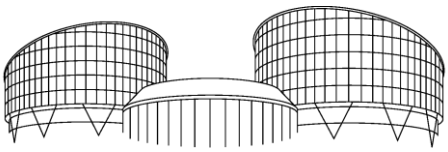

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YEMELIN v. RUSSIA

(Application no. 41038/07)

JUDGMENT

STRASBOURG

10 October 2013

FINAL

10/01/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Yemelin v. Russia,

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

Isabelle Berro-Lefèvre, President,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, judges,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 41038/07) 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 Aleksey Alekseyevich Yemelin ("the applicant"), on 6 August 2007.

2. The applicant, who had been granted legal aid, was represented by Mr T. Misakyan, 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 conditions incompatible with the standards set forth in Article 3 of the Convention and that the judgment in his favour had not been enforced.

4. On 27 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 1971 and lives in Alicante, Spain.

A. Criminal proceedings against the applicant

6. On 7 July 2004 the applicant, a police officer at the time, lent 20,000 Russian roubles (RUB) to M. The latter failed to repay the loan. On an unspecified date, in order to make her pay the debt, the applicant tricked M. into giving him her travel passport.

7. On 14 January 2007 M. let K., a friend of the applicant's, into her flat. K. asked her to repay the loan, which she could not do. Then the applicant broke into M.'s flat and beat her up. M. sustained a closed head injury and fractured ribs, and received treatment in hospital.

8. On 15 January 2007 M. complained about the beating to the local department of the interior where the applicant was serving as a police officer. On 19 January 2007 she lodged a complaint with the prosecutor's office, alleging that on 14 January 2007 the applicant had entered her flat against her will.

9. On 1 February 2007 the prosecutor's office opened a criminal investigation into M.'s complaint.

10. On 5 February 2007 the applicant made an undertaking not to leave town.

11. On 9 February 2007 the Volsk Town Court ordered that the applicant be temporarily removed from office. The applicant did not appeal.

12. On 10 February 2007 the applicant was indicted on charges of unlawful entry and assault with bodily injuries.

13. On 19 April 2007 the applicant was indicted on a charge of abuse of power.

14. On 26 April 2007 the Volsk Town Court received the case-file.

15. On 31 May 2007 the applicant gave an interview to the local newspaper alleging that one of the prosecutor's witnesses had a grudge against him and had testified against him out of revenge.

B. Applicant's pre-trial detention and the verdict

16. On 15 June 2007 the Volsk Town Court established that the applicant had made threats to M. and other witnesses with intent to intimidate them and ordered that the applicant be detained pending trial. On 2 July 2007 the Saratov Regional Court upheld the decision of 15 June 2007 on appeal.

17. On 17 August 2007 the Town Court found the applicant guilty of unlawful entry, assault with bodily injuries and misappropriation of M.'s passport, and sentenced him to two years' suspended imprisonment and a fine. He was released in the courtroom.

18. On 1 November 2007 the Saratov Regional Court upheld the applicant's conviction on appeal.

C. Conditions of detention and transport

19. From 15 June to 17 August 2007 the applicant was detained alternately at the temporary detention centre in Volsk and in remand prison no. IZ-64/1 in Saratov.

1. Temporary detention centre in Volsk

20. The applicant was detained in cell no. 6 at the temporary detention centre in Volsk from 15 to 16 June, 27 June to 3 July, 11 to 19 July and 27 July to 17 August 2007.

(a) Description provided by the Government

21. According to the Government, the cell where the applicant was detained measured 5.85 sq. m and contained two beds. During the first two periods of detention the applicant was held in the cell alone. During the second two periods another inmate was held there with the applicant. The cell had no windows and was lit with a 200-watt electric bulb. Nor was the cell equipped with a toilet; the inmates had to use a bucket, which was placed some 1.5 metres from the beds and 3.5 metres from the dining table. There was no screen separating the "toilet zone" from the rest of the cell. The temporary detention centre had no exercise yard and inmates detained there had to stay in their cells all the time.

(b) Description provided by the applicant

22. According to the applicant, he was detained in a windowless cell measuring 1.3 sq. m. The cell was not equipped with a toilet or running water. The applicant had to use a bucket placed in the cell as both a toilet and a sink. He was allowed to empty the bucket once a day. The mattress and a pillow given to him were dirty and smelt foul. No bed linen was provided. The cell was infested with rats. The ventilation system was on for no more than forty minutes a day. The constant fetid smell in the cell made the applicant sick and gave him headaches. When it rained, water leaked into one of the corners and flooded the cell. The concrete floors were always damp. The walls were covered with mould. Because of the dampness of the cell, the applicant developed painful breathing.

23. There was no access to natural light. The cell was lit with a 40-watt electric bulb. The temporary detention centre had no outdoor exercise area and the applicant was confined to the cell for twenty-four hours a day. Breakfast consisted of hot water only. For dinner the inmates received cold leftovers from lunch. The food served for dinner often turned sour owing to the lack of refrigerators in the temporary detention centre.

2. Remand prison no. IZ-64/1 in Saratov

(a) Description provided by the Government

24. The Government's submissions as regards the conditions of the applicant's detention in remand prison no. IZ-64/1 in Saratov can be summarised as follows:

Period of detention	Cell no.	Surface area (in square metres)	Number of inmates	Number of beds
From 16 to 18 June	18	21.2	4-5	5
From 19 to 26 June	117	8.1	2	2
From 4 to 10 July	18	21.2	4-5	5
20 July	18	21.2	4-5	5
From 21 to 24 July	207	8.05	2	2
From 24 to 26 July	138	8.05	2	2

25. Each cell had one window which ensured access to daylight. The windows were covered with metal bars with 200-sq. cm openings. All the cells in the remand prison were equipped with a ventilation system in good working order. The electric lighting was constantly on. From 6 a.m. to 10 p.m. the cells were lit with a 100-watt bulb and from 10 p.m. to 6 a.m. with a 40-watt bulb for safety and surveillance purposes.

26. Each cell had a water closet separated from the living area with a 1.5-metre high partition. The distance between the toilet and the beds/dining table was at least 2 metres. The inmates had the right to daily outdoor exercise lasting at least an hour.

(b) Description provided by the applicant

27. The applicant did not dispute the Government's submissions as regards the periods of his detention in the remand prison and the numbering of the cells where he had been detained. He provided the following additional data regarding the size of the cells and the number of inmates:

Cell no.	Surface area (in square metres)	Number of inmates
18	21.2	10
117	8	3
207	7	3-4
138	7	2

28. Each cell had a window covered with three layers of metal bars with 100-sq. cm openings. The window ensured access to daylight. The electric light was constantly on. There was no dining table in cell no. 117. The toilet was located in the corner of the cell no more than 1.5 m from the dining table and no more than 2 m from the nearest bed. The toilet was separated with brick walls without a door and offered no privacy. The ventilation system was not effective enough to evacuate the smell emanating from the

toilet. No hot water was supplied; nor was there cold running water between 5.45 a.m. and noon. The inmates were allowed one hour's outdoor exercise per day, which was cancelled in the event of rain. The food was of very poor quality and scarce. The pickled cabbage was rancid and smelled bad, the potatoes were black and rotten. The milk turned sour immediately or contained grey residue. The fish was rotten. No fruit or vegetables were served.

29. According to the applicant, all the letters he sent to his family and friends were opened and censored.

3. Conditions of transport

(a) Description provided by the Government

30. According to the Government, on the days of the applicant's transfer between the remand prison and the temporary detention centre, he was provided with a dry food ration. He received 300 grams of biscuits, 30 grams of soup concentrate, 168 grams of main-course concentrate, 40 grams of sugar and 2 grams of tea. The inmates were placed in special vans and taken to the railway station. Being a former police officer, the applicant was placed in a van compartment alone. The travel time did not exceed twenty minutes. Upon arrival at the station, the inmates were placed in railway carriages. At all times, the applicant had an individual sleeping place. The train journey lasted from six to eight hours. The applicant was provided with hot water to be used with the food concentrates and drinking water. He was allowed to use the toilet. At the destination railway station, the inmates were again placed in vans and taken to the respective detention facility.

(b) Description provided by the applicant

31. According to the applicant, on the days on which he was transported between the remand prison and temporary detention centre, notably 27 June, 3, 11, 19 and 27 July 2007, the journey lasted from eight to sixteen hours. No food was provided. The inmates were placed in compartments measuring 1.2 to 2 square metres. During the first four transfers there were three inmates in the compartment, including the applicant, and during the fifth transfer there were four inmates, including the applicant. There were three berths in the compartment measuring 1.2 square metres and the applicant had to share his sleeping place with another inmate. During the journey, the detainees were given water once and were allowed to use the toilet once. For the rest of the time they had to use plastic bags or bottles in the compartment to answer calls of nature. The toilet in the railway carriage had no sink.

32. The applicant submitted two statements from inmates V. and N. who had been transported with him on 3 and 11 July 2007 respectively. Both V. and N. confirmed the applicant's description of the conditions in which they had been transported. In particular, V. submitted as follows:

> "... on 3 July 2007 [the applicant] and myself were placed in a railway carriage ... to be transferred to remand prison no. IZ-64/1 in Saratov. We arrived at Saratov at around 2 a.m. (the journey lasted sixteen hours). During the trip we were allowed to use the toilet once and we received water once. We were held in a compartment measuring 2 square metres equipped with three berths. Other amenities, food or hot water were not available."

D. Civil proceedings initiated by the applicant and enforcement of the judgment in his favour

33. Following his removal from office pending criminal proceedings (see paragraph 11 above), the applicant brought a claim against the local department of the interior for lost earnings.

34. On 26 September 2007 the Frunzenskiy District Court of Saratov granted the applicant's claim and ordered the local department of the interior to pay to the applicant a monthly allowance in the amount of RUB 7,806.70 during his temporary removal from office, and for court and legal expenses.

35. On 23 October 2007 the District Court amended the operative part of the judgment of 26 September 2007 and ruled that the local department of the interior should pay the applicant RUB 36,833.14 for unlawful temporary removal from office for the period between 1 July and 1 November 2007.

36. On 15 November 2007 the Saratov Regional Court upheld the judgment of 26 September 2007 on appeal.

37. On 13 December 2007 the bailiff received the writ of execution.

38. It appears that there were certain technical errors in the text of the writ of execution and on 27 February 2008 the applicant asked the District Court to rectify them.

39. On 18 March 2008 the District Court ordered the local department of the interior to pay the applicant arrears totalling RUB 36,833.17 in connection with the authorities' failure to execute the judgment of 26 September 2007. On an unspecified date the applicant forwarded the relevant writ of execution to the bailiff's office.

40. On 21 April 2008 the bailiff closed the enforcement proceedings and returned both writs of execution to the applicant, noting that the execution of the judgments in the applicant's favour was not within the competence of the bailiff's office.

41. On 25 September 2009 the District Court clarified the content of the judgment of 26 September 2007 and ordered the local department of the

interior to pay the applicant arrears in the amount of RUB 68,059.90 for the period from 9 February to 1 November 2007.

42. On an unspecified date the applicant asked the court to adjust the amount of the award in view of the lengthy period of non-enforcement of the judgments in his favour and to award him RUB 83,901.53 for lost earnings, RUB 1,248 for court expenses and RUB 1,000 for legal expenses.

43. On 28 October 2009 the District Court granted the applicant's claim and awarded him RUB 84,846.45, broken down as follows: RUB 82,597 for lost wages; RUB 1,248 for reimbursement of court expenses (travel and postage); and RUB 1,000 for reimbursement of legal expenses.

44. On 22 April 2010 the applicant sent the writ of execution to a federal treasury department. On 18 May 2010 the sum of the award was transferred to his account.

E. Criminal proceedings against M.

1. Libel

45. On 5 February 2008 the applicant instituted criminal proceedings against M., accusing her of libel.

46. On 22 May 2007 the justice of the peace delivered a not-guilty verdict. On an unspecified date the verdict was upheld on appeal. On 9 October 2008 the Saratov Regional Court held a cassation hearing and upheld the verdict and the appeal judgment.

2. Perjury

47. On 21 January 2009 the prosecutor's office refused to prosecute M. on perjury charges.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

48. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences, as amended ("the Detention of Suspects Act"), in force since 21 June 1995, provides that suspects and defendants detained pending investigation and trial are held in remand prisons (section 8). They may be transferred to temporary detention centres if so required for the purposes of investigation or trial and if transportation between a remand prison and a police station or courthouse is not feasible because of the distance between them. Such detention at a temporary detention centre may not exceed ten days per month (section 13). Temporary detention centres at

police stations are designated for the detention of persons arrested on suspicion of a criminal offence (section 9).

49. According to the Internal Regulations of Temporary Detention Facilities, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996, as amended (in force at the time of the applicant's detention), the living space per detainee should be 4 square metres (paragraph 3.3 of the regulations). It also made provision for cells in a temporary detention centre to be equipped with a table, toilet, water tap, shelf for toiletries, drinking water tank, radio and refuse bin (paragraph 3.2 of the regulations). Furthermore, the regulations made provision for detainees' right to outdoor exercise of at least one hour per day in a designated exercise area (paragraphs 6.1, 6.40, and 6.43 of the regulations).

B. Remedies in respect of non-enforcement of a judgment against the State

50. Federal Law No. 68-FZ of 30 April 2010 (in force as of 4 May 2010) provides that in the event of a violation of the right to enforcement of a final judgment, the person concerned is entitled to seek compensation in respect of non-pecuniary damage. Federal Law No. 69-FZ adopted on the same day introduced the pertinent changes to the Russian legislation.

51. Section 6.2 of Federal Law No. 68-FZ provides that everyone who has an application pending before the European Court of Human Rights concerning a complaint of the nature described in the law has six months to submit that complaint to the domestic courts.

III. RELEVANT INTERNATIONAL DOCUMENTS

52. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") (CPT/Inf (92) 3) reads as follows:

> "42. Custody by the police is in principle of relatively short duration ... However, certain elementary material requirements should be met.
>
> All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.
>
> Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

> 43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling."

53. The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained about the conditions of his detention in remand prison no. IZ-64/1 in Saratov and the temporary detention centre in Volsk from 15 June to 17 August 2007. He also complained about the conditions in which he was transported between the remand prison and temporary detention centre. 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

55. 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

1. Parties' submissions

56. The Government did not contest that the conditions of the applicant's detention in the temporary detention centre in Volsk had fallen short of the requirements of the national standards and the recommendations of the CPT. At the same time, the Government considered that the fact that the applicant had been detained in such conditions did not show that there had been a positive intention to humiliate or debase him. They further submitted that there were objective reasons for the domestic authorities'

failure to ensure that the applicant was held in proper conditions at the temporary detention centre in connection with the on-going reform of the detention facilities. Lastly, they argued that the treatment to which the applicant had been subjected as a result of his detention in the temporary detention centre had not gone beyond the threshold of severity set out in Article 3 of the Convention. As regards the conditions of the applicant's detention in the remand prison and the conditions in which he was transported between those two detention facilities, the Government asserted that they had been in compliance with domestic and international standards. The relied on excerpts from the remand prison population register and statements prepared by the administration of the remand prison in July 2010. They also submitted copies of receipts confirming the provision of the applicant with dry food ration on the days of his transfers from one detention facility to the other.

57. The applicant maintained his complaint. He submitted a statement made by V. and N., the inmates detained and transported together with him. In the applicant's view, the domestic authorities had failed to ensure that his detention during the period in question had been compatible with the requirements set out in Article 3 of the Convention. His pre-trial detention and the appalling conditions in which he had been transported had amounted to inhuman and degrading treatment prohibited by the said Article and had resulted in serious damage to his health.

2. Court's assessment

(a) General principles

58. The general principles concerning the conditions of detention are well established in the Court's case-law and have been summarised as follows (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012):

> "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)."

(b) Temporary detention centre in Volsk

59. The Court notes that it has already examined the conditions of detention in temporary detention centres in various Russian regions and found them to be in breach of Article 3 (see *Khristoforov v. Russia*, no. 11336/06, §§ 22-29, 29 April 2010; *Nedayborshch v. Russia*, no. 42255/04, §§ 27-33, 1 July 2010; *Salikhov v. Russia*, no. 23880/05, §§ 89-93, 3 May 2012; and *Velichko v. Russia*, no. 19664/07, §§ 54-60, 15 January 2013).

60. The Government did not challenge the applicant's account of the conditions of his detention in the temporary detention centre. They conceded that those conditions had fallen short of the requirements of national standards and the recommendations of the CPT.

61. On the facts, the Court notes that the cell in which the applicant was repeatedly held lacked basic amenities. It did not have a window and offered no access to natural light or air. There was no toilet or sink. If the applicant wished to go to toilet, he had to use a bucket. Lastly, throughout his detention the applicant was confined to his cell for twenty-four hours a day without any opportunity to pursue physical and other out-of-cell activities.

62. The Court observes that the circumstances of the present case are very similar to those examined in the earlier case of *Nedayborshch* where the applicant was detained during multiple periods lasting from an overnight to four consecutive days totalling thirty-six days in overcrowded cells of a temporary detention centre without a toilet or running water or an opportunity for an outdoor exercise (see *Nedayborshch*, cited above,

§§ 9-16). In *Nedayborshch* the Court has found such conditions incompatible with the standards set out in Article 3 of the Convention. It discerns nothing in the materials before it that would allow it to reach a different finding in the present case.

63. The Court takes into account the Government's argument that in the present case there was no positive intention to humiliate or debase the applicant. However, the absence of any such intention cannot exclude a finding of a violation of Article 3 of the Convention. Even if there had been no fault on the part of the administration of the temporary detention facility, it should be emphasised that Governments are answerable under the Convention for the acts of any State agency, since what is at issue in all cases before the Court is the international responsibility of the State (see, among other authorities, *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005).

64. There has accordingly been a violation of Article 3 of the Convention on account of the degrading conditions of the applicant's detention in the temporary detention facility in Volsk on several occasions between 15 June and 17 August 2007.

(c) Remand prison no. IZ-64/1 in Saratov

65. The Court observes that the parties agree on the periods of the applicant's detention in the remand prison, the cell numbers and measurements. The Court further notes that the Government submitted excerpts from the prison population register to substantiate their submissions as regards the number of inmates in the cells where the applicant was detained. The authenticity of the data contained in the excerpts was not disputed by the applicant. Accordingly, the Court accepts as credible the Government's submissions as regards the population of the cells in the remand prison where the applicant was detained and finds that the personal space afforded to the applicant at all times during his detention in the remand prison exceeded 4 square metres. The Court also takes into account the fact that the applicant did not allege that an individual bed was not provided to him or that he had been unable to move freely around the cell.

66. The Court further notes that the thrust of the applicant's complaint was poor hygiene conditions in the cells and the scarcity and poor quality of the food. The Court, however, is unable to determine, on the basis of the material submitted by the parties, that those aspects of the conditions of the applicant's detention were such as to amount to degrading or inhuman treatment.

67. Thus, on the basis of the materials before it, the Court concludes that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-64/1 in

Saratov (compare *Andrei Georgiev v. Bulgaria*, no. 61507/00, §§ 57-62, 26 July 2007).

(d) Conditions of transport between the detention facilities

68. As to the conditions in which the applicant was transported, the Court notes that he has endured some distress and hardship during the transfers between the remand prison and the temporary detention centre. However, having examined the parties' submissions and the available material, and regard being had, in particular, to the number and length of the transfers from one detention facility to the other, the Court does not consider that the conditions endured by the applicant have reached an intensity "exceeding the unavoidable level of suffering inherent in detention". There has therefore been no violation of Article 3 of the Convention on account of the conditions in which the applicant was transported between the detention facilities.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

69. The applicant complained that the judgment in his favour had not been enforced in good time. He relied on Article 3 of the Convention. The Court will examine the complaint under Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1. The Court also decided, of its own motion, to examine this issue under Article 13 of the Convention. The relevant provisions of the Convention read, in so far as relevant, as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in

accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

70. 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

1. Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

71. The Government admitted that the judgments in the applicant's favour had been enforced with two-and-a-half years' delay. They suggested, however, that the applicant had partially contributed to the excessive length of the enforcement proceedings. In particular, on 27 February 2008 he asked the District Court to forward the writs of execution to the bailiff's office, whereas he knew that the enforcement of the judgments in his favour was to be carried out by the treasury. Lastly, they conceded that the applicant's failure to follow the procedure prescribed for execution of the judgments against the State could have been accounted for in part by objective factors, such as the reform of the State system of execution of judgments.

72. The applicant considered that the delays in enforcement of the judgments in his favour had amounted to a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

73. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). To decide if the delay was reasonable, it will look at the complexity of the enforcement proceedings, the behaviour of the applicant and the authorities, and the nature of the award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

74. The Court further reiterates that a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance (see *Akashev v. Russia*, no. 30616/05, § 21, 12 June 2008). The complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to everyone the

right to have a binding and enforceable judicial decision enforced within a reasonable time (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 70, ECHR 2009). Where the creditor's cooperation is required, it must not go beyond what is strictly necessary and in any case does not relieve the authorities of their obligation under the Convention to take timely and *ex officio* action, on the basis of the information available to them, with a view to honouring the judgment against the State (see *Akashev*, cited above, § 22).

75. The Court observes that in the instant case the judgment of 26 September 2007 was enforced only on 18 May 2010. It notes that the enforcement proceedings were not particularly complex, given the nature of the award, and that no significant delays can be attributed to the applicant. On the other hand, the Court does not lose sight of the fact that the execution of the judgment called for clarification and amendment of the original text. The Court considers that the delays that resulted from those actions are attributable to the domestic judicial authorities. Furthermore, the fact that the enforcement proceedings at the material time were so complex does not relieve the State of its obligation to act in accordance with the principles cited above. In particular, once the authorities were in possession of the writ of execution, it was open to them to adopt a more practical approach and to forward the document to the responsible body. Consequently, despite the applicant's failure to indicate properly the State body responsible for the execution of the judgments in his favour, the full responsibility for enforcement of the court judgment rests with the State.

76. In view of the above, the Court considers that the authorities failed to comply with their obligation under the Convention and that there has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

2. Article 13 of the Convention

77. The Government considered that the applicant had had an effective remedy in connection with lengthy non-enforcement of the judgments in his favour. In particular, it was open to him to ask the court to adjust the sum of the award. In fact, the applicant's relevant claim was successful and granted in part by the domestic court. Furthermore, it remained open to the applicant to lodge a civil action seeking non-pecuniary damage resulting from the lengthy non-enforcement of the judgments in his favour as provided for by the applicable legislation.

78. The applicant considered that no effective remedy was available to him at the domestic level.

79. The Court takes cognisance of the existence of a new remedy introduced by Federal Laws Nos. 68-FZ and 69-FZ in the wake of the pilot judgment adopted in the case of *Burdov* (no. 2), cited above. Those statutes, which entered into force on 4 May 2010, set up a new remedy enabling

those concerned to seek compensation for the damage sustained as a result of excessive delays in the enforcement of court judgments against the State (see paragraph 50 above).

80. The Court accepts that as from 4 May 2010 and until 4 November 2010 the applicant had a right to use the new remedy (see paragraph 51 above), which, however, he did not pursue.

81. The Court observes that, in the pilot judgment cited above, it stated that it would be unfair to request applicants whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court, to bring their claims again before the domestic tribunals (see *Burdov* (no. 2), cited above, § 144). In line with that principle, the Court decided to examine the complaint about non-enforcement of the final judgment in the applicant's favour on its merits and found a violation of the substantive provisions of the Convention.

82. However, the fact of examining the present case on its merits should in no way be interpreted as prejudging the Court's assessment of the quality of the new remedy. It will examine this question in other cases that are more suitable for such analysis. It does not see fit to do so in the present case, particularly as the parties' observations were made in relation to the situation that had existed before the introduction of the new remedy.

83. Having regard to those special circumstances, the Court does not consider it necessary to examine separately the complaint under Article 13 of the Convention in the present case (see, among other authorities, *Tkhyegepso and Others v. Russia*, nos. 44387/04, 2513/05, 24753/05, 34770/07, 37169/07, 54527/07, 21648/08, 42081/08, 56022/08, 59873/08, 671/09 and 4555/09, §§19-24, 25 October 2011).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. Lastly, the applicant complained under Article 3 of the Convention that his unlawful removal from office and his allegedly unfair criminal prosecution had been seriously detrimental to his health. He further complained, under Articles 5 and 6 of the Convention, that his pre-trial detention had been unlawful. He complained under Article 6 of the Convention about the unfairness of his removal from office, the criminal proceedings against him and M.'s acquittal. Referring to Article 8 of the Convention, he alleged that the letters he had sent from prison had been subjected to censorship. Lastly, he submitted, with reference to Article 10 of the Convention, that he had been remanded in custody because of an interview he had given to a local newspaper.

85. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that the evidence discloses no 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 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 54,475 euros (EUR) in respect of non-pecuniary damage.

88. The Government considered the applicant's claim excessive.

89. The Court takes into account that it has found a violation of the applicant's rights set out in Articles 3 and 6 of the Convention and Article 1 of Protocol No. 1. However, it accepts the Government's argument that the applicant's claim appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

90. The applicant also claimed 8,833.80 Russian roubles (RUB) for the costs and expenses incurred before the Court. In particular, he had paid (1) RUB 6,000 to a second lawyer he retained to be represented before the Court; (2) RUB 1,004.40 for travel from his place of residence to Moscow and back to meet with Mr T. Misakyan to discuss the case and to sign an authority form, and (3) RUB 1,829.40 for postage.

91. The Government considered that, in view of the poor quality of the copies of the relevant receipts submitted by the applicant, such documents could not be accepted as proof that the costs and expenses had actually been incurred.

92. 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, the above criteria and the fact that legal aid has been granted to the applicant, the Court rejects the claim for costs and expenses in the proceedings before the Court.

C. Default interest

93. 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 in the temporary detention centre in Volsk and remand prison no. IZ-64/1 in Saratov, the conditions in which he was transported between those two detention facilities, and the non-enforcement of the final judgment in his favour 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 applicant's detention in the temporary detention centre in Volsk on several occasions between 15 June and 17 August 2007;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the applicant's detention in remand prison no. IZ-64/1 in Saratov or the conditions in which he was transported between the temporary detention centre in Volsk and remand prison no. IZ-64/1 in Saratov;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of the delayed enforcement of the judgment in the applicant's favour;

5. *Holds* that there is no need to examine the complaint under Article 13 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, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 10 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Isabelle Berro-Lefèvre
Deputy Registrar	President