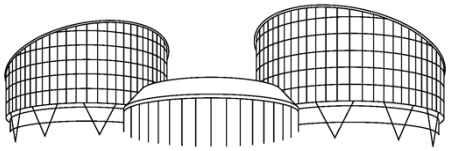

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TERESHCHENKO v. RUSSIA

(Application no. 33761/05)

JUDGMENT

STRASBOURG

5 June 2014

FINAL

05/09/2014

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

In the case of Tereshchenko v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 33761/05) 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 Mr Anatoliy Nikolayevich Tereshchenko ("the applicant") on 28 July 2005.

2. The applicant, who had been granted legal aid, was represented by Mr P. Finogenov, 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 kept in appalling conditions during his detention in 2003-05 and had had no effective remedies in this respect; that his family visits had been unjustifiably restricted while held in a detention centre; that a domestic court had failed to issue a decision on the issue of early release; and that the staff of the detention facilities had not dispatched his letters to the Court. He cited Articles 3, 6, 8, 13 and 34 of the Convention.

4. On 5 June 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and is serving a prison sentence in the Voronezh Region.

A. Criminal proceedings against the applicant

6. On 19 September 2002 a search of the applicant's flat was carried out. He was then charged with drug trafficking. The applicant was kept in police custody until 21 September 2002, when he was released on undertakings of good behaviour and to not leave town.

7. In separate proceedings, on 19 September 2003 the applicant was arrested on suspicion of causing bodily harm to another person. On 21 September 2003 he admitted the charge, allegedly under duress. According to the applicant, lawyer V., assigned to represent him, was not present at the interview and signed the record later on. However, there was no mention of counsel's name in the list of visitors in the detention centre. On 23 September 2003 Judge M. of the Talovskiy District Court, the Voronezh Region ("the District Court") authorised the applicant's continued detention and stated that he "had indeed committed a very serious offence". The applicant was charged with causing bodily harm resulting in the victim's death. On the same date, the police took him to a hospital and required him to undergo a blood test.

8. The applicant confirmed his earlier confession in V.'s presence during an on-the-spot interview, which was recorded on video. On an unspecified date, the applicant terminated V.'s representation of him. A new lawyer, B., was appointed for the trial.

9. On 27 November 2003 Judge L. of the District Court convicted the applicant of drug trafficking. In February 2004 the District Court issued a decision admitting the applicant's mother, K., as the applicant's lay defender in the appeal proceedings concerning the drug-trafficking conviction. On 29 March 2004 the Voronezh Regional Court ("the Regional Court") quashed the judgment of 27 November 2003 and ordered a retrial.

10. By a judgment of 22 November 2004, the District Court convicted the applicant of causing bodily harm resulting in the victim's death. However, on 1 March 2005 the Regional Court quashed this judgment, considering that the trial court had wrongly allowed the reading out of a pre-trial witness statement, despite the defence's objection and in the absence of the applicant. Thus, the appeal court ordered a retrial and that the applicant be held in custody pending it.

11. On 23 March 2005 the District Court extended the applicant's detention, referring to the gravity of the charges against him and the risk that he would continue criminal activity, if at large.

12. In April 2005 the Regional Bar Association decided on a complaint brought by the applicant and imposed a disciplinary penalty on V., the applicant's former lawyer, apparently, in relation to the drug-related case.

13. On 26 April 2005 the District Court returned the case about drug trafficking to the prosecutor. On 29 April 2005 the prosecutor joined the criminal cases against the applicant. On 30 April 2005 the investigator dismissed a number of motions lodged by the defence. In particular, the investigator stated that K. could no longer act as the applicant's lay

defender, since the decision to admit her to the proceedings issued in February 2004 had concerned only the appeal proceedings.

14. On 3 May 2005 the joined cases were submitted for trial before the District Court.

15. Hearings were held on 8 July and 21 July 2005. On the latter date Judge M. stripped K. of her lay-defender status in the criminal proceedings against her son, because she had been interviewed as a witness in the bodily harm case.

16. Subsequently, the case was assigned to a trial panel of three judges, including Judge M. as the presiding judge.

17. In the meantime, the applicant sought the withdrawal of Judge M. from the case, arguing bias on account of, *inter alia*, the judge's statement in the detention order of 23 September 2003 (see paragraph 7 above) and his failure to ensure decent conditions of detention pending retrial or to issue permission for a visit from the applicant's mother. The judge refused to withdraw from the case, stating that the trial court was not competent to deal with the issue of conditions of detention and that the trial court's competence as regards visits was limited under Article 395 of the Code of Criminal Procedure to the period following delivery of the trial judgment. While admitting that the remark in the detention order was "unfortunate", the judge stated it did not contain any information to the effect that he had an "interest in the outcome of the criminal case". The Regional Court upheld the judge's refusals to withdraw.

18. In reply to a renewed challenge by the applicant, on 1 August 2005 the matter was submitted to the remaining two judges on the trial panel. They considered that there were no reasons for Judge M. to withdraw from or to be removed from the criminal case against the applicant. In particular, they stated that the Custody Act required "compelling reasons" for refusing a visit by a next-of-kin to a detainee. They concluded, however, that there was no evidence that any such visit had been refused without valid reason in the applicant's case.

19. On 7 September 2005 the District Court discontinued the case against the applicant on charges of drug trafficking, because the prosecutor had dropped the charges.

20. As to the remaining charges of causing bodily harm, the trial panel noted the defence's challenge to the expert report concerning the victim's injuries and granted its request for another expert report.

21. On 24 January 2006 the District Court convicted the applicant of causing bodily harm resulting in the victim's death and sentenced him to eight years' imprisonment. The court relied on several witness statements, the applicant's pre-trial confession and his on-the-spot interview.

22. On 20 April 2006 the Regional Court upheld the conviction and sentence.

23. In or around October 2006 the applicant sought statutory compensation payable by the State to individuals who have been acquitted of criminal offences or in respect of whom the charges have been dropped.

On 3 April 2007 the District Court granted the applicant's claims in part as regards pecuniary and non-pecuniary damage. On 17 July 2007 the Regional Court ordered a retrial in respect of the pecuniary claims. The award in respect of the non-pecuniary claim became final. On 10 April 2008 the District Court granted the applicant's pecuniary claim in part. On 3 July 2008 the Regional Court, considering that the applicant's presence at the appeal hearing was not necessary, upheld the judgment.

24. In the meantime, the applicant sought supervisory review of the above judgment, challenging the factual and legal findings made by the courts and their refusal to confirm his right to compensation on account of his prosecution on drug-trafficking charges. Having heard the applicant, on 13 February 2008 the Presidium of the Regional Court amended the judgments of 24 January and 20 April 2006 recognising his right to compensation. The court rejected the applicant's remaining complaints as unfounded. He received a copy of the supervisory-review ruling on 19 February 2008.

B. Early release

25. On 29 December 2008 the applicant applied for early release from prison. In his letter, which was sent to the Paninskiy District Court of the Voronezh Region, he asked that the necessary supporting documents be requested by the court from the prison administration. It appears that this letter reached the District Court on 10 February 2009. By letter dated 11 February 2009, a judge of the District Court informed the applicant of the refusal to examine the application. The letter read as follows:

> "Hereby I return your application for early release as it requires amendment. Certain necessary documents were not enclosed with it, namely the prison's reports on your personality and disciplinary penalties, as well as certificates relating to employment, your medical and psychiatric conditions ...
>
> No court decision [on your application] may be issued in the absence of these documents."

The applicant did not appeal, as he was not provided with a copy of any formal decision.

26. Instead, the applicant resubmitted his application to the District Court, this time with some supporting documents. During the hearing, which took place before another District Court judge, the prison administration expressed their disagreement with his application, considering it to be premature. By a judgment of 25 March 2009 that District Court judge examined the applicant's request. While acknowledging that the applicant had already served two-third of the sentence, the court rejected the application, referring *inter alia* to the fact that the applicant had received several penalties for violations of the internal prison regulations, including one placement in a punishment cell. The

applicant appealed. On 23 June 2009 the Regional Court upheld the judgment.

C. Other proceedings

27. Between 2002 and 2009 the applicant lodged numerous complaints, initiated proceedings against lawyer V. and various public officials accusing them of criminal offences, contesting criminal proceedings against him or complaining about the conditions of his detention (see also paragraphs 37-39 below).

28. In November 2002 the applicant lodged a complaint, alleging that during the search of his house in September 2002 one of the officers had taken him into the bedroom and had pushed him against the wall. On 30 November 2002 an investigator refused to institute criminal proceedings on account of the alleged ill-treatment. In 2003 the matter was examined and a new refusal was issued by a deputy prosecutor on 28 May 2003. By a judgment of 2 September 2005, the District Court confirmed this refusal to prosecute. On 3 November 2005 the Voronezh Regional Court upheld that judgment.

D. Conditions of detention

1. Talovskiy Temporary Detention Centre

29. The applicant was detained in Talovskiy Temporary Detention Centre ("TDC"), which was attached to Talovskiy police station, on numerous occasions between September 2003 and 2005 for periods at times in excess of one month. The applicant was also held in the TDC on several occasions between 2006 and 2008.

30. According to the applicant, although he was alone in the cell, no arrangements were made for a proper bed and bedding. Neither were there any facilities for taking a bath or shower or for outdoor exercise. He was given one meal a day. The walls were rendered with *shuba*, a coarse type of concrete, designed to prevent detainees from leaning on the walls. The cell windows were covered with metal shutters blocking access to fresh air and natural light.

31. In late 2003 the applicant had bronchitis and allegedly failed to receive appropriate treatment. In December 2003 he attempted suicide and self-harmed, being unable to stand the appalling conditions of detention and the duration of his placement in the TDC.

32. The applicant submitted that the conditions of detention in the TDC improved between 2006 and 2008, when he was allowed to take a shower and daily outdoor exercise and was provided with two meals a day.

2. Voronezh Remand Centre

(a) The applicant's account

33. Between October 2003 and July 2005 the applicant was also kept in Voronezh Remand Centre no. 36/1. According to him, at times, twenty-three detainees were held in a cell with twelve beds; thus the cell measurements were below the required international and even national standards.

34. In his observations before the Court, the applicant further argued that he had been kept in a cell measuring 25 sq. m. together with eleven other detainees. On average, the cell accommodated sixteen or seventeen detainees although it only had six bunk beds. At times, it accommodated some 20-23 detainees. The applicant enclosed diagrams of cells 141, 156, 171, 177 and 189, which, according to him, measured 27.5 sq. m. and had twelve beds each. He also provided several written statements from individuals who had been kept in the remand centre for varying periods between 2003 and 2006, at times in the same cell(s) as the applicant. For instance, T. submitted that on some occasions between twenty and twenty-seven detainees had been kept in cells measuring about 30 sq. m. with twelve beds. Another detainee stated that cell no. 171 had twelve beds but accommodated, sometimes, twenty-four detainees; they had to take turns to sleep during the day or at night.

35. Drawing on the statements from other detainees, the applicant's lawyer argued in the observations that the cells had lacked mandatory ventilation although many detainees smoked, and, at times, the temperature there went up to 50 C. The toilet in the cells was separated in the main area by a metal bar of 1.5 m in height, which did not provide sufficient privacy. Sometimes, there was no water supply in the drainage system, so the use of the toilet had to be limited in order to reduce unpleasant smells. The cells were infested with flies, cockroaches and bugs.

(b) The Government's account

36. In reply to the applicant's initial complaint relating to the cell sizes and insufficiency of beds, the respondent Government submitted a certificate signed on 12 August 2009 by the acting chief officer of the remand centre. This certificate listed the cells in which the applicant had been kept for varying periods since October 2003 (cells nos. 1, 8, 44, 86, 90, 137, 141, 156, 171 and 188).

3. The applicant's complaints about the conditions of his detention

37. The applicant unsuccessfully complained to various public authorities about the conditions of his detention in the Talovskiy TDC. These complaints were forwarded to the Voronezh Region Prosecutor's Office for examination. By letters of 16 March, 27 April and 26 August 2004, and 23 October 2006 the Prosecutor's Office rejected his complaints

as unfounded. It indicated that the applicant's repeated placements in the temporary detention centre were due to logistical difficulties with transferring him between Talovskiy TDC and the Voronezh Remand Centre, which were a considerable distance apart. On 28 March and 12 September 2005 as well as on 29 September 2006 the Talovskiy District Prosecutor's Office rejected the applicant's renewed complaints as unsubstantiated.

38. By letters of 2 and 12 September 2005, the President of the District Court declined jurisdiction to deal with the applicant's complaints about his repeated and prolonged detention in the Talovskiy TDC, including his complaints about the physical conditions of detention there.

39. By letter of 1 September 2008, the Regional Prosecutor's Office informed the applicant that his earlier complaints had been examined by the district prosecutor, who had issued decisions dated 11 October 2006, 25 June 2007 and 28 January 2008 confirming unspecified violations in relation to the conditions of detention in the TDC.

4. Conditions of detention in the post-conviction prison

40. The applicant is now detained in prison no. 3, located in Pereleshino in the Voronezh Region. According to him, the living area of the prison measures 64 square metres and houses 38 detainees; the artificial lights in the dormitory are insufficient; the food is bad.

E. Limitations on family visits

41. Between January 2004 and March 2005 the applicant received visits in the remand centre from his mother, K.

42. Around April 2005 the applicant started to complain that he was no longer receiving visits from his mother. According to the Government, she did not come to the remand centre and did not request any visits at that time; nor did she lodge any complaints of visits being refused.

43. By letter of 1 April 2005, Judge M. of the District Court stated that the Code of Criminal Procedure did not require a court decision in response to the applicant's complaint concerning family visits. Section 18 of the Custody Act did not necessitate a request for such a visit to be granted; the decision on whether to authorise such a visit remained within the discretion of the authority dealing with the criminal case. Article 395 of the Code of Criminal Procedure provided that visits could be authorised following delivery of the trial judgment and before its enforcement.

44. By letter of 7 April 2005 the President of the District Court dismissed the applicant's renewed complaint. He indicated that family visits could be allowed under Article 395 of the Code of Criminal Procedure after pronouncement of a trial judgment.

45. The applicant also complained to the Regional Prosecutor's Office that a police officer (apparently, the officer in charge of Talovskiy TDC) was refusing to allow visits from his mother. This complaint was forwarded

to the Talovskiy District Prosecutor's Office for examination. In July 2005 the district prosecutor dismissed the complaint from the applicant, stating that while K. had been accepted in February 2004 as a lay defender in the appeal proceedings concerning the drug-trafficking case against the applicant, this case had been joined to the second case pending before the District Court. The prosecutor noted that the District Court had not yet issued any decision accepting K. as a lay defender in the joined cases.

46. The applicant complained to the Supreme Court of Russia about the refusal to allow visits from his mother. This complaint was forwarded to the District Court. By letter of 29 July 2005, the President of the District Court stated as follows:

> "I consider that section 18 of the Custody Act does not require the court "dealing with the criminal case" to grant applications for the authorisation of visits. Such visits may be authorised depending on the circumstances relating to the criminal proceedings. Following the quashing of the judgments [in respect of the applicant] on appeal and the decision to order a retrial, the retrial has not started yet. Article 395 of the Code of Criminal Procedure requires the court to grant visits from next-of-kin following delivery of the trial judgment ... K. had been accepted as [the applicant's] lay defender, in addition to counsel, and was granted permission to pay visits to [the applicant] ... Section 18 does not require the court to issue any additional authorisations for visits ..."

47. The applicant also complained to the Regional Prosecutor's Office in June 2005. This complaint was forwarded for examination to the Talovksiy District Prosecutor's Office. By letter of 3 August 2005 the district prosecutor dismissed his complaint.

48. The applicant tried to lodge an appeal before the Regional Court in relation to the above letter of 29 July 2005. By letter of 12 September 2005, Judge M. of the District Court refused to process the applicant's appeal against the letter. The judge indicated that a letter was not amenable to appeal.

49. The applicant submitted to the Court a statement made by his mother. She affirmed that on several occasions during the year 2004 she had been afforded the opportunity to talk for a short time with the applicant through a metal partition, because there was no meeting room in Talovksiy TDC. Between March and August 2005 she had lodged six requests before Judge M. of the District Court seeking authorisation for a meeting with the applicant in the TDC. In her requests, she referred to her next-of-kin status rather than her position as a lay defender in the criminal proceedings. The judge had dismissed her requests orally without issuing any formal decision which would be amenable to appeal. Her similar requests to the President of the District Court were also dismissed. She had presented the decision of 16 February 2004 to the chief officer of the Talovskiy police station but he had demanded a recent court order. Apparently, her ensuing complaints against the officers had not been processed by the District Court. Between February 2004 and July 2005 no permission had been granted for her to visit

as a lay defender (which would have had the benefit of visits not being limited in frequency and duration, see paragraph 56 below).

F. Correspondence with the Court

50. In September 2005 the Court received the applicant's application form dispatched, by registered mail, on 30 July 2005 from Remand Centre no. 36/1 (as indicated on the envelope). In March 2006 the Court received the applicant's additional application form, with enclosures, sent by registered mail on 4 February 2006 from the same remand centre (as indicated on the envelope). In August 2006 the Court received two further packages, with numerous enclosures, from the applicant. According to the applicant, the above correspondence was, in fact, dispatched by his mother, K.

51. The Court also received the applicant's letter dated 15 December 2006, which he submitted had been sent by his mother, in which he complained that prison no. 3 had not dispatched his letters of 27 June, 2 August and 8 September 2006.

52. Subsequently, the applicant also complained to the Court that the remand centre had not dispatched his letter dated 27 April 2006. He submitted a copy of a note, apparently written by a remand centre officer, stating that his letter had been dispatched. The Court did not receive this letter.

53. The applicant claimed that on 26 December 2006 the staff of the prison refused to dispatch a letter dated 15 December 2006 to the Court. He was then transferred to the TDC in Talovaya. According to the applicant, his mother then tried to dispatch the letter from there, but the staff of the postal office refused to dispatch it.

54. On 16 May 2008 the Registry of the Court received the applicant's letter dated 28 December 2006, apparently dispatched by the applicant's mother. In that letter the applicant alleged that on 26 December 2006 the administration of prison no. 3 had refused to dispatch his letter of 15 December 2006.

55. The Registry also received the applicant's letters of 31 March, 10 October, 15, 21 and 29 December 2008, and several letters in 2009 from prison no. 3.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Visits to detainees

1. Visits from counsel

56. Pending investigation and trial a detainee has the right to receive visits from his counsel without any limitation of frequency or duration (Article 47 of the Code of Criminal Procedure, "the CCrP"). A court may authorise a person's next-of-kin to act as counsel, in addition to a lawyer (Article 49 of the CCrP). In 2008 the Russian Constitutional Court held that the combined reading of Articles 49, 51, 52 and 72 of the CCrP implied that a person admitted as counsel in a criminal case continues to have his or her procedural rights and obligations during subsequent proceedings, at least until a court decides to remove counsel or accepts the defendant's decision in this vein (decisions nos. 453-O-O and 871-O-O of 24 June and 25 December 2008; see also decision no. 803-O-O of 28 May 2009).

2. Other visits pending investigation and trial

57. Section 18 of the Custody Act (Federal Law no. 103-FZ of 15 July 1995) provided that meetings with counsel were not limited in their number and duration, except when otherwise prescribed by the CCrP. Counsel, who is not an advocate, should present a court order and his identity document. The same section also provided that the officer or authority dealing with the criminal case could authorise a suspect or accused person to receive up to two visits (of up to three hours each) per month from their next-of-kin or other individuals.

58. In its decision no. 159-O of 1 July 1998, the Constitutional Court held that section 18 was compatible with the Constitution. The limitations relating to the number of visits and their length, as well as regarding practical arrangements for them, were an inevitable consequence of detention pending investigation or trial. Section 18 should not be interpreted as authorising an investigator to refuse a visit without there being a compelling reason relating to the protection of rights of others or the interests of justice in a criminal case. The investigator's decision should provide reasons and may be subject to judicial review. The reviewing court should assess all relevant circumstances and the sufficiency of reasons for refusing a visit.

59. In its decision no. 133-O of 7 February 2013, the Constitutional Court re-examined the constitutionality of section 18, having regard, *inter alia*, to the Court's findings in *Vlasov v. Russia*, no. 78146/01, 12 June 2008 (see also paragraph 135 below). The Constitutional Court held that section 18 contained precise limitations concerning the frequency and length of visits and provided for an authorisation procedure for such visits. The existence of those limitations was related to the specific nature of criminal proceedings and the aims pursued by preventive measures such as remand

in custody pending criminal proceedings. Indeed, there was a difference vis-à-vis detention following conviction, during which, under certain conditions, there is a right to long visits. The limitation relating to the length of visits applies during remand in custody pending investigation, which, in itself, should not go beyond a reasonable time. That limitation also applies to detention pending trial, which may be extended, for no longer than three months each time, only in serious and particularly serious cases. The above conditions constituted guarantees against disproportionate interference with the detainee's right to communicate with his or her relatives.

60. Article 395 of the CCrP provides that following pronouncement of the trial judgment and before its enforcement, the trial judge or President of the court must grant any request from the next-of-kin of the convicted person for a visit.

B. Early release

1. Criminal Code and Code of Criminal Procedure

61. Article 79 § 1 of the Criminal Code provides that a convicted person serving a sentence of imprisonment may be granted (*подлежит*) conditional early release, provided that a court has accepted that the full period of detention is no longer necessary for the convict's punishment and rehabilitation. Article 79 of the Code also reads as follows:

> "2. The court may also impose certain obligations on the convict in a decision to grant early release ...
>
> 3. Early release may only be granted after serving at least
>
> (a) one-third of the sentence for offences of minor and medium severity;
>
> (b) one-half of the sentence for serious offences; and
>
> (c) two-thirds for particularly serious offences ...
>
> 7. A court may revoke early release if, during the period at liberty, the convict commits a breach of the public order ... , seriously violates the obligations imposed on him or her in the decision to grant early release, ... or commits a criminal offence."

62. A court decision concerning early release can be appealed to a higher court (Article 401 of the CCrP).

2. Ruling no. 8 of the Supreme Court of Russia

63. On 21 April 2009 the Plenary session of the Supreme Court of Russia issued Ruling no. 8, providing clarifications to the lower courts on the application of Article 79 of the Criminal Code concerning early release and Article 80 of this Code concerning commutation to a lighter sentence. It was stated therein that the examination of cases falling within the scope of those Articles required an individualised approach, with due regard to the existence or absence of any continuing need of detention for punishment and rehabilitation of the convicted person, his or her personality, and

attitude displayed towards labour or education during the prison term. The mere fact that the convict had already served the required part of the prison term would not suffice for granting early release under Article 79. Courts should not refuse early release on grounds which are not listed in the law (such as the existence of an earlier conviction, the lenient nature of the sentence or denial of guilt by the convict).

64. A court must examine an application under Article 79 of the Criminal Code even if the convict or his representative has not submitted the documents normally required in the case of a similar application made by the prison. In such cases, the court must forward the application to the prison and require them to submit the relevant documents. The court may also provide assistance to the convict in collecting other evidence which cannot be submitted by the prison.

C. Convicts' correspondence

65. Under the regulations governing detention facilities adopted by the Federal Ministry of Justice on 3 November 2005, detainees are allowed to dispatch correspondence at their own expense. They must do so through the detention facility (points 15 and 49). Detainees are also allowed to dispatch, again only through the detention facility, correspondence to public authorities (complaints, motions, suggestions), which is registered in a correspondence logbook (point 61).

66. As follows from Instruction no. 94-дсп for special units in remand centres (adopted by the Federal Ministry of Justice on 23 June 2005 for internal use by detention facilities), detainees' correspondence should normally be dispatched by ordinary mail. By a judgment of 6 April 2010, the Supreme Court of Russia upheld this provision and confirmed that the decision not to publish the Instruction had been lawful. It is unclear whether the above Instruction applied to prisons (*исправительные колонии*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

67. The applicant complained under Article 3 of the Convention that he had been kept in appalling conditions between 2003 and 2005 in Talovskiy Temporary Detention Centre and Voronezh Remand Centre no. 36/1.

68. Article 3 of the Convention reads as follows:

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

A. Admissibility

69. The Government argued that, while the applicant had complied with the six-month rule, he had failed to exhaust domestic remedies.

70. The Court previously dismissed a similar argument as unsubstantiated (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 70 and 100-119, 10 January 2012). The Court finds no reason to reach a different conclusion in the present case, as regards both the Talovskiy TDC and the Voronezh Remand Centre.

71. 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. Talovskiy Temporary Detention Centre

72. The Government acknowledged that the conditions of the applicant's detention in the temporary detention centre had been unacceptable by Article 3 standards. The Court takes note of the Government's admission and sees no reason to hold otherwise. Accordingly, the Court concludes that the conditions of the applicant's detention in the centre amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention and that there has been a violation of this Article.

2. Voronezh Remand Centre no. 36/1

(a) The parties' submissions

73. The Government stressed that the applicant's initial complaint before the Court on which they had been asked to comment had related to the cell sizes and cell population, and to the alleged lack of a sufficient number of individual beds in the cells. The Court's delay in giving notice of the application had deprived the domestic authorities of an opportunity to keep the logbooks describing the relevant conditions, including the cell population on relevant dates. Lastly, the Government stated that the conditions in the remand centre had been acceptable.

74. The applicant maintained his initial complaint and added further details to the description of the conditions of detention. He argued that the Government had failed to submit any documentary evidence to refute his allegation that the domestic requirement as to cell space (four square metres per detainee) had not been complied with. Like in earlier cases, the Government had referred to the destruction of relevant logbooks while failing to remedy the situation, for instance, by amending the regulations establishing the retention periods for such logbooks. In the absence of any

effective domestic remedies, the applicant had had no forum in which to establish the facts of the matter.

(b) The Court's assessment

75. The Court observes at the outset that the applicant's initial complaint, which was raised in 2005, concerned the allegedly cramped conditions and insufficient number of individual beds in the cells of the remand centre (see paragraph 33 above). In his observations of December 2009 in reply to those of the Government, he raised further complaints relating to the physical conditions of detention in the remand centre (see paragraphs 34-35 above). The Court considers that these new aspects of the case fall outside the scope of the case communicated to the respondent Government and will not be taken into consideration in the present case (see, *mutatis mutandis*, *Pavlenko v. Russia*, no. 42371/02, § 94, 1 April 2010, and *Antonyuk v. Russia*, no. 47721/10, §§ 93-94, 1 August 2013).

76. The Court reiterates that an applicant must provide an elaborate and consistent account of the conditions of his or her detention, mentioning the specific details, for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government (see *Ananyev and Others*, cited above, § 122). Cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence as to the conditions of detention may give rise to the drawing of inferences as to the validity of the applicant's allegations (ibid., § 123).

77. In previous conditions-of-detention cases, the extent of factual disclosure by the Russian Government has been rather limited and the supporting evidence they produced has habitually consisted of a series of certificates issued by the governor of the impugned detention facility after they had been given notice of the complaint. The Court has repeatedly pointed out that such certificates lacked references to the original prison documentation and were apparently based on personal recollections rather than on any objective data and, for that reason, were of little evidentiary value (see, among other authorities, *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007; *Belashev v. Russia*, no. 28617/03, § 52, 4 December

2008; *Veliyev v. Russia*, no. 24202/05, § 127, 24 June 2010; and *Idalov v. Russia* [GC], no. 5826/03, §§ 99-100, 22 May 2012).

78. In the present case, no such certificate or similar evidence was adduced. Thus, the Court finds that the Government's general assertion concerning the adequacy of the conditions of detention lacks substantiation.

79. The Government also advanced the explanation that the complaint had been communicated to them after a considerable lapse of time and that by then the original prison documentation had been destroyed upon the expiry of the time-limit for its safe-keeping.

80. The Court reiterates in this connection that the Government must properly account for its failure to submit original records, in particular those concerning the number of inmates detained together with the applicant. The destruction of the relevant documents did not absolve the Government from the obligation to support their factual submissions with appropriate evidence (see *Ananyev and Others*, cited above, § 125). Moreover, the Court has often found that the Russian authorities did not appear to have acted with due care and diligence in handling prison records because some of them had actually been destroyed after the Government had been put on notice that the Court was dealing with the case (see *Novinskiy v. Russia*, no. 11982/02, §§ 102-103, 10 February 2009; *Gultyayeva v. Russia*, no. 67413/01, § 154, 1 April 2010; and *Shcherbakov v. Russia*, no. 23939/02, § 78, 17 June 2010). In other cases the Government submitted extracts from original prison records, but they were too disparate and far apart in time to present a credible refutation of the applicant's claim of severe overcrowding at the material time (see *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008; *Kokoshkina v. Russia*, no. 2052/08, §§ 32 and 60, 28 May 2009; and *Gubin v. Russia*, no. 8217/04, § 54, 17 June 2010).

81. The Government did not enclose with their observations in 2009 any official document relating to the destruction of logbooks. Thus, the Court was not afforded an opportunity to verify their submissions in this respect. These registers could have been an important and reliable piece of evidence but the Government have not accounted for their failure to produce them to the Court. Moreover, they did not submit any documents relating to the measurements and cell population for the relevant periods of the applicant's detention in the remand centre. At the same time, it is noted that the respondent Government submitted a certificate signed on 12 August 2009 by the acting chief officer of the remand centre, who was able to list the cells in which the applicant had been kept for certain periods since October 2003 (cells nos. 1, 8, 44, 86, 90, 137, 141, 156, 171 and 188).

82. Furthermore, the Court notes its findings in relation to the same detention facility in *Ivakhnenko v. Russia* (no. 12622/04, §§ 28 and 32, 4 April 2013) that the Government did not claim in their observations in that case in 2009 that the registers covering the period between August 2003 and January 2004 (which corresponds to a part of the period of the applicant's detention in the present case) had been destroyed. Also, in that case the applicant produced a copy of a letter from the regional prosecutor's office

dated 24 October 2005 in response to his complaint about the conditions of his detention, in which the prosecutor acknowledged, in particular, the existing overcrowding in the cells and indicated that he had asked the governor of the remand centre to remedy the breach of the domestic legal requirements concerning the conditions of detention (ibid., §§ 9 and 34).

83. Having regard to the above, the Court considers the applicant's allegations concerning the overcrowding of the remand prison to be credible (see paragraph 33 above). In the present case, the Court is ready to accept that the applicant was kept for over a year in cramped conditions, where each detainee was afforded, at times, less than or around 2 sq. m. of cell space, which included the space taken by the cell furniture and amenities. The Court also accepts that, sometimes, the cell population exceeded the actual number of beds in the cell, so that the detainees had to take turns to sleep. The Court considers that this could be a source of tension between detainees and would have generated additional stress and frustration.

84. The Court has found in many previous cases that where the applicants had less than three square metres of floor space at their disposal, the overcrowding was considered to have been so severe as to justify in itself a finding of a violation of Article 3 (see *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Starokadomskiy v. Russia*, no. 42239/02, § 43, 31 July 2008; and *Dmitriy Rozhin v. Russia*, no. 4265/06, §§ 49 and 50, 23 October 2012).

85. There has therefore been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in Voronezh Remand Centre no. 36/1 between 2003 and 2005, which the Court considers to have been inhuman and degrading treatment within the meaning of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ITS ARTICLE 3

86. The applicant also argued that he had not had effective remedies for the complaints detailed above, in breach of Article 13 of the Convention:

> "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."

87. The Government submitted that the applicant had had effective remedies at his disposal, including a civil action for compensation.

88. The applicant maintained his complaint.

89. In *Ananyev and Others* (cited above, §§ 93-119) the Court carried out a thorough analysis of domestic remedies in the Russian legal system in respect of a complaint relating to the physical conditions of detention in a remand centre. The Court concluded in that case that it had not been 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 had not had at their disposal an effective domestic remedy for their complaints, in breach of Article 13 of the Convention.

90. Having examined the Government's arguments, the Court finds no reason to depart from this conclusion in the present case. Noting that the applicant raised an "arguable" complaint under Article 3 of the Convention, the Court finds that there has been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

91. The applicant further complained about the refusal to examine his application for early release in February 2009 and his inability to appeal against this refusal.

92. The Court will examine this complaint under Article 6 of the Convention, which in the relevant part reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ..."

Admissibility

1. The parties' submissions

93. The applicant first argued that the civil limb of Article 6 § 1 of the Convention was applicable to the proceedings in which he had sought early release. Article 79 of the Criminal Code conferred a right to early release. While its exercise was subject to certain conditions, the domestic courts were not empowered to refuse early release with reference to *inter alia* the existence of an earlier conviction or the denial of guilt by the detainee (see paragraph 63 above). The District Court's failure to issue a decision in relation to the applicant's request had impinged upon his right of access to court. In addition, the court's reply by letter had prevented him from making an appeal before a higher court.

94. The Government argued that the purpose of a sentence in criminal proceedings was to achieve social justice, to ensure the punishment and rehabilitation of the convicted person and to prevent new offences. Under Russian law, the rule was to require that a sentence be served in its entirety. The possibility of early release on probation or otherwise was aimed at encouraging the convicted person to pursue his rehabilitation and thus qualified as a privilege rather than a right. In granting or refusing early release, a court would consider whether the convicted person had demonstrated good behaviour, respect for prison discipline and rules, respect for the law in general and other relevant factors. Thus, the

applicant's complaint should be dismissed as incompatible *ratione materiae*.

2. The Court's assessment

95. In the instant case the Court observes that the applicant relied on Article 6 of the Convention in complaining of the judge's refusal in February 2009 to examine his application for early release, including the failure to issue a formal decision which could be amenable to appeal (see paragraph 25 above).

96. Examining first whether the applicant's complaint is compatible *ratione materiae* with Article 6 of the Convention, the Court considers that this provision is not applicable under its criminal head, as the proceedings concerning the prison system did not relate in principle to determination of a "criminal charge" (see *Enea v. Italy* [GC], no. 74912/01, § 97, ECHR 2009).

97. The Court must therefore determine whether the applicant had a "right" of a "civil" nature, in order to assess whether the safeguards afforded by Article 6 § 1 of the Convention were applicable to the proceedings concerning his application for early release.

(a) General principles

98. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). The issue of the applicability of Article 6 § 1 arises under two heads: whether there was a dispute ("*contestation*" in the French text) over an arguable right under domestic law, and whether or not the said right was a "civil" one (see *Ganci v. Italy*, no. 41576/98, § 23, ECHR 2003-XI; *Marin Kostov v. Bulgaria*, no. 13801/07, §§ 57-58, 24 July 2012, and *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012).

99. Indeed, for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 74, 15 October 2009).

100. Article 6 § 1 does not guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States: the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see, for example, *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A

no. 294-B, and *Roche v. the United Kingdom* [GC], no. 32555/96, § 119, ECHR 2005-X). The starting point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 49, Series A no. 327-A, and *Roche*, cited above, § 120).

101. In carrying out this assessment, it is necessary to look beyond appearances and the language used and to concentrate on the realities of the situation (see *Van Droogenbroeck v. Belgium*, 24 June 1982, § 38, Series A no. 50, and *Roche*, cited above, § 121). Whether or not the authorities enjoyed discretion in deciding whether to grant the measure sought by a particular applicant may be taken into consideration and may even be decisive. Nevertheless, the mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right. Other criteria which may be taken into consideration by the Court include the recognition of the alleged right in similar circumstances by the domestic courts or the fact that the latter examined the merits of the applicant's request (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 41, ECHR 2007-II).

102. Lastly, the Court also notes that where a State confers rights which can be enforced by means of a judicial remedy, these can, in principle, be regarded as civil rights within the meaning of Article 6 § 1 (see *Kök v. Turkey*, no. 1855/02, §§ 36-37, 19 October 2006, and *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 105, ECHR 2010).

(b) Application of the principles to the present case

103. First of all, the Court observes that the parties disagreed as to whether there was a "right" at stake under Russian law in relation to the applicant's application for early release.

104. The Court notes that Article 79 of the Russian Criminal Code provides that a court "may" grant early release to a convicted person serving a sentence of imprisonment (see paragraph 61 above). As clarified by the Supreme Court of Russia in April 2009, a court must examine an application under Article 79 of the Criminal Code even if the convict or his representative has not submitted the documents normally required in the case of a similar application made by a prison. In such cases, the court must forward the application to the prison and require them to submit the relevant documents. The court may also provide assistance to the convict in collecting other evidence which cannot be submitted by the prison (see paragraph 63 above). It is also noted that the applicant had a right of appeal against any decision taken in relation to the application for early release (see paragraph 62 above).

105. As regards the issue of whether such a "right" could be said, at least on arguable grounds, to be recognised in domestic law, the Court observes that Article 79 of the Criminal Code, as interpreted by the Supreme Court in 2009, provides that early release may be granted, provided that certain

conditions have been complied with: a certain period of the prison term (depending on the gravity of the offence) must already have been served and the court must be satisfied that the detainee no longer needs to complete his prison term for punishment and rehabilitation purposes. The latter requirement may encompass a variety of factual circumstances to be considered by a judge (see paragraph 63 above).

106. The Government argued that the above information discloses that early release is a privilege rather than a right. The Court considers that the notion of "privilege" may have different meanings in different contexts: it may refer either to a concession that can be granted or refused as the authorities see fit, or to a measure which the authorities are bound to grant once the person concerned satisfies certain prior conditions (see *Boulois*, cited above, § 97).

107. In the instant case the Court is of the view that the wording of Article 79 of the Criminal Code should be analysed in the light of the clarifications made by the Supreme Court in 2009, according to which the granting of measures relating to replacing or putting an end to a custodial measure should not be automatic and will ultimately remain at the discretion of the judge examining the case (see paragraph 63 above). Unlike the case of *Enea* (cited above, see in particular § 103), which concerned a restriction on the scope of existing rights, the present case concerns a benefit created as an incentive to prisoners (see similarly, *Boulois*, § 98).

108. Furthermore, the parties have both acknowledged that, even where the requirement relating to the prison term already served has been complied with, the court still has to apply the other, less formal, criteria relating to the applicant's personality, such as his behaviour and the history of his detention. Therefore, the court enjoys a certain degree of discretion in deciding whether the prisoner concerned merits the privilege in question.

109. As can be seen from Article 79 of the Criminal Code and the ruling of the Supreme Court, a court is to determine the issue of early release with reference to whether the convict has already served the statutory portion of his prison term, and whether the service of the remaining term is considered to be no longer necessary for his punishment and rehabilitation. As stated by the Supreme Court of Russia, examination of cases in this area requires an individualised approach, with due regard to the existence or absence of any continuing need of detention for rehabilitation of the convicted person, his or her personality, and attitude displayed toward labour or education during the prison term. The mere fact that the convict has already served the mandatory part of the prison term will not suffice for granting early release (see paragraph 63 above). If granted, release remains "conditional", since a court could revoke it if, during the period at liberty, the convict commits a breach of the public order, seriously violates the obligations imposed on him in the decision to grant early release, or commits a criminal offence (see paragraph 61 above).

110. It is true that the District Court refused to deal with the applicant's request for early release in February 2009, that is to say before the ruling of

the Plenary session of the Supreme Court in April 2009. However, it has not been suggested, and the Court does not find, that the state of the law before that ruling was subject to a different interpretation as to the nature of early release. It therefore concludes that there was no "right" to early release under Russian law.

111. In view of the foregoing and having regard to its case-law on the matters relating to the execution of a sentence and, specifically, the matter of early release (see, among others, *Macedo da Costa v. Luxembourg* (dec.), no. 26619/07, 5 June 2012, and *Pawlak v. Poland* (dec.), no. 73620/10, 2 April 2013), the Court cannot consider that the applicant's claims related to a "right" of a "civil" nature, which was recognised in Russian law or in the Convention. Accordingly, it concludes, like the Government, that Article 6 of the Convention is not applicable.

112. Finally, the Court notes that, one month later, another judge in the District Court did examine the merits of the applicant's renewed application and issued a reasoned decision refusing early release. This decision was then upheld on appeal (see paragraph 26 above). However, in view of the considerations in the preceding paragraphs, the Court does not need to decide whether this resolved the applicant's complaint concerning the manner in which his initial application for early release had been dealt with.

113. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION (REGARDING VISITS IN THE DETENTION CENTRE)

114. The applicant further complained that between April and September 2005 he had not been able to receive visits in the detention centre from his mother.

115. The Court will examine this complaint under Article 8 of the Convention (see *Vlasov v. Russia*, no. 78146/01, § 120, 12 June 2008), which reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

116. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court

concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it must be declared admissible.

B. Merits

1. The parties' submissions

117. The applicant argued that between March and August 2005 his mother, K., had lodged six requests before the trial judge, seeking authorisation to visit the applicant in the remand centre. The judge had orally dismissed her requests. The applicant had also lodged a number of complaints. The above had adversely affected his private life.

118. The Government argued that the applicant had received regular visits from K. as his lay defender until late March 2005; between April and July 2005 she had not requested any visits. Being stripped of her lay defender status in July 2005, the applicant's mother could thereafter have asked the trial judge for authorisation for family visits. Russian law provided for up to two visits per month from next-of-kin.

2. The Court's assessment

(a) General principles

119. The Court observes that detention entails by its very nature a limitation on private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him to maintain contact with his close family (see *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X, and *Estrikh v. Latvia*, no. 73819/01, § 166, 18 January 2007). Private life, as protected under Article 8, includes a right to maintain relationships with the outside world (see *Laduna v. Slovakia*, no. 31827/02, § 53, ECHR 2011, and *Nada v. Switzerland* [GC], no. 10593/08, § 151, ECHR 2012).

120. Such restrictions as limitations imposed on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visit arrangements constitute an interference with his rights under Article 8 of the Convention (see *Vlasov*, cited above, § 123). The Court recognises at the same time that some measure of control over prisoners' contacts with the outside world is called for and is not in itself incompatible with the Convention (see *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI, and *Lorsé and Others v. the Netherlands*, no. 52750/99, § 82, 4 February 2003).

121. The Court also reiterates that a restriction under Article 8 of the Convention must be applied "in accordance with the law", must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must

be justified as being "necessary in a democratic society" (see *Klamecki v. Poland (no. 2)*, no. 31583/96, § 144, 3 April 2003, and *Kučera v. Slovakia*, no. 48666/99, § 127, 17 July 2007).

122. According to the Court's case-law, the requirement of lawfulness means that the impugned measure should have some basis in domestic law and be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus be adequately accessible and foreseeable, that is to say, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 95, 4 December 2008). With respect to the need for foreseeability, what is required is that, where discretionary powers are conferred on authorities, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (see *Munjaz v. the United Kingdom*, no. 2913/06, § 88, 17 July 2012).

123. While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking there may be positive obligations inherent in the effective "respect" for private life (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 59, ECHR 2012). These obligations may involve the adoption of measures designed to secure respect for private life (ibid.). The boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 70, ECHR 2007-V, and *Davison v. the United Kingdom* (dec.), no. 52990/08, 2 March 2010).

(b) Application of the principles to the present case

(i) Interference

124. The Court observes that the Government may be understood as disputing the existence of any "interference" with the applicant's rights on the basis that the applicant's mother did not seek any visits between April and September 2005.

125. Russian law provides a detainee with the ability to receive visits from counsel, next-of-kin or other persons. Given the domestic regulations providing for an authorisation procedure for all visits, the applicant and his visitors could be expected to ask for such permission. Thus, the question arises whether the authorities' alleged failure to deal with this matter adversely affected the applicant's family and private life.

126. The Court also observes that the applicant lodged a number of complaints relating to restrictions on visits from his mother, K. (see paragraphs 17, 18, 42-48 above). The Court has no reason to doubt that he wished to receive visits from his mother. The applicant submitted to the Court a statement by K., who affirmed that she had been prevented from visiting her son in the detention centre (see paragraph 49 above). The Court is inclined to give credence to this submission (see, for comparison, *Čistiakov v. Latvia*, no. 67275/01, § 86, 8 February 2007, and *Komissarova v. Russia* (dec.), no. 25537/08, 3 July 2012).

127. There is no dispute between the parties that the alleged unavailability of visits from the applicant's mother interfered with his right to respect for his "private life", within the meaning of Article 8 § 1 of the Convention. The Court sees no reason to hold otherwise. The Court considers that there is no need to determine whether there has also been interference with the applicant's "family life", since in practice the factors to be examined in order to assess the proportionality of the interference are essentially the same (see *A.A. v. the United Kingdom*, no. 8000/08, §§ 46-49, 20 September 2011, and *Samsonnikov v. Estonia*, no. 52178/10, § 82, 3 July 2012, concerning the relationship between an adult applicant and his parent).

(ii) Justification for the interference

128. The Court notes that the main thrust of the applicant's complaint before the Court concerns the failure of the District Court to properly deal with the question of visits, thereby securing respect for his private life.

129. Indeed, it is common ground between the parties that the detention centre staff were not allowed under Russian law to make arrangements for a visit between the applicant and his mother without valid permission having been issued to her either as counsel or next-of-kin. So, such permission was an indispensable prerequisite for the applicant's exercise of his right, under Russian law, to receive visits in the detention centre.

130. As regards visits as counsel, the Court observes that in February 2004 the applicant's mother was admitted as his lay defender in the criminal case and thus was entitled, in this capacity, to pay him visits in the detention centre during the appeal proceedings (see paragraph 9 above). However, there was uncertainty as to whether the applicant's mother continued to benefit from the permission afforded in February 2004 during the relevant period, between April and July 2005, following the quashing of the trial judgment on appeal in March 2004 and pending retrial (see paragraphs 13, 45 and 46 above).

131. Replying to the applicant's complaints, the investigating and prosecuting authorities considered that the decision to admit K. to the proceedings was limited to the appeal proceedings, as is evident from the text of the decision, and thus was no longer valid (see paragraphs 13 and 45 above). The District Court President appeared to have taken the opposite

view on this matter in July 2005 (see paragraph 46 above), after the retrial judge had "stripped" K. of lay defender status. Furthermore, the Court notes that the Constitutional Court clarified the situation, albeit in 2008, in favour of the continuous validity of status as counsel in the course of criminal proceedings (see paragraph 56 above).

132. The Court reiterates that it is in the first place for the national authorities to interpret domestic law, as it stood at the material time. Before the Court the Government have not taken any position on this point of domestic law. Neither have they substantiated that prior to the decision of the Constitutional Court the applicant or his mother could effectively enforce this approach by way of bringing court proceedings (before the same District Court, for instance), for example against prison officers refusing access to the applicant, or having recourse to some other effective remedy.

133. In view of the available material, the Court considers that the applicant was left in a state of uncertainty, seriously affecting his "private life". In the Court's view, the domestic law at the material time and the express wording of the relevant decision were such as to allow the conclusion that K. could no longer visit the applicant as counsel between April and July 2005.

134. Be that as it may, between July and September 2005 when K. was clearly no longer acting as counsel, permission for a visit could have been granted to her as next-of-kin on the basis of the Custody Act. The Court observes in this respect that under section 18 of the Act "the authority dealing with the criminal case" was to also deal with the question of visits. During the relevant period the applicant's case was before the District Court pending retrial. However, that court refused to take any specific decision on the visits sought on the basis of the Custody Act (see paragraphs 43-46 above). There is no indication that the applicant and his mother had at their disposal any recourse against this omission or failure.

135. Furthermore, in *Vlasov* (cited above, §§ 124-126, concerning an investigator's ban on visits to the detained applicant for some seventeen months) the Court considered, on the basis of the parties' submissions, that the relevant provisions of the Custody Act (which were also applicable in the present case) fell short of the requirement of foreseeability because they conferred unfettered discretion on the investigator (the trial court, in the present case) but did not define the circumstances in which a visit could be refused. The impugned provisions went no further than mentioning the possibility of refusing visits, without saying anything about the length of the measure or the reasons that could warrant its application. No mention was made of the possibility of challenging the refusal to issue an authorisation or whether a court was competent to rule on such a challenge. The Court considered that the provisions of Russian law governing family visits did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities, so that the applicant did not enjoy the minimum degree of protection to which individuals are

entitled under the rule of law in a democratic society. In that case, the Court concluded that the interference could not be regarded as having been "in accordance with the law", as required under Article 8 of the Convention (§ 126 of the judgment).

136. In the present case, the Court considers that the domestic authorities did not take sufficient care to deal with the question of visits, thus failing to take measures relating to securing effective respect for the applicant's private life (see paragraph 46 above). In these circumstances, the prison staff would have had no valid reason to grant K. access to the applicant (see paragraph 129 above). It has not been suggested, and the Court does not consider, that the situation complained of was adequately mitigated by, for instance, the availability of other means of communication, such as the telephone.

137. There has accordingly been a violation of Article 8 of the Convention in relation to the question of visits by the applicant's mother between late July and September 2005.

V. ALLEGED VIOLATIONS REGARDING CORRESPONDENCE WITH THE COURT

138. The applicant alleged that the staff of the detention facilities had not dispatched a number of his letters to the Court in 2006.

139. Being the master of the characterisation in law to be given to the facts of the case (see *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 54, 17 September 2009), and having regard to the nature of the interference and the contents of the applicant's submissions, the Court considers that the matters relating to the correspondence between the applicant and the Court raise issues under both Articles 8 and 34 of the Convention (see *Yefimenko v. Russia*, no. 152/04, §§ 152-153, 12 February 2013).

140. Articles 8 and 34 of the Convention read as follows:

Article 8

"1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 34

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

A. The parties' submissions

141. The Government submitted that there had been no interference with the applicant's correspondence at the domestic level. During his detention in the Talovskiy TDC and the Voronezh Remand Centre the applicant had not handed over any letters addressed to the Court for dispatch by the staff of those detention facilities. During his detention in prison no. 3 the applicant had handed over twelve letters to the Court, of which eleven had been dispatched by the prison staff without delay. The remaining letter had been returned to the applicant, at his own request, for "redrafting".

142. The applicant submitted that as far back as July 2005 he had been compelled to ask his mother to dispatch the first letter to the Court, since the TDC staff had refused to do so. Similarly, in February 2006 the TDC staff had refused to dispatch another letter to the Court, without issuing any formal written refusal. In April 2006 he had been informed by the staff of the remand centre that another of his letters to the Court had been dispatched. While detained in prison no. 3, on 27 June 2006 he had handed yet another letter to the staff but had not been given any confirmation that it had been dispatched. Neither had the staff returned this letter to him for "redrafting". The applicant had made a written statement to the contrary in 2009, under threat from the prison governor. In July 2006 officers at the Talovskiy police station had refused to dispatch another piece of correspondence to the Court; the applicant had dispatched it via his mother. The applicant maintained his allegation, also arguing that he had been dependent on the staff of the detention facilities in seeking to correspond with the outside world, including the Court, and that the domestic regulations were such as to seriously undermine his ability to prove interference (non-dispatch of letters) and to ensure "respect" for his correspondence and the unhindered exercise of his right of application, as protected by Articles 8 and 34 of the Convention respectively.

B. The Court's assessment

143. The Court observes at the outset that the Government denied that the staff of the detention facilities had made any refusals to dispatch the applicant's correspondence to the Court during the period under consideration.

144. Having examined the parties' submissions and the material available to it, the Court considers that there is an insufficient factual basis to consider that there has been any unjustified interference by State authorities with the applicant's exercise of the right of petition in the proceedings before the Court in relation to the present application.

145. Therefore, the Court concludes that the respondent State has complied with its obligations under Article 34 of the Convention.

146. Similarly, the applicant's allegations being unsubstantiated, there is no indication that there has been any interference by the respondent State

with his right under Article 8 of the Convention. It follows that this complaint is inadmissible and must be rejected in accordance with Article 35 § 3 (a) and § 4.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

147. Lastly, the applicant complained about the conditions of his transfer between detention facilities in 2003-06; of ill-treatment in September 2002; periods of unlawful detention in 2002-05; and an unfair trial.

148. The Court has examined the above complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

149. 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

150. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage.

151. The Government contested the claim.

152. Having regard to the nature of the violations found, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

153. Since the applicant made no claim, the Court does not make any award under this head.

C. Default interest

154. 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

1. *Declares*, unanimously, the complaints concerning the conditions of the applicant's detention, a lack of effective remedies in this respect and the issue of visits in the detention centre admissible and *declares*, by a majority, the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Talovskiy Temporary Detention Centre and the Voronezh Remand Centre;

3. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention in conjunction with its Article 3;

4. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention on account of the issue of visits in the detention centre;

5. *Holds*, unanimously, that the respondent State has complied with its obligation under Article 34 of the Convention;

6. *Holds*, unanimously,
   (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 8,000 (eight 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*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President