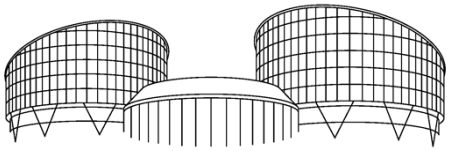

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MELA v. RUSSIA

(Application no. 34044/08)

JUDGMENT

STRASBOURG

23 October 2014

FINAL

23/01/2015

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

In the case of Mela v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 30 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 34044/08) 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 Nigerian national, Mr Richard Mela ("the applicant"), on 7 April 2008 when he introduced his complaints about the conditions of his pre-trial detention in the remand prison in 2007-08 and the alleged unlawfulness of his pre-trial detention. On 12 January 2010 the applicant introduced a complaint about the conditions of his detention in the correctional colony. On 23 February 2012 the applicant lodged a complaint concerning the conditions of his detention in the remand prison in 2009-11.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in appalling conditions and in the absence of any charges against him.

4. On 23 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Lagos, Nigeria.

A. Criminal proceedings against the applicant

6. On 27 September 2007 the applicant was arrested on suspicion of robbery. On 28 September 2007 the Krasnogvardeiskiy District Court of St Petersburg authorised his detention pending investigation. The court noted that the applicant was suspected of having committed a serious offence entailing a custodial sentence of up to seven years, that he did not have a permanent place of residence or employment in St Petersburg and that, if released, he might re-offend or abscond. The applicant appealed.

7. On 9 October 2007 the applicant was charged with robbery.

8. On 22 October 2007 the applicant lodged a complaint against the investigator, claiming that he had been charged belatedly. He argued that he should have been released in view of the applicable rules of criminal procedure, which provided that, if a suspect was not charged within ten days of his arrest, he was to be released immediately.

9. On 26 October 2007 the District Court dismissed the applicant's complaint lodged on 22 October 2007, noting that the appeal proceedings concerning the lawfulness of the applicant's detention authorised by the court order of 28 September 2007 were still pending. On 29 January 2008 the City Court upheld the decision of 26 October 2007 on appeal.

10. On 1 November 2007 the St Petersburg City Court upheld the court order of 28 September 2007 on appeal.

11. On 21 December 2007 the District Court extended the applicant's pre-trial detention until 27 January 2008. On 26 February 2008 the City Court upheld the relevant decision on appeal. The applicant remained in custody during the criminal proceedings against him.

12. On 1 April 2008 the District Court found the applicant guilty as charged and sentenced him to four years' imprisonment.

13. On 22 July 2008 the City Court upheld the applicant's conviction on appeal.

B. Loss of the applicant's passport

14. Following the applicant's arrest, the investigator in charge of his case seized the applicant's Nigerian passport, which was supposed to be filed together with the other materials concerning the criminal investigation. It appears that the passport was lost.

15. In response to a complaint lodged by the applicant, the regional department of the interior carried out an inquiry, which confirmed the applicant's allegations about the loss of the passport. The investigator was subjected to a disciplinary sanction. On 5 September 2010 the applicant was informed accordingly. As regards the issuance of a new passport, the applicant was advised to contact the Nigerian consulate.

16. It appears that the applicant unsuccessfully attempted to bring a civil action against the domestic authorities for the loss of his passport. On 17 December 2010 the Tverskoy District Court of Moscow dismissed the applicant's claims against the Ministry of Finance. The applicant appealed. He did not inform the Court about the outcome of the appeal proceedings.

C. Conditions of detention

17. As regards the timeframe of the applicant's detention, the Government provided the following information:

Period of detention	Type of detention facility
From 28 September 2007 to 29 February 2008	Remand prison no. IK-1 (former remand prison no. IZ-47/1) (from 19 to 24 December 2007, from 3 to 7 January, from 16 to 21 January, and from 31 January to 2 February 2008 the applicant was held in a disciplinary cell)
From 29 February to 21 March 2008	Regional prison hospital
From 21 March to 4 August 2008	Remand prison no. SIZO-1 (from 14 to 21 July 2008 the applicant was held in a disciplinary cell)
From 4 August 2008 to 2 November 2009	Correctional colony no. IK-6
From 2 to 16 November 2009	Remand prison no. SIZO-1
From 16 November 2009 to 11 February 2010	Correctional colony no. IK-6
From 11 February to 27 September 2010	Remand prison no. SIZO-1 (on 18 February 2010 the applicant was held in a disciplinary cell; from 24 June to 28 July 2010 the applicant was held in a hospital ward)
From 27 September to 7 October 2010	Correctional colony no. IK-6
From 7 October 2010 to 14 February 2011	Remand prison no. SIZO-1
From 14 February to 5 March (?) 2011	Correctional colony no. IK-6
From 21 March to 6 June 2011	Remand prison no. SIZO-1
From 6 June to 1 August 2011	Correctional colony no. IK-5
From 1 August to 26 September 2011	Remand prison no. SIZO-1

18. On 26 September 2011 the applicant was released, having served his prison sentence.

1. Remand prison no. SIZO-1 in St Petersburg

(a) The Government's submissions

19. According to the Government, all the cells in the remand prison, except for the hospital wards, measured 8.4 square metres. They were equipped with four beds. The number of inmates detained with the applicant never exceeded four persons in each cell.

20. The Government submitted the following excerpts from the remand prison population register:

Date	Cell number	Cell population, including the applicant
26 October 2007	300	1
19 November 2007	79	3
19 November 2007	108	1
27 November 2007	108	3-4
5 January 2008	Disciplinary cell	1
13 January 2008	108	2
17 January 2008	Disciplinary cell	1
2 February 2008	Disciplinary cell	1
14 December 2008	108	3
15 February 2010	114	3
18 February 2010	114	2
19 February 2010	Disciplinary cell	1
2 March 2010	30	2
14 March 2010	53	2
5 May 2010	53	2
16 July 2010	21 (hospital ward)	7-8
12 August 2010	69	2
27 August 2010	749	4
20 September 2010	752	4

21. All the cells were equipped with a ventilation system in working order. The windows in the cells had small vents, which could be kept open to ensure access to fresh air. The metal grills on the windows with openings measuring 10 by 20 cm did not prevent access to daylight.

22. During the daytime the cells were lit with a 60-75-watt electric bulb. During the night the cells were lit with a 40-watt electric bulb. The temperature in the cells was maintained at +22°C in the summer and +18°C in the winter.

23. The toilet in each cell was separated from the living area by a 1.5-metre high wooden partition and a door, which ensured sufficient

privacy. The distance between the toilet and the dining table was at least 2 metres. There was a sink with hot and cold running tap water.

24. The meals provided to the detainees were in compliance with ration and quality standards. The applicant was allowed to take a fifteen-minute shower at least once a week. The bed sheets were changed weekly. The inmates were allowed daily outdoor exercise for at least an hour.

(b) The applicant's submissions

25. According to the applicant, he was held in cells nos. 42, 101, 142, 149, 741, 742 and 778 of the remand prison. All the cells were of the same size and the conditions of detention were the same.

26. The cells were overcrowded and the inmates had to take turns to sleep. On many occasions persons suffering from hepatitis or HIV-infected inmates were placed in the same cell. The toilet was not separated from the living area of the cell. The ventilation did not function. It was hot in the summer and cold in the winter. The food was of a low quality. The inmates were not provided with toiletries. The mattresses and bed sheets were of a poor quality. The light was constantly on. The inmates were allowed only one-hour's daily exercise.

2. Correctional colony no. IK-6

(a) The Government's submissions

27. The Government submitted the following information as regards the applicant's detention in the correctional colony:

Period of detention	Unit no.	Total surface in square metres (including exercise area)	Number of inmates assigned to the dormitory	Total number of sleeping places per unit	Sanitary facilities per unit
From 4 to 21 August 2008	Quarantine	295 (189?)	47	50	5 wash sinks 4 toilets 6 urinals
From 21 August to 9 September 2008	Unit 11 (section 2)	363	57	100	10 wash sinks 4 toilets 1 urinal
From 9 September to 2 November 2009	Unit 16 (section 2)	578	45	100	6 wash sinks 6 toilets 6 urinals

Period of detention	Unit no.	Total surface in square metres (including exercise area)	Number of inmates assigned to the dormitory	Total number of sleeping places per unit	Sanitary facilities per unit
From 16 November 2009 to 5 February 2010	Unit 16 (section 2)	578	36	100	See above
From 5 to 11 February 2010	Disciplinary cell	8 (surface area of the cell alone)	1	2	No data
From 27 September to 7 October 2010	Quarantine	295 (189?)	48	50	See above
From 14 February to 5 March (?) 2011	Quarantine	295 (189?)	30	50	See above

28. At all times the applicant was provided with an individual bed. The windows in the dormitories ensured adequate access to daylight. The lavatory was separate from the living area of the units. Each toilet was located in a separate cubicle. The quarantine section had five wash sinks, four toilets and six urinals. In unit 11 there were ten wash sinks, four toilets and one urinal. In unit 16 there were six wash sinks, six toilets and six urinals. The temperature and lighting were adequate. The inmates had access to an outdoor exercise area in accordance with the schedule.

(b) The applicant's submissions

29. According to the applicant, the dormitories were overcrowded and he did not have an individual bed. He was assigned to a dormitory measuring 46 sq. m and housing from twenty-five to thirty inmates. On many occasions persons suffering from hepatitis or HIV-infected inmates were placed in the same dormitory. The bathroom in the building housing 150 persons was equipped with three toilets. The inmates were allowed one shower per week. The shower room measured 36 sq. m and was equipped with fourteen shower heads. Each person had from approximately seven to thirteen minutes to take a shower.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

30. Section 23 of the Detention of Suspects Act of 15 July 1995 provides that detainees should be kept in conditions that meet sanitary and hygienic requirements. They should be provided with an individual sleeping place and be given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

31. Article 99 § 1 of the Penitentiary Code of 8 January 1997 provides for a minimum standard of two square metres of personal space for male prisoners in correctional colonies.

B. Remand of a suspect in custody

32. The Russian Code of Criminal Procedure (Article 100) provides for a possibility to impose a measure of restraint, including remand in custody, on a person suspected of having committed a criminal offence such as robbery before he is actually charged. In such a case, should a suspect not be charged within ten days of his arrest, the measure of restraint imposed on him should be lifted and he is to be released immediately.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that he had been detained in appalling conditions in remand prison no. SIZO-1 and correctional colony no. IK-6 in St Petersburg. He referred to Article 3 of the Convention, which reads as follows:

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

34. The Government submitted that the applicant's complaint should be rejected for his failure to comply with the requirements of Article 35 § 1 of the Convention. In their opinion, it had been open to the applicant, in order to obtain adequate relief, to address his grievances to the administration of the prison facility where he had been detained, the Russian Parliament, the President or the Government of the Russian Federation or its constituencies, the federal prison department, a prosecutor or a court. They 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 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 5 August 2009 the Astrakhan Regional Court had found credible A.'s allegations concerning the conditions of his detention in a remand prison and awarded him non-pecuniary damages in the amount of RUB 4,700.

35. The applicant did not comment.

A. Admissibility

1. Exhaustion of domestic remedies

36. As regards the Government's objection as to the exhaustion of domestic remedies, in the case of *Ananyev* (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 93-119, 10 January 2012) the Court carried out a thorough analysis of domestic remedies in the Russian legal system in respect of complaints relating to the material conditions of pre-trial detention. The Court concluded in that case that it had not been shown that the Russian legal system offered an effective remedy that could have been used to prevent the alleged violation or its continuation and could have provided the applicants with adequate and sufficient redress for their complaint of inadequate conditions of detention. Accordingly, the Court dismissed the Government's objection as to the 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. There is nothing in the materials submitted by the Government in the present case that would allow the Court to reach a different conclusion. It follows that the part of the Government's objection relating to the applicant's complaint about the conditions of his detention in the remand prison should be dismissed.

37. In so far as the Government's objection concerns the applicant's complaint about the conditions of detention in the correctional colony, the Court firstly notes that the Government have not specified what redress the legislative or executive powers of the Russian Federation or its constituencies would provide in respect of the applicant's complaint. Accordingly, it finds the Government's argument in that part without merit.

38. Nor can the Court consider that recourse to the federal prison service would be effective, as it would not have a sufficiently independent

standpoint to satisfy the requirements of Article 13 (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61). In deciding on a complaint concerning conditions of detention for which they were responsible, they would in reality be judges in their own cause.

39. As regards a possibility to complain to a prosecutor, the Court notes that it has already examined the Government's argument 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 this respect, the Court concluded that a complaint to a prosecutor about unsatisfactory conditions of detention did not give the person using it a personal right to the exercise by the State of its supervisory powers and that it could not be regarded as an effective remedy (see *Ananyev and Others*, cited above, § 104). In the present case there is nothing in the materials before the Court that would allow it to reach a different conclusion. Accordingly, recourse to a prosecutor does not constitute an effective remedy.

40. In so far as the Government, relying on the domestic courts' judgments, suggested 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 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 the effectiveness of a claim for damages incurred in connection with inhuman or degrading conditions of detention.

41. Lastly, the Court further observes that in a number of earlier cases concerning conditions of detention in correctional colonies in Russia, it has examined and dismissed the Government's objection as to the alleged non-exhaustion of domestic remedies by the applicants. In those cases the Court noted that the Government had failed to demonstrate the practical effectiveness of the applicants' recourse to the domestic authorities in respect of their complaints about the conditions of his detention in a correctional colony (see, among other authorities, *Sergey Babushkin v. Russia*, no. 5993/08, §§ 41-45, 28 November 2013).

42. Having examined the Government's arguments, the Court finds no reason to depart from that conclusion in the present case. Accordingly, the Court rejects the Government's argument as to the non-exhaustion of domestic remedies with respect to the applicant's complaint about the conditions of detention in the correctional colony.

2. Compliance with the six-month rule

43. In the light of the Court's finding (see paragraphs 36-42 above) that the Russian legal system offers no effective remedy in respect of the applicant's complaint, the Court considers that the six-month period should start running from the end of the situation complained of.

Severability of the applicant's complaints

44. The Court notes from the outset that the applicant's complaints concern the conditions of his detention in two different types of detention facility, notably in remand prison no. SIZO-1 and correctional colony no. IK-6 in St Petersburg. He was detained in the remand prison pending investigation and trial. Once his conviction had become final, the applicant was sent to serve a prison sentence in the correctional colony. His detention there was not, however, continuous and was punctuated by several transfers back to the remand prison. Accordingly, the Court's task in the present case is to ascertain whether the applicant's detention constituted a "continuing situation". If not, it must decide on the admissibility of the applicant's complaint in respect of each period of his detention.

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

46. Mindful of the above, the Court finds that the applicant's detention in remand prison no. SIZO-1 and in correctional colony no. IK-6 in St Petersburg do not constitute a "continuing situation". It will accordingly consider separately whether the applicant complied with the six-month rule in respect of his complaints concerning the conditions of detention in those facilities.

(i) Remand prison no. SIZO-1 in St Petersburg

47. The Court observes that the applicant was detained in the remand prison during the following periods (see paragraph 17 above):

- from 28 September 2007 to 29 February 2008;
- from 21 March to 4 August 2008;
- from 2 to 16 November 2009;
- from 11 February to 27 September 2010;
- from 7 October 2010 to 14 February 2011;
- from 21 March to 6 June 2011; and

- from 1 August to 26 September 2011.

48. As regards the applicant's detention during the investigation and trial, that is between 28 September 2007 and 4 August 2008 (see paragraphs 6 and 13 above), the Court considers that it constituted a continuing situation, the applicant's temporary placement in a prison hospital from 29 February to 21 March 2008 having no incidence on the continuous nature of the detention.

49. The Court further notes that the applicant's transfer to the correctional colony on 4 August 2008 (see paragraph 27 above) put an end to the "continuing situation" and his subsequent placements in the remand prison cannot be regarded as a continuation of the situation that existed during his pre-trial detention (see paragraph 45 above). Accordingly, at the end of each such period the applicant was required to lodge a complaint about the conditions of his detention in order to comply with the six-month rule.

50. Accordingly, the Court's findings as regards the applicant's compliance with the six-month rule can be summarised as follows.

(α) Detention between 28 September 2007 and 4 August 2008

51. The Court observes that the applicant introduced the complaint about the conditions of his detention from 28 September 2007 to 4 August 2008 on 7 April 2008. The Court finds, accordingly, that the applicant complied with the six-month rule in respect of this part of the application.

(β) Detention between 2 November 2009 and 26 September 2011

52. The Court observes that the applicant introduced the complaint in respect of the remaining periods of his detention between 2 November 2009 and 26 September 2011 in the remand prison on 23 February 2012. Accordingly, it considers that the part of the complaint concerning the periods of detention from 2 to 16 November 2009, from 11 February to 27 September 2010, from 7 October 2010 to 14 February 2011 and from 21 March to 6 June 2011 has been lodged out of time and must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

53. The Court further considers that by lodging the complaint about the conditions of detention from 1 August to 26 September 2011 on 23 February 2012, the applicant complied with the six-month rule in respect of that part of the application.

(ii) Correctional colony no. IK-6 in St Petersburg

54. The Court observes that the applicant was detained in correctional colony no. IK-6 in St Petersburg during the following periods (see paragraph 17 above):

- from 4 August 2008 to 2 November 2009;
- from 16 November 2009 to 11 February 2010;

- from 27 September to 7 October 2010; and
- from 14 February to 5 March 2011.

55. Given that the applicant was sent to the correctional colony to serve a prison sentence, and in the absence of any evidence that the material conditions of the applicant's detention there significantly varied, the Court considers that it must examine the applicant's detention in the correctional colony as a whole.

56. The Court considers that by introducing the complaint about the conditions of his detention in correctional colony no. IK-5 on 12 January 2010, the applicant complied with the six-month rule in respect of that part of the application.

3. Conclusion

57. The Court notes that the complaint about the conditions of the applicant's detention in remand prison no. SIZO-1 in St Petersburg from 28 September 2007 to 4 August 2008 and from 1 August to 26 September 2011, and in correctional colony no. IK-6 in St Petersburg during multiple periods between 4 August 2008 and 5 March 2011, 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. The parties' submissions

58. The Government submitted that the conditions of the applicant's detention had been in compliance with the standards set forth in Article 3 of the Convention. They relied on twenty excerpts from the prison population register and the certificates prepared by the administration of the remand prison and the correctional colony in December 2011.

59. The applicant maintained his complaint. He did not challenge the veracity of the certificates submitted by the Government. However, he argued that both the remand prison and the correctional colony had been overcrowded and that he had not been provided with an individual bed.

2. The Court's assessment

60. For an overview of the general principles, see the Court's judgment in the cases of *Ananyev and Others* (cited above, §§ 139-59) and *Sergey Babushkin* (see *Sergey Babushkin*, cited above, §§ 48-51).

(a) Conditions of detention in the remand prison

61. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in remand prison no. SIZO-1 in

St Petersburg. However, there is no need for the Court to establish the veracity of each and every allegation. The focal issue for the Court in the present case is the personal space afforded to the applicant during his detention at the remand prison.

62. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in certain instances the respondent Government alone have access to information capable of corroborating or refuting the allegations made. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the validity of the applicant's allegations (see, among other authorities, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

63. In support of their submissions as to the cell population and the availability of an individual sleeping place, the Government produced certificates issued by the remand prison administration in August 2010 and selected pages from the prison population register, which recorded each day the number of inmates per cell (see paragraph 20 above).

64. The certificates from the prison governor contained information on cell sizes and the number of beds per cell.

65. As regards the copies of the prison population register produced by the Government, the Court notes, firstly, that the Government preferred to submit the copies of certain pages only, covering twenty days, whereas the applicant spent over a year in the remand prison. In the Court's view, such incomplete and selective evidence is unconvincing (see, for similar reasoning, *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008; and *Kokoshkina v. Russia*, no. 2052/08, § 60, 28 May 2009).

66. The Court further notes that, even assuming that, as submitted by the Government, there were never more than four inmates detained in the same cell as the applicant, on some occasions the personal space afforded to each inmate under such conditions was as low as 2.1 square metres. Apart from an hour's daily exercise, the applicant was confined to his cell for the rest of the time. In the Court's view, his out-of-cell activity, if any (occasional meetings with his lawyer, participation in court hearings or fifteen-minute weekly showers), did not significantly alter the conditions of his detention.

67. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see, among the leading authorities, *Ananyev and Others*, cited above, § 166). It further notes that the conditions of detention in remand prison no. SIZO-1 in St Petersburg have been subject to examination by the Court on numerous occasions. The Court has consistently found a violation of Article 3 of the Convention in those cases on account of the appalling conditions in which the inmates were detained (see, among other numerous

authorities, *Tsarenko v. Russia*, no. 5235/09, §§ 47-53, 3 March 2011; *Gorbulya v. Russia*, no. 31535/09, §§ 64-73, 6 March 2014; and *Malyugin v. Russia*, no. 71578/11, §§ 20-23, 13 March 2014, where the periods of detention complained of overlapped with the time the applicant in the present case spent in the same remand prison).

68. Having regard to its case-law on the subject and the materials submitted by the parties, the Court reaches the same conclusion in the present case. The fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates was in itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of anguish and inferiority capable of humiliating and debasing him.

69. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. SIZO-1 in St Petersburg during the periods between 28 September 2007 and 4 August 2008 and from 1 August to 26 September 2011, which amounted to inhuman and degrading treatment within the meaning of that provision.

(b) Conditions of detention in correctional colony no. IK-6 in St Petersburg

70. The Court notes from the outset that the Government did not submit complete information in response to its request about the conditions of the applicant's detention in correctional colony no. IK-6 in St Petersburg. In particular, the Government failed to indicate the exact surface area of the dormitories to which the applicant was assigned. Nor did they make any comment as regards the total population of each unit where the applicant was detained (see paragraph 27-28 above).

71. Accordingly, the Court accepts the applicant's assertion that the dormitories in the correctional colonies measured 46 square metres and that the population of each building he was detained in was 150 inmates. It further takes into account that, according to the certificates submitted by the Government and not contested by the applicant, the number of inmates assigned to the same dormitory as the applicant varied between thirty and fifty-seven. Accordingly, the personal spaced afforded to each inmate was from 0.80 to 1.53 square metres. The Court is mindful of the fact that this figure is below the domestic statutory standard of 2 square metres for male convicts in correctional colonies (see paragraph 31 above). It reiterates that this figure must be viewed in the context of the wide freedom of movement enjoyed by the applicant from the wake-up call in the morning to lights out at night, when he would have been able to move about a substantial part of the correctional colony, including the rest of the prison block and adjacent grounds (compare *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). Nevertheless, in the circumstances of the present case, the Court considers that the level of privacy available to the applicant was

insufficient to comply with the standards set forth in Article 3 of the Convention. For approximately a year and seven months, during the night, the applicant was housed in a dormitory with at least thirty other persons where he was afforded no more than 1.53 square metres of personal space. At times the personal space afforded to him was as low as 0.80 square metres. Furthermore, in the Court's view, the sanitary facilities available were not sufficient to accommodate the needs of the detainees. In each unit there were no more than ten wash sinks and six toilets available for approximately 150 detainees living in the same block as the applicant (compare *Klyukin v. Russia*, no. 54996/07, § 65, 17 October 2013).

72. 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-6 in St Petersburg during multiple periods between 4 August 2008 and 5 March 2011, which the Court considers inhuman and degrading within the meaning of this provision.

(c) Summary of the Court's conclusions

73. Regard being had to the above findings, the Court considers that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. SIZO-1 in St Petersburg from 28 September 2007 to 4 August 2008 and from 1 August to 26 September 2011, and in correctional colony no. IK-6 in St Petersburg between 4 August 2008 and 5 March 2011.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

74. The applicant complained that he had not had an effective remedy in respect of his grievances under Article 3 of the Convention. He referred to Article 13 of the Convention, which reads as follows:

> "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."

75. The Government considered the applicant's complaint unsubstantiated.

76. The applicant maintained his complaint.

A. Admissibility

77. 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

78. The Court takes note of its earlier findings (see paragraphs 36-42 above) and concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law enabling the applicant to complain about the conditions of his detention in remand prison no. SIZO-1 and correctional colony no. IK-6 in St Petersburg (see *Ananyev*, cited above, § 113, and *Babushkin*, cited above, § 45).

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

79. The applicant complained that, in contravention of the applicable rules of criminal procedure, he had not been released following the authorities' failure to charge him within ten days of his arrest. The Court will examine the complaint under Article 5 § 1 (c) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]"

80. The Government conceded that the applicant had been indicted with a delay and his detention pending indictment had exceeded the ten-day period provided for by law. However, in their opinion, the applicant's rights had not been *de facto* infringed, given that the whole period of his pre-trial detention had been offset against the imposed prison sentence. Lastly, they suggested that the applicant's complaint should be dismissed for his failure to exhaust effective domestic remedies in this respect. They considered that it had been incumbent on the applicant to challenge in court the investigator's failure to release him.

81. The applicant did not comment.

A. Admissibility

82. As regards the Government's argument that the applicant had failed to exhaust effective domestic remedies in respect of his complaint, the Court notes that on 22 October 2007 the applicant expressly complained to the District Court about the investigator's failure to release him in the absence of any charges brought against him within ten days following his arrest. The

complaint was reviewed by the courts at two levels of jurisdiction and dismissed (see paragraphs 8-10 above).

83. It follows that the applicant cannot be said to have failed to exhaust domestic remedies in respect of his complaint about the unlawfulness of his pre-trial detention. Thus, the Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

84. The Court also 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

85. The Court reiterates at the outset that Article 5 of the Convention protects the right to liberty and security. This right is of primary importance "in a democratic society" within the meaning of the Convention (see, amongst many other authorities, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12; *Assanidze v. Georgia* [GC], no. 71503/01, § 169, ECHR 2004-II; and *Ladent v. Poland*, no. 11036/03, § 45, 18 March 2008).

86. Everyone is entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 77, ECHR 2010). Where the "lawfulness" of detention is at issue, including the question whether "a procedure prescribed by law" has been followed, the Convention essentially refers to national law. It requires at the same time that any deprivation of liberty be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111; and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008).

87. Turning to the circumstances of the present case, the Court observes that the applicant was arrested on 27 September 2007 (see paragraph 6 above). Accordingly, pursuant to the requirements of the applicable rules of criminal procedure (see paragraph 32 above), it was incumbent on the prosecuting authorities to indict him within the following ten days, that is no later than 7 October 2007. However, no charges were brought against the applicant until 9 October 2007 (see paragraph 7 above). Nevertheless, despite the express requirement of the Russian law that a suspect should be released in such a case, the applicant remained in custody. In this connection, the Court takes into account the Government's admission that the applicant's detention after 7 October 2007 had not been compatible with the applicable rules of criminal procedure.

88. In the circumstances of the case, the Court finds without merit the Government's argument that the applicant's rights were not *de facto* infringed.

89. It follows that the applicant's detention during the period in question was not "lawful" or "in accordance with a procedure prescribed by law". There has accordingly been a violation of Article 5 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

90. Lastly, the applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair. He also alleged that the prosecuting authorities had lost his Nigerian passport. He further claimed that his rights set out in Articles 1, 13 and 17 of the Convention and Articles 2 and 6 of Protocol No. 4, Article 7 of Protocol No. 7 and Article 1 of Protocol No. 12 had been violated.

91. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 13,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

94. The Government considered the applicant's claims excessive and contrary to the Court's practice. They proposed that the finding of a violation would constitute sufficient just satisfaction.

95. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

96. The Court notes, on the other hand, that it is undeniable that the applicant suffered distress, frustration and anxiety caused by the appalling conditions of detention and unlawful deprivation of liberty. The Court considers that the applicant's suffering cannot be compensated for by the

mere finding of a violation. However, it accepts the Government's argument that the specific amount claimed is excessive. Making its assessment on an equitable basis, it awards the applicant EUR 6,500, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

97. The applicant also claimed EUR 100 for the costs and expenses incurred before the domestic courts.

98. The Government considered the applicant's claims unsubstantiated.

99. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicant's claim for costs and expenses in the domestic proceedings.

C. Default interest

100. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 3, 5 § 1 (c) and 13 of the Convention admissible and the remainder of the application inadmissible;

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

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

4. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President