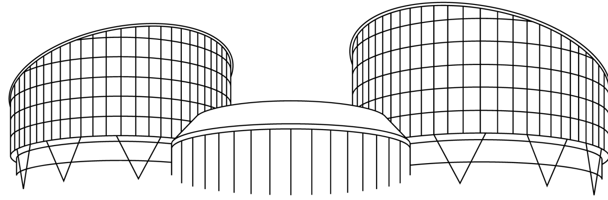

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ALEKSANDR MATVEYEV v. RUSSIA

(Application no. 14797/02)

JUDGMENT

STRASBOURG

8 July 2010

FINAL

08/10/2010

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

In the case of Aleksandr Matveyev v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 14797/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Vladimirovich Matveyev ("the applicant"), on 27 February 2002.

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

3. The applicant alleged that he had been ill-treated after his arrest, that the conditions of his detention on remand had been appalling and that the criminal proceedings against him had been unfair. By letter of 2 December 2003 the applicant also complained that placing him in the disciplinary cells of OYa-22/7 had restricted his rights.

4. On 13 October 2005 the President of the Third Section decided to communicate the complaints about the conditions of the applicant's detention on remand to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1). The case was subsequently transferred to First Section for examination.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in the town of Pestovo in the Novgorod Region.

A. The applicant's arrest

1. The applicant's arrest, as reflected in the case file records

6. On the evening of 14 April 2000 the applicant was arrested on suspicion of having committed murder and remanded in custody in detention facility IVS of police station no. 36 in the Vyborgskiy District of St Petersburg (*ИВС при 36 отделении милиции Выборгского района г. Санкт-Петербурга*).

7. The arrest report drawn up on 15 April 2000 at 1 p.m. contains the typed description of the applicant's procedural rights, in particular "the right to be represented by a lawyer from the moment of drawing up of the arrest report" and "the right not to incriminate oneself". It was signed by the applicant and also includes the applicant's statement that he "wishes to give evidence in the presence of counsel G.". Lastly, the report contains the following hand-written statement, also signed by the applicant:

> "I did commit, together with V., the murder of P. on 5 April 2000."

8. A record of the applicant's questioning on 15 April 2000, signed by the applicant and counsel G., according to which the applicant was questioned from 1.15 to 4 p.m. in the presence of counsel G., contains a detailed description of the murder and robbery of P.

9. According to a subsequent record of 17 April 2000 signed by the applicant and counsel G., the applicant "confirmed his testimony contained in the record of 15 April 2000".

10. According to the records of subsequent interviews, also signed by the applicant and his representative, the applicant refused to give further evidence and stated that he confirmed his confession, but only in part.

11. The records do not contain any indication of or complaints about coercion or ill-treatment.

12. On 17 April 2000 the prosecutor of the Vyborgskiy District of St Petersburg authorised the applicant's further detention.

13. According to the applicant, he was transferred to remand prison IZ-45/4 in St Petersburg (SIZO no. 4).

14. The Government submitted that the transfer had taken place on 20 April 2000.

2. The applicant's account of events of 15 April 2000

15. In his application to the Court the applicant gave the following account of the events of 15 April 2000.

16. The applicant was escorted for questioning to an office, where he was fettered to the floor with handcuffs and put in an uncomfortable sitting position. The applicant was then beaten up by men who did not state their names.

17. The applicant submitted that they had beaten him "professionally", inflicting blows in such a way as to leave no traces and using, in particular, plastic bottles filled with water. They had also held a knife to his throat, threatened him with death and promised to chop his head off. At first, the officers had beaten the applicant without asking him to do or say anything, but after some time they had invited him to confess. When the applicant refused, they had shown him a written statement of his friend V., who had been arrested in connection with the same criminal case and had "confessed to things he had never done".

18. The applicant submitted that, being demoralised and fearing for his life, he had confessed to a murder and a robbery but had refused to incriminate V.

19. The applicant submitted that he had told his counsel about the ill-treatment but his counsel had failed to react.

20. It does not appear that the applicant requested medical assistance or complained to any domestic authority in connection with the alleged ill-treatment.

B. The applicant's trial

1. First-instance proceedings

21. By a judgment of 5 December 2000 the St Petersburg City Court convicted the applicant of having killed and robbed P. and having stolen his passport. The court sentenced the applicant to eighteen years' imprisonment in a high security prison and the confiscation of his property.

22. By the same decision it acquitted him on a separate count of theft because the prosecution had been based solely on the applicant's confession and the victim's statement. Referring to the record of the applicant's psychiatric-psychological examination, the court ordered his compulsory out-patient psychiatric treatment for drug addiction.

23. The applicant was represented at the trial by counsel G. Throughout the trial they consistently defended the view that the victim had in fact been killed by a third person and not by the applicant.

24. The court rejected this argument by reference to the oral evidence given by three witnesses and a police officer in charge of the investigation

and also to the discrepancies and contradictions in the applicant's own statements.

25. The court further cited the applicant's and his co-accused's statements from the pre-trial stage describing in detail the killing and robbery, and held that they “corresponded to the factual circumstances of the case in part, concerning the preparation and execution of the robbery of the victim P. and his especially cruel murder by [the applicant]”. In finding the applicant guilty, the court also referred to various pieces of evidence, including, in particular, statements from four witnesses, the crime scene inspection report, three identification parade reports, a record of the identification of the stolen goods, seizure records, forensic medical and biological reports and the applicant's explanations about the blood spots on his jacket.

26. During the trial the defence argued that the applicant had been forced by the authorities to confess, with threats of violence. In this respect, the court established the following:

> “As to [the applicant's] allegations that, by threatening him with violence and even death, the police officers had forced him to confess to having killed and robbed P., witness Pe. [the investigator] stated that no violence or threats were applied to [either] co-accused throughout their arrest and questioning. They gave evidence voluntarily, on some occasions in the presence of their defence counsel.
>
> In this connection Matveyev [the applicant] submitted at a court hearing that Pe. had never threatened him at the pre-trial investigation and that he [the applicant] did not know the names of the police officers who had threatened him and would not be able to identify them.”

27. According to the minutes of the hearing, the applicant and his counsel did not object to the conclusion of the trial in the absence of witness M. The hearing transcript also contains no indication that the applicant or his defence counsel requested the court to summon witness K.

28. It appears that some time after the trial the defence changed their counsel.

29. The applicant, his newly appointed counsel and his mother, admitted to the appeal proceedings as a “public defender”, appealed against the conviction. In his appeal submissions, the applicant's counsel alleged, among other things, that the trial court had failed to summon and examine witnesses K. and M.; that in ordering the applicant's compulsory medical treatment it had failed to properly take into account his state of health; and that it should not have based the applicant's conviction on his forced pre-trial statements and referred to the statement of the investigator in rejecting his submission that the victim had been killed by a third person. The applicant's counsel further contested at length the way in which the trial court had assessed the evidence before it. In his own appeal submissions, the applicant alleged that he had not killed P.

2. Decision on the applicant's objections to the transcript of the court hearings

30. By a decision of 18 April 2000, judge Sh. rejected the applicant's objections to the transcript of the court hearings as unfounded and tending to revise the facts established by the trial court.

3. Appeal proceedings

31. By decision of 27 September 2001 the Supreme Court upheld the judgment in respect of the applicant. The hearing was conducted by way of videoconferencing. Both the applicant and his mother were given the floor.

32. The court held, in particular, that:

> "Having analysed the evidence gathered in the case in its entirety, the first-instance court reached a well-founded conclusion as to [the applicant]'s and [V.'s] guilt in the crimes committed by them ... [,] having provided sufficient reasons for its conclusions concerning their guilt and the classification of the defendants' acts.
>
> The case was investigated and examined by the [trial] court without any significant violations of the provisions of the RSFSR CCrP which could have had prejudiced the court's judgment, including the issue of admissibility of evidence."

C. Conditions of detention

33. The applicant submitted that he had been held in SIZO no. 4 in St Petersburg and also in remand prison IZ-77/3 (SIZO no. 3) in Moscow. In respect of the former facility, he submitted that he had been detained there from 17 April 2000 to 8 September 2001 and from January to March 2002. He did not submit specific dates concerning his detention in SIZO no. 3, but suggested that it had taken place between September 2001 and January 2002.

34. The Government submitted, with reference to prison records, that the applicant's detention in SIZO no. 4 had lasted from 20 April 2000 to 7 September 2001 and from 23 January 2002 to 13 March 2002, whilst his detention in SIZO no. 3 had taken place in between the mentioned terms, from 10 September 2001 to 21 January 2002.

1. SIZO no. 4 in St Petersburg

35. The applicant gave the following account of the conditions of his detention.

36. At all times the prison was heavily overcrowded. His cell measured 20 square metres and was meant to accommodate twelve inmates but actually housed between forty and fifty. The bunk beds in the cell had three "levels", the applicant's sleeping place being on the top level, right under the ceiling. The inmates slept in turns, two or three persons sharing one bed

at a time. The applicant slept on a worn-out mattress and was not provided with any bedding. Because the detainees shared beds, they often contracted skin infections and had lice. The inmates had a one-hour outside walk per day. The lavatory pan was separated from the living area by a makeshift partition. As such an arrangement was prohibited by the prison authorities, it was ripped down in the course of every routine check and then rebuilt by the inmates until the next check.

37. The windows had double bars and metal shutters which let almost no natural light in. The electric lights were always switched on. For the same reason there were problems of fresh air, especially in summer when it was very hot. The windows had no glass and in winter the detainees covered them in order to avoid freezing, so there was even less fresh air.

38. The quality of the food was deplorable. The inmates were sometimes given out-of-date biscuits from humanitarian supplies.

39. The applicant could not wash himself properly because the "washing schedule" (once every 8-10 days) was rarely respected by the prison authorities. Furthermore, the shower facility, a former morgue, was in a disgusting state.

40. On several occasions tuberculosis or hepatitis sufferers and mentally disturbed inmates had been placed in the applicant's cell. The applicant submitted that although the detainees underwent HIV and AIDS tests upon their arrival in the detention facility, they were informed of the results with a considerable delay.

41. The applicant alleged that he suffered from epileptic fits and nocturnal enuresis and could not count on adequate medical assistance.

42. He further stated that the regular searches in the cells, assisted by members of the special forces *(спецназ)*, were usually accompanied by violence, especially throughout 2000. On one such occasion the applicant's fellow detainees were ordered to leave the cell and the applicant was ordered to hand over any prohibited items. When he refused, he was ordered to kneel down, which he again refused to do because it was humiliating. In response, persons wearing masks beat him up.

43. It does not appear that the applicant complained about the alleged incident or requested medical assistance at the time.

44. The Government disagreed with the above description and submitted that the applicant had been provided with his own sleeping place, bedding and cutlery. They also submitted that all original documentation relating to the periods in question had been destroyed. They submitted that the cells in the prison had had windows measuring between 0.9 and 1 metre and had been equipped with light bulbs. They admitted that the windows had been covered with metal shutters until 1 April 2003. The inmates had been able to wash themselves once a week and also to wash their personal things. The Government denied the applicant's allegations concerning the detention of mentally disturbed persons and persons infected with tuberculosis in his

cell, and submitted that such a situation was impossible, since the applicable law did not allow it. There may have been HIV infected persons in the applicant's cell, but that was not in breach of the domestic law or the European Convention on Human Rights. The Government also submitted that the prison administration had taken measures against the insects in the cells and that the quality of the food had been in accordance with all relevant standards.

2. SIZO no. 3 in Moscow

45. The applicant submitted that the conditions of his detention in the remand prison in Moscow had been better than in St Petersburg only in two respects: he had been able to shower more regularly and he was provided with a mattress. As to the rest, although there were fewer inmates, the cell was overcrowded and the detainees slept in turns. The ventilation was inadequate, there was lack of natural light and the lights were always switched on. The cell was infested with insects and cockroaches.

46. The Government disagreed and submitted that between 10 and 12 September 2001 the applicant had been detained in cell no. 417, which measured 14.98 square metres and was equipped with two-tier bunk beds for ten persons. From 12 September 2001 to 21 January 2002 he was detained in cell no. 414, measuring 15 square metres and equipped with ordinary beds for eight persons. The original documentation concerning the number of inmates in these cells at the relevant time was destroyed on 20 February 2004, the regulatory time for its storage having elapsed. The Government submitted that the conditions of detention could not have been worse than those required by the Rules on the prison regime in pre-trial detention centres (as approved by Ministry of Justice Decree no. 148 of 12 May 2000 – see the Relevant Domestic Law section below). The Government argued that the cells had been properly lit, ventilated, and disinfected and had generally been in good condition.

D. Events following the applicant's final conviction

47. On 19 March 2002 the applicant arrived in the correctional colony OYa-22/7 in Pankovka settlement in the Novgorod Region.

48. Upon arrival, the applicant was placed in a disciplinary cell for protesting about serving his sentence in the Novgorod Region instead of the Yaroslavl Region as the authorities had allegedly promised him.

49. He was kept in the disciplinary cell from 19 March to 22 June and from 19 September to 19 November 2002. According to the applicant, the cell measured around 25 square metres and held six prisoners. He was not allowed to have any personal belongings. He could shower once a week and had a one-hour walk per day. There was no table, bench or washbasin and the applicant was not provided with a mattress or bedding.

50. Throughout his confinement in the disciplinary cell the applicant was prohibited from sending and receiving letters. He was also banned from smoking, reading and receiving parcels.

51. By letter dated 28 June 2002 the head of the correctional colony OY-22/7 informed the applicant's father that the applicant was detained in the disciplinary cell and that during his detention there all correspondence and family visits were prohibited.

52. The applicant submits that from 22 June to 19 September 2002 he was held in a "safe cell" (*безопасное место*) where correspondence was allowed and the restrictions imposed in the disciplinary cell did not apply.

53. On 23 July 2003 he was transferred to correctional colony YN-88/3 in Uglich in the Yaroslavl Region.

II. RELEVANT DOMESTIC LAW

A. Rules on the prison regime in pre-trial detention centres (as approved by Ministry of Justice Decree no. 148 of 12 May 2000)

54. Rule 42 provided that all suspects and accused persons in detention had to be given, among other things: a sleeping place; bedding, including a mattress, a pillow and one blanket; bed linen, including two sheets and a pillow case; a towel; tableware and cutlery, including a bowl, a mug and a spoon; and seasonal clothes (if the inmate had no clothes of his own).

55. Rule 44 stated that cells in pre-trial detention centres were to be equipped, among other things, with a table and benches to seat the number of inmates detained there, sanitation facilities, running water and lighting for use in the daytime and at night.

56. Rule 46 provided that prisoners were to be given three warm meals a day, in accordance with the norms laid down by the Government of Russia.

57. Under Rule 47 inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh linen after taking their shower.

58. Rule 143 provided that inmates could be visited by their lawyer, family members or other persons, with the written permission of an investigator or an investigative body. The number of visits was limited to two per month.

B. Order no. 7 of the Federal Service for the Execution of Sentences dated 31 January 2005

59. Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 deals with the implementation of the "Pre-trial detention centres 2006" programme.

60. The programme is aimed at improving the functioning of pre-trial detention centres so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in pre-trial detention centres and seeks to reduce and stabilise the number of detainees in order to resolve the problem.

61. Amongst those affected, the programme mentions pre-trial detention centre SIZO no. 3. In particular, the programme states that on 1 July 2004 the detention centre had a capacity of 1,109 inmates and in reality housed 1,562 detainees, in other words, 48.9% more than the permitted number. The programme also mentions SIZO no. 4, stating that on 1 July 2004 the detention centre had a capacity of 1,032 inmates but actually housed 1,362 detainees, or 31.9% more than the permitted number.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

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

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

> "46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.
>
> 47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...
>
> 48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...
>
> 49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...
>
> 50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

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

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

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

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

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

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

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. Under Article 3 of the Convention the applicant complained that the conditions of his detention in SIZO no. 4 in St Petersburg and SIZO no. 3 between April 2000 and March 2002 in Moscow had been deplorable. Article 3 provides as follows:

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

A. Submissions of the parties

64. The Government submitted that the applicant had failed to exhaust available domestic remedies. According to them, he could have applied to the domestic courts with claims for compensation in respect of any non-pecuniary damage allegedly resulting from the conditions of his detention. The Government also considered that the conditions of detention in the prisons concerned had not been incompatible with Article 3 of the Convention.

65. The applicant disagreed and maintained his complaints. He argued that the data and figures provided by the Government were inaccurate.

B. The Court's assessment

1. Admissibility

66. In as much as the Government claim that the applicant has not complied with the rule on exhaustion of domestic remedies, the Court finds that the Government have not specified with sufficient clarity the type of action which would have been an effective remedy in their view, nor have they provided any further information as to how such action could have prevented the alleged violation or its continuation or provided the applicant with adequate redress. Even if the applicant, who at the relevant time was still in detention pending trial, had been successful, it is unclear how the claim for damages could have afforded him immediate and effective redress. In the absence of such evidence and having regard to the above-mentioned principles, the Court finds that the Government have not substantiated their claim that the remedy or remedies the applicant allegedly failed to exhaust were effective ones (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003). For the above reasons, the Court finds

that this part of the application cannot be rejected for non-exhaustion of domestic remedies (see also *Popov v. Russia*, no. 26853/04, §§ 204-06, 13 July 2006; *Mamedova v. Russia*, no. 7064/05, §§ 55-58, 1 June 2006; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)).

67. The Court accepts the accuracy of the dates of the applicant's detention, as submitted by the Government, and notes the essentially continuous character of the applicant's detention from 20 April 2000 to 13 March 2002 in SIZO no. 3 and SIZO no. 4, interrupted by prison transfers only on two occasions, in September 2001 and in January 2002, for the overall period of mere three days. It further notes that his grievances about the mentioned detention facilities all concern the same problem of overcrowding and the general lack of living space. In view of this, the Court finds that the mentioned period of time should be regarded as a "continuing situation" for the purposes of calculation of the six-month time-limit. It thus finds that the applicant lodged his complaints about the conditions of detention in SIZO no. 3 and SIZO no. 4 in good time.

68. In the light of the parties' submissions, the Court finds that the applicant's complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established.

2. *Merits*

69. The Court would note that the parties disagree on many aspects of the applicants' conditions of detention, including the size of the cells, the number of beds as well the number of detainees in the cells. Most importantly, the Government deny that the cells in question were overcrowded or cramped, and have submitted official certificates to that effect provided by the authorities of the detention centres in question, whereas the applicant insists on his initial account of events.

70. Having observed the documents submitted by the parties, the Court finds that it need not resolve the parties' disagreement on all of the aforementioned points as the case file contains sufficient documentary evidence to confirm the applicant's allegations of severe overcrowding in pre-trial detention facilities SIZO no. 4 in St Petersburg and SIZO no. 3 in Moscow, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

71. The Court would note that as regards both detention centres the existence of a deplorable state of affairs may be inferred from the information contained in Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 (see paragraph 61 above), which expressly acknowledges the issue of overcrowding in these detention centres in 2004.

72. The Court also recalls that in its judgments in the cases of *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Benediktov v. Russia*, no. 106/02, §§ 31-41, 10 May 2007; *Igor Ivanov v. Russia*, no. 34000/02, §§ 30-41, 7 June 2007; *Sudarkov v. Russia*, no. 3130/03, §§ 40-51, 10 July 2008; *Belashev v. Russia*, no. 28617/03, §§ 50-60, 4 December 2008; *Novinskiy v. Russia*, no. 11982/02, §§ 106-108, 10 February 2009; *Bychkov v. Russia*, no. 39420/03, §§ 33-43, 5 March 2009; and *Buzhinayev v. Russia*, no. 17679/03, §§ 26-36, 15 October 2009, it has previously examined the conditions of detention in SIZO no. 3 in 2000-2003 and found them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding.

73. Since the Government did not support its own submissions with reference to any original documentation, the Court is prepared to accept the mentioned indications as sufficient confirmation of the applicant's point that the overcrowding of cells was a problem in both detention facilities at the time the applicant was detained there.

74. 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 *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

75. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant had to spend at least 1 year, 10 months and 20 days in overcrowded cells at SIZO no. 4 in St Petersburg and SIZO no. 3 in Moscow was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

76. There has therefore been a violation of Article 3 of the Convention as the Court finds the applicant's detention to have been inhuman and degrading within the meaning of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. In so far as the applicant also complained of ill-treatment after his arrest (see paragraphs 15-20), the alleged lack of adequate medical assistance in SIZO no. 4 (see paragraph 41), as well as an episode of alleged

ill-treatment by the special forces in 2000 (see paragraphs 42 and 43), the Court notes that these grievances have not been made out and in any event the applicant failed to raise these complaints before the competent domestic authorities as required by Article 35 § 1 of the Convention.

78. As to the complaints about various aspects of the applicant's detention in disciplinary cells of the correctional colony OYa-22/7 (see paragraphs 48-52), the Court would note that the first period in question ended in June, and the second on 19 November 2002. The grievances were first raised in his letter of 2 December 2003, that is more than six months later.

79. As regards the proceedings in his criminal case, the applicant was dissatisfied with the use of his pre-trial confession by the courts, alleged bias on the part of the trial court, the mistaken assessment of the evidence in his case as well as the courts' failure to call and question witnesses K. and M.

80. The Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility and assessment of evidence, which are primarily a matter for regulation under national law (see, among other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V). Furthermore, it is not the role of the Court to determine, as a matter of principle, whether a particular piece of evidence is necessary and essential to decide a case (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII) or, indeed, whether the applicant is guilty or not. The question which must be answered is whether the alleged defects impaired the fairness of the proceedings, taken as a whole. On the facts of the present case, the Court observes that the applicant was fully able to contest the authenticity and admissibility of the evidence at each stage of the proceedings and the courts addressed these arguments either by rectifying the alleged mistakes or rejecting his arguments as unsubstantiated. Thus, in so far as the applicant complained about the use of evidence obtained through coercion, the Court would note firstly that at the trial the applicant seemed to have complained of threats by the relevant officials, and not of physical force, the latter argument having been raised much later in the application to this Court. Further, the grievance has never been raised by the applicant before a competent domestic authority which could investigate the matter by way of a criminal inquiry (see also the Court's conclusions under Article 3 in paragraph 77 above). To the extent that the applicant raised this argument before the courts in his criminal case, the courts examined and rejected it as unfounded (see paragraph 26) and there is nothing in the case file which would enable the Court to depart from these conclusions. That being so, and having regard to the extensive body of

evidence which was presented by both parties and then carefully examined by the courts, the Court cannot conclude that the defects alleged by the applicant, if any, adversely affected the fairness of the proceedings as a whole.

81. In so far as the applicant complained that the domestic courts had refused to call certain witnesses on his behalf and generally failed to examine his case properly, the Court recalls that Article 6 § 3 (d) does not require as such the attendance and examination of every witness on behalf of an accused and a court is justified in refusing to summon witnesses whose statements could not be of any relevance in the case (see, amongst other authorities, *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B). The Court observes that the applicant failed to exhaust domestic remedies in this respect, since he never raised this issue before the trial court (see paragraph 27), and in any event did not substantiate, either before the domestic appeal court of before this Court, the necessity of calling this or that particular witness, and that the domestic courts' decisions in this respect do not appear arbitrary or unreasonable. Having regard to the facts as submitted by the applicant, the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention.

82. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed compensation of 50,000 euros (EUR) in respect of non-pecuniary damage.

85. The Government submitted that this claim was unfounded and generally excessive.

86. The Court considers that the applicant must have sustained stress and frustration as a result of the violation found. Making an assessment on an equitable basis, the Court awards the applicant EUR 12,300 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

87. The applicant also claimed a lump sum of EUR 300 for the legal costs incurred before the Court.

88. The Government contested the applicant's claim.

89. 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. Having regard to the material in its possession, the Court considers it reasonable to award the applicant the sum of EUR 300 for the legal expenses incurred in relation to the proceedings before the Court.

C. Default interest

90. The Court considers it appropriate that the default interest 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 complaint concerning the conditions of the applicant's detention in SIZO no. 4 in St Petersburg (from 20 April 2000 to 7 September 2001 and from 23 January to 13 March 2002) and SIZO no. 3 in Moscow (from 10 September 2001 to 21 January 2002) admissible and the remainder of the application inadmissible;

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

3. *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 12,300 (twelve thousand three hundred euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on those amounts which are to be converted into Russian roubles 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;

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

Done in English, and notified in writing on 8 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President