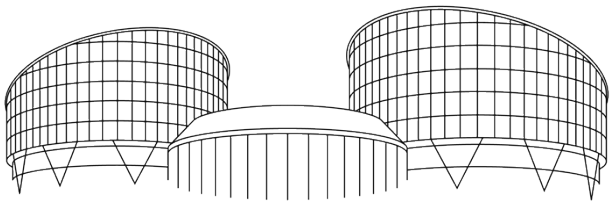

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YEPISHIN v. RUSSIA

(Application no. 591/07)

JUDGMENT

STRASBOURG

27 June 2013

FINAL

27/09/2013

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

In the case of Yepishin v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 591/07) 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 Vladimir Ivanovich Yepishin ("the applicant"), on 14 November 2006.

2. The applicant was represented by Mr A. Babushkin, 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 complained, in particular, about the conditions of his detention and of being hindered in the exercise of the right to individual petition.

4. On 26 May 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 1970 and lives in Moscow.

6. On an unspecified date the applicant was arrested on suspicion of robbery and manslaughter and remanded in custody pending investigation and trial.

7. On 29 November 2001 the Orekhovo-Zueyvo Town Court, located in the Moscow Region, found the applicant guilty as charged and sentenced him to twelve years' imprisonment. According to the Government, on 3 March 2004 the applicant's sentence was reduced to eleven years and seven months' imprisonment.

A. The applicant's pre- and post-conviction detention

1. Remand prison no. IZ-49/7 in Yegorievsk, Moscow Region

8. On 6 December 2000 the applicant was placed in remand prison no. IZ-49/7 in Yegorievsk, Moscow Region, where he was held until June 2001. According to the applicant, he was detained in overcrowded cells where the inmates had to take turns to sleep. They were not provided with bed sheets or crockery. The cells were infested with insects and mice. The food was of a low quality.

2. Remand prison no. IZ-50/7 in Moscow and transit prison no. IK-18 in the Republic of Mordoviya

9. In June 2001 the applicant was held for sixteen days at remand prison no. IZ-50/7 in Moscow. He was placed in cell no. 7. It housed 100 detainees and was equipped with twenty-eight sleeping places. He was then transferred to transit prison no. IK-18 in the Republic of Mordoviya, where he was diagnosed with tuberculosis. The hospital where the applicant was admitted was, according to him, overcrowded and the quality of the food there was inadequate.

3. Medical colony no. ZhKh-385/3 in the Republic of Mordoviya

10. In July 2001 the applicant was transferred to medical colony ZhKh 385/3 in the Republic of Mordoviya. He submitted that the treatment he received there was irregular.

4. Correctional colony no. IK-17 in the Republic of Mordoviya

11. On 10 January 2002 the applicant was transferred to correctional colony no. IK-17 in the Republic of Mordoviya. The applicant submitted that the heating had been insufficient, that there had been no lavatory in the building and that the personal space available to the applicant in the dormitory had been below two sq. m. He had been allowed to take a shower once a week. There had been a tap with cold water and a tap with hot water. The applicant had to use a bucket to mix the water to wash himself.

5. Remand prison no. IZ-50/7 in Moscow

12. In January-March 2004 the applicant was held at remand prison no. IZ-50/7 in Moscow. According to the applicant, he was detained in satisfactory conditions and received adequate medical assistance.

6. Correctional colony no. IK-1 in Tambov

13. Following the supervisory review of the applicant's conviction, he was sent to serve a prison sentence in correctional colony no. IK-1 in Tambov, where he was held from 12 April 2004 to 29 December 2009.

(a) General conditions of the applicant's detention at the colony

(i) The description provided by the applicant

14. The applicant was placed in a building with two dormitories. The dormitory he was assigned to measured 104 sq. m. He shared it with sixty-one other inmates. Most of the space in the dormitory was taken up by two-tier bunk beds placed close to the windows, which prevented natural light and fresh air from coming into the dormitory. The dormitory was always humid and stuffy. There was one lavatory in the building. The individual toilets were separated by twenty-centimetre high partitions and offered no privacy. The applicant, who suffered from haemorrhoids, had to apply medication, such as suppositories, in plain view of other inmates. The lavatory and the washroom were dirty and humid at all times. The bed sheets provided by the colony were made of a gauze-like fabric normally used for wood finishing and caused skin irritations and itching. The inmates were allowed to take a shower once a week. The water in the showers was lukewarm. According to the colony's schedule, two hundred inmates were given three hours in which to take a shower. There were no laundry facilities and the inmates also had to use that time for washing their clothes. The food was poor and of a low quality.

15. In response to a complaint lodged by the applicant's representative, the regional prosecutor's office conducted an inquiry into the conditions of detention at the correctional colony. As regards the dormitories, on 19 November 2007 the prosecutor informed the applicant and his representative as follows:

> "The inquiry conducted in respect of the dormitories has established that their sanitary conditions are satisfactory. The natural and artificial lighting complies with applicable standards (daylight bulbs are in working order). ... there is a recreation room with a TV set, chairs and a table with board games. The lavatory consists of two separate rooms. The first one contains eight sinks and a tub for feet washing. The second room measures 8.5 sq. m and contains 6 individual toilets. It is true that the majority of the dormitories (built in the 1940-50s) where the convicts reside, including those assigned to unit 11, fell short of the [statutory] personal space standards. This fact has been repeatedly brought by the prosecutor's office to the

attention of the head of correctional colony no. IK-1 and the head of the regional department of corrections. In order to rectify the situation, it is necessary to construct new dormitories for the convicts or to reduce the number of the convicts detained at the colony ... .”

16. In response to an additional complaint lodged by the applicant’s representative, on 5 September 2008 the regional prosecutor’s office submitted the following information concerning the conditions of the applicant’s detention:

“Currently [the applicant] is assigned to unit 3. ... The dormitories for units 3 and 13 have a surface area of 165 sq. m. As of 18 August 2008 ..., there were 98 convicts [in the dormitories]. The personal space available to each convict was below the statutory standard of 2 sq. m.”

17. In response to a further complaint made by the applicant about the conditions of his detention at the correctional colony, the regional prosecutor’s office conducted another inquiry and on 11 November 2009 informed the applicant of its results as follows:

“It was established in the course of the inquiry, that as regards certain dormitories, the administration of correctional colony no. IK-1 in the Tambov Region has failed to fully comply with the requirements of [applicable legislation] as regards the personal space assigned to each convict.”

(ii) The description provided by the Government

18. The Government provided the following information as regards the applicant’s detention at the correctional colony.

19. The applicant was assigned to unit 11 (the number was later changed to 13) from 12 April 2004 to 4 May 2005, from 26 April 2006 to 4 January 2007 and from 4 January 2007 to 29 December 2009. The unit measured 427.5 sq. m including a living area of 138.6 sq. m. The dormitory had sixty two-tier bunk beds.

20. From 4 May 2005 to 26 April 2006 the applicant was assigned to unit 2. The unit measured 543.5 sq. m including a living area of 295.9 sq. m with fifty-six two-tier bunk beds.

21. According to a certificate issued by the administration of the correctional colony on 4 August 2010, the number of the convicts detained with the applicant was as follows:

Year	Number of convicts per unit
2004	54-60
2005	48-59
2006	51-57
2007	44-60
2008	43-54
2009	51-60

22. At no time had the number of convicts assigned to a dormitory exceeded the number of sleeping places there. The dormitories had a sufficient number of windows to ensure an adequate supply of fresh air. Unit 2 had twelve windows and unit 11 had twenty windows. There were no metal bars on the windows. The dormitories were lit with four 100-watt daylight bulbs and one 60-watt night light bulb installed above the entrance door. The daytime lighting was on from 6 a.m. to 10 p.m.

23. Units 2 and 11 had separate bathrooms with four and five individual toilets respectively. They were separated by one-metre high and eighty-centimetre wide partitions.

24. The convicts were allowed to move freely within specially designated areas – measuring from 479.44 sq. m to 830.23 sq. m – in accordance with their individual schedules. They could also take part in morning exercise sessions lasting at least fifteen minutes if weather conditions permitted.

(b) Conditions of the applicant's detention at the colony hospital

25. According to the applicant, he was admitted to the colony hospital on several occasions. The most recent period in which he had been admitted was from 8 to 23 April 2008. The cells there were dirty and infested with insects. The hospital did not have a yard and he did not have the opportunity to go for a walk or to exercise outdoors. The food was of a low quality.

26. According to the Government, from 1 to 20 September 2004 and from 14 September to 13 October 2005 the applicant was admitted to ward 11, measuring 32 sq. m and equipped with six beds. From 11 to 23 May 2005 and from 5 March to 30 April 2010 the applicant was held in ward 14, measuring 31.8 sq. m and equipped with six beds. Each of the wards had a window covered with metal bars. The wards were equipped with a ventilation system. The lighting was similar to that used in the main dormitory units. The lavatory was located by the door and separated by a brick wall from the living area of the ward.

(c) Medical assistance

(i) The applicant's medical file submitted by the Government

27. According to the medical file submitted by the Government, the applicant underwent a medical examination upon his arrival at correctional colony no. IK-1 and had regular consultations with doctors during his detention there.

28. In 2004-2009 the applicant received both inpatient and outpatient treatment for haemorrhoids, chronic gastroduodenitis, eczema, gastritis, bronchitis, tuberculosis and flu. On numerous occasions he consulted a general practitioner, a neurologist, a phtisiologist, a dentist, a surgeon, a urologist, an otolaryngologist, and had blood, sputum, and urine tests, X-ray

and EKG examinations, and an ultrasound scan of his abdominal area and kidneys. In 2005 the doctors considered him cured of tuberculosis. The applicant was advised to undergo colorectal surgery, which he repeatedly refused to do out of fear of the risk of dying during the operation or suffering post-operative complications, or as a result of what he considered to be a poor relationship with the administration of the correctional colony. According to the file, the applicant also submitted that he had been suffering from haemorrhoids for twenty years.

29. The applicant's application for disability was considered in 2004, 2005 and 2007. Following a medical examination, the application was refused. The relevant reports which found the applicant fit for employment were issued on 22 December 2004, 30 November 2005 and 1 October 2007. According to the applicant, the reports indicated that he had ability to work with limitations in view of his health condition and could not perform heavy labour.

30. On 11 December 2007 the applicant considered that his condition had been deteriorating and asked the administration of the colony for inpatient treatment and a comprehensive examination in order to assess his disability. His request was to no avail.

31. According to the applicant, in 2009 the colony could not provide him with required medication on a regular basis. In August 2009 the applicant did not receive suppositories to treat his haemorrhoids. Vitamins were also mostly unavailable.

7. Correctional colony no. IK-8 in the Tambov Region

32. On 15 January 2010 the applicant was transferred to correctional colony no. IK-8 in the Tambov Region.

B. Proceedings instituted by the applicant

1. Criminal proceedings

33. On 30 July 2007 the applicant unsuccessfully challenged in court a prosecutor's refusal to institute criminal proceedings against the administration of correctional colony no. IK-1 in Tambov. The final relevant decision was taken on 29 November 2007 by the Tambov Regional Court.

2. Civil proceedings

34. On 25 September 2007 the Regional Court dismissed without consideration on the merits a claim for damages brought by the applicant against correctional colony no. IK-1 in Tambov. The court noted that the applicant had failed to pay court fees.

C. Correspondence with the Court

35. According to the applicant, on several occasions during the period between November 2007 and the end of 2009 the administration of the colony refused to dispatch his letters addressed to the Court owing to his failure to pay for postage. The applicant, who had no cash in his account and was not employed, had to ask other inmates for financial support.

36. According to the Government, on 31 July 2006 and 14 September 2007 the applicant asked the administration of the correctional colony to pay for the dispatch of his letters addressed to the Court. His request was granted.

37. On 29 October 2007 his letter to the Court was dispatched by a lawyer representing one of the inmates.

38. On 24 January 2008 the head of the colony informed the applicant that another letter submitted by him and addressed to the Court could not be dispatched free of charge. Subsequently, the supervising prosecutor informed the applicant's representative that no federal budget funds had been allocated to provide free stationery to inmates.

39. In December 2008 a human rights NGO transferred 200 Russian roubles to the applicant's account.

40. In June 2009 the NGO sent postal stamps and envelopes to the applicant upon his request.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

41. 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. Inmates are to be provided with individual sleeping places, bed sheets, toiletries and seasonal clothes.

B. Right to correspondence

42. Article 91 of the Russian Code on the Execution of Criminal Sentences in effect at the relevant time provided that the inmates serving a prison sentence may receive and send, at their own expense, an unlimited number of letters and telegrams.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

43. The applicant complained about the conditions of his detention at correctional colony no. IK-1 in Tambov and of a lack of adequate medical assistance there during his detention from 12 April 2004 until December 2009. 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."

He also claimed that he had not had an effective remedy at his disposal in respect of the conditions of his detention. The Court considers that this part of the application falls to be examined under Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

A. Admissibility

1. Conditions of detention

44. The Government claimed that the applicant had failed to bring his complaints to the attention of the national courts and considered that his complaint should therefore be rejected for failure to comply with the requirements of Article 35 § 3 of the Convention. In particular, they asserted that it had been open to the applicant to challenge the lawfulness of the actions of the administration of any of the remand prisons or correctional facilities he had been detained in or to institute criminal proceedings against them. The Government submitted copies of three judgments whereby national courts had granted claims brought by inmates against the remand prison or correctional colony where they were detained for their failure to ensure appropriate conditions of detention. In the Government's view, it had also been open to the applicant to complain to the administration of the correctional colony, supervising state bodies, a prosecutor or a court. The applicant had repeatedly lodged complaints with the prosecutor's office about the conditions of his detention. Following the ensuing inquiries, the complaints had been dismissed as unsubstantiated. The applicant's subsequent appeals lodged with the courts had been left without consideration on the merits due to his failure to comply with applicable procedural rules. The applicant had also brought two civil actions against

the correctional facilities, which had not been considered on the merits due to his failure to observe procedural formalities.

45. The applicant asserted that the dismissals of his complaints by the domestic authorities, including the courts, had not been in compliance with the law.

46. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the complaint that the applicant did not have an effective remedy at his disposal by which to complain of inhuman and degrading conditions during his detention. The Court therefore finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention.

47. The Court further notes that the complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Alleged lack of proper medical assistance

48. The applicant alleged that the medical treatment he had received had not been effective. His health had deteriorated after years of detention in the correctional colony resulting from poor nutrition, appalling conditions of detention and a low quality of medical care. In his opinion, his haemorrhoids and gastroudenitis could have been cured by a proper diet and medication. On many occasions, the medicine which he had been prescribed had not been available at the pharmacy. The Russian authorities should have provided for his treatment at a civilian hospital or a prison hospital closer to the Moscow Region, where he had lived prior to his arrest and conviction.

49. The Government disputed the applicant's allegations. Relying on the applicant's medical file, they submitted that he had received prompt and adequate medical assistance provided by qualified medical practitioners. The hospital and the pharmacy at the correctional colony had been duly equipped. There had not been a lack of the medicine required for the applicant's treatment.

50. The Court reiterates that Article 3 of the Convention imposes an obligation on the State to ensure, given the practical demands of imprisonment, that the health and well-being of a prisoner are adequately secured by, among, other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI).

51. The Court further observes that the medical evidence which the Government produced shows that during his detention at the correctional colony the applicant regularly sought, and obtained, medical assistance. He was examined by doctors and received treatment in connection with his conditions (see paragraphs 27-28 above).

52. The Court also notes that although the applicant disputed the adequacy of his treatment, he did not provide a medical opinion confirming his point of view. The Court further observes that, according to the Government's submissions, which were not disputed by the applicant, the applicant was under constant medical supervision. Nothing in the parties' submissions can lead the Court to the conclusion that the applicant did not receive appropriate medical treatment for his conditions. The applicant's allegations appear to be conjecture and not substantiated by any specific evidence.

53. Thus, having regard to the material in its possession, the Court finds that in the present case it has not been established that the medical assistance the applicant received from 2004 to 2009 was inadequate, or that his state of health deteriorated beyond the natural course of his conditions, or that he suffered as a result of insufficient medical care.

54. In view of the above considerations, the Court finds that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Article 13 of the Convention

55. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła*, cited above, § 157). The Court observes that the applicant's complaint under Article 3 of the Convention was declared admissible (see paragraph 47 above). Accordingly, an "arguable claim" clearly arises for the purpose of Article 13 of the Convention.

56. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice, as well as in theory.

57. Turning to the facts of the present case, the Court considers that the Government did not demonstrate that preventive measures or compensatory redress could have been afforded to the applicant by a court or other State authorities. Nor can the Court accept, without going into further detail with regard to the adequacy of the compensation awarded by the domestic courts, that the cases cited by the Government suffice to show the existence of settled domestic practice that would prove the effectiveness of the remedy.

The Court further observes that in the case of *Kulikov* (see *Kulikov v. Russia*, no. 48562/06, § 31, 27 November 2012), it dismissed the Government's objection as to the alleged non-exhaustion of domestic remedies by the applicant for their failure to demonstrate the practical effectiveness of the applicant's recourse to the domestic authorities in respect of his complaints about the conditions of his detention in a correctional colony. In the present case the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion.

58. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies and concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law enabling the applicant to complain about the general conditions of his detention.

2. Article 3 of the Convention

(a) The parties' submissions

59. The applicant asserted that he had been detained in overcrowded dormitories. Due to the lack of ventilation, the dormitories had been damp and cold. The lighting had been insufficient. During the time in which he had been admitted to hospital, he had not had an opportunity for outside daily exercise. He admitted that the wards at the hospital had not been overcrowded. As regards the data concerning the correctional colony population submitted by the Government, the applicant claimed that it was contradictory and could not substantiate their submissions of compliance with applicable standards. The information taken from the records of prisoner profiles did not allow for a determination of the overall population of the correctional colony or the number of prisoners detained with him and was, accordingly, of no relevance.

60. The Government considered that the applicant's rights set out in Article 3 of the Convention had not been infringed and that there had never been any intent on the part of the Russian authorities to subject the applicant to torture through physical or mental suffering during the time he had been serving a prison sentence. In respect of the data provided by them as regards the correctional colony population, they provided certificates prepared by the colony administration in 2010 and a copy of the records of prisoner profiles.

(b) The Court's assessment

61. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the

circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that, in the context of deprivation of liberty, to meet the Article 3 threshold the suffering and humiliation involved must go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of liberty may often involve such an element, in accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła*, cited above, § 92-94).

62. Turning to the facts of the instant case, the Court notes that the parties disputed certain aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation. It can find a violation of Article 3 on the basis of the facts presented to it by the applicant which the respondent Government fail to refute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

63. In this connection, the Court takes cognisance of the findings of the inquiries conducted by the Office of the Prosecutor General of the Russian Federation in 2007, 2008 and 2009 (see paragraphs 15-17 above) whereby it was established that the personal space afforded to the applicant during his detention in the correctional colony had fallen short of the domestic statutory requirements of two square metres per person and that the dormitories where the applicant had been detained had been overcrowded. The Court further notes that the Government have not proffered any explanation as to how the findings of the prosecutor's inquiries corresponded to the data submitted by them to the Court (see paragraph 21 above). Nor have they submitted any original data concerning the population of the correctional colony during the relevant period. A copy of the records of prisoner profiles is of no relevance. As the applicant pointed out, it does not provide any data on the colony population.

64. In this connection, the Court reiterates that Convention proceedings such as the present application do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the validity of the applicant's allegations (see *Timurtaş v. Turkey*, no. 23531/94, § 66 *in fine*, ECHR 2000-VI).

65. Having regard to the principles cited above and the fact that the Government did not submit any relevant or convincing data, the Court accepts the applicant's argument that the dormitories where he was detained for over five years were overcrowded. Admittedly, the Court has previously held that the personal space afforded to detainees in the dormitory of a correctional colony must be viewed in the context of the wide freedom of movement enjoyed by detainees during the daytime, which ensures that they have unobstructed access to natural light and air (see *Nurmagomedov v.Russia* (dec.), no. 30138/02, 16 September 2004). Nevertheless, in the circumstances of the present case, the Court considers that the level of privacy available to the applicant was insufficient to comply with the standards set forth in Article 3 of the Convention. For over five years, during the night, the applicant was housed in a dormitory with forty-four to sixty other people where he was afforded less than two square metres of personal space. Furthermore, in the Court's view, the sanitary facilities available were not sufficient to accommodate the needs of the detainees. Lastly, the Court observes that on several occasions the applicant was transferred to a hospital where there was no overcrowding. However, given the infrequency and the brevity of such periods of detention, the Court does not consider them to have alleviated the applicant's situation.

66. The Court takes cognisance of the fact that in the present case there is no indication that there was a positive intention on the part of the authorities to humiliate or debase the applicant, but reiterates that, irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial 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, and *Benediktov v. Russia*, no. 106/02, § 37,10 May 2007).

67. 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, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Belevitskiy v. Russia*, no. 72967/01, §§ 75 et seq., 1 March 2007; and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 166, 10 January 2012).

68. Having regard to the material in its possession, 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.

69. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 12 April 2004 to 29 December 2009 in correctional facility no. IK-1 in Tambov, which

conditions the Court considers inhuman and degrading within the meaning of this provision.

70. 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.

II. ALLEGATION OF HINDRANCE IN THE EXERCISE OF THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

71. The applicant complained that the administration of correctional colony no. IK-1 in Tambov, where he had been serving his prison sentence from 12 April 2004 to 29 December 2009, had refused to dispatch his correspondence to the Court in view of his inability to cover the postal costs. The Court decided to examine his complaint from the standpoint of the right of individual petition guaranteed by Article 34 of the Convention, which reads:

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

72. The Government contested that argument. They submitted that on 31 July 2006 and 14 September 2007 the applicant had asked the administration of the correctional colony to assist him with the dispatch of his letters to the Court, as he had lacked the means to pay for the stamps himself. His requests had been granted and the postal costs had been incurred by the correctional colony. A certain number of other letters had been sent to the Court by an NGO on behalf of the applicant. In any event, the applicant could have applied for a paid job in order to earn money to be able to afford to pay for stamps and envelopes. He had undergone a complete physical examination in December 2005 and had been found fit for employment. However, he had not applied for a job and had turned down several job offers from the administration of the correctional colony. In particular, on 25 February 2008 the applicant refused to be hired as an orderly, on 16 November 2009 the applicant refused a job offer without a reason, and on 4 August 2010 the applicant refused another job offer referring to his medical condition.

73. The applicant submitted that from November 2007 to December 2009 the administration of the correctional colony had refused to provide him with stamps for letters to be sent to the Court. It had been the applicant's representative who had provided the applicant with stamps and envelopes or other convicts or their lawyers. In principle, the national regulations did not provide for an opportunity for indigent convicts to apply

for assistance from the authorities in connection with postal expenses. As regards a possibility of employment, the applicant claimed that he had been unable to accept the job offers from the administration of the correctional colony in view of his poor health.

74. The Court reiterates that the right of individual petition under Article 34 of the Convention will operate effectively only if an applicant can interact with the Court freely, without being subjected to any form of pressure from the authorities to withdraw or modify his or her complaints (see *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports of Judgments and Decisions* 1996-IV). The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy or having a "chilling effect" on the exercise of the right of individual petition by applicants and their representatives (see *Fedotova v. Russia*, no. 73225/01, §§ 48-51, 13 April 2006; *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV).

75. The Court has previously held that the failure to provide a prisoner with the resources required for carrying out correspondence with the Court may contribute to a finding of the respondent State's failure to comply with its obligations under Article 34 of the Convention (see, for example, *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003).

76. Turning to the circumstances of the present case, the Court does not consider that the facts complained of by the applicant are sufficient to disclose any prejudice in the presentation of his application to the Court. Admittedly, the administration of the correctional colony where the applicant was serving a prison sentence on a number of occasions refused to pay the postage for the dispatch of his letters. However, it does not appear that it was excessively burdensome for him to carry the postage expenses himself. The Court does not lose sight that the applicant was found fit for work and that it was open for him to accept the employment offered by the correctional colony in order to mitigate his indigent situation. Nor does the fact that the applicant's representative sent him stamps and envelopes and cash to pay for the postage raise an issue under Article 34 of the Convention.

77. Accordingly, the Court cannot find that the Government failed to comply with their obligations set out in Article 34 of the Convention. It therefore concludes that there has been no hindrance to the applicant's right of individual petition.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. Lastly, the applicant complained under Article 3 of the Convention about the conditions of his detention in various facilities from 6 December 2000 to January 2004. He further complained about the dismissal of his civil claims and the prosecutor's refusal to institute criminal proceedings against certain officers of correctional colony no. IK-1. Referring to Article 14 of the Convention, he also alleged that he had been unable to receive medical treatment in civilian hospitals.

79. 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and EUR 50,000 in respect of non-pecuniary damage.

82. The Government considered the applicant's claims excessive and unsubstantiated.

83. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it observes that the applicant was detained in appalling conditions for over five years in contravention of Articles 3 and 13 of the Convention. The Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. However, the Court accepts the Government's argument that the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 19,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicant also claimed 186 Russian roubles (RUB) for postal costs and expenses incurred before the domestic courts and RUB 1566.6 before the Court.

85. The Government did not comment.

86. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 38, plus any tax that may be chargeable to the applicant, covering costs and expenses for the proceedings before the Court.

C. Default interest

87. 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. *Joins to the merits* the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about the conditions of the applicant's detention at correctional colony no. IK-1 in the Tambov Region from 12 April 2004 to 29 December 2009 and rejects it;

2. *Declares* the complaints concerning the conditions of the applicant's detention at correctional colony no. IK-1 in the Tambov Region from 12 April 2004 to 29 December 2009 and the alleged lack of effective remedy in this respect admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 12 April 2004 to 29 December 2009 in correctional facility no. IK-1 in Tambov;

4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law enabling the applicant to complain about the general conditions of his detention;

5. *Holds* that the State has not failed to meet its obligation under Article 34 of the Convention;

6. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 19,000 (nineteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 38 (thirty-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 27 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President