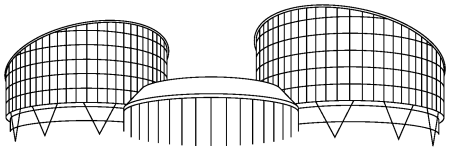

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MOROZOV v. RUSSIA

(Application no. 38758/05)

JUDGMENT

STRASBOURG

12 November 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Morozov v. Russia,

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

András Sajó, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 20 October 2015,

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

PROCEDURE

1. The case originated in an application (no. 38758/05) 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 a Russian national, Mr Vladimir Alekseyevich Morozov ("the applicant"), on 3 October 2005.

2. The applicant, who had been granted legal aid, was represented by Mr A. Derkach, a lawyer practising in Rostov-on-Don. 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 in 2004-05 he had been detained in appalling conditions, and that he had had no effective domestic remedies at his disposal in that respect.

4. On 9 January 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Morozovsk in the Rostov Region.

A. Conditions of the applicant's detention and transport

1. Temporary detention centre in Morozovsk

6. On 7 July 2004 the applicant was arrested and placed in a temporary detention centre at the Morozovsk police station («*Изолятор временного содержания*», «*ИВС*», "IVS") on suspicion of murder.

7. The applicant was detained in the IVS on four separate occasions: between 7 and 24 July 2004; 17 August and 8 October 2004; 24 October and 16 November 2004; and 4 and 16 December 2004.

(a) The applicant's account

(i) Material conditions of detention

8. In the applicant's submission, the conditions of his detention in the IVS during those four periods were essentially identical and as described below.

9. The IVS was situated in the basement of the police station. The applicant was placed in a cell measuring approximately 12.5 square metres, which housed six to seven people. The walls, floor and ceiling were all covered with cement. There was no ventilation in the cell and consequently it was stuffy. The windows were covered with exterior and interior metal plates with minuscule openings, which gave practically no access to natural light. The cell was lit by a lamp set high up in an alcove in the wall, so there was insufficient light for reading or writing.

10. In summer, temperatures inside exceeded 40˚C and the cell had a high level of humidity. There was no glass in the windows and in winter it was cold.

11. No mattresses, bedding, cups, eating utensils or toiletries were distributed. There were no pest control measures in place to eliminate cockroaches and mice. The cell was not connected to a sewer and detainees had to relieve themselves in a bucket, which was removed from the cell once a day to be emptied. The water which was distributed once a day (ten litres per cell) was not drinkable. There was no provision for outside exercise or showers.

12. The applicant was fed once a day. The food was wholly inadequate, both in terms of quality and portion size.

(ii) The applicant's state of health

13. The applicant sustained an injury to his head prior to his arrest. While in the IVS, he did not receive adequate medical treatment for the injury. The applicant – who had contracted tuberculosis in 2001 – shared a cell with a person who was actually suffering from the open form of the disease at the time of his detention, and this represented a potential risk to his health.

(b) The Government's account

14. Each of the IVS cells in which the applicant was kept measured approximately 15 square metres and had six sleeping places. However, it was impossible to provide more detailed information, as the registration logs for the IVS had been destroyed.

15. According to the findings of the inquiry carried out by the Morozovskiy district prosecutor's office on the basis of the applicant's complaint, the applicant shared one of the cells in which he was kept – which was equipped with six sleeping places – with four inmates. At some point, he was transferred to a solitary confinement cell upon his request. The applicant received three meals a day. There were no mice or insects in the cells. The bucket that acted as a substitute for sanitary facilities was cleaned daily. The applicant had access to drinking water and toiletries. The applicant was provided with adequate medical assistance on request.

2. The applicant's conviction and subsequent transfer to the post-conviction detention facility

16. On 12 November 2004 the Morozovskiy District Court of the Rostov Region convicted the applicant of murder and sentenced him to eleven years' imprisonment. On 15 March 2005 the Rostov Regional Court upheld the conviction on appeal.

17. The applicant was then sent to serve his sentence at a post-conviction detention facility in the town of Pechora in the Komi Republic. The journey there included train travel and accommodation in SIZO-type detention facilities *(«следственный изолятор временного содержания», «СИЗО)*. These facilities generally serve as remand prisons, yet can also be used for the temporary detention of people who have already been convicted.

(a) Novocherkassk detention facility no. IZ-61/3 (SIZO-3)

18. At certain times between 24 July 2004 and 6 June 2005, the applicant was kept in Novocherkassk detention facility no. IZ-61/3.

(i) The applicant's account

19. The applicant was detained in a cell measuring 28 square metres, which was designed to hold ten people. However, he shared this cell with fifteen other detainees, so they had to sleep in shifts. The bedding supplied was dirty, worn out and covered in bloodstains. Mattresses were also worn out and infested with insects. There was no ventilation. Lights were on day and night. No toiletries were supplied.

20. In summer, the cell was extremely humid and stuffy. Owing to water shortages lasting up to two or three days, the applicant had difficulties in obtaining drinking water and flushing the lavatory. The cell was infested

with insects such as cockroaches. Conditions were unsanitary and no showers were available.

(ii) The Government's account

21. While in detention facility no. IZ-61/3, the applicant was kept in the following cells:

- cell no. 247 measuring 25.7 square metres;
- cell no. 243 measuring 23 square metres;
- cell no. 244 measuring 25.7 square metres;
- cell no. 284 measuring 18.5 square metres;
- cell no. 162 measuring 33.8 square metres;
- cell no. 337 measuring 18.7 square metres;
- cell no. 372 measuring 18.7 square metres;
- cell no. 402 measuring 10.5 square metres;
- cell no. 393 measuring 10.5 square metres;
- cell no. 385 measuring 18.5 square metres;
- cell no. 316 measuring 18.7 square metres;
- cell no. 304 measuring 18.5 square metres;
- cell no. 326 measuring 10.5 square metres;
- cell no. 332 measuring 10.4 square metres;
- cell no. 330 measuring 10.4 square metres.

22. The Government did not specify the actual number of sleeping places in the cells in question and/or the number of inmates who had shared the cells with the applicant, referring to the fact that the detention facility's logbooks had been destroyed.

23. The Government provided a number of documents dated 30 April 2009 and signed by the governor of detention facility no. IZ-61/3, which stated in particular that: (a) the number of inmates kept together with the applicant in the fifteen cells of Novocherkassk detention facility had not exceeded the number of sleeping places available; (b) on 1 December 2005 an additional new building to accommodate 500 inmates had been opened; (c) there had been no rodents or insects in the facility and the cells had been regularly cleaned and disinfested; (d) each of the fifteen cells had been equipped with lavatories which were separated from the living areas and sinks; and (e) detainees had been provided with good-quality food pursuant to internal regulations.

24. The Government provided three handwritten undated statements from IZ-61/3 officials who stated that they "certainly remembered" that the applicant had been kept in fifteen cells at the facility. In their statements, the officials listed the numbers of the cells and confirmed that he had been provided with an individual sleeping place in each of those cells.

(b) Ryazan detention facility no. IZ-62/1 (SIZO-1)

25. Between 7 June and 9 July 2005 the applicant was kept in Ryazan detention facility no. IZ-62/1.

(i) The applicant's account

26. In the applicant's submission, he was kept in a transit cell measuring 49 square metres, which was designed for twenty-two detainees. Instead, during the relevant period, the cell housed no fewer than forty-two people, who had to sleep in shifts. The applicant suffered from a lack of food and found the food which he was given to be of poor quality. He also sustained numerous painful insect bites which left marks on his body.

(ii) The Government's account

27. According to the Government, the applicant was kept in cell no. 32 (measuring 49 square metres), cell no. 46 (measuring 56 square metres) and cell no. 56 (measuring 32 square metres). The number of sleeping places and/or inmates who had been kept in the cells with the applicant was unknown, as the facility's logbooks had been destroyed.

28. The Government provided documents dated 4 May 2009 which had been signed by the deputy governor of IZ-62/1 and which stated that: (a) cell no. 32 had been equipped with a sink; (b) during the applicant's detention, a private contractor had regularly carried out disinfestation procedures at the detention facility pursuant to a contract which had been concluded on 9 January 2008; and (c) detainees had been provided with three meals a day, pursuant to the relevant regulations. The Government also enclosed a photo of a sink and invoices from the disinfestation contractor which were dated July 2008.

(c) Yekaterinburg detention facility no. IZ-66/1 (SIZO-1)

29. Between 20 and 27 July 2005 the applicant was kept in Yekaterinburg detention facility no. IZ-66/1.

(i) The applicant's account

30. According to the applicant, he was placed in a cell measuring 25 square metres, together with twenty-three other inmates. No bedding was supplied. The cell was infested with insects. After some days there, he was moved to another cell measuring 22.5 square metres, which housed thirty-five people. The cell had a row of benches, which were no use for sitting on, let alone sleeping on. No food or drinking water was provided.

(ii) The Government's account

31. In the Government's submission, the applicant was kept in cell no. 137 (measuring 12.5 square metres), cell no. 302 (measuring

31.4 square metres), cell no. 307 (measuring 29.2 square metres) and cell no. 404 (measuring 15.2 square metres). In each cell, he was provided with an individual sleeping place and bedding. The number of inmates who were kept in the cells with the applicant was unknown, as was the number of sleeping places which were available, as the logbooks had been destroyed.

32. The Government provided documents dated 5 May 2009 and signed by the governor of IZ-66/1 confirming that the applicant had been detained in the facility between 20 and 27 July 2005. There had been no rodents or insects in the cell during this period, and the cell had been equipped with sanitary facilities. The applicant had been provided with access to a shower upon his arrival at the facility and had been provided with food, pursuant to the relevant regulations. The cell had been equipped with sixteen sleeping spaces and had housed four to sixteen inmates. The Government also enclosed contracts for disinfestation services, as well as relevant invoices.

33. Another document dated 5 May 2009 and signed by the head of the Sverdlovsk regional department of the Federal Prison Service ("the Sverdlovsk FSIN") stated that, between 20 and 27 July 2005, the applicant had been kept in cell no. 307 at IZ-66/1. According to the document, this cell measured 29.2 square metres and was equipped with twenty sleeping places, and the applicant had shared it with four to sixteen other inmates.

B. The applicant's complaints to various national authorities

34. The applicant made a complaint to various public authorities, including the prosecutor's office and courts, in relation to the alleged lack of adequate medical assistance and the conditions of detention in the IVS (see paragraphs 6 to 15 above). In particular, he alleged that he had sustained a post-traumatic brain injury, contracted tuberculosis and become ill with gastritis, astigmatism, alimentary anaemia and muscular hypotrophy while in detention.

35. As regards his complaint to the prosecutor's office it appears that on 5 November 2005 the Morozovskiy district prosecutor's office refused to initiate criminal proceedings regarding the alleged poor conditions of the applicant's detention in the IVS. The applicant was not provided with a copy of that decision. A further refusal was issued on 16 February 2006. However, the prosecutor found that the applicant's allegations concerning the conditions of detention in the IVS "had been confirmed in part", but that such conditions did not constitute a crime under the Criminal Code. He also indicated that the head of the police station had been instructed to remedy the irregularities which had been identified. The applicant was not given access to the prosecutor's inquiry file.

36. On 20 March 2007 the Morozovskiy District Court of the Rostov Region upheld the prosecutor's decision. On 28 August 2007 the Rostov Regional Court upheld the first-instance judgment.

37. As regards other court proceedings, in 2007 the applicant initiated civil proceedings, claiming compensation for the non-pecuniary damage caused by the conditions of detention in the IVS and the lack of adequate medical assistance rendered to him in that facility. On three occasions – on 26 November and 26 December 2007, and on 11 January 2008 – the Morozovskiy District Court invited the applicant to eliminate discrepancies in his statements of claim. The applicant did not comply with the court's requests, neither did he appeal against the court's rulings. The Morozovskiy District Court left the claims unexamined.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

38. The provisions of domestic and international law relating to conditions of detention are set out in the Court's judgment in the judgment of *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 25-65, 10 January 2012).

THE LAW

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

39. The applicant complained that while in the IVS he had not been provided with adequate medical assistance in relation to the head injury which he had allegedly sustained. He also claimed that the medical assistance rendered to him in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg had been insufficient.

40. The applicant further complained that the conditions of detention in the IVS and in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg had been poor.

41. Lastly, the applicant maintained that his complaints to the domestic authorities in respect of above grievances had been unsuccessful.

42. Being the master of the characterisation to be given in law to the facts of the case (see *Margaretić v. Croatia*, no. 16115/13, § 75, 5 June 2014), the Court considers that the applicant's complaints fall to be examined under Articles 3 and 13 of the Convention.

43. Article 3 of the Convention reads as follows:

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

44. Article 13 of the Convention 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."

A. Admissibility

1. The parties' submissions

45. Having acknowledged that the applicant had complied with the six-month rule in relation to all periods of his detention, including that in the IVS, the Government, submitted that he had failed to exhaust the effective domestic remedies available to him in connection with his complaints relating to the detention facilities in Novocherkassk, Ryazan and Yekaterinburg, as he had not instituted civil proceedings seeking compensation for non-pecuniary damage before the domestic courts. To prove the effectiveness of that remedy, they referred to two cases which had been resolved at national level. The first case was that of Mr D., who had been awarded 25,000 Russian roubles (RUB) in respect of the non-pecuniary damage relating to the suffering which had resulted from his transfer outside the region in which he was normally resident in order to serve his sentence, and from the fact that he had contracted scabies while in detention. The second case referred to by the Government was that of Mr R., who had received RUB 30,000 in respect of fifty-six days of unlawful detention, and in view of the fact that he had not been fed for five days while in detention. The Government further asserted that the applicant had failed to comply with the Morozovskiy District Court's requests in connection with his claims relating to his detention in the IVS, and, accordingly, had not exhausted the remedies available to him.

46. In response to the Government's plea, the applicant maintained that he had not had effective remedies at his disposal, as the poor conditions of detention in Russia constituted a systemic problem. He also stated that he had lodged two complaints about the lack of medical assistance in the IVS with both the head of the IVS administration and the prosecutor's office, neither of which had been properly registered in his personal file.

2. The Court's assessment

(a) Complaints concerning the allegedly inadequate medical assistance and the alleged lack of effective remedies in that respect

47. The Court observes that in previous cases against Russia concerning an alleged lack of adequate medical assistance for detainees, it has clearly distinguished between two situations. It has found that no effective remedies existed in Russia for applicants who have complained of an ongoing deterioration in their health as a result of a lack of proper medical care while

in detention (see, among other authorities, *Koryak v. Russia*, no. 24877/10, § 95, 13 November 2012; *Dirdizov v. Russia*, no. 41461/10, § 91, 27 November 2012; and *Reshetnyak v. Russia*, no. 56027/10, § 80, 8 January 2013). However, when applicants have complained of the detention authorities' failure to provide them with adequate medical services, but at the time of the complaint were no longer in the situation complained of, the Court has stressed that a civil claim for damages would have been capable of providing redress in respect of that complaint, and would have offered reasonable prospects of success (see *Buzychkin v. Russia*, no. 68337/01, § 83, 14 October 2008; *Shchebetov v. Russia*, no. 21731/02, §§ 89-92, 10 April 2012; and *Gadamauri and Kadyrbekov v. Russia*, no. 41550/02, § 34, 5 July 2011). Given that the applicant's complaint of inadequate medical assistance relates to his period of detention in the IVS that ended on 16 December 2004 (see paragraph 7 above), and to his detention in the SIZO-type facilities (the latest period of which ended on 27 July 2005 – see paragraph 29 above), his situation in the present case falls into the latter category.

48. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms, in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Menteş and Others v. Turkey*, 28 November 1997, § 89, *Reports of Judgments and Decisions* 1997-VIII).

49. The Court observes that Russian law undoubtedly provided the applicant with the opportunity to bring proceedings in tort against the State (see *Gusev v. Russia* (dec.), no. 49038/12, § 24, 24 March 2015, and *Mumryayev v. Russia* (dec.), no. 52025/13, § 14, 21 April 2015). The applicant did not explain why he had failed to comply with the Morozovskiy District Court's repeated requests to eliminate discrepancies in his statements of claim relating to the alleged non-pecuniary damage caused, in particular, by the lack of adequate medical assistance in the IVS (see paragraph 37 above). Neither did he provide any explanation as to why he had not brought any proceedings for damages in relation to the allegedly

inadequate medical assistance rendered to him in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg.

50. In such circumstances, the Court does not see any reason in the present case to depart from its well-established approach (see *Shchebetov*, cited above, §§ 89-92; *Buzychkin*, cited above, § 84; and *Gadamauri and Kadyrbekov*, cited above, §§ 34 and 36), and concludes that the remedy available to the applicant satisfied the criteria laid down in paragraph 45 above. It follows that this part of the complaint under Article 13 is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and must be rejected pursuant to Article 35 § 4.

51. Given this finding, the Court further concludes that the applicant failed to exhaust domestic remedies with regard to his complaints about the poor quality of the medical assistance he received. It follows that this part of his complaint under Article 3 of the Convention must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) Complaints concerning the conditions of detention in the IVS and in the SIZO-type facilities, and the alleged lack of effective remedies in that respect

52. With regard to the Government's plea of non-exhaustion of domestic remedies in relation to the conditions of the applicant's detention, the Court points out that it has previously dismissed similar arguments on the part of the Government (see *Ananyev and Others*, cited above, §§ 70 and 100-19). It finds no reason to reach a different conclusion in the present case (see *Yevgeniy Bogdanov v. Russia*, no. 22405/04, § 70, 26 February 2015), and accordingly dismisses the Government's objection.

53. The Court further reiterates that, in contrast with an objection on the basis of non-exhaustion of domestic remedies, which must be raised by the respondent Government, it is not open to it to dispense with the application of the six-month rule solely because the respondent Government have not made an objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III; *Ananyev and Others*, cited above, § 71; *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 72, 17 January 2012; and *Musaev v. Turkey*, no. 72754/11, § 46, 21 October 2014).

54. Article 35 § 1 of the Convention permits the Court to deal with a matter only if the relevant application is lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Fetisov and Others*, cited above,

§ 73). 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 (see *Mela v. Russia*, no. 34044/08, § 45, 23 October 2014).

55. The Court observes that the present application was lodged on 3 October 2005, that is in any event within six months of the end of each respective period of his detention in the SIZO-type detention facilities in Novocherkassk, Ryazan and Yekaterinburg (see paragraphs 18, 25 and 29 above). It therefore considers that the applicant has complied with the six-month rule in respect of the conditions of detention in these three facilities.

56. With regard to the conditions of detention in the IVS, the Court points out that the applicant's latest period of detention in that facility ended on 16 December 2004 (see paragraph 7 above). The Court reiterates that, in order to satisfy the six-month rule, his complaint about the inadequate conditions of detention in this facility should have been lodged within six months of the day after his transfer out of the detention facility (see *Norkin v. Russia* (dec.), no. 21056/11, §§ 14-25, 5 February 2013; *Zhirko v. Russia* (dec.), no. 8696/12, § 13, 17 September 2013; and *Tuvykin v. Russia* (dec.), no. 31970/09, § 12, 27 March 2014). In the absence of any arguments or factual information which would warrant a departure from the Court's constant approach, the part of the application concerning the allegedly inadequate conditions of the applicant's detention in the IVS, and the lack of effective remedies in that respect, is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

57. The Court further notes that the complaints concerning the conditions of detention in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg and the lack of effective remedies in that respect are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. Article 13 of the Convention

(a) The parties' submissions

58. The Government argued that Article 13 of the Convention had been complied with in the present case. Firstly, they submitted that it had been open to the applicant to lodge a complaint with a prosecutor's office. To demonstrate the effectiveness of that remedy, they referred to an example in the Kaluga region, where the local prosecutor's office had in 2006 declared

13.1% of complaints about inadequate conditions of detention well-founded, a proportion which had risen to 18% in the first half of 2007. They also submitted, without providing any further details, that in two detention facilities in the Vladimir and Khabarovsk regions, material conditions of detention had been improved following complaints to prosecutor's offices. Secondly, the Government argued that it had been open to the applicant to institute civil proceedings before the domestic courts in relation to the pecuniary and non-pecuniary damage caused by the conditions of detention, as, in their submission, that avenue of recourse constituted an effective remedy within the meaning of Article 13 of the Convention. To illustrate their point, the Government stated that an unspecified number of individuals had successfully sought damages in the courts of the Perm region and Kazan. They further referred to the case of Mr S., who had been awarded RUB 250,000 by a domestic court for non-pecuniary damage, and to that of Mr D. – already cited in connection with their plea of non-exhaustion. Lastly, the Government stated that the applicant had failed to properly bring his civil claims in connection with the conditions of detention in the IVS. Referring to the Court's case-law (see *Whiteside v. the United Kingdom*, Commission decision of 7 March 1994, application no. 20357/92, Decisions and Reports 76, p. 80), they pointed out that a mere doubt on the applicant's part as to the prospects of success was not sufficient to exempt him from submitting his claim to any of the aforementioned national authorities with jurisdiction in such matters.

59. The applicant maintained his complaint under Article 13 of the Convention, submitting that no coherent and well-established practice of affording redress in respect of similar complaints existed at national level.

(b) The Court's assessment

60. In the case of *Ananyev and Others v. Russia* (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 material conditions of detention in a SIZO-type detention facility. The Court concluded in that case that it had not been shown that the Russian legal system offered an effective remedy which could be used to prevent a violation, or to prevent a violation from continuing once it had occurred, or to provide an applicant with adequate and sufficient redress in connection with a complaint of inadequate conditions of detention. Accordingly, the Court found that the applicants in that case did not have at their disposal an effective domestic remedy for their grievances, in breach of Article 13 of the Convention.

61. Having examined the Government's arguments, the Court finds no reason to depart from that conclusion in the present case. Noting that the applicant raises an "arguable" complaint under Article 3 of the Convention,

the Court considers that there has been a violation of Article 13 of the Convention.

2. Article 3 of the Convention

(a) The parties' submissions

62. The Government submitted that in all the cells of the detention facilities in Novocherkassk, Ryazan and Yekaterinburg in which the applicant had been kept, the number of inmates had not exceeded the number of sleeping places. The Government were not in a position to advise the Court of the exact number of inmates who had shared the cells with the applicant, as the detention facilities' logbooks had been destroyed. They submitted the following description of the conditions of the applicant's detention, based on reports prepared in 2009 by the management of the respective detention facilities. All cells had been equipped with functioning ventilation systems. Each cell had been adequately heated. The temperature had been maintained between 18˚C and 22˚C; in summer it had not exceeded 27˚C. The applicant had at all times been provided with an individual sleeping place and bedding so that he had not had to sleep in turns with other inmates, and the bedding had been changed once a week. He had also been provided with a spoon and a mug. The applicant had used the showers once a week. The management of the detention facilities had not received any complaints from the applicant. Lavatories had been separated from the living areas of the cells. There had been running tap water in the cells. The applicant had had access to drinking water of acceptable quality. He had been provided with three hot meals of acceptable quality per day. The applicant had been provided with adequate medical assistance and he had not complained about the quality of the medical assistance rendered to him. The cells had been equipped with all necessary furniture and had not been infested with insects or rodents. The inmates had been escorted daily on a one-hour walk.

63. The applicant maintained his complaint about the appalling conditions of detention in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg. He pointed out that the Government had failed to submit any documentary evidence to disprove his allegations about these conditions. The applicant contended that the Government's references to the destruction of the relevant logbooks owing to the expiry of the retention periods were unconvincing, and observed that the documents submitted by the Government related to the state of affairs in the detention facilities some years after the respective periods of his detention.

(b) The Court's assessment

64. The Court will examine the merits of this part of the applicant's complaint under Article 3 in the light of the applicable general principles reiterated in the case of *Ananyev and Others* (cited above, §§ 139-41).

65. The Court has held on many occasions that 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 relating to the material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ananyev and Others*, cited above, § 123; and *Suldin v. Russia*, no. 20077/04, § 39, 16 October 2014).

66. The Court notes that the parties disagreed on most aspects of the conditions of the applicant's detention in the facilities in Novocherkassk, Ryazan and Yekaterinburg. However, where conditions of detention are in dispute, there is no need for the Court to establish the veracity of each and every disputed or contentious point. It can find a violation of Article 3 on the basis of any serious allegation which the respondent Government have failed to refute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009; and *Adeishvili (Mazmishvili) v. Russia*, no. 43553/10, § 65, 16 October 2014).

67. The Court observes at the outset that the Government failed to provide any original documents to refute the applicant's allegations, claiming that they had been destroyed after the expiry of the statutory time-limit for their storage. Their submissions are based on documents issued by officials of the detention facilities in April and May 2009 (see paragraphs 23, 28 and 32 above). The Court notes, however, that these documents – issued almost four years after the applicant's detention in the impugned facilities had come to an end – contain no clear references to the capacity of the cells in which he was detained, or to the number of inmates who were kept there during the relevant periods in 2004-05. The documents provided by the Government are either irrelevant (as they relate to periods of time which followed the applicant's detention), or give rise to serious doubts as to their reliability. For example, the Court is not prepared to attach any evidential value to the handwritten statements of the officers of the Novocherkassk detention facility – which, albeit undated, appear to have been drafted after 2005 – as it is highly implausible that the officers would "certainly remember" the numbers of all fifteen cells in which one particular detainee had been kept (see paragraph 24 above).

68. In view of the fact that the Government did not submit any convincing relevant information, the Court will now proceed to examine the issue concerning the number of inmates kept in the relevant cells of the Novocherkassk, Ryazan and Yekaterinburg facilities on the basis of the applicant's submissions (see *Igor Ivanov v. Russia*, no. 34000/02, § 35, 7 June 2007).

69. With regard to Novocherkassk detention facility no. IZ-61/3 where he stayed from 24 July 2004 to 6 June 2005, the applicant submitted that he had shared a cell measuring 28 square metres – which had been designed for ten people – with sixteen other inmates (see paragraph 19 above). Even assuming that the number of inmates did not exceed the number of sleeping places, it is clear that the floor space afforded to each detainee would have been less than 3 square metres. In the absence of any submissions by the Government capable of refuting the applicant's allegations, the Court finds it established that in IZ-61/1 the applicant was provided with 1.75 square metres of floor space.

70. With regard to Ryazan detention facility no. IZ-62/1 where the applicant stayed from 7 June to 9 July 2005, the applicant claimed that he had been kept in a cell measuring 49 square meters (see paragraph 26 above), which corresponds to the information provided by the Government in respect of cell no. 32 (see paragraph 27 above). Given the absence of any information submitted by the Government to refute the applicant's allegations regarding the capacity of the cell, the Court accepts that the cell was equipped with twenty-two sleeping places. Accordingly, even where the number of inmates did not exceed the capacity of the cell, each inmate would have been afforded 2.2 square metres of floor space. Accordingly, the Court finds it established that in IZ-62/1 the applicant was detained in cramped conditions.

71. With regard to Yekaterinburg detention facility no. IZ-66/1 where the applicant stayed from 20 to 27 July 2005, it follows from the document supplied by the head of the Sverdlovsk FSIN (see paragraph 30 above) that, at some point at least, the applicant shared a cell measuring 29.2 square metres with sixteen other inmates. The Court therefore finds it established that, at some point in time while being detained in the facility in question, the applicant was afforded approximately 1.8 square metres of personal space.

72. The Court has frequently found violations of Article 3 of the Convention on account of insufficient personal space being afforded to detainees (see, among numerous other authorities, *Ananyev and Others*, cited above, §§ 120-66).

73. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case regardless of the fact that the period of detention in IZ-66/1 was of relatively short

duration. The Court therefore concludes that the conditions of the applicant's detention in the SIZO-type detention facilities in question amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

74. In view of the above, the Court does not consider it necessary to examine the remainder of the parties' submissions on other aspects of the conditions of the applicant's detention in the facilities in question.

75. Accordingly, there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg in 2004-05.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

76. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed that he had sustained non-pecuniary damage as a result of the poor conditions of his detention, and on that basis invited the Court to establish the appropriate amount of compensation to be awarded.

79. The Government insisted that the applicant's rights had not been violated and submitted that, should the Court find to the contrary, the finding of a violation would, in itself, constitute sufficient just satisfaction.

80. Having regard to its above findings of violations of Articles 3 and 13 of the Convention, the Court awards the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the conditions of the applicant's detention in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg and the lack of effective domestic remedies in this respect admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective domestic remedy in connection with the conditions of the applicant's detention in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the detention facilities in Novocherkassk, Ryazan and Yekaterinburg;

4. *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, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

EUR 5,000 (five thousand 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.

Done in English, and notified in writing on 12 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	András Sajó
Registrar	President