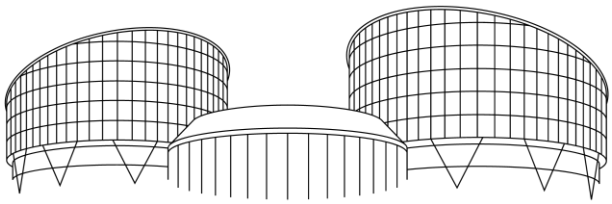

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF FETISOV and OTHERS v. RUSSIA

(Applications nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

04/06/2012

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

In the case of Fetisov and Others v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in six applications (nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08) 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 six applicants whose names are listed below.

2. The applicants Mr Fetisov, Mr Telyubayev, Mr Savinor, Mr Shakurov and Mr Korobeynikov were represented by Ms O. Preobrazhenskaya and Mr P. Finogenov, lawyers practising in Strasbourg and Moscow. The applicant Mr Fetisov was granted legal aid for his representation before the Court.

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

4. The applicants alleged, in particular, that they had been detained in inhuman and degrading conditions and that they had not had effective domestic remedies at their disposal.

5. On 14 May 2009 the Court decided to give notice of the applications to the Government. It also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. All the applicants were held in various Russian remand prisons at some point in time. Their individual circumstances are detailed below.

A. Application no. 43710/07 lodged on 17 July 2007

7. The applicant in case no. 43710/07, Mr Andrey Anatolyevich Fetisov, is a Russian national who was born in 1967.

8. On 22 August 2006 Mr Fetisov was arrested on suspicion of drug-trafficking. Following a period of initial detention at the Gukovo town police ward (*изолятор временного содержания г. Гуково*), on 30 August 2006 he was transferred to remand prison IZ-61/3 of Novocherkassk in the Rostov Region. On various dates between 9 October and 12 December 2006 Mr Fetisov effected further short stays in the Gukovo ward.

9. On 20 March 2007 Mr Fetisov was found guilty of drug-trafficking at last instance and sentenced to nine years' imprisonment. On 17 May 2007 he left the remand prison for transfer to a correctional colony.

10. In prison IZ-61/3, Mr Fetisov stayed the first night in cell 168, one week in cell 181, and subsequently in cells 245 (after 28 September 2006) and 291 (after 12 December 2006). The last two cells measured 19 and 34 square metres, respectively.

11. The parties disagreed on the number of sleeping places and detainees. According to the Government, cell 245 had four places, and cells 181 and 291 eight places each. Mr Fetisov submitted that all the cells had twice as many places.

12. In the Government's submission, cell 245 accommodated "up to four persons", and cells 181 and 291 – "up to eight persons". Mr Fetisov asserted that cell 245 housed up to twenty inmates and cell 291 up to twenty-five.

13. The Government produced in evidence certificates showing the number of beds and detainees, issued by the prison governor on 29 June 2009, and three pages from the prison population register. The extracts show that on 20 September 2006 an eight-person cell 181 accommodated eight inmates, that on 28 September 2006 a four-person cell 245 housed four inmates, and that on 13 December 2006 an eight-person cell 291 held eight detainees. It does not appear that the design capacity was exceeded in any other cells within the prison on those dates.

14. Mr Fetisov submitted eight written statements from his co-detainees dated 19 October and 7 November 2007. Each of them stated that he had been detained in cell 291 together with Mr Fetisov and that the cell had measured approximately 40 square metres, had been equipped with 16 beds and had actually accommodated 20 to 25 prisoners. There had been no ventilation and frequent interruptions of the water supply. Further to the Court's request, the Government produced the cell records for those individuals from which it appears that six of them had shared cell 291 with Mr Fetisov from 12 December 2006 until January or February 2007, the seventh inmate from 26 December 2006 to 22 March 2007, and the eighth person from 22 April to 17 May 2007.

B. Application no. 6023/08 lodged on 3 January 2008

15. The applicant in case no. 6023/08, Mr Valeriy Viktorovich Savinov, is a Russian national who was born in 1957.

16. On 4 February 2006 Mr Savinov was arrested on a charge of kidnapping and placed in a temporary detention ward in Kazan. On 13 February 2006 he was transferred to remand prison IZ-16/1 of Kazan in the Tatarstan Republic.

17. In prison IZ-16/1, Mr Savinov stayed in cells 7 (until 12 April 2006), 15 (until 25 September 2006), 5 (until 2 October 2006), 11 (until 9 October 2006), 8 (until 11 February 2007), and 68 (until 20 August 2007). On the latter date he was transferred to a prison in Moscow. On 11 October 2007 Mr Savinov was convicted at last instance and subsequently sent to serve his sentence in a correctional colony.

18. The cells presented the following characteristics:

- cell 7: 40 square metres and 10 sleeping places;
- cell 15: 25 square metres and 6 sleeping places;
- cells 5 and 11: 20 square metres and 5 sleeping places;
- cells 8 and 68: 16 square metres and 4 sleeping places.

19. The parties disagreed on the number of detainees who had been held together with Mr Savinov.

20. The Government submitted that "the number of detainees had not exceeded the number of beds", relying on the certificates issued by the prison governor on 29 June 2009. They also produced four statements by prison warders (two undated and the other two dated 24 June 2009), according to which Mr Savinov had had a personal sleeping place and bed linen, and fourteen statements by detainees, including Mr P. (all dated 24 June 2009) who had been held in cells 5, 7, 8, 11, 15, 67 and 68 during various periods of time in 2008 and 2009. Finally, they enclosed extracts from the prison population register of prison IZ-16/1, covering one day per month in the period from February 2006 to January 2008. The extracts showed that during the respective periods of Mr Savinov's stay, cell 7 housed 8 to 10 persons, cell 15 – 5 or 6 persons, cells 5 and 11 – 5 persons, cells 8 and 68 – 3 or 4 persons, and that the total prison population had varied but never exceeded 586 persons.

21. Mr Savinov claimed that the Government had falsified the documents concerning the number of detainees. He prayed in aid an article, entitled *The Kazan Jailhouse: the Past and the Present*, published in Issue 10, October 2006, of *Crime and Punishment*, a magazine of the Federal Penitentiary Service. The relevant extracts read as follows:

> "Prison no. [IZ-16/]1 with a design capacity of 600 persons currently houses 780 suspects and defendants. Thus, the overcrowding is still significant...
>
> Renovation and construction works are in full swing. In January 2005 a new wing with 120 places was put in operation... The conditions are fully compatible with European standards: wooden floors in cells, mirrors above sinks, isolated toilets,

radios, TV sets, shower stalls on each floor. This wing... accommodates underage detainees...” (page 51)

22. Mr Savinov listed the names (five full names and two first names) of the co-detainees, including Mr P., with whom he stayed in cell 68 from 26 November 2007 to 28 January 2008. He submitted that he had shared the bed with Mr P. on the second tier of the bunk beds. Further to the Court’s request for information, the Government submitted cell records in respect of five inmates whose full names were listed. It appears that only three of them had actually shared cell 68 with Mr Savinov. The first names of the remaining two detainees were insufficient for reliable identification.

C. Application no. 11248/08 lodged on 4 February 2008

23. The applicant in case no. 11248/08, Mr Amangeldy Sebepovich Telyubayev, is a Russian national who was born in 1977.

24. On 29 May 2002, 19 May and 6 June 2005 the Sol-Iletskiy District Court of the Orenburg Region convicted Mr Telyubayev of various crimes and sentenced him to imprisonment. In 2007 Mr Telyubayev petitioned the Orenburg Regional Court for supervisory review of the judgment of 29 May 2002. In order to take part in the supervisory review hearing on 27 August 2007, he was taken from the correctional colony where he was serving his sentence. Before reaching his destination, Mr Telyubayev transited through several remand prisons.

25. From 10 to 12 August and then from 12 to 15 September 2007 Mr Telyubayev was accommodated in cell 203 in remand prison IZ-66/1 of Yekaterinburg. The cell measured 33 square metres and was equipped with 16 sleeping places. The cell population varied from 3 to 12 inmates.

26. From 13 to 17 August and then from 7 to 11 September 2007 Mr Telyubayev was held in cell 116 in remand prison IZ-74/3 of Chelyabinsk. Cell 116 was designed for four inmates and had 16 square metres of floor space. The parties disagreed on the number of detainees in cell 116. According to the Government, there were four persons; Mr Telyubayev maintained that the actual number was as high as ten.

27. Finally, between 18 August and 6 September 2007, Mr Telyubayev had to stay in cell 59 in remand prison IZ-56/1 of Orenburg. It was 16 square metres in size with eight sleeping places and accommodated three to seven detainees.

28. The Government submitted certificates issued by the governors of prisons in Yekaterinburg, Chelyabinsk and Orenburg on 25 and 29 June 2009 listing the cells in which Mr Telyubayev had been held, statements by warders of the Yekaterinburg prison who asserted that Mr Telyubayev had been assigned his personal sleeping place, and extracts from the registers for verification of the number of detainees in prisons 66/1 (Yekaterinburg), 74/3 (Chelyabinsk) and 56/1 (Orenburg).

29. The extracts from the register of prison 74/3 cover the dates from 7 to 11 September 2007 and show that cell 116 had four places and housed

as many detainees. Some extracts from the register of prison 66/1 relate to an earlier period of Mr Telyubayev's stay in 2005 and at that time cell 203 had accommodated on average thirty prisoners. However, the entries relating to various dates in August and September 2007 indicated that the design capacity of cell 203 had not been exceeded and ranged from 3 to 12 inmates. Finally, the extracts of 27 August and 6 September 2007 from the register of prison 56/1 indicated the population of cell 59 as five and six persons, respectively.

D. Application no. 27668/08 lodged on 5 April 2008

30. The applicant in case no. 27668/08, Mr Rail Kurbanovich Shakurov, is a Russian national who was born in 1970.

31. On 31 August 2007 Mr Shakurov was taken into custody. On 10 September 2007 he was placed in remand prison IZ-16/1 of Kazan.

32. In prison IZ-16/1, Mr Shakurov stayed in cells 127 (the first night), 3 (from 11 September to 22 October 2007 and from 14 May to 17 November 2008), 21 (from 22 October 2007 to 14 May 2008), 40 (from 17 November to 31 December 2008 and from 30 January to 16 April 2009), 66 (from 31 December 2008 to 30 January 2009), and 44 (from 16 April 2009 until at least June 2009).

33. The parties disagreed on the measurements of some cells and on the number of detainees who had been held together with Mr Shakurov.

34. According to the Government, the cells presented the following characteristics:

- cell 127: 65 square metres and 16 sleeping places;
- cell 3: 40 square metres and 10 sleeping places;
- cells 21, 40, 44 and 66: 16 square metres and 4 sleeping places.

35. The Government indicated that the design capacity of the cells had never been exceeded, relying on the certificates established by the prison governor on 29 June 2009. They also produced four statements by prison warders (dated 24 June and 17 July 2009), according to which Mr Shakurov had had a personal sleeping place and bed linen, and two statements by detainees (dated 24 June 2009) who had been held in cell 66 since April 2009. Finally, they enclosed extracts from the prison population register for prison IZ-16/1, covering several days per month in the period from September 2007 to March 2009. The extracts showed that during the respective periods of Mr Shakurov's stay, cell 3 housed 7 to 10 persons and cells 21, 40 and 44 housed 4 persons. The Government produced photographs of the cells and the shower room, from which it appears that they were in a good state of repair. In response to the Court's request for information, they submitted floor plans of the facility, which confirmed the accuracy of the cell surface area as they had given it.

36. In Mr Shakurov's submission, cells 66 and 44 measured only 4.8 sq. m. He produced hand-written lists of individuals who were detained

in the same cell with him. The lists contained their full names, dates of birth and their signatures. The lists show that:

- from 10 to 13 October 2008, cell 3 housed 18 inmates;
- from 17 to 20 October 2008, cell 3 housed 18 inmates;
- from 24 to 27 October 2008, cell 3 housed 20 inmates;
- from 2 to 5 November 2008, cell 3 housed 18 inmates.
- from 17 to 20 November 2008, cell 40 housed 4 inmates;
- from 1 to 15 January 2009, cell 66 housed 4 inmates;
- from 17 April to 4 May 2009, cell 44 housed 4 inmates.

37. Further to the Court's request, the Government submitted cell records for the individuals named in Mr Shakurov's lists. It can be seen from the records that as many as eight or ten persons whom Mr Shakurov had listed as his co-detainees in cell 3 had actually been held in other cells.

38. On 18 April 2011 Mr Shakurov complained to the Court that the prison authorities had opened and stamped the Court's letter of 14 February 2011. He enclosed a copy of the letter bearing the prison stamp dated 1 March 2011. In his view, tampering with his correspondence amounted to a violation of his right of individual petition under Article 34 of the Convention.

39. In a letter of 23 June 2011 sent in response to the Court's request for comments, the Government acknowledged that the Court's letter of 14 February 2011 had been opened in prison IZ-16/1. They pointed out that an inquiry had identified the officials responsible for the opening and enclosed the order of the acting prison governor of 6 June 2011. The order shows that the letter was opened and stamped by Major A.Kh., the head of the correspondence unit, who thus breached the requirements of the Federal Penitentiary Service's circular letter of 17 December 2010 in the part concerning the timely delivery of the Court's letters to detainees in closed envelopes. The acting prison governor issued a disciplinary warning to Lieutenant-Colonel R.Kh., his deputy for human resources. In respect of Major A.Kh., it was decided "to maintain the warning that had been previously imposed by an order of 25 October 2010".

E. Application no. 31242/08 lodged on 4 May 2008

40. The applicant in case no. 31242/08, Mr Anatoliy Ivanovich Korobeynikov, is a Russian national who was born in 1953.

41. On 29 November 2006 Mr Korobeynikov was placed in remand prison IZ-48/1 of Lipetsk. On 20 November 2007 he was convicted at last instance and was transferred, ten days later, to a correctional colony in the Lipetsk Region.

42. In prison IZ-48/1, Mr Korobeynikov stayed in cell 4 (from 29 November to 7 December 2006), cell 161 (from 7 to 12 December 2006), cell 190 (from 12 December 2006 to 18 January 2007), cell 157 (from 18 January to 31 May 2007), cell 144 (from 31 May to 19 June 2007), cell

141 (from 19 to 27 June 2007), and cell 176 (from 27 June to 30 November 2007).

43. According to the Government, the cells presented the following characteristics:

- cell 4: 48 square metres and 12 sleeping places;
- cells 161, 190 and 157: 12 square metres and 3 sleeping places;
- cells 144, 141 and 176: 16 square metres and 4 sleeping places.

44. The applicant gave the same number of sleeping places but claimed that the cells had been much smaller. Thus, in his submission, cell 4 measured only 20 sq. m, cell 157 – 9 sq. m, and cells 144, 141 and 176 – approximately 10 sq. m.

45. The parties agreed that the number of detainees did not exceed the number of sleeping places. In support of their submissions, the Government produced certificates issued by the prison governor on 22 June 2009. Subsequently, the Government also submitted floor plans of the facility, which corroborated their indications of the cell surface areas.

F. Application no. 52133/08 lodged on 5 August 2008

46. The applicant in case no. 52133/08, Mr Khamil Kamil oglu Balammedov, is a stateless person who was born in 1962 in the Azerbaijan SSR.

47. On 17 January 2007 Mr Balammedov was taken into custody and placed in remand prison IZ-47/6 of St Petersburg. On 3 April 2008 he was convicted at last instance and subsequently transferred to a correctional colony in the Yamalo-Nenets Region.

48. In prison IZ-47/6, Mr Balammedov stayed in cell 1/2 (from 21 February to 4 July 2007), cell 3/11 (from 4 to 30 July 2007), cell 1/3 (from 30 July to 16 January 2008), cell 403 (from 16 January to 19 April 2008), and cell 419 (from 19 April to 17 May 2008).

49. According to the Government, the cells presented the following characteristics:

- cells 1/2 and 1/3: 396 square metres and 99 sleeping places;
- cell 3/11: 81 square metres and 20 sleeping places;
- cells 403 and 419: 25 square metres and 4 sleeping places.

50. Mr Balammedov claimed that cell 1/3 actually measured 25 by 7 metres, that is 175 square metres, and accommodated 140 to 160 inmates who had slept in turns. He pointed out that, judging from the number of detainees in the prison (1,342) and the sanitary norm of 4 square metres per inmate, the total prison surface should have been no less than 5,368 square metres; however, the cleaning contracts submitted by the Government referred to a much smaller area of 1,500 square metres.

51. Further to the Court’s request for information, the Government produced floor plans of the facility, which corroborated their indications of the cell surface.

52. The Government submitted certificates issued by the prison governor on 25 June 2009, and undated statements by prison warders who stated that Mr Balammedov had at all times had a personal sleeping place and that the cell population had been as follows:

- cell 1/2 housed 78 to 99 persons;
- cell 3/11 – 17 to 20 persons;
- cell 1/3 – 81 to 99 persons;
- cell 419 – 2 to 4 persons.

53. The Government also produced five pages from the prison population register for prison IZ-74/6, covering dates in March, August, September and November 2007. The extracts indicated that cells 1/2 and 1/3 accommodated no more than 97 inmates. Mr Balammedov replied that the extracts covered the dates when the overcrowding had been the least severe.

54. Cells 1/2 and 1/3 featured separate toilet rooms equipped with four and five pans and four and five sinks, respectively. In cells 3/11, 403 and 419 the toilet pan was separated from the living area by a brick partition 1.2 metres high.

55. The exercise yards of the first wing (cells 1/2 and 1/3) measured 700 sq. m and were equipped with benches, pavilions and sheds. Those in the third wing (cell 3/11) ranged from 30 to 60 sq. m in size, and those in the fourth wing (cells 409 and 419) from 8 to 20 sq. m.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

56. Personal dignity is protected by the State and may not be undermined for any reason (Article 21 § 1).

No one may be subject to torture, violence or any other cruel or degrading treatment or punishment (Article 21 § 2).

B. Pre-trial Detention Act (Federal Law no. 103-FZ of 15 July 1995)

57. Detention on remand must be based on the principles of lawfulness, fairness, presumption of innocence, equality before the law, humanism, respect for human dignity and must be carried out in accordance with the Russian Constitution, international legal principles and norms and international treaties, to which Russia is a party, and must not involve torture or other actions that purport to cause physical or moral suffering to the suspect or defendant (section 4).

58. Detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should dispose of no less than four square metres of personal space in his or her cell (section 23).

C. Civil Code

59. If certain actions impairing an individual's personal non-property rights or encroaching on other intangible assets have caused him or her non-pecuniary damage (physical or mental suffering), the court may impose on the perpetrator an obligation to pay pecuniary compensation for that damage. The amount of compensation is determined by reference to the gravity of the perpetrator's fault and other significant circumstances. The court also takes into account the extent of physical or mental suffering in relation to the victim's individual characteristics (Article 151).

60. State and municipal bodies and officials shall be liable for damage caused to a citizen by their unlawful actions or omissions (Article 1069). Irrespective of any fault by State officials, the State or regional treasury are liable for damage sustained by a citizen on account of (i) unlawful criminal conviction or prosecution; (ii) unlawful application of a preventive measure, and (iii) unlawful administrative punishment (Article 1070).

61. Compensation for non-pecuniary damage is effected in accordance with Article 151 of the Civil Code and is unrelated to any award in respect of pecuniary damage (Article 1099). Irrespective of the tortfeasor's fault, non-pecuniary damage shall be compensated for if the damage was caused (i) by a hazardous device; (ii) in the event of unlawful conviction or prosecution or unlawful application of a preventive measure or unlawful administrative punishment, and (iii) through dissemination of information which was damaging to honour, dignity or reputation (Article 1100).

D. Code of Civil Procedure: Complaints about unlawful decisions

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

63. A citizen may lodge a complaint about an act or decision by any State authority which he believes has breached his rights or freedoms, either with a court of general jurisdiction or by sending it to the directly higher official or authority (Article 254). The complaint may concern any decision, act or omission which has violated rights or freedoms, has impeded the exercise of rights or freedoms, or has imposed a duty or liability on the citizen (Article 255).

64. If the court finds the complaint justified, it issues a decision requiring the authority or official to fully remedy the breach of the citizen's rights (Article 258 § 1). The court determines the time-limit for remedying the violation with regard to the nature of the complaint and the efforts that

need to be deployed to remedy the violation in full (point 28 of Ruling no. 2).

III. RELEVANT INTERNATIONAL MATERIAL

65. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular, as follows:

> "10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation...
>
> 11. In all places where prisoners are required to live or work,
>
> (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
>
> (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
>
> 12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
>
> 13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.
>
> 14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all time.
>
> 15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness...
>
> 19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness..."

66. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member States on the European Prison Rules, which replaced Recommendation No. R (87) 3 on the European Prison Rules accounting for the developments which had occurred in penal policy, sentencing practice and the overall management of prisons in Europe. The amended European Prison Rules lay down the following guidelines:

"1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

...

10.1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction."

Allocation and accommodation

"18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

19.3. Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

27.1. Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2. When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise."

67. The relevant extracts from the General Reports prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (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...

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..."

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. JOINDER OF THE APPLICATIONS

68. The Court notes at the outset that all the applicants complained about the allegedly inhuman conditions of their detention in Russian detention facilities and that some of them additionally complained about the absence of an effective domestic remedy in that connection. Having regard to the similarity of the applicants’ grievances, the Court is of the view that, in the interests of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ADMISSIBILITY

A. The applicants’ complaints concerning their conditions of detention and the alleged absence of an effective domestic remedy

69. The Court will begin its examination with a verification of whether or not the admissibility criteria in Article 35 of the Convention have been met in each individual case. Paragraph 1 of Article 35 provides as follows:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

1. Exhaustion of domestic remedies

70. The Government submitted that the applicants had not exhausted the domestic remedies because they had not applied to Russian courts with claims for compensation in respect of non-pecuniary damage in connection with the allegedly inhuman conditions of their detention. The procedure for making claims was established in Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court’s Ruling no. 2 of 10 February

2009. Articles 151 and 1069 allowed individuals to claim compensation for non-pecuniary damage caused by unlawful actions of State authorities. The Government further pointed out that the prosecutors had competence to review compliance with laws in penitentiary institutions. They carried out monthly inspections of remand prisons, during which they checked in particular the conditions of detention and medical assistance. In the Government's view, such inspections were an effective remedy capable of preventing breaches of law and putting an end to them. This remedy was accessible to everyone who was held in custody. However, a majority of the applicants did not apply to a prosecutor.

71. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicants' complaint that they did not have at their disposal an effective remedy for complaining about inhuman conditions of detention. Thus, the Court finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention (compare *Benediktov v. Russia*, no. 106/02, § 25, 10 May 2007).

2. Compliance with the six-month time-limit

72. The Court reiterates that, in contrast to an objection as to the non-exhaustion of domestic remedies, which must be raised by the respondent Government, it cannot set aside the application of the six-month rule solely because a government have not made a preliminary objection to that effect (see *Maltabar and Maltabar v. Russia*, no. 6954/02, § 80, 29 January 2009; *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I; and also *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-...).

73. As a rule, the six-month period runs from 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 *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008, and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

74. The Court observes that a majority of the applicants in the instant case spent the entire period of their detention in the same remand prison and that there were no appreciable variations in the conditions of their detention or interruptions during that period. As they introduced their complaints within six months of the end of their respective detention periods, they have complied with the six-month criterion. On the other hand, the cases of Mr Fetisov requires particular attention on the part of the Court in terms of compliance with the six-month rule. The applicant Mr Fetisov spent the initial period of his detention in two facilities: his stay in the remand prison was punctuated with short stays in the police ward. The question to be

resolved is whether or not the whole period of Mr Fetisov's custody in two different facilities constituted a "continuing situation".

75. The concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). Complaints which have as their source specific events which occurred on identifiable dates cannot be construed as referring to a continuing situation (see *Nevmerzgitskiy v. Ukraine* (dec.), no. 58825/00, 25 November 2003, where the applicant was subjected to force-feeding, and *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005, where the applicant's son was denied medical assistance). However, in the event of a repetition of the same events, such as an applicant's transport between the remand prison and the courthouse, even though the applicant was transported on specific days rather than continuously, the absence of any marked variation in the conditions of transport to which he had been routinely subjected created, in the Court's view, a "continuing situation" which brought the entire period complained of within the Court's competence (see *Vlasov v. Russia* (dec.), no. 78146/01, 14 February 2006, and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004). Similarly, in a situation where the applicant's detention in the police ward was not continuous but occurred at regular intervals when he was brought there for an interview with the investigator or other procedural acts, the Court accepted that in the absence of any material change in the conditions of his detention, the breaking-up of his detention into several periods was not justified (see *Nedayborshch v. Russia*, no. 42255/04, § 25, 1 July 2010). In another case, the applicant's absence from the detention facility for carrying out a certain procedural act did not prevent the Court from recognising the continuous nature of his detention in that facility (see *Romanov v. Russia*, no. 63993/00, § 73, 20 October 2005, where the applicant spent one month out of the remand prison in a psychiatric institution). Nevertheless, where an applicant was released but subsequently re-detained, the Court limited the scope of its examination to the later period (see *Belashev v. Russia*, no. 28617/03, § 48, 4 December 2008; *Grishin v. Russia*, no. 30983/02, § 83, 15 November 2007; and *Dvoynykh v. Ukraine*, no. 72277/01, § 46, 12 October 2006).

76. An applicant's detention in the domestic system is rarely effected within the confines of the same facility: usually he or she would spend a few first days in the police custody, move later to a remand prison during the investigation and trial and, if convicted, begin to serve the sentence in a correctional colony. Different types of detention facilities have different purposes and vary accordingly in the material conditions they can offer. Thus, temporary detention wings located inside police stations are designed for short-term custody only and often lack the amenities indispensable for prolonged detention, such as a toilet, sink, or exercise yard (see for example *Shchebet v. Russia*, no. 16074/07, § 89, 12 June 2008), whereas in correctional colonies – in contrast to remand prisons – the restricted space in

the dormitories is compensated for by the freedom of movement enjoyed by the detainees during the day-time (see *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). The difference in material conditions of detention creates the presumption that an applicant's transfer to a different type of facility would require the submission of a separate complaint about the conditions of detention in the previous facility within six months of such transfer (see *Volchkov v. Russia*, no. 45196/04, § 27, 14 October 2010; *Gultyayeva v. Russia*, no. 67413/01, § 148, 1 April 2010; *Maltabar*, cited above, §§ 82-84; and *Nurmagomedov* (dec.), cited above). Only in a few exceptional cases, having regard to the allegation of severe overcrowding as the main characteristic of the detention conditions in both facilities, has the Court recognised the existence of a "continuous situation" encompassing the applicant's stay both in police custody and in the remand prison (see *Lutokhin v. Russia*, no. 12008/03, §§ 40-42, 8 April 2010; *Seleznev*, cited above § 36, 26 June 2008; and *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008).

77. As long as the applicant stays within the same type of detention facility and provided the material conditions have remained substantially the same, it matters not that he or she was transferred between cells or wings within the same remand prison (see *Trepashkin v. Russia (no. 2)*, no. 14248/05, §§ 108-109, 16 December 2010, and *Nazarov v. Russia*, no. 13591/05, § 78, 26 November 2009), from one remand prison to another within the same region (see *Romokhov v. Russia*, no. 4532/04, § 74, 16 December 2010; *Mukhutdinov v. Russia*, no. 13173/02, § 77, 10 June 2010; *Goroshchenya v. Russia*, no. 38711/03, § 62, 22 April 2010; and *Benediktov*, cited above, § 31, 10 May 2007) or even to a remand prison in a different region (see *Aleksandr Matveyev v. Russia*, no. 14797/02, § 67, 8 July 2010, and *Buzhinayev v. Russia*, no. 17679/03, § 23, 15 October 2009). Nevertheless, a significant change in the detention regime, even where it occurs within the same facility, has been held by the Court to put an end to the "continuous situation" as described above and the six-month time-limit would thus be calculated from that moment: this would be the case for instance where the applicant has moved from a communal cell to solitary confinement (see *Zakharkin v. Russia*, no. 1555/04, § 115, 10 June 2010) or from an ordinary cell to the hospital wing.

78. The Court's approach to the application of the six-month rule to complaints concerning the conditions of an applicant's detention may therefore be summarised in the following manner: a period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention

must be filed within six months from the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion.

79. Examining the case of Mr Fetisov in the light of the above principles, the Court observes that during the initial period of detention he was frequently transferred between the police ward and the remand prison for the purposes of certain procedural acts. Those short-term interruptions do not prevent the Court from treating his allegations as reflecting a "continuing situation" in each respective facility. However, the most recent date on which he was held in police custody was 12 December 2006 and, accordingly, if he wished to complain about the conditions of his detention in the ward he should have done so by 12 June 2007, whereas his application was lodged on 17 July 2007, that is more than six months later. It follows that Mr Fetisov's complaint about the conditions of his detention at the Gukovo police ward has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. Preliminary conclusion as to the admissibility of the complaints relating to the conditions of detention and the existence of an effective remedy

80. The Court has found that the issue of exhaustion of domestic remedies must be joined to the merits of the complaint under Article 13 of the Convention and that a part of the applicant Mr Fetisov's complaints was submitted out of time and was inadmissible. As to the remainder of their complaints concerning the conditions of their detention and the existence of effective domestic remedies, the Court considers that they raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established.

B. The remainder of the applicants' complaints

81. Some of the applicants also raised additional complaints about various alleged deficiencies in the criminal proceedings against them, their pre-trial detention, property issues, spousal visits and other matters. The Court has given careful consideration to these grievances in the light of all the material in its possession and considers that, 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. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. EXHAUSTION OF DOMESTIC REMEDIES AND ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

82. The Court reiterates that an applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, inter alia, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success.

83. The Court has already examined the effectiveness of various domestic remedies suggested by the Russian Government in a number of cases concerning inadequate conditions of an applicant's detention and found them to be lacking in many regards. On that basis, it has rejected the Government's objection as to the non-exhaustion of domestic remedies and has also found a violation of Article 13 of the Convention. The Court has held in particular that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see, among recent authorities, *Kozhokar v. Russia*, no. 33099/08, §§ 92-93, 16 December 2010; *Skachkov v. Russia*, no. 25432/05, §§ 43-44, 7 October 2010; *Vladimir Krivonosov v. Russia*, no. 7772/04, §§ 82-84, 15 July 2010; *Lutokhin*, cited above, § 45; *Skorobogatykh v. Russia*, no. 4871/03, § 52, 22 December 2009; *Aleksandr Makarov v. Russia*, no. 15217/07, § 87-89, 12 March 2009; *Benediktov*, cited above, §§ 27-30; and also *Moiseyev* (dec.), cited above).

84. As regards the possibility to complain to a supervising prosecutor, such complaint falls short of the requirements of an effective remedy because of the procedural shortcomings that have been previously identified in the Court's case-law (see, for instance, *Pavlenko v. Russia*, no. 42371/02, §§ 88-89, 1 April 2010; *Aleksandr Makarov*, § 86, and *Benediktov*, § 29, both cited above). It has been noted that there is no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings that would entirely be a matter between the supervising prosecutor and the supervised body. The complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint. Moreover, the Court has already seen cases in which an applicant did complain to a prosecutor but his complaint did not elicit any response (see *Antropov v. Russia*, no. 22107/03, § 55, 29 January

2009). Since the complaint to a prosecutor about unsatisfactory conditions of detention does not give the person using it a personal right to the exercise by the State of its supervisory powers, it cannot be regarded as an effective remedy.

85. By contrast, the judicial proceedings instituted in accordance with Chapter 25 of the Code of Civil Procedure provide a forum that guarantees due process of law and effective participation for the aggrieved individual. In such proceedings, courts can take cognisance of the merits of the complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation. The ensuing judicial decision will be binding on the defaulting authority and enforceable against it. It appears that the existing legal framework renders this remedy prima facie accessible and capable, at least in theory, of affording appropriate redress.

Nevertheless, in order to be "effective", a remedy must be available not only in theory but also in practice. This means that the Government should normally be able to illustrate the practical effectiveness of the remedy with examples from the case-law of the domestic courts. The Russian Government, however, did not submit a single judicial decision showing that the complainant had been able to vindicate his or her rights by having recourse to this remedy. The Court, for its part, has not noted any examples of the successful use of this remedy in any of the conditions-of-detention cases that have previously come before it. Moreover, as the Court has noted in previous conditions-of-detention cases, the malfunctioning of such a preventive remedy in a situation of overcrowding is to a large extent due to the structural nature of the underlying problem. As the applicants rightly pointed out, even if they were to obtain a judgment requiring the prison authorities to make good a violation of their right to an individual sleeping place and to the sanitary norm of floor surface, their personal situation in an already overcrowded facility could only be improved at the expense and to the detriment of other detainees.

The Court finds that, although Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's ruling of 10 February 2009, provided a solid theoretical legal framework for adjudicating the detainees' complaints about inadequate conditions of detention, it fell short of the requirements of an effective remedy because its capacity to produce a preventive effect in practice has not been convincingly demonstrated.

86. Finally, the Court has to consider whether the tort provisions of the Civil Code constituted an effective domestic remedy capable of providing an aggrieved individual with compensation for the detention that had already occurred in inhuman or degrading conditions. The Court has already examined this remedy in several recent cases, in the context of both Article 35 § 1 and Article 13 of the Convention, and was not satisfied that it was an effective one. The Court found that, while the possibility of obtaining compensation was not ruled out, the remedy did not offer reasonable prospects of success, in particular because the award was conditional on the establishment of fault on the part of the authorities. Even

in cases where the claimant was able to prove that the actual conditions of detention deviated from, or fell short of, the standards required by applicable Russian laws, the Russian courts have routinely absolved the State of tort liability, finding that the inadequacy of material conditions was not attributable to some shortcoming or omission on the part of the prison authorities but rather to a structural problem, such as insufficient funding of the penitentiary system. Moreover, the level of the compensation was unreasonably low in comparison with the awards made by the Court in similar cases (see, for instance, *Roman Karasev v. Russia*, no. 30251/03, §§ 81-85, 25 November 2010; *Shilbergs v. Russia*, no. 20075/03, §§ 71-79, 17 December 2009; *Skorobogatykh*, cited above, §§ 17-18 and 31-32; *Kokoshkina v. Russia*, no. 2052/08, § 52, 28 May 2009; *Aleksandr Makarov*, §§ 77 and 87-89; and *Benediktov*, §§ 29 and 30, both cited above). Accordingly, a civil claim for damages incurred in connection with inhuman or degrading conditions of detention is not an effective remedy that offers both a reasonable prospect of success and adequate redress.

87. In the light of the above considerations, the Court concludes that for the time being the Russian legal system does not dispose of an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention. Accordingly, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies and, noting that all the applicants had at least an "arguable claim" of ill-treatment on account of allegedly inhuman or degrading conditions of their detention, finds a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

88. The applicants complained under Article 3 of the Convention that they had been detained at various remand prisons in conditions that had been so harsh as to constitute inhuman or degrading treatment in breach of this provision, which reads as follows:

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

A. Establishment of facts

1. General principles

89. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted

presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; and *Akdivar and Others v. Turkey* [GC], 16 September 1996, § 168, *Reports of Judgments and Decisions* 1996-IV).

90. The Court is mindful of the objective difficulties experienced by the applicants in collecting evidence to substantiate their claims about the conditions of their detention. Owing to the restrictions imposed by the prison regime, detainees cannot realistically be expected to be able to furnish photographs of their cell or give precise measurements of its dimensions, temperature or luminosity. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government.

91. 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 on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts)).

92. In previous conditions-of-detention cases, the extent of factual disclosure by the Russian Government was rather limited and the supporting evidence they produced habitually consisted in a series of certificates issued by the director of the impugned detention facility after they had been given notice of the complaint. The Court repeatedly pointed out that such certificates lacked references to the original prison documentation and were apparently based on personal recollections rather than on any objective data and, for that reason, were of little evidentiary value (see, among other authorities, *Veliyev v. Russia*, no. 24202/05, § 127, 24 June 2010; *Igor*

Ivanov v. Russia, no. 34000/02, § 34, 7 June 2007; and *Belashev*, cited above, § 52).

2. Findings of fact in respect of individual cases

(a) The case of Mr Fetisov

93. Mr Fetisov was held in the Novocherkassk remand prison IZ-61/3 from 30 August 2006 to 17 May 2007, with the exception of short periods of time when he was taken to the Gukovo detention ward. His detention thus lasted approximately eight months.

94. During his detention Mr Fetisov stayed mainly in two cells: the smaller cell 245 measured 19 square metres and the larger cell 291, 34 square metres. The parties presented contradictory evidence on the number of sleeping places and the actual cell population.

95. The Government's evidence comprised the certificates prepared by the prison governor in 2009 and the extracts from the prison population register covering three days within the period of Mr Fetisov's detention. The certificates merely affirmed that the design capacity had not been exceeded, without indicating the actual cell population on any given date or referring to any documents on which that affirmation was founded. The fact that they were issued approximately three years after Mr Fetisov's detention had ended further undermined their evidentiary value: as the Court has pointed out on many occasions, documents prepared after a considerable period of time cannot be viewed as sufficiently reliable sources, given the length of time that has elapsed (see *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009, and *Shilbergs*, § 91, both cited above).

96. By contrast, the Court is satisfied that the three extracts from the register were the original documents which had been prepared during the period under examination and which showed the number of sleeping places in cells 245 and 291 and the actual number of inmates who had been present in those cells on those dates. The Court considers it regrettable that the extent of the Government's disclosure was restricted to just three extracts which appeared to have been chosen to reflect the situation in Mr Fetisov's cell on the day of his transfer or on the following day. On those dates cell 245, having four sleeping places, accommodated four persons and cell 291, having eight places, housed as many inmates. Even in the absence of similar documents covering other dates, useful information about the situation in other prison cells and the overall prison population may be deduced from the extracts submitted. It appears that the Novocherkassk prison was not generally plagued with the overcrowding problem, because no other cell had been filled beyond its design capacity.

97. Mr Fetisov's evidence included eight handwritten statements from the persons who had been detained together with him in cell 291. According to the statements, the cell was equipped with sixteen bunk beds and its population varied from 20 to 25 persons. The Court however finds the statements unconvincing for the following reasons. Firstly, although they

were prepared more than six months after their authors had stayed in the cell, the statements were strikingly similar in their content to the point that many phrases were repeated verbatim, thus suggesting that they were not drafted spontaneously. Secondly, the cell records produced by the Government indicated that only seven – out of eight – inmates who had given the statement had shared the cell with Mr Fetisov in the winter of 2006-2007, whereas the author of the eighth statement had first moved into the cell in the mid-spring of 2007. Accordingly, the number of statements does not support the conclusion that there were more than eight cellmates in cell 291 at any given point. Had the cell population been larger than eight persons, surely it must have been possible to compile a verifiable list of their names or obtain further written statements. Thirdly, as noted above, the extracts from the prison register demonstrated that the prison had not been generally overcrowded. Even though the Government did not submit any reliable data covering the periods between September and December 2006 or between January and May 2007, it is highly improbable that the prison population could have spiked in those periods so sharply as to result in Mr Fetisov's cell being filled to three times its design capacity. Besides, the statements listed the number of sleeping places, which was twice as large as that listed in the register. As that number obviously could not have fluctuated so significantly over a relatively short period of time, this factual inaccuracy further undermines the credibility of the statements.

98. Having assessed the evidence presented by the parties in its entirety, the Court lends credence to the primary documents produced by the Government and rejects Mr Fetisov's allegation of overpopulation during the period of his detention. It finds that there was no shortage of sleeping places in the cells and that Mr Fetisov disposed of at least four square metres of personal space.

(b) The case of Mr Savinov

99. Mr Savinov was held in the Kazan remand prison IZ-16/1 for some eighteen months, from 13 February 2006 to 20 August 2007.

100. Mr Savinov transited through six cells. It is not disputed that the design capacity of all the cells, that is the floor surface divided by the number of sleeping places, afforded at least four square metres per inmate. The dispute between the parties related to the issue whether or not the design capacity had been exceeded.

101. The Government produced a significant amount of evidence capable of corroborating their assertion that the number of inmates had not surpassed the number of beds. For the reasons outlined above, the Court does not accept as sufficiently reliable the certificates by the prison governor and the statements by the prison warders, which were prepared more than two years after Mr Savinov's detention had ended. The fourteen statements by former inmates do not appear to contain any relevant information because all of them described the conditions of detention as they had been in 2008 or 2009, whereas Mr Savinov had been transferred

from the Kazan prison already in October 2007. The most important and persuasive part of the Government's evidence are the extracts from the prison population register covering at least one day per month during the entire period of Mr Savinov's detention. Those documents reflected the situation as it existed at the material time. They indicated that Mr Savinov's cells had been filled to design capacity or below it and that there had been no other overcrowded cells in the facility.

102. In support of his allegations, Mr Savinov submitted a magazine article and a list of his co-detainees in cell 68. The article did mention the overcrowding problem in the Kazan remand prison; however it did not refer to the source of the information and its wording was insufficiently specific to determine whether the word "currently" referred to the time of its drafting or to the time of its publication. This information is too generic to be of any real evidentiary value (compare *Rokhlina v. Russia* (dec.), no. 54071/00, 9 September 2004). The list of residents of cell 68 in the period from November 2007 to January 2008 contained eight names, including that of Mr Savinov. Two individuals were mentioned only by their first name and thus cannot be identified. The Court requested the Government to produce the cell records of their remaining five individuals, from which it became apparent that only three of them had actually shared the cell with Mr Savinov and that the other two had been held elsewhere. In these circumstances, the Court does not consider the list to be credible. It follows that cell 68 actually accommodated four persons (Mr Savinov and three others), which is consistent with the entries in the prison population register.

103. In the light of the parties' submissions, the Court finds that Mr Savinov was detained in conditions providing at least four square metres of personal space for each prisoner. It has been unable to establish that there was a shortage of sleeping places in Mr Savinov's cells.

(c) The case of Mr Telyubayev

104. Mr Telyubayev was held in three different remand prisons.

(i) Remand prison IZ-66/1 in Yekaterinburg

105. Mr Telyubayev transited through cell 203 of the prison during three days in August and four days in September 2007.

106. Cell 203 measured 33 square metres and afforded 16 sleeping places. It follows from the parties' submissions and the documents produced by the Government that the cell population ranged from 3 to 12 inmates.

107. The Court finds that Mr Telyubayev had three or more square metres at his disposal during his stay in prison IZ-66/1.

(ii) Remand prison IZ-74/3 in Chelyabinsk

108. Mr Telyubayev's stay in the Chelyabinsk prison fell on five days in August and five days in September 2007.

109. Each time he stayed in cell 116, which measured 16 square metres and was equipped with four beds.

110. The parties disagreed on the number of inmates in the cell. The extracts from the prison registers covering the dates in September 2007 indicated that the cell housed four inmates. Mr Telyubayev claimed that there had been as many as ten prisoners. He did not specify, however, whether his claim related to the first, the second or both of his stays. Given a lack of precision in Mr Telyubayev's submissions and the absence of any material capable of corroborating them, the Court finds no indication of overpopulation in cell 116 and estimates the available floor space per detainee to have been four square metres.

(iii) Remand prison IZ-56/1 in Orenburg

111. Mr Telyubayev's accommodation in cell 59 in the Orenburg prison lasted from 18 August to 6 September 2007, for a total of nineteen days.

112. There is no discord between the parties as to the characteristics of the cell. It measured 16 square metres and provided eight sleeping places but the actual number of inmates was no greater than seven.

113. It is therefore established that in the Orenburg prison Mr Telyubayev disposed of nearly two square metres of floor surface.

(d) The case of Mr Shakurov

114. Mr Shakurov's stay in the Kazan remand prison IZ-16/1 lasted from 10 September 2007 until at least June 2009, that is for almost two years and probably longer. Mr Savinov had been held in that same remand prison some time before Mr Shakurov arrived there.

115. The parties provided differing information on almost every aspect of Mr Shakurov's detention, except the cell number and the dates of the transfers from one cell to another. Moreover, Mr Shakurov did not dispute the number of sleeping places as it had been given by the Government.

116. The Government submitted multiple certificates by the prison governor and statements by the prison warders, which had been prepared at the time when Mr Shakurov was still in the prison. However, the affirmations contained in those statements were too general and unspecific to be of much use for the fact-finding; for instance, they did not allow the Court to determine whether or not Mr Shakurov's conditions of detention had changed over time and, if they had, which period of his detention was described therein. By contrast, the extracts from the prison population register and the floor plans of the entire facility were the important original documents that provided reliable and sufficient information on the prison population in general, the number of inmates in every cell, including those occupied by Mr Shakurov, and their dimensions.

117. Mr Shakurov corroborated his claim of severe overcrowding with several hand-written lists containing the names and signatures of individuals who had allegedly shared the cell with him. It appeared from those lists that for several weeks in October 2008, cell 3, having ten sleeping places, accommodated twice as many inmates. However, after the Court requested from the Government the cell records of the listed individuals, it transpired

that a majority of them had not been held in cell 3 but in other cells. The actual cell population did not exceed ten persons, which coincided with the Government's submissions and the entries in the prison population register. Since the lists turned out to be inaccurate and unreliable with regard to the most important information they purported to prove, that is the number of inmates, the Court sees no reason to accept them in support of Mr Shakurov's other allegation of a paucity of personal space in cells 66 and 44, which was moreover refuted by the floor plans produced by the Government.

118. On the basis of the evidence presented by the parties, the Court finds that Mr Shakurov had at his disposal a sleeping place and at least four square metres of personal space during the entire period of his detention in the Kazan remand prison.

(e) The case of Mr Korobeynikov

119. Mr Korobeynikov spent almost one year, from 29 November 2006 to 20 November 2007, in the Lipetsk remand prison IZ-48/1.

120. While in prison, he stayed in seven cells which, with the exception of his initial accommodation in cell 4, were relatively small in size. The parties disagreed on their exact measurements. The Court lends credence to the Government's information on the cell dimensions, which was corroborated by detailed floor plans.

121. In the absence of any disagreement as to the number of sleeping places and inmates, the Court finds that each detainee disposed of his own sleeping place and four square metres of floor surface.

(f) The case of Mr Balammedov

122. Mr Balammedov was detained in the St Petersburg remand prison IZ-47/6 for fourteen months, from 17 January 2007 to 3 April 2008.

123. The Court observes that some of Mr Balammedov's cells were unusually large in surface, however, their exact measurements were a matter of dispute between the parties. Mr Balammedov gave the dimensions of cell 1/3 as having been 25 by 7 metres and the Government maintained that the cell measured almost 400 square metres. To resolve the controversy, the Court obtained from the Government the floor plans of the entire remand prison, which demonstrated that Mr Balammedov's measurements could not have been accurate. As to Mr Balammedov's objection that the cleaning contracts referred to a surface area which was much smaller than what the total prison surface area should have been had the sanitary norms been complied with, the Court finds no indication in the text of the contract that it covered the entire prison rather than some parts of it or a separate wing.

124. Turning to the issue of alleged overpopulation, the Court notes that Mr Balammedov did not produce any evidence in support of his claim that cell 1/3 had actually accommodated more inmates than it had contained sleeping places. The information produced by the Government was also scarce. As the Court has pointed out above, the statements by the prison

governor and warders are of little evidentiary value because of the two-year gap between the period under examination and the time of their drafting and also because of their vague wording and lack of references to any verifiable sources of information. The extracts from the prison population register are an important and reliable piece of evidence but the Government did not explain why they chose to submit just four extracts covering some random dates in 2007. The extent of their disclosure was obviously insufficient to make reliable findings of fact in respect of the entire fourteen-month period of Mr Balammedov's detention. Nevertheless, it appears from the extracts that the St Petersburg prison did not suffer from overpopulation on those dates and even had some spare capacity which could be used to accommodate new inmates. In these circumstances, Mr Balammedov's affirmation that cell 1/3 had been filled to more than forty to sixty per cent beyond its design capacity and that such overcrowding had only occurred in between the dates on the extracts, appears implausible.

125. The Court finally observes that the parties had no disagreement on the characteristics of the smaller cells. In the light of the above considerations, it finds that it is unable to establish to the standard required under Article 3 of the Convention, "beyond reasonable doubt", that Mr Balammedov was detained in overcrowded cells. He appears to have disposed of approximately four square metres of personal space at all times.

B. Compliance with Article 3

1. General principles

126. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

127. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

128. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see, *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

129. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

130. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005). In its previous cases where applicants had at their disposal less than 3 sq. m of floor surface, the Court found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 (see, among many other authorities, *Svetlana Kazmina v. Russia*, no. 8609/04, § 70, 2 December 2010; *Kovaleva v. Russia*, no. 7782/04, § 56, 2 December 2010; *Roman Karasev*, cited above, §§ 48-49; *Aleksandr Leonidovich Ivanov v. Russia*, no. 33929/03, § 35, 23 September 2010; *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 98, 12 February 2009; *Guliyev*, cited above, § 32; *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

131. In cases where the inmates appeared to have at their disposal sufficient personal space, the Court noted other aspects of physical conditions of detention as being relevant for the assessment of compliance with that provision. Such elements included, in particular, access to natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements. Thus, even in cases where a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; and *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007).

2. Application of the principles in the instant case

132. The Court will now proceed to assess, in the light of the above-mentioned general principles and requirements, whether or not the facts, as established above, disclosed a violation of Article 3 in individual cases.

133. The present case concerned the conditions of detention in seven different remand prisons: Novocherkassk prison IZ-61/3, Kazan prison IZ-16/1, Yekaterinburg prison IZ-66/1, Chelyabinsk prison IZ-74/3, Orenburg prison IZ-56/1, Lipetsk prison IZ-48/1, and St Petersburg prison IZ-47/6. The Court found it established, to the standard required under Article 3 of the Convention, that at the material time at least one prison was plagued with a severe shortage of personal space available to inmates.

134. The applicant Mr Telyubayev, during his nineteen-day stay in the Orenburg prison, was held in conditions that provided approximately two square metres of floor surface per inmate. Nevertheless, he disposed of his own personal sleeping place (see paragraphs 111-113 above). By contrast, the applicants Mr Fetisov, Mr Savinov, Mr Shakurov, Mr Korobeynikov, Mr Balammedov, as well as Mr Telyubayev during his stays in the Yekaterinburg and Chelyabinsk facilities, had at their disposal at least four square metres of floor surface and a quantity of sleeping places sufficient for them and their cellmates (see paragraphs 98, 103, 118, 121, 125, 107 and 110 above). It cannot be said that the overall dimensions of their cells were so small as to restrict the inmates' freedom of movement beyond the threshold tolerated by Article 3.

135. In the light of the parties' submissions and the legal and normative regulations regarding the regime in Russian remand prisons, as applicable at the material time (see paragraph 57 et seq. above), the Court also considers the following to be established. The applicants were allowed a one-hour period of outdoor exercise daily. Windows were not fitted with metal shutters or other contraptions preventing natural light from penetrating into the cell. Where available, a small window pane could be opened for fresh air. Cells were additionally equipped with artificial lighting and ventilation.

136. As regards sanitary and hygiene conditions, it is noted that both the dining table and the lavatory pan were located inside the applicants' cells, sometimes as close to each other as one or one and a half metres. A partition, approximately one to one a half metres in height, separated the toilet on one side; the prison regulations did not allow the toilet to be completely shielded from view by means of a door or a curtain. Cold running water was normally available in cells and detainees had access to showers once every seven to ten days.

137. The case of Mr Balammedov calls for particular attention. He had spent a significant portion of his fourteen-month detention on remand in two large-capacity dormitories in the St Petersburg prison IZ-47/6. It is recalled that the Committee for the Prevention of Torture expressed strong concern and objections to the very principle of such accommodation arrangements frequently encountered in Central and Eastern European prisons, because

the dormitories in question had been found to hold prisoners under extremely cramped and insalubrious conditions. The Committee also noted that such accommodation inevitably implied a lack of privacy for prisoners in their everyday lives (see paragraph 29 of the 11th General Report, cited in paragraph 67 above). In Mr Balammedov's case, however, the Court was unable to establish that the dormitories were filled beyond the design capacity. Although premises shared by up to a hundred inmates undoubtedly restricted the privacy of the inhabitants, the floor plans submitted by the Government demonstrated that the toilet and washing facilities were located in a separate annex and that the lavatory pans were sufficient in number.

138. The Court acknowledges that the conditions of detention of the applicants fell short of the Minimum Standard Rules for the Treatment of Prisoners, the European Prison Rules and the recommendations of the Committee for the Prevention of Torture in some aspects, including in particular a lack of privacy for detainees using the toilet, an insufficient frequency of hot showers and restricted out-of-cell activities. Furthermore, the cell in which Mr Telyubayev was detained in Orenburg prison IZ-56/1 offered an extremely restricted personal space to detainees. Nevertheless, taking into account the cumulative effect of those conditions and in particular the brevity of Mr Telyubyev's stay at the Orenburg prison, the Court does not consider that the conditions of the applicants' detention, although far from adequate, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention. Therefore, there has been no violation of this provision.

V. ALLEGED HINDRANCE TO THE APPLICANT MR SHAKUROV'S RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

139. The applicant Mr Shakurov complained about the opening of the Court's letters addressed to him. In his view, this amounted to an attempt to hinder his right of individual petition enshrined in Article 34 of the Convention, which provides as follows:

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

140. The Government acknowledged that one of the Court's letters had indeed been opened and stamped. The officials responsible had been identified and disciplined. They submitted that there had been no violation of Article 34 because the applicant Mr Shakurov had been able to exercise fully his right to petition Russian and international authorities, including this Court. They also pointed out that the Federal Penitentiary Service had repeatedly reminded its employees that correspondence with the Court

should remain confidential and be diligently dispatched and delivered. Appropriate training had been provided to the staff.

141. The Court observes at the outset that a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000, and *Ergi v. Turkey*, 28 July 1998, § 105, *Reports* 1998-IV).

142. The Court further reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 160, *Reports* 1998-III, and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references).

143. It is important to respect the confidentiality of the Court's correspondence with the applicants since it may concern allegations against prison authorities or prison officials. The opening of letters from the Court or addressed to it undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create a risk of reprisals by prison staff against the prisoner concerned. The opening of letters by prison authorities can therefore hinder applicants in bringing their cases to the Court (see *Ponushkov v. Russia*, no. 30209/04, § 80, 6 November 2008, and *Klyakhin v. Russia*, no. 46082/99, §§ 118 and 119, 30 November 2004).

144. It is not in dispute between the parties that the Court's letter of 14 February 2011 was opened and stamped in the correspondence unit of Kazan remand prison IZ-16/1. Pursuant to Article 91 of the Penitentiary Code, correspondence with the Court is privileged and is not subject to censorship. The Court's letter was therefore opened in breach of domestic law, as was acknowledged by the Government (see paragraph 39 above). Moreover, that letter contained the Court's request for certain additional information concerning the conditions of Mr Shakurov's detention in the remand prison. In these circumstances, the Court considers that the opening of his correspondence could have had an intimidating effect on the applicant and constituted an inappropriate interference with the exercise of his right of individual petition in breach of the respondent State's obligation under Article 34 of the Convention (see *Ponushkov*, §§ 81-85, cited above).

145. It follows therefore that in Mr Shakurov's case the respondent State has failed to comply with its obligations under Article 34 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. 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

147. The applicants claimed the following amounts in respect of non-pecuniary damage:

- Mr Fetisov 16,000 euros (EUR);
- Mr Savinov EUR 35,000;
- Mr Telyubayev EUR 1,000;
- Mr Shakurov EUR 200,000;
- Mr Korobeynikov EUR 10,000,000, and
- Mr Balammedov EUR 100,000.

148. The Government considered their claims to be excessive.

149. The Court has found a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy by which the applicants could have ventilated their complaints about the conditions of their detention. It has also found a breach of Article 34 in respect of Mr Shakurov.

150. In these circumstances, the Court considers that the finding of a violation constitutes sufficient just satisfaction. Accordingly, it rejects the applicants' claims in respect of non-pecuniary damage.

B. Costs and expenses

151. The applicant Mr Fetisov claimed 5,000 Russian roubles (RUB) in postal expenses, RUB 20,000 in legal costs in the domestic proceedings, and RUB 162,000 in respect of his wife's travel expenses and the purchase of food and toiletries during his pre-trial detention. The Government pointed out that no supporting documents had been provided.

152. The other applicants did not claim any costs or expenses.

153. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

154. In the case of Mr Fetisov, the amount of EUR 850 has already been paid to the applicant by way of legal aid and the Court does not consider it necessary to make an additional award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's objection relating the exhaustion of domestic remedies and *rejects* it;

3. *Declares* admissible the applicants' complaints about the conditions of their detention in various remand prisons and about the alleged absence of an effective domestic remedy in this connection, and inadmissible the remainder of the application, including the complaints by Mr Fetisov in the part concerning his detention in the police ward;

4. *Holds* that there has been no violation of Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention in respect of all the applicants;

6. *Holds* that in Mr Shakurov's case the respondent State has failed to comply with its obligations under Article 34 of the Convention;

7. *Holds* that the finding of a violation constitutes sufficient just satisfaction;

8. *Dismisses* the applicants' claims for just satisfaction.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President