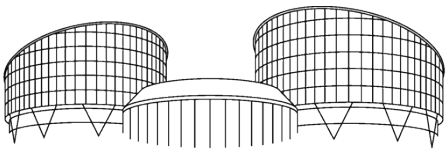

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KLYUKIN v. RUSSIA

(Application no. 54996/07)

JUDGMENT

STRASBOURG

17 October 2013

FINAL

17/02/2014

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

In the case of Klyukin v. Russia,

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

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

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 54996/07) 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 Aleksandr Lemarkovich Klyukin ("the applicant"), on 30 October 2007. The applicant complained about the conditions of his detention in remand prison no. IZ-77/3 in Moscow and correctional colony no. IK-5 in the Nizhniy Novgorod region. On 25 March 2008 he introduced similar complaints in respect of correctional colony no. IK-16 in the Nizhniy Novgorod region. On 12 January 2011 the applicant complained about the conditions of his detention in respect of his detention in the correctional colonies from 16 April 2008 to 27 November 2009.

2. The applicant was represented by Ms M. Samorodkina, 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 appalling conditions.

4. On 1 July 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 1961 and lives in Moscow.

A. Criminal proceedings against the applicant

6. On 16 April 2006 the applicant was arrested on suspicion of having committed a burglary together with K., his underage son, and S., also a minor. His flat was searched. He was brought to a temporary detention centre, where he was held until 18 or 19 April 2006 (the parties disputed the relevant date). He received very little food and water and did not have access to medical assistance. During that period he was questioned on several occasions in the absence of a lawyer and beaten up by police officers, who wanted him to confess. According to the applicant, his lawyer's signature was later added to the transcript of his questioning.

7. On 18 April 2006 the Moscow Tushinskiy District Court authorised the applicant's pre-trial detention. In particular, the court noted as follows:

> "Pursuant to the materials submitted, [the applicant] is charged with criminal offences entailing a custodial sentence exceeding five years, he is not officially employed and, if released, might abscond. Furthermore, the court discerns no grounds rendering possible the imposition of a less strict restrictive measure."

8. The applicant remained in custody pending investigation and trial. The District Court extended his detention on 14 June and 29 November 2006 and 27 February 2007. The applicant did not appeal against those decisions.

9. On 14 June 2006 the District Court opened the trial. The applicant was represented by State-appointed counsel.

10. On 12 March 2007 the District Court found the applicant guilty as charged and sentenced him to five-and-a-half years' imprisonment. On 14 May 2007 the Moscow City Court upheld the applicant's conviction on appeal.

B. Conditions of the applicant's detention

1. Remand prison no. IZ-77/3 in Moscow

11. From 18 or 19 April 2006 to 13 June 2007, the applicant was detained at remand prison no. IZ-77/3 in Moscow.

(a) The description provided by the Government

12. The Government's submissions as regards the conditions of the applicant's detention in remand prison no. IZ-77/3 can be summarised as follows:

Period of detention	Cell no.	Cell surface area (square metres)	Number of beds	Number of inmates
From 19 April 2006 to 17 February 2007	411	32.4	12	12
From 17 February to 16 March 2007	401	32.4	12	12
From 16 March to 11 April 2007	704	36.3	9	5-6
From 11 to 25 April 2007	411	32.4	12	12
From 16 May to 13 June 2007	309	32.4	12	9-12

13. All the cells were equipped with a ventilation system ensuring adequate fresh air circulation. Each cell had two windows measuring 0.89 x 0.94 metres covered with metal grilles that had 50 x 50 millimetres openings. The grilles installed did not prevent access to natural light. The windows had small vents which could also be kept open to ensure access to fresh air. The electric lighting was constantly on. From 6 a.m. to 10 p.m. four 40-watt electric bulbs were used. For the rest of the time two 40-watt electric bulbs were used.

14. The toilet in each cell was separated from the living area by a 1.7-metre high brick wall and a door. The distance between the toilet and the dining table was 2 metres. There was a sink with hot and cold running tap water.

15. The inmates were allowed at least an hour's daily outdoor exercise in designated exercise areas measuring 33 square metres on average. The exercise areas were covered with steel mesh, with openings measuring 20 x 20 centimetres. The mesh did not prevent access to natural light or fresh air.

(b) The applicant's submissions

16. The applicant accepted the Government's submissions in part concerning cell measurements and the number of sleeping places. He challenged the data submitted by the Government as regards cell population.

According to the applicant, at all times the cells were severely overcrowded. The number of inmates was two to three times as high as the cells' design capacity. The number of sleeping places was insufficient and the inmates had to take turns to sleep. In particular, in cells nos. 401 and 411 there were from 30 to 50 inmates detained together with the applicant; cell no. 704 housed from 5 to 20 inmates. The applicant did not contest the information submitted by the Government in respect of the number of inmates detained in cell no. 309.

17. There was no ventilation system in any of the cells. The electric lighting was insufficient. The glass panes were missing from the windows and it was extremely cold in the winter and extremely hot in the summer. The windows were covered with several layers of metal grilles and bars which prevented access to natural light. Nor was there running hot water.

18. The applicant was allowed outdoor daily exercise in the specially designated areas only during the period of his detention in cell no. 309, in other words from 16 May to 13 June 2007. For the rest of the time he was taken outdoors to a semi-circular area measuring from 20 to 25 square metres. However, in view of the large number of inmates brought to that area, it was impossible to exercise or walk around. The applicant did not have winter clothes and was not allowed to exercise outdoors during the winter.

19. In cells nos. 401 and 411 the toilet was not separated from the living area of the cell. The cells were infested with lice, bed bugs and other insects. The toilet was foul smelling. No bed linen was provided. The only mattresses provided were dirty, covered with blood stains and infested with lice. Sometimes detainees suffering from tuberculosis, hepatitis and AIDS were placed in the cell. The food was of a very low quality. The library was closed. Nor were the inmates provided with board games.

20. From 24 April to 16 May 2007 the applicant was admitted to the hospital at remand prison no. IZ-77/1 in Moscow. He claimed that he did not receive proper medical assistance there.

2. Conditions of the applicant's detention after conviction

21. The time frame of the applicant's detention in correctional colonies nos. IK-5 and IK-16 in the Nizhniy Novgorod region where the applicant served a prison sentence can be presented as follows:

Period	Detention facility
From 27 June to 5 September 2007	Correctional colony no. IK-16, block 2
From 5 September to 7 November 2007	Hospital at correctional colony no. IK-5
From 7 November 2007 to 16 April 2008	Correctional colony no. IK-16, block 2

From 16 April to 2 July 2008	Hospital at correctional colony no. IK-5
From 2 July 2008 to 27 November 2009	Correctional colony no. IK-16, block 1

(a) Correctional colony no. IK-5 in the Nizhniy Novgorod region

(i) The description provided by the Government

22. According to the Government, from 5 to 9 September 2007 the applicant was held in the colony's hospital, in ward no. 2 measuring 23.3 square metres and equipped with eight beds. From 10 September to 7 November 2007 and from 16 April 2008 to 2 July 2008 the applicant was held in ward no. 3 measuring 23.3 square metres and equipped with ten beds. The Government did not specify the number of inmates detained there. The wards were equipped with a ventilation system. The windows in the wards ensured adequate access to daylight. They were not covered with grilles or shutters. The electric lighting was adequate. The bathroom was located outside the ward. Both the hospital and the transit area of the correctional colony had outdoor exercise areas.

(ii) The description provided by the applicant

23. According to the applicant, upon arrival to the hospital on 5 September 2007, he was placed in disciplinary cell no. 2 measuring 20 sq. m. since there were no beds available in ordinary wards. The toilet was located some 1 metre away from the dining table. He was transferred to hospital ward no. 3 only on 10 September 2007.

24. Disciplinary cell no. 2 was infested with insects and rats. The walls were dirty. The windows there were covered with metal grilles. The mattresses were dirty and covered with blood. No bedding was provided. It was impossible to sleep in those beds because of metal springs sticking out. The lighting there was insufficient. Ward no. 3 was much cleaner than the disciplinary cell. There were no metal grilles on the windows. The lighting was sufficient.

25. The applicant was provided with an individual bed at all times. The food was scarce and of a very low quality. During the night the applicant was unable to sleep because of hunger. He spent nights in the bathroom reading the bible. The bathroom was in a satisfactory condition. The number of inmates detained together with the applicant sometimes was twice as high as the number indicated by the Government. The applicant was not allowed any outdoor exercise.

(b) Correctional colony no. IK-16 in the Nizhniy Novgorod region

(i) The description provided by the Government

26. Without indicating specific time periods, the Government submitted the following information as regards the number of inmates detained together with the applicant in correctional colony no. IK-16 in the Nizhniy Novgorod region:

Dormitory	Surface area of the dormitory where the applicant was placed (square metres)	Number of inmates/sleeping places in the dormitory where the applicant was placed	Number of inmates/sleeping places per block	Number of toilet cabins	Number of wash sinks	Exercise area (square metres)
Block 2	196	120	179	5	10	274
Block 1	35	16	126	5	8	70

27. The living premises in the colony were equipped with a ventilation system. The inmates could also open vents in the windows to ensure access to fresh air. The windows were not covered with metal bars or grilles. The electric lighting in the dormitories was sufficient. The sanitary area in each unit was equipped with five toilets separated by one-metre high non-transparent screens.

28. The inmates were able to partake in outdoor exercise in areas adjacent to blocks 1 and 2 measuring 70 and 274 square metres respectively.

(ii) The description provided by the applicant

29. The applicant did not challenge the veracity of the Government's submissions concerning the surface area of the dormitories in correctional colony no. IK-16 at the time of his detention there. He claimed, however, that the number of inmates assigned with him to the dormitories was much higher than the figures provided by the Government. According to the applicant, the beds in the dormitories were arranged in three-tier bunks offering very little personal space to the inmates. His bed was located near the window and he could read easily during the day time. In the evening, however, the electric light was insufficient for reading. The hygienic conditions of the dormitories were also poor due to the large number of detainees assigned to them. The dormitories were equipped with a ventilation system. The windows were not covered with metal grilles. The bathrooms located were in satisfactory conditions. The applicant had sufficient opportunity for an outdoor exercise.

C. The applicant's release

30. On 30 November 2009 the Lyskovo District Court in the Nizhniy Novgorod Region released the applicant on parole. The court noted, *inter alia*, that the applicant demonstrated his remorse for the crimes he had committed and regretted them.

31. The applicant appealed, claiming that he had never admitted that he had actually committed the crimes he had been convicted of and that the District Court had erred in stating the contrary in the decision of 30 November 2009.

32. The parties did not inform the Court of the outcome of the appeal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

35. The applicant complained about the conditions of his pre-trial detention from 18 (in the Government's submission, 19) April 2006 to 13 June 2007 at remand prison no. IZ-77/3 in Moscow; and during multiple periods between 27 June 2007 and 27 November 2009 in correctional colonies nos. IK-16 and IK-5 in the Nizhniy Novgorod region. He also complained of the lack of an effective domestic remedy in this respect. The

Court will examine the complaints under Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

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."

A. Admissibility

1. The parties' submissions

36. The Government submitted that the applicant had failed to exhaust available domestic remedies. In particular, he had not brought a civil action seeking damages for the allegedly appalling conditions of his detention. Alternatively, he could have brought his complaints to the attention of a prosecutor.

37. The applicant asserted that he had lodged numerous complaints about the conditions of his detention before domestic prosecutors. All of them had been to no avail. Nor would a civil action for damages have been an effective remedy in respect of the alleged violation of Article 3 of the Convention.

2. The Court's assessment

(a) Exhaustion of domestic remedies

38. As regards the Government's objection that the applicant failed to exhaust effective domestic remedies in respect of his complaint about the conditions of his detention, the Court reiterates that in the case of *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 93-119, 10 January 2012) the Court carried out a thorough analysis of domestic remedies in the Russian legal system in respect of a complaint relating to the material conditions of detention in a remand prison. The Court concluded in that case that it was not shown that the Russian legal system offered an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint of inadequate conditions of detention. Accordingly, the Court dismissed the Government's objection as to the

non-exhaustion of domestic remedies and found that the applicants did not have at their disposal an effective domestic remedy for their grievances, in breach of Article 13 of the Convention.

39. The Court further observes that in an earlier 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. The Court noted in *Kulikov* that the Government had failed 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.

40. Having examined the Government's arguments, the Court finds no reason to depart from that conclusion in the present case. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies.

(b) Compliance with six-month rule

41. In the light of the Court's finding (see paragraphs 38-40 above) that the Russian legal system offers no effective remedy providing adequate redress, the Court considers that the six months' period should start running from the end of the situation complained of.

(i) Severability of the applicant's complaints

42. The Court notes from the outset that the applicant's complaints concern the conditions of his detention in two different types of detention facility, notably in remand prison no. IZ-77/3 in Moscow and correctional colonies nos. IK-5 and IK-16 in the Nizhniy Novgorod region. He was detained in the remand prison pending investigation and trial. Once his conviction became final, the applicant was sent to serve a prison sentence in correctional colony no. IK-16. His detention there was not, however, continuous and comprised three distinct periods punctuated by his two transfers to correctional colony no. IK-5 where he underwent medical treatment (see paragraph 21 above). Accordingly, the Court's task in the present case is to ascertain whether the applicant's detention constituted a "continuing situation" or, if not, to decide on the admissibility of the applicant's complaint in respect of each period of the applicant's detention.

43. In this connection, the Court observes that detention facilities of different types have different purposes and vary in the material conditions they offer (see, *mutatis mutandis*, *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 76, 17 January 2012). Such a difference in material conditions creates the presumption that detention in detention facilities of different types does not constitute a continuing situation and the applicant is expected to submit a separate complaint in respect of the conditions of his or her detention in each detention facility.

44. The Court further observes that a significant change in the detention regime, even where it occurs within the same facility, has been held by the Court to put an end to the "continuing situation" as described above (see *Fetisov*, cited, above, §§ 77-78).

45. Regard being had to the above, the Court finds firstly, that the applicant's detention in remand prison no. IZ-77/3 in Moscow and his detention in correctional colonies nos. IK-5 and IK-16 in the Nizhniy Novgorod region do not constitute a "continuing situation".

46. As regards the applicant's detention in the correctional colonies, the Court notes as follows. During the first two periods of the applicant's detention in correctional colony no. IK-16, the applicant was assigned to a dormitory in block 2. The applicant's placement in a hospital in between those two periods, being of a temporary nature, does not prevent the Court from treating his detention during those two periods as a "continuing situation". However, upon return to correctional colony no. IK-16 after the second admission to hospital, the applicant was assigned to block 1 where the conditions of his detention (number of inmates assigned to the dormitory, size of the dormitory and exercise area, capacity of sanitary facilities, etc.) different significantly from those in block 2 (see paragraphs 26-29 above). Accordingly, the third period of the applicant's detention should be considered separately.

47. Lastly, the Court notes that the two periods of detention of the applicant's in correctional colony no. IK-5 where he underwent medical treatment, as noted above, being of a temporary nature, did not constitute a continuing situation and the Court will examine them separately.

48. Accordingly, the Court will examine separately whether the applicant complied with the six-month rule in respect of each of the following periods:

Period	Detention facility
From 27 June 2007 to 16 April 2008	Correctional colony no. IK-16, block 2
From 5 September to 7 November 2007	Hospital at correctional colony no. IK-5
From 16 April to 2 July 2008	Hospital at correctional colony no. IK-5
From 2 July 2008 to 27 November 2009	Correctional colony no. IK-16, block 1

(ii) Detention in remand prison no. IZ-77/3 in Moscow from 18 or 19 April 2006 to 13 June 2007

49. The applicant was required to introduce the complaint in respect of the conditions of his detention in remand prison no. IZ-77/3 in Moscow from 18 or 19 April 2006 to 13 June 2007 no later than 13 December 2007. The Court finds, accordingly, that by lodging the complaint on 30 October

2007 the applicant complied with the six-month rule in respect of this part of the application.

(iii) Detention in correctional colony no. IK-16 in the Nizhniy Novgorod region

50. The Court considers that, by introducing the complaint on 25 March 2008 in respect of the detention in correctional colony no. IK-16 in the Nizhniy Novgorod region between 27June 2007 and 16 April 2008 and on 30 October 2007 in respect of the detention in correctional colony no. IK-5 in the Nizhniy Novgorod region from 5 September to 7 November 2007, the applicant complied with the six-month rule. However, as regards the applicant's detention in the same colonies during the period between 16 April 2008 and 27 November 2009, the applicant lodged the relevant complaints only 12 January 2011, that is more a year after his detention ended. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(iv) Conclusion

51. The Court notes that the complaints about conditions of the applicant's detention in remand prison no. IZ-77/3 in Moscow from 18 (or 19) April 2006 to 13 June 2007, in correctional colony no. IK-16 in the Nizhniy Novgorod region between 27 June 2007 and 16 April 2008 and in correctional colony no. IK-5 in the Nizhniy Novgorod region from 5 September to 7 November 2007 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 3 of the Convention

(a) The parties' submissions

52. The Government submitted that the conditions of the applicant's detention in the remand prison had been compatible with the standards set forth in domestic legislation and the requirements of Article 3 of the Convention. They relied on excerpts (22 in total) from the remand prison population register which recorded, for each day, the number of sleeping places and the number of inmates in each cell, the total number of inmates in each of the seven wings of the remand prison and the total number of inmates in the entire remand prison, and on certificates prepared by the administration of the remand prison concerning its population in August

2010. As for the conditions of the applicant's detention in the correctional colonies, the Government submitted statements prepared by the colonies' administration.

53. The applicant challenged the veracity of the data submitted by the Government in respect of the remand prison population. In particular, he pointed out that the figures concerning the remand prison population contained visible corrections. In any event, he asserted that, if the Government's allegations were accepted as credible, the personal space afforded to him during the periods of his detention in cells nos. 401 and 411 had been below three square metres, which fact alone had been found by the Court on many occasions as sufficient to find a violation of Article 3 of the Convention. As regards the correctional colonies, the applicant conceded that the conditions of his detention there had been better than the conditions of detention in the remand prison. Nevertheless, in view of insufficient personal space afforded to him and the scarcity and low quality of food there, he considered that those conditions had been incompatible with the standards set out in Article 3 of the Convention.

(b) The Court's assessment

54. For an overview of the general principles, see the Court's judgment in the case of *Ananyev and Others* (cited above, §§ 139-159).

(i) Conditions of detention in the remand prison

55. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in remand prison no. IZ-77/3 in Moscow. However, there is no need for the Court to establish the veracity of each and every allegation. The focal issue for the Court in the present case is the personal space afforded to the applicant during his detention at the remand prison.

56. 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) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting the allegations made. 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, among other authorities, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

57. In support of their submissions as to the cell population and the availability of an individual sleeping place, the Government produced certificates issued by the administration of the remand prison in August 2010 and selected pages from the prison population register which recorded, for each day, the number of sleeping places and the number of inmates in

each cell, the total number of inmates in each of the seven wings of the remand prison and the total number of inmates in the entire remand prison.

58. The certificates from the prison governor were issued in August 2010, long after the applicant had left the remand prison. The Court has repeatedly declined to accept the validity of similar certificates on the grounds that they could not be viewed as sufficiently reliable, given the lapse of time involved and the absence of any supporting documentary evidence (see, among other numerous authorities, *Idalov v. Russia* [GC], no. 5826/03, §§ 99-100, 22 May 2012). The certificates are therefore of little evidentiary value for the Court.

59. Turning next to the copies of the prison population register produced by the Government, the Court notes, firstly, that the Government preferred to submit the copies of certain pages only, covering twenty-two days out of almost a year and four months that the applicant spent in the remand prison. It finds such incomplete and selective evidence unconvincing (see, for similar reasoning, *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008, and *Kokoshkina v. Russia*, no. 2052/08, § 60, 28 May 2009). It further observes that on all the pages containing data in respect of the population of cells nos. 401 and 411 the entries showing the number of sleeping places and the number of inmates were visibly altered, with a figure having been erased and another figure having been written over instead. It is significant that on each page only the entries concerning the applicant's cells were corrected, the entries in respect of the other cells remaining intact. The entries recording the total number of inmates in the applicant's wing and the total number of inmates in the entire remand prison were also erased and changed. The Government did not indicate at what point and for what purpose the information in the register had been modified in such a way. The Court notes in this connection that it has already found that alterations in a prison population register, without any explanations as to their origin, reason and timing, made the information contained in it unreliable (see *Glotov v. Russia*, no. 41558/05, § 25, 10 May 2012).

60. Having regard to the above considerations, the Court considers that the Government have not substantiated their argument that the number of inmates in the applicant's cells did not exceed the capacity they were designed for. Accordingly, the Court accepts the applicant's submissions that the cells in remand prison no. IZ-77/3 in Moscow where he was detained were overcrowded.

61. 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 the leading authorities, *Ananyev*, cited above, § 166).

62. Having regard to its case-law on the subject and the materials submitted by the parties, the Court reaches the same conclusion in the present case. The fact that the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to

cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of anguish and inferiority capable of humiliating and debasing him.

63. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-77/3 in Moscow from 18 or 19 April 2006 to 13 June 2007, which amounted to inhuman and degrading treatment within the meaning of that provision.

(ii) Conditions of detention in the correctional colonies

(α) Detention in correctional colony no. IK-16 in the Nizhniy Novgorod region between 27 June 2007 and 16 April 2008

64. The Court notes that the applicant challenged the information submitted by the Government as regards the personal space afforded to him in a dormitory during his detention in correctional colony no. IK-16 in the Nizhniy Novgorod region between 27 June 2007 and 16 April 2008. 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 of the Convention, even on the assumption that the information provided by the Government is correct.

65. The Court notes that, according to the Government, during the periods in question the applicant shared a dormitory measuring 196 square metres with 120 other persons. The personal space afforded to him amounted, accordingly, to 1.63 square metres. The Court does not lose sight of the fact that this figure is below the domestic statutory standard of 2 square metres for male convicts in correctional colonies (see paragraph 34 above). It also reiterates that this figure must be viewed in the context of the wide freedom of movement enjoyed by the applicant from the wake-up call in the morning to lights out at night, when he would have been able to move about a substantial part of the correctional colony, including the rest of the prison block and adjacent grounds of 274 square metres (compare *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 seven and a half months, during the night, the applicant was housed in a dormitory with at least 120 other persons where he was afforded only 1.63 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. There were only ten wash basins and five toilets available for approximately 180 detainees living in the same block as the applicant (see paragraphs 21 and 26 above).

66. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in correctional colony no. IK-16 in the Nizhniy Novgorod region between 27 June 2007 and 16 April 2008, which it considers inhuman and degrading within the meaning of this provision.

(β) Detention in a hospital at correctional colony no. IK-5 in the Nizhniy Novgorod region from 5 September to 7 November 2007

67. The Court observes that the applicant spent two months in a hospital at correctional colony no. IK-5 where, according to him, he had no opportunity for outdoor exercise and the food was scant and of poor quality. He also challenged the information provided by the Government as regards the personal space afforded to him and claimed that on certain occasions he had been afforded no more than 0.1 square metres.

68. The Court further notes that the Government's submissions were based on the statements made by the administration of the correctional colony prepared in 2010, that is almost three years after the applicant's detention there. In this respect, the Court reiterates that it attaches little evidential value to such documents and cannot view them as sufficiently reliable (see, for example, *Idalov*, cited above, §§ 99-100).

69. Nevertheless, taking into account the cumulative effect of the conditions of the applicant's detention and, in particular, the time-period during which he was detained in a hospital at correctional colony no. IK-5, the privacy he was afforded as regards the use of sanitary facilities and the fact that he could move freely within the hospital, 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 (compare, *Fetisov*, cited above, § 138). Therefore, there has been no violation of this provision.

(iii) Summary of the Court's conclusions

70. Regard being had to the above findings, the Court considers that (1) 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-77/3 in Moscow from 18 or 19 April 2006 to 13 June 2007 and in correctional colony no. IK-16 in the Nizhniy Novgorod Region between 27 June 2007 and 16 April 2008; and (2) there has been no violation of the said provision on account of the conditions of the applicant's detention in a hospital at correctional colony no. IK-5 in the Nizhniy Novgorod Region from 5 September to 7 November 2007.

2. Article 13 of the Convention

71. The Court takes note of its earlier findings (see paragraphs 38 and 40 above), and concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law enabling the applicant to complain about the conditions of his detention in remand prison no. IZ-77/3 in Moscow and correctional colony no. IK-16 in the Nizhniy Novgorod Region.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

72. Lastly, the applicant complained of ill-treatment in police custody, the unlawfulness and the length of his pre-trial detention, a search in his flat, the unfairness and the length of the criminal proceedings against him, and about the court's reasoning underlying his release on parole and the destruction of one his letters addressed to the Court by an inmate.

73. 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 before it 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

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

77. The Court observes that for over two years the applicant was detained in appalling conditions 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 a 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 6,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

79. 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 remand prison no. IZ-77/3 in Moscow from 18 (or 19) April 2006 to 13 June 2007, in correctional colony no. IK-16 in the Nizhniy Novgorod Region between 27 June 2007 and 16 April 2008 and in a hospital at correctional colony no. IK-5 in the Nizhniy Novgorod region from 5 September to 7 November 2007 and the lack of an effective remedy in this respect 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-77/3 in Moscow from 18 (or 19) April 2006 to 13 June 2007 and correctional colony no. IK-16 in the Nizhniy Novgorod Region between 27 June 2007 and 16 April 2008;

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 a hospital at correctional colony no. IK-5 in the Nizhniy Novgorod region from 5 September to 7 November 2007;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *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 6,000 (six 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;

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

Done in English, and notified in writing on 17 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President