37. The regime in a prison is the most severe. The convicts are detained in cells. They are allowed daily outdoor exercise not exceeding one hour and a half. The number of family visits and parcels received is limited. So is the amount of money the convicts may spend during a month.

38. Upon arrival at a penal institution, a convict may be placed in quarantine quarters for a period of up to fifteen days. The conditions of

detention in the quarantine quarters are similar to those of the penal institution itself.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. In the application form of 8 December 2005, the applicant complained about the conditions of his detention in remand prison no. IZ-66/1 in Yekaterinburg from 9 February to 10 March 2004 and from 15 March to 3 August 2005, and about the conditions of his detention in correctional facility no. IK-13 in Nizhniy Tagil from 4 to 15 August 2005. Furthermore, in his submissions of 28 March 2011, the applicant complained about the conditions of his detention in correctional facility no. IK-13 in Nizhniy Tagil from 15 August to 17 February 2006. He referred to 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. Admissibility

40. The Court notes that the applicant's complaint concerns two separate periods of detention, that is, (1) from 9 February to 10 March 2004, when he was released pending trial, and (2) from 15 March 2005, when he was again remanded in custody, to 17 February 2006, when he was released having served his sentence. In this connection, the Court reiterates that where an applicant is released but subsequently redetained, it does not consider that such separate periods of detention constitute a continuing situation (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 79, 10 January 2012; and, *mutatis mutandis*, *Idalov v. Russia* [GC], no. 5826/03, §§ 128-30, 22 May 2012). It will accordingly consider whether the applicant complied with the six-month rule in respect of each such period.

1. Detention from 9 February to 10 March 2004

41. As regards the applicant's complaint about the conditions of his detention from 9 February to 10 March 2004 in remand prison no. IZ-66/1, the Court reiterates that the Russian legal system does not have an effective remedy for such a complaint (see *Ananyev*, cited above, § 119), and the six months should therefore run from the end of the situation complained of.

Thus, the applicant should have submitted the complaint no later than 10 September 2004. However, as it was introduced on 8 December 2005, it was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Detention from 15 March 2005 to 17 February 2006

42. The Court reiterates that during his detention from 15 March 2005 to 17 February 2006, the applicant was placed in two facilities. First, from 15 March to 3 August 2005 he was held in remand prison no. IZ-66/1 in Yekaterinburg and then from 4 August 2005 to 17 February 2006 he was held in correctional facility no. IK-13 in Nizhniy Tagil. In the latter facility he spent the period between 4 and 15 August 2005 in a disciplinary cell in conditions similar to those of an ordinary prison. From 15 August 2005 to 17 February 2006 he was placed in a dormitory of a correctional settlement. The applicant complained about the conditions of his detention in respect of the period between 15 March and 15 August 2005 in the application form introduced on 8 December 2005, whereas this complaint concerning the period between 15 August 2005 and 17 February 2006 was introduced on 28 March 2011.

43. Having regard to the above, the Court considers that as the applicant introduced his complaint in respect of his detention (1) from 15 March to 3 August 2005 and (2) from 4 to 15 August 2005 within six months of the end of the said period, he has complied with the six-month criterion. The Court further notes that this part of the application 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. It must therefore be declared admissible.

44. As regards the period of the applicant's detention from 15 August 2005 to 17 February 2006, the Court notes that the complaint was submitted more than five years after it had ended. It follows that it has been introduced out of time and must also be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. The parties' submissions

45. The Government asserted that the conditions of the applicant's detention in remand prison no. IZ-66/1 from 15 March to 3 August 2005 had been in compliance Article 3 of the Convention. The applicant had not been confined to the cell all the time. It had been open to him to meet with his lawyer and/or family. He had been able to participate in investigative actions and exercise his right to worship in special premises. Furthermore,

he had been able to leave the cell in order to use shower facilities and to do his laundry. In certain remand prisons it was possible for the inmates to work in various workshops affiliated to the prison. When describing the conditions of the applicant's detention in the remand prison (see paragraphs 15-17 above), the Government relied on excerpts from the remand prison population register, official floor plans of the cells in the remand prison. Relying on the statements provided by the administration of correctional facility no. IK-13 where the applicant had served his prison sentence following his conviction, the Government further claimed that the conditions of the applicant's detention there from 4 to 15 August 2004 had been compatible with the standards set forth in Article 3 of the Convention.

46. The applicant submitted that the conditions of his detention in remand prison no. IZ-66/1 and correctional facility no. IK-13 had fallen short of the standards set forth in Article 3 of the Convention. He claimed that the Government's description of the conditions of his detention was not correct. He submitted that at all times during the period under consideration he had been detained in overcrowded cells and that he had not had his own bed or bedding. He further provided statements by the inmates detained in the same cells as him in the remand prison and the correctional settlement which contained a similar description of the conditions of detention there.

2. The Court's assessment

(a) General principles

(i) Conditions of detention

47. The general principles relating to the conditions of detention of inmates are well established in the Court's case-law and have been summarised as follows (see *Ananyev*, cited above):

> "139. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).
>
> 140. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of

Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

141. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the 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 *Kudła*, cited above, §§ 92-94, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

142. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, Alver v. Estonia, no. 64812/01, 8 November 2005)."

(ii) Assessment of evidence and establishment of facts

48. Allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(b) Application of these principles to the present case

(i) Detention from 15 March to 3 August 2005

49. As regards the applicant's detention in remand prison no. IZ-66/1 from 15 March to 3 August 2005, the Court observes that, according to the Government's submissions, during the period under consideration the applicant was allocated no more than 2.30 square metres of personal space. On certain days the overcrowding was so severe that such space was less than 1.11 square metres per inmate. It also follows from the information provided by Government that the applicant was not provided with an individual sleeping place during most of the time he was detained there. For four and a half months the applicant had to spend at least twenty-three hours per day in such conditions.

50. In this respect the Court observes that in earlier cases against Russia, where the applicants had at their disposal less than three square metres of floor surface, it considered the overcrowding to be so severe as to justify of itself a finding of a violation of Article 3 (see, *Ananyev*, cited above, § 145).

In the Court's opinion, these considerations hold true in the present case. It accordingly finds that the applicant's detention in remand prison no. IZ-66/1 from 15 March to 4 August 2005 in overcrowded cells where he was not provided with an individual bed amounted to inhuman and degrading treatment in breach of Article 3 of the Convention. There has been accordingly a violation of this provision.

51. In view of the above, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention during the period in question (cf. *Idalov*, cited above, § 102).

(ii) Detention from 4 to 15 August 2005

52. The Court notes that it was established in the course of the domestic proceedings initiated by the applicant that the personal space afforded to him during the detention in a disciplinary cell in correctional settlement no. IK-13 in Nizhniy Tagil was below 2 square metres. The applicant had to share an 8-square metre cell together with 2 to 3 other inmates for at least 22 hours per day (see paragraph 25 above).

53. The Court further takes cognisance of the domestic judicial authorities' finding that the conditions of the applicant's detention fell short of the statutory requirement as regards the personal space afforded to the detainees. It further notes the lack of privacy for detainees using the toilet separated from the rest of the cell by a 1.1-metre high partition and restricted out-of-cell activities. Nevertheless, taking into account the cumulative effect of those conditions and, in particular, the brevity of the applicant's stay in the disciplinary cell of the correctional settlement, the Court does not consider that the conditions of the applicant's detention, although far from adequate, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention. Therefore, there has been no violation of this provision (cf. *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 138, 17 January 2012).

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

54. The applicant complained that he had been detained under the prison regime from 4 to 15 August 2005 in contravention of applicable domestic regulations. The Court will examine the complaint under Article 5 § 1 (a) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court."

55. The Government submitted that the applicant's detention during the period in question had been in compliance with the requirements set forth in Article 5 § 1 (a) of the Convention. They further noted that, generally, convicts were placed in quarantine upon arrival at a correctional facility. However, in view of the absence of quarantine quarters in correctional settlement no. IK-13 in Nizhniy Tagil, the applicant had been placed in a prison-type cell, which fact had been in contravention of applicable domestic regulations.

56. The applicant maintained his complaint.

A. Admissibility

57. The Court reiterates that it falls first to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, among other numerous authorities, *Siliadin v. France*, no. 73316/01, § 61, ECHR 2005-VII). An applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

58. In the present case, the Court notes that the domestic judicial authorities unequivocally recognised that the applicant's detention in the prison-type cell had been unlawful (see paragraph 25 above). However, no compensation was offered to the applicant in this respect. The domestic judicial authorities merely stated, without much analysis or detail, that the applicant had not sustained any physical or mental suffering resulting from the violation of his rights (see paragraph 28 above). The Court considers that, in the circumstances of the case, the applicant was not afforded appropriate and sufficient redress and can still claim to be a "victim" within the meaning of Article 34 of the Convention.

59. The Court 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. It must therefore be declared admissible.

B. Merits

60. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof (see, among other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X (extracts)).

61. In the present case, the Court observes that the compliance of the applicant's detention with the applicable national laws was in fact subject to domestic judicial review. On 23 June 2006 the District Court found that the applicant had been unlawfully held in a prison-type cell for ten days. The District Court's decision was upheld on appeal by the Regional Court on 15 August 2006. The Court does not see any reason to depart from the domestic courts' findings and concludes that the national law was not complied with. Thus, the applicant's detention from 4 to 15 August 2005 was not "in accordance with a procedure prescribed by law". Accordingly, there has been a violation of Article 5 § 1 (a) of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. Lastly, the applicant raised a number of other complaints under Articles 5, 6 and 8 of the Convention in connection with his pre-trial detention and the criminal proceedings against him.

63. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court 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 manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 450,826.54 euros (EUR) in respect of pecuniary damage, covering loss of earnings and damage to his health. He also claimed EUR 534,000 in respect of non-pecuniary damage.

66. The Government considered the applicant's claim excessive and unsubstantiated. They further submitted that the finding of a violation would constitute sufficient just satisfaction.

67. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. As regards the non-pecuniary damage sustained by the applicant, the Court considers that it cannot be sufficiently compensated for by the finding of a

violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

69. 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 complaints concerning the conditions of the applicant's detention from 15 March to 15 August 2005 and the alleged unlawfulness of the applicant's detention from 4 to 15 August 2005 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 remand prison no. IZ-66/1 in Yekaterinburg from 15 March to 3 August 2005;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's detention in correctional facility no. IK-13 in Nizhniy Tagil from 4 to 15 August 2005;

4. *Holds* that there has been a violation of Article 5 § 1 (a) of the Convention;

5. *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 five hundred euros), to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President