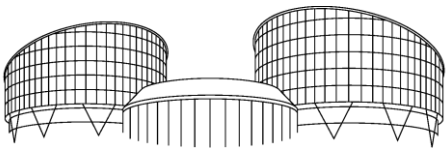

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SERGEY BABUSHKIN v. RUSSIA

(Application no. 5993/08)

JUDGMENT

STRASBOURG

28 November 2013

FINAL

28/02/2014

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

In the case of Sergey Babushkin 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 5 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 5993/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Vladimirovich Babushkin ("the applicant"), on 24 December 2007.

2. The applicant 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 was detained in cramped and appalling conditions in correctional colony no. IK-2 in Livny, Orel region, and that he had no effective remedy in this respect.

4. On 27 August 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Livny, Orel region.

6. The applicant suffers from locomotor impairment resulting from a gunshot wound he received in 1997.

A. Conditions of detention

7. On an unspecified date the applicant was found guilty of assault on a police officer, theft and illegal possession of firearms and sentenced to fifteen years' imprisonment. He was sent to correctional colony no. IK-2 in Livny, Orel region, to serve the prison sentence. He was released in September 2013.

1. The description submitted by the Government

8. The Government submitted copies of official floor plans of the colony premises and statements from the colony administration. The information provided can be summarised as follows:

Period of detention	Unit no.	Total surface in square metres (including exercise area)	Dormitory surface area in square metres	Number of inmates assigned to the dormitory	Number of sleeping places
From 6 to 17 November 1999	Quarantine section	216	No data provided	No data provided	44
From 17 November 1999 to 14 July 2006	Unit 15	690	172.6	97	117
From 14 July to 25 August 2006	Unit 10	230	169.3	No more than 106	112
From 28 August 2006 to 3 September 2008	Unit 15	690	172.6	97	117
From 3 September 2008 to 16 September 2009	Unit 3	405	182.7	102	118
From 25 September to 20 November 2009	Unit 15	690	172.6	97	117

Period of detention	Unit no.	Total surface in square metres (including exercise area)	Dormitory surface area in square metres	Number of inmates assigned to the dormitory	Number of sleeping places
From 20 November 2009 to 2 February 2010	Unit 3	405	182.7	102	118
From 2 February 2010 September 2013	Unit 12	405	176.7	No more than 110	117

9. Each unit comprised a dormitory, a lavatory, a cafeteria, a TV room, a storage room and a locker room. At all times the applicant was provided with an individual bed, bedding and cutlery. All the dormitories were equipped with a ventilation system in good working order. The windows in the dormitories, except for those in the quarantine section, were not covered with grilles and provided adequate access to daylight. All the premises in the correctional colony were equipped with electric lighting. The lavatory was separate from the living area of the units. Each toilet was located in a separate cubicle. The inmates were allowed at least one hour's exercise twice a day in a specially designated area which was equipped with a volleyball playground and exercise bars.

10. The Government submitted a copy of the daily schedule of correctional colony no. IK-2 which reiterated the routines as set out in the model daily schedule approved by the Ministry of Justice of the Russian Federation for correctional colonies (see paragraph 22 below). According to the Government, most detainees spent their day at work. Because of the disability, the applicant was not obligated to work. He was offered a job in a sewing shop where the working conditions were appropriate for his disability.

2. The description submitted by the applicant

11. The applicant did not challenge the data submitted by the Government in respect of the measurements and population of the dormitories. He submitted that the beds were arranged in two tiers which prevented access to daylight. The dormitories were not equipped with any ventilation system. They were infested with lice. The lighting was dim and insufficient. The water supply was irregular. The level of medical service

provided was unsatisfactory. The applicant did not provide any detail as to his daily routines. Nor did he explain whether he had accepted a job offer in the sewing shop or not.

12. On numerous occasions the applicant was placed in a disciplinary cell for failure to comply with internal regulations. Each time his head was allegedly shaved.

13. In response to a complaint by the applicant about the conditions of his detention, on 30 March 2007 the Federal Department of Corrections confirmed that the applicant was detained in an overcrowded dormitory where the living area per inmate was below the statutory two square metres. In particular, the letter stated as follows:

> "The medical division of the Federal Department of Corrections has considered your complaint ... .
>
> Pursuant to Article 99 § 1 of the Russian Code on the Execution of Criminal Sentences, the personal space in the correctional colony afforded per convict cannot be below 2 square metres. The disabled persons are not entitled to additional personal space. Currently the number of convicts serving a prison sentence in correctional colony no. IK-2 exceeds its maximum capacity by 6%. The conditions of detention are the same in all units.
>
> The use of shower facilities by the convicts, laundry and drying of the bed linen and working clothes are carried out in accordance with the schedule ... approved by the head of the colony. The shower, laundry and drying facilities are in a working order."

B. Correspondence with the Court

14. On 23 August 2007 the applicant allegedly submitted to the administration of the correctional colony a letter addressed to the Court. According to the applicant, the letter was not dispatched. He brought a civil claim for damages against the correctional colony.

15. On 14 August 2008 the Livny District Court of the Orel Region dismissed the applicant's claims as unsubstantiated. The court noted that the inmates who testified on the applicant's behalf could not state the date on which the applicant had allegedly submitted the letter to the administration in their presence. The court also examined the outgoing correspondence registers, which contained no reference to the applicant's letter of 23 August 2007. Nor was there any information confirming that the witnesses who testified on the applicant's behalf submitted any documents to the administration on that day.

16. On 10 December 2008 the Orel Regional Court upheld the judgment of 14 August 2008 on appeal.

C. Proceedings concerning the applicant's entitlement to orthopaedic shoes

17. It appears that in 2005 the applicant was recognised as "category three" disabled owing to his locomotor impairment.

18. Prior to 2006 the applicant had purchased orthopaedic shoes at his own expense. On 13 September 2006 the applicant placed an order for orthopaedic shoes with the correctional colony. On 3 April 2007 he received four pairs of shoes free of charge.

19. On an unspecified date he brought an action against the correctional colony seeking, *inter alia*, reimbursement of the sums he had paid for the shoes on previous occasions.

20. On 15 May 2007 the Livny District Court of the Orel Region dismissed the applicant's claim in full. The court noted, *inter alia*, that the applicant had not asked the colony to provide him with orthopaedic shoes prior to 2006. Once he had placed the order, the colony had complied with its obligation to provide him with the shoes free of charge. The delay in making the shoes had been caused by the financial difficulties of the shoe factory. The court further noted that the applicant had in any event failed to demonstrate what expenses he had incurred when purchasing the shoes himself. Nor was it incumbent on the administration of the correctional colony to take steps to purchase shoes for him in the absence of any corresponding request on his part. On 11 July 2007 the Orel Regional Court upheld the judgment of 15 May 2007 on appeal.

II. RELEVANT DOMESTIC LAW

A. Code on the Execution of Criminal Sentences: personal space in a dormitory

21. Article 99 of the 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. Internal Regulations of the Correctional Colonies: the model daily schedule

22. According to the Internal Regulations of the Correctional Colonies as approved by Order No. 5 of the Ministry of Justice of the Russian Federation on 3 November 2005, the model daily schedule for correctional colonies is as follows:

"Wake up call – no later than 5-6 a.m.

Morning physical exercise (duration) – up to 15 minutes

Time for morning toilet and making the bed – up to 10 minutes

Morning and evening muster – up to 40 minutes

Breakfast – up to 30 minutes

Travel to work site – up to 40 minutes

Work – in accordance with labour legislation

Lunch break – up to 30 minutes

Work day ends, time for cleanup – up to 25 minutes

Dinner – up to 30 minutes

Personal time – up to 1 hour

Educational programmes – up to 1 hour

Specialised and recreational activities, school and vocational training – in accordance with a separate schedule

Preparation for sleep – up to 10 minutes

Sleep (continuous) – 8 hours."

C. Code of Civil Procedure: complaints about unlawful decisions

23. Chapter 25 sets out the procedure for a judicial examination of complaints about decisions, acts or omissions of the State and municipal authorities and officials. Pursuant to Ruling no. 2 of 10 February 2009 by the Plenary Supreme Court of the Russian Federation, complaints by suspects, defendants and convicts about inappropriate conditions of detention must be examined in accordance with the provisions of Chapter 25 (point 7).

24. The burden of proof as to the lawfulness of the contested decision, act or omission lies with the authority or official concerned. If necessary, the court may obtain evidence of its own initiative (point 20 of Ruling no. 2).

25. If the court finds the complaint justified, it issues a decision requiring the authority or official to fully remedy the breach of the citizen's rights (Article 258 § 1). The court determines the time-limit for remedying the violation with regard to the nature of the complaint and the efforts that need to be deployed to remedy the violation in full (point 28 of Ruling no. 2).

D. Ombudsman Act (Federal Law no. 1-FKZ of 26 February 1997)

26. The Ombudsman may receive complaints concerning the actions by federal and municipal State bodies or employees, provided that the complainant has previously lodged a judicial or administrative appeal in this connection (section 16 § 1).

27. Having examined the complaint, the Ombudsman may apply to a court or prosecutor for the protection of the rights and freedoms which have been breached by an unlawful action or inaction of a State official or petition the competent authorities for institution of disciplinary, administrative or criminal proceedings against the State official who has committed such a breach (section 29 § 1).

28. The Ombudsman prepares a summary of individual complaints and he or she may submit to State and municipal authorities recommendations of a general nature on the ways to improve the protection of individual rights and freedoms or suggest legislative amendments to the lawmakers (section 31).

E. Act on public supervision for human rights compliance in places of detention and assistance to detainees (Federal Law no. 76-FZ of 10 June 2008)

29. Public supervision commissions are responsible for public monitoring, reporting and promoting cooperation in human rights compliance in places of detention (Article 6). They may, *inter alia*, visit places of detention, consider detainees' complaints, provide recommendations and interact with state and municipal authorities and mass media (Article 15).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

30. The relevant extracts from the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ..."

Extracts from the 7th General Report [CPT/Inf (97) 10]

"13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ..."

Extracts from the 11th General Report [CPT/Inf (2001) 16]

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping

> and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions."

THE LAW

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

31. The applicant complained that he had been detained in cramped and appalling conditions in correctional colony no. IK-2 in Livny, Orel Region. He referred to 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."

32. The Government noted that the applicant had failed to bring his grievances to the attention of the Russian courts and submitted that his complaint should be rejected for failure to comply with the requirements of Article 35 § 1 of the Convention. In support of their argument, they relied on the relevant domestic laws' provisions (see paragraphs 23-29 above). In their opinion, it was open to the applicant, in order to obtain an adequate relief, to address his grievances to a court, a public supervision commission, or an ombudsman. They further cited the following examples from domestic practice. On 19 July 2007 the Novgorod Town Court of the Novgorod Region had awarded 45,000 Russian roubles (RUB) to D. in respect of non-pecuniary damage resulting from the domestic authorities' failure to ensure proper conditions during his pre-trial detention. On 17 December 2008 the Sovetskiy District Court of Nizhniy Novgorod had upheld G.'s claims concerning his detention in an overcrowded cell in a remand prison and awarded him RUB 2,000. On 14 October 2009 the Sovetskiy District

Court of Nizhniy Novgorod had upheld B.'s claims concerning the conditions of his pre-trial detention in view of the lack of sufficient personal space, lighting, ventilation, fresh air and adequate medical assistance and awarded him RUB 100,000. On 26 March 2007 the Tsentralniy District Court of Kaliningrad had found that the correctional colonies where R. had been serving a prison sentence had failed to provide him with adequate medical assistance and awarded him RUB 300,000. On 26 September 2008 the Berezniki Town Court of the Perm Region had awarded RUB 65,000 to Ye. for the non-pecuniary damage resulting from his detention in a temporary detention centre. Lastly, referring to the Court's case-law (see *Whiteside v. the United Kingdom*, decision of 7 March 1994, application no. 20357/92, DR 76, p. 80), they pointed out that a mere doubt on the applicant's part as to the prospect of success was not sufficient to exempt him from submitting his complaint to any of the above mentioned competent national authorities.

33. The applicant submitted that he had not brought a court action against the administration of the correctional colony for fear of reprisals. As regards the precedents cited by the Government, he pointed out that the claimants in those cases had sued the detention facilities only after their detention there had ended.

A. Admissibility

34. 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.

35. 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.

B. Merits

1. Article 13 of the Convention

(a) The parties' submissions

36. The Government submitted that the applicant had effective remedies in respect of his grievances about the conditions of his detention. The

opportunity was still open to him to lodge a complaint on that account with the competent State authorities or a court.

37. The applicant maintained his complaint.

(b) The Court's assessment

38. 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 v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

39. 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.

40. In the area of complaints about inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention and compensation for the damage or loss sustained on account of such conditions. If an applicant has been held in conditions that are in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment, is of the greatest value. Once, however, the applicant has left the facility in which he or she endured the inadequate conditions, he or she should have an enforceable right to compensation for the violation that has already occurred (see, *mutatis mutandis*, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 97, 10 January 2012).

41. Turning to the facts of the present case, the Court observes that the Government have suggested that it was open to the applicant to lodge a judicial complaint about the infringement of his rights caused by the conditions of his detention or address it to an ombudsman or a public supervision commission. In this connection, the Court notes it has already examined the Government's argument about a possibility of judicial complaint or a complaint to an ombudsman in the context of conditions of detention in a remand prison in Russia and rejected it having found that those remedies had fallen short of the requirements set out in Article 13 of the Convention. In respect of the judicial complaint, the Court concluded that, even though it provided a solid theoretical legal framework for adjudicating the detainees' complaints about inadequate conditions of detention, its capacity to produce a preventive effect in practice had not been convincingly demonstrated (see *Ananyev*, cited above, § 112). Nor could the Court recognise the effectiveness of a complaint to an ombudsman

noting that the latter lacked the power to issue a legally binding decision that would be capable of bringing about an improvement in the detainee's situation or serving as a basis for obtaining compensation (see *Ananyev*, cited above, § 106). In the present case there is nothing in the materials before the Court that would allow it to reach a different conclusion. Accordingly, the recourse to a court or an ombudsman does not constitute an effective remedy.

42. As regards a recourse to a public supervision commission, the Court is not persuaded that it can provide an adequate redress in respect of the complaint about the conditions of detention in a correctional colony. Similarly to the ombudsman's office, the said commissions are not invested with authority to issue legally binding decisions. Their task is to provide advice and information to other state bodies or mass media on the issues concerning the human rights compliance in places of detention (see paragraph 29 above).

43. In so far as the Government, relying on the domestic courts' judgments, may be understood to suggest that the applicant could have successfully brought a claim for damages resulting from detention in inadequate conditions, the Court notes that none of the cases cited by the Government concerned the conditions of post-conviction detention in a correctional colony. Three of them dealt with overcrowding of pre-trial detention facilities (a temporary detention centre and remand prisons) and the fourth one concerned the lack of proper medical assistance in a correctional colony. Accordingly, the Court is unable to conclude that the Government have demonstrated that a sufficiently established domestic judicial practice exists confirming an effectiveness of a claim for damages incurred in connection with inhuman or degrading conditions of detention.

44. Lastly, the Court observes that in the case of *Kulikov* (see *Kulikov v. Russia*, no. 48562/06, § 31, 27 November 2012), it examined and dismissed the Government's objection concerning 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 the Court to reach a different conclusion.

45. Accordingly, the Court rejects the Government's objection concerning the non-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 that would have enabled the applicant to complain about the conditions of his detention in the correctional colony where he is serving a prison sentence.

2. Article 3 of the Convention

(a) The parties' submissions

46. The Government conceded that the personal space afforded to the applicant had been below the statutory standards because of the overpopulation of the correctional colony. However, they contended that the overall conditions of the applicant's detention had been in compliance with the standards set forth in Article 3 of the Convention.

47. The applicant maintained his complaint. He claimed that at all times the dormitories he had been assigned to were overcrowded and the lighting there was insufficient. He further alleged that the size of other premises in the colony, including the cafeteria, TV room and exercise areas was inadequate to accommodate the needs of the colony population.

(b) The Court's assessment

48. 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 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).

49. Turning to the facts of the instant case, the Court observes that the thrust of the applicant's complaint is the overcrowding of the correctional colony where he was serving a prison sentence. Insofar as the applicant can be understood to complain about inadequacy and insufficiency of the colony's facilities for outdoor exercise and recreation, the Court observes that, in the absence of any detailed information from the applicant about his daily routines at the colony, and regard being had to the materials submitted by the Government on the issue, the Court is unable to accept the applicant's submissions as sufficiently established or credible. Accordingly, the Court's task in the present case is to determine whether the applicant's placement during the night time in a large capacity dormitory ensured adequate conditions of detention.

50. As regards the overcrowding of the detention facilities, the Court takes cognisance of the findings summed up in the reports published by the Committee for the Prevention of Torture where the prison overcrowding has been repeatedly characterised as entailing adverse effects, such as cramped and unhygienic accommodation, a constant lack of privacy, reduced out-of cell activities, and resulting in inhuman and degrading conditions of detention (see paragraph 30 above). However, the Court reiterates that it cannot decide, once and for all, how much personal space should be allocated to a detainee in terms of the Convention. That depends on many relevant factors, such as the duration of detention in particular conditions, the possibilities for outdoor exercise, the physical and mental condition of the detainee, and so on. This is why, whereas the Court may take into account general standards in this area developed by other international institutions, such as the CPT, these cannot constitute a decisive argument (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007).

51. The Court further developed this line of reasoning in the case of *Samaras* (see *Samaras and Others v. Greece*, no. 11463/09, §§ 51-66, 28 February 2012), where it held, in paragraph 63, as follows:

> "The Court does not intend to question its case-law according to which factors other than overcrowding or the personal space available to a detainee may be taken into account in examining compliance with the requirements of Article 3 in the matter. The possibility of circulating outside the cell or dormitory is certainly one such factor. However, in the Court's opinion that factor alone, if established, cannot be considered so decisive that it would suffice, in itself, to tip the scales in favour of a finding of no violation of Article 3. The Court must also examine the conditions and duration of the freedom of movement in relation to the overall duration of the detention and the general conditions prevailing in the prison. It considers that factors that helped alleviate the harshness of the conditions of detention could be taken into account in determining the amount of any just satisfaction to be awarded to the applicants in the event of a finding of a violation."

52. In this regard, the Court takes cognisance of the admission made by the Government that, because of the overcrowding of the correctional colony where the applicant had been serving a prison sentence, the personal space afforded to him in the dormitory was below the statutory standard of two square metres. According to the data submitted by the Government, the applicant had at his disposal in the dormitory no more than 1.55 square metres of personal space.

53. The Court does not lose sight that, as submitted by the Government and not contested by the applicant, during the day the applicant was not confined to an overcrowded dormitory. He had an opportunity for at least two hours' daily outdoor exercise. It was also open to him to work in a sewing shop or stay at the unit premises while other detainees were at work.

54. Nevertheless, the Court considers that the conditions of the applicant's detention in correctional facility no. IK-2 have fallen short of the standards set forth in Article 3 of the Convention. In this regard the Court

puts a special emphasis on the fact that the applicant has been serving a long term of imprisonment. His placement in a cramped dormitory with approximately a hundred inmates, if only at night, was not temporary. He has been held in such conditions, lacking any privacy, for thirteen years. In the Court's opinion, this fact alone raises an issue under Article 3 of the Convention.

55. The Court accepts 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).

56. When examining the earlier cases against Russia concerning the conditions of detention in correctional colonies, the Court has considered the detention in overcrowded dormitories where the personal space afforded to the detainees was below the statutory standard of two square metres, if only at night, to be one of the decisive factors weighing in favour of finding a violation of Article 3 of the Convention (see, for example, *Kulikov*, cited above, § 37, and *Yepishin v. Russia*, no. 591/07, § 65, 27 June 2013).

57. 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.

58. 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-2 in Livny, Orel Region, from 6 November 1999 to September 2013, which it considers inhuman and degrading within the meaning of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

59. Lastly, the applicant complained under Article 6 of the Convention that the civil proceedings which he had initiated were unfair. He also complained, under Article 34, about the disciplinary measures imposed on him during his detention and the alleged refusal by the administration of the correctional colony to dispatch a letter of his which was addressed to the Court. He also alleged, with reference to Article 1 of Protocol No. 1, that he had not been provided with orthopaedic shoes until 2007.

60. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the provisions invoked. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 90,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government considered the applicant's claims unsubstantiated and excessive. They further submitted that, given that the applicant's rights under the Convention had not been infringed, his claims in respect of damage should be rejected in full. Alternatively, they submitted that a finding of a violation would constitute sufficient just satisfaction.

64. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed, having regard to any agreement which might be reached between the Government and the applicant (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

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

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 and rejects it;

2. *Declares* the complaints concerning the conditions of the applicant's detention and the lack of an effective remedy in this respect admissible and the remainder of the application inadmissible;

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

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

5. *Holds* that the question of the application of Article 41 is not ready for decision and accordingly:
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicant to submit, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 28 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President