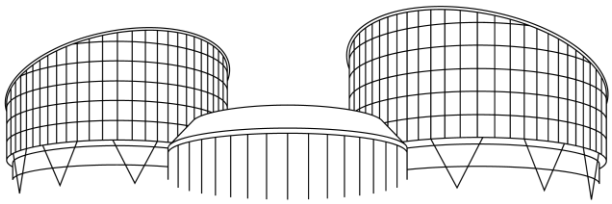

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GUBIN v. RUSSIA

(Application no. 8217/04)

JUDGMENT

STRASBOURG

17 June 2010

FINAL

17/09/2010

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

In the case of Gubin v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 8217/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksey Andreyevich Gubin ("the applicant"), on 19 January 2004.

2. The applicant, who was granted legal aid, was represented by Ms Y. Yefremova, a lawyer practising in Moscow. The Russian Government ("the Government") were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and Mr A. Savenkov, First Deputy Minister of Justice of the Russian Federation, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant claimed, in particular, that he had been detained in inhuman and degrading conditions in remand prison no. 77/1 in Moscow and that he and his counsel had not been present at the appeal hearing on the extension of his pre-trial detention on 3 November 2003. The Court also considered it appropriate to raise of its own motion the issue of Russia's compliance with the requirements of Article 13 of the Convention as regards the availability of an effective remedy in respect of the applicant's complaint about conditions of his pre-trial detention in remand prison no. 77/1 in Moscow.

4. On 26 May 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Moscow.

A. The applicant's arrest and pre-trial detention

6. On 12 August 2003 a Ms T. lodged a complaint with the Kuzminskiy District Prosecutor's Office of Moscow alleging that she had been kidnapped and raped by a group of men.

7. On 13 August 2003 the applicant was arrested on suspicion of kidnapping and rape.

8. On 14 August 2003 the District Court authorised the applicant's detention pending trial. The applicant was represented by counsel of his own choosing.

9. According to the applicant, he could not appeal against the decision of 14 August 2003 since he was not provided with stationery by the administration of the temporary detention facility where he was being held at the time.

10. On 8 October 2003 the Kuzminskiy District Court of Moscow extended the applicant's pre-trial detention until 12 December 2003. The applicant attended the hearing. His counsel asked the court to consider the case in his absence and did not appear at the hearing. The applicant was represented by a court-appointed lawyer.

11. On 14 October 2003 the applicant lodged an appeal against the court order of 8 October 2003. He asked the appeal court to ensure his and his lawyer's presence at the hearing.

12. On 3 November 2003 the Moscow City Court examined the appeal. The hearing was held in the absence of the applicant and his counsel. The prosecutor considered that the applicant's appeal should be dismissed. The City Court found that the extension of the applicant's pre-trial detention was in accordance with the law and upheld the decision of 8 October 2003.

13. The District Court further extended the applicant's detention pending trial. Extensions were granted at the prosecutor's request on 3 December 2003 and 10 February 2004. The City Court upheld those decisions on appeal on 21 January and 9 March 2004 respectively. The applicant did not provide any other details in respect of the detention orders.

14. On several occasions in 2004 the applicant asked the investigator to question additional witnesses and examine forensic evidence. The investigator dismissed the applicant's requests, indicating, *inter alia*, that:

> "The guilt of [the defendants] ha[d] been fully proved".

15. On 30 January 2004 the District Court dismissed the applicant's complaint about the prosecutor's refusal to open a criminal investigation against the police officers who had allegedly ill-treated him during his arrest. The applicant did not appeal.

B. The trial

16. On 1 April 2004 the Kuzminskiy District Court of Moscow received the case file.

17. On 20 December 2004 the District Court found the applicant guilty of kidnapping and rape and sentenced him to four and a half years' imprisonment.

18. On 19 April 2005 the Moscow City Court upheld the applicant's conviction on appeal.

C. Conditions of the applicant's detention

1. Detention in the temporary detention facility

19. From 13 to 20 August 2003 the applicant was held in cell no. 2 of the Maryinskiy temporary detention facility. The cell measured 8 sq. m. The applicant was detained there alone. According to him, the cell was poorly lit, and the cement floor was dirty. The cell was infested with bedbugs and other insects. The corners were covered in cobwebs. No bed sheets, mattresses or blankets were provided. The radio was left on during the whole night. Water was available twice a day. There was no sink and the applicant had to wash himself over the toilet. The applicant received one meal a day.

2. Detention in remand prison no. 77/1

(a) The description provided by the applicant

20. On 20 August 2003 the applicant was transferred to remand prison no. 77/1. On arrival he was placed in a cubicle measuring 1 sq. m where he spent the whole day. He was not given any food or allowed to use the bathroom for the whole of the time he spent in the cubicle.

21. On 21 August 2003 the applicant was placed in cell no. 274, where he was detained until 11 September 2004. It measured 16 sq. m and had eight sleeping places. It housed from ten to fifteen persons (in his subsequent submissions the applicant stated that it housed from twelve to sixteen persons). The inmates had to take turns to sleep. The beds were 1.65 m long. The cell did not have any drawers or shelves to allow the inmates to store their personal belongings properly. Approximately eighty per cent of

the inmates smoked and the applicant, a non-smoker, was exposed to tobacco smoke. The toilet was located about one metre from the dinner table. It was dirty and foul smelling. There was no separation between the toilet and the living area of the cell and the person using it could be seen by others present in the cell. The inmates had to pull a curtain across to separate the toilet from the living area. However, the prison guards removed the curtain each time they made an inspection. Because of the overcrowding of the cell the inmates had to wait a long time for their turn to use the toilet.

22. The food was of poor quality and portions were small. On the days of the court hearings, the applicant left the prison at six a.m. and came back late at night. As a result, he missed the meals served at the prison and was left hungry all day. No drinking water was available in the cell. There was only cold tap water that contained rust and had a peculiar colour and taste.

23. The cell had only one window measuring 1.2 sq. m, which was covered with a metal screen and bars. The screen and the bars prevented any fresh air or natural light from entering the cell. There were no window panes. The artificial ventilation system did not function properly. The electric light was constantly on.

24. The cell was stuffy and infested with parasites. It was never disinfected. There was fungus and mould in the shower rooms. Medical assistance was of poor quality.

25. According to the applicant, he twice attempted to lodge a complaint with the authorities about the conditions of his detention. On both occasions an administrative officer physically destroyed the written complaints.

26. The applicant submitted written testimonies from five of his fellow mates who corroborated the description of cell no. 274 provided by the applicant.

(b) The description provided by the Government

27. On arrival at the remand prison the applicant was taken first to the processing area (сборное отделение). He was held for one hour in a one-person cubicle equipped with a seat and artificial lighting. Then he was transferred to another cell which was equipped with running water, lighting, ventilation and a seat. The applicant spent about one day there.

28. On 21 August 2003 the applicant was transferred to cell no. 274. The average number of inmates held with the applicant in that cell was seven. There were eight beds in the cell. At all times the applicant and other inmates were provided with an individual sleeping place and bed linen.

29. According to the excerpts from the remand prison population register submitted by the Government, the number of inmates in the cell was as follows:

Date	Number of inmates
21 August 2003	Four
24 August 2003	Four

6 September 2003	Six
29 September 2003	Six
7 October 2003	Six
Unspecified date	Nine

30. There were no metal shutters on the cell windows. They had been removed before 1 April 2003, that is before the applicant's detention there began. The windows were provided with air vents which could be kept open. There was also exhaust ventilation which was in good working order. The prison was equipped with central heating which functioned properly at all times. The average temperature in the cells was never below $+18^0$C during the winter and did not exceed $+22^0$C during the summer.

31. The cell was equipped with electrical lighting. During the day lighting was on from 6 am to 10 pm. At night lower-voltage bulbs were used to provide lighting for surveillance and safety reasons.

32. The applicant had the opportunity to take a shower once a week. The bed linen was changed weekly. The remand prison had a centralised water supply system. The quality of the water was in full compliance with standards of hygiene.

33. The cell was disinfected according to the schedule approved by the head of the prison. The daily cleaning was the inmates' responsibility. The toilet was separated from the rest of the cell by a 1.25-metre partition to ensure the privacy of the person using it.

34. The applicant received three meals a day. The food ration was in full compliance with quality and quantity standards.

3. Applicant's transfer to remand prison no. 77/6

35. On 11 September 2004 the applicant was transferred to remand prison no. 77/6.

36. On 4 October 2004 he lodged another complaint about the conditions of his detention in remand prison no. 77/1.

37. On 27 November 2004 Ms F., an administrative officer at the remand prison, allegedly summoned the applicant to her office. She threatened to move him back to remand prison no. 77/1 or make his life more difficult at remand prison no. 77/6 if he continued to complain about the conditions of his detention.

38. On 30 November 2004 the Moscow City Department of Corrections responded officially to the applicant's complaint about conditions of detention at remand prison no. 77/1. The applicant was informed that the overcrowding in the cells had been caused by renovation work being carried out at the prison; that the food rationing was in accordance with the applicable norms; that the inmates were allowed to take a fifteen-minute shower once a week; and that the bed sheets were changed on a weekly basis.

4. Applicant's post-conviction detention

39. From 18 to 31 May 2005 the applicant was detained in remand prison no. 66/1 in Yekaterinburg. According to the applicant, he was held in cell no. 334, which measured 30 sq. m and housed from twenty-four to twenty-seven persons. It had eleven sleeping places and the inmates had to take turns to sleep. The cell was infested with bedbugs, cockroaches, lice and rats. It was never cleaned. There were nine mattresses. No bed sheets, pillows or blankets were provided, nor was there any cutlery or tableware. Water was constantly leaking from a corroded sink onto the floor. The toilet was separated from the living area by a partition less than one metre high. The inmates were allowed to shower once every ten days. Because of the small size of the table and bench, the inmates had to take turns to eat. There was no radio or clock. The inmates did not receive soap or buckets with which to do their laundry.

THE LAW

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

40. The applicant complained that he had been detained in appalling conditions in remand prison no. 77/1 in Moscow from 20 August 2003 to 11 September 2004 in contravention of Article 3 of the Convention which reads as follows:

"**Article 3**

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

41. The Court considered it appropriate to raise of its own motion the issue of Russia's compliance with the requirements of Article 13 of the Convention which, in so far as relevant, provides as follows:

Article 13

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority..."

A. Submissions by the parties

1. *The Government*

42. The Government noted that the applicant had failed to bring his grievances to the attention of a competent domestic authority and considered that his complaint should be rejected because he had failed to comply with the requirements of Article 35 § 1 of the Convention, as he had not exhausted domestic remedies before lodging his application with the Court. In particular, they submitted that it had been open to the applicant to bring his grievances to the attention of the prosecutor. They cited the following examples from the domestic practice in support of their position: in response to a complaint by a Mr N, the Novosibirsk prosecutor's office had conducted an inquiry which confirmed his allegations that the food ration was insufficient and the water supply was irregular. As a result, the prison administration had renovated the prison and purchased medical supplies; in the Vladimir Region, a special section for the detention of inmates diagnosed with tuberculosis had been set up following an NGO's complaint in respect of a Mr B; in the Khabarovsk Region the administration of the prison where a Mr Sh. and a Mr Z. were detained had renovated the shower and laundry rooms, upgraded the ventilation system in the disciplinary block and set up an area for medical consultations. Alternatively, the applicant could have brought a civil action for damages resulting from the conditions of his detention. The Government cited two cases: a Mr S. had been awarded 250,000 roubles (RUB) in compensation for non-pecuniary damage resulting from the violation of his rights set forth in Article 3 of the Convention on account of the appalling conditions of his detention in a remand prison in the Mariy El Republic; a Mr D. had been awarded RUB 25,000 in compensation for non-pecuniary damage arising from the unsatisfactory conditions of his pre-trial detention.

43. The Government claimed that the conditions of the applicant's detention had been in compliance with the standards set forth in Article 3 of the Convention. They submitted that at all times the applicant had been provided with an individual bed and bedding. The Government referred to the copies of excerpts from the remand prison population register for the period from 18 April 2003 to 10 November 2003.

2. *The applicant*

44. The applicant maintained his complaint. He submitted that he had been detained in inhuman and degrading conditions for over a year and did not have an effective domestic remedy for the violation of his rights. In addition to his own description of the cell, he provided testimonies from five of his fellow inmates to substantiate his complaint. Referring to the Court's vast case-law (the cases of *Kalashnikov v. Russia*, no. 47095/99,

ECHR 2002-VI; *Labzov v. Russia*, no. 62208/00, 16 June 2005; and *Khudoyorov v. Russia*, no. 6847/02, ECHR 2005-X (extracts)), the applicant considered that he had no effective remedies available at the domestic level. He considered that an application to the prosecutor or the court, as suggested by the Government, would be illusory and ineffective. In his view, the examples cited by the Government were isolated incidents and did not reflect the general approach of the Russian authorities. As regards his own attempts to bring his grievances to the attention of the authorities, the applicant submitted that the remand prison administration had refused to dispatch his complaints and had destroyed them. Only after his transfer to another remand prison had he been able complain to a prosecutor about the conditions of his detention. However, the complaint had been to no avail.

B. The Court's assessment

1. Admissibility

45. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the complaint that the applicant did not have at his disposal an effective remedy for complaining about inhuman and degrading conditions during his detention. The Court therefore finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention.

46. The Court further notes that the complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible

2. Merits

(a) Article 13 of the Convention

47. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

48. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

49. As regards the Government's contention that the applicant could have obtained redress for the allegedly inhuman and degrading conditions of his detention by means of an application to a prosecutor or a court, the Court observes that it has previously found that the possibility of making such an application cannot be regarded as an effective domestic remedy (see, for example, *Benediktov v. Russia*, no. 106/02, §§ 27-30, 10 May 2007). Having regard to the material submitted by the Government, the Court notes that they have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

50. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies and concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law enabling the applicant to complain about the general conditions of his detention.

(b) Article 3 of the Convention

51. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. The Convention prohibits torture or inhuman or degrading treatment or punishment in absolute terms, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that in order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of his liberty may often involve such an element, under Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland*, cited above, §§ 92-94).

52. Turning to the facts of the instant case, the Court notes that the parties disagreed as to most aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, because it can find a violation of Article 3 on the basis of the facts presented to it by the applicant which the respondent Government failed to refute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

53. In particular, the Court observes that the Government did not provide any information as to the surface area of the cell where the applicant had been detained. Nor did they dispute the data submitted by the applicant on the issue.

54. As regards the applicant's argument that the cell had been overcrowded at all times and that, while it was equipped with eight sleeping places, the number of inmates held in it was twice as many, the Court took cognisance of the original data submitted by the Government to refute the applicant's contention. However, the Court notes that the information submitted by the Government is rather scarce. The Government submitted excerpts from the remand prison population register in respect of five days only. No explanation as to how the samples had been chosen was provided. While the Court accepts that on those five days the number of inmates in the cell where the applicant was detained was indeed below the capacity it was designed for and that the cell was not overcrowded, it cannot accept that the Government's contention that there was no overcrowding is sufficiently substantiated in respect of the remaining almost thirteen months the applicant spent in detention. Furthermore, the Court cannot but notice that even the extract from the register showed that on one occasion the number of the inmates detained in the cell exceeded the number of sleeping places available (see paragraph 29 above).

55. The Court further notes that the domestic authorities did in fact concede that the applicant had been detained in an overcrowded cell (see paragraph 38 above). However, the Government offered no comment as to that fact.

56. In connection with the above inconsistencies and the incompleteness of the data submitted by the Government on the issue, the Court reiterates that Convention proceedings such as the present application do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on the part of a Government to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Timurtaş v. Turkey*, no. 23531/94, § 66 *in fine*, ECHR 2000-VI).

57. Having regard to the above, the Court does not accept that the Government have fully substantiated their argument that the number of the inmates in the cell where the applicant was detained did not exceed the capacity it was designed for and that it had not been overcrowded. Accordingly, the Court agrees with the applicant, the truthfulness of whose allegations were in fact established by the domestic authorities, that the cells in the remand prison where he was detained were overcrowded. At times, as the applicant submitted, the space the cells afforded did not exceed 1 sq. m per person. Moreover, the number of beds was insufficient and the applicant had to take turns with other inmates to sleep. The applicant remained confined in such conditions practically all day for almost thirteen months.

58. The Court observes that the Moscow City Department of Corrections cited renovation work in the remand prison as the cause of the overcrowding in the cell where the applicant was detained (see paragraph 38 above). In this connection, the Court reiterates that, irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006, and *Benediktov v. Russia*, cited above, § 37).

59. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005).

60. Having regard to its case-law on the subject and the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although there is no indication in the present case that there was an intention on the part of the authorities to humiliate or debase the applicant, the Court finds that the fact that he was obliged to live, sleep and use facilities in the same cell as so many other inmates for almost thirteen months was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

61. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. 77/1 in Moscow between 20 August 2003 and 11 September 2004, which it considers to have been inhuman and degrading within the meaning of this provision.

62. In view of the above finding, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention at remand prison no. 77/1 in Moscow.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

The applicant complained under Article 13 of the Convention that the appeal hearing concerning the extension of his pre-trial detention on 3 November 2003 had been held in his absence and in the absence of his counsel. The Court will examine this complaint under Article 5 § 4 of the Convention which reads as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

63. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

64. The Government conceded that the appeal court's failure to ensure the presence of the applicant and his lawyer at the appeal hearing on 3 November 2003 had been in contravention of Article 5 § 4 of the Convention.

65. The applicant maintained his complaint.

66. The Court reiterates that, by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII, with further references). The proceedings must be adversarial and must always ensure equality of arms between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Trzaska v. Poland*, no. 25792/94, § 74, 11 July 2000). The possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B).

67. Turning to the circumstances of the present case, the Court observes that on 3 November 2003 the Moscow City Court examined the applicant's appeal against the detention order of 8 October 2003. The prosecutor attended the hearing and made submissions to the court on the extension of the applicant's pre-trial detention. In such circumstances, the Court considers that it was incumbent on the domestic judicial authorities to adhere to the principle of equality of arms and to give the applicant the

opportunity to appear, either in person or through some form of representation, at the same time as the prosecutor, so that he could reply to the latter's arguments. However, the appeal court failed to do this. As can be seen from the text of the court's decision of 3 November 2003, the appeal court proceeded with the hearing in the absence of the applicant and his counsel. It did not even verify whether the applicant and/or his counsel had been notified of the date and time of the hearing and, if they had not been, consider whether the appeal hearing should be adjourned to provide the applicant with an opportunity to be heard by the court.

68. Having regard to the above, the Court considers that on 3 November 2003 the domestic judicial authorities failed to carry out a review of the lawfulness of the applicant's detention in accordance with the requirements of Article 5 § 4 of the Convention. The proceedings in question were not adversarial and the principle of equality of arms between the parties was not respected. There has accordingly been a violation of Article 5 § 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The applicant complained that he had been beaten up by police officers during his arrest, that he had been arrested in the absence of a reasonable suspicion that he had committed the criminal offence he was charged with and that he had not been provided with a lawyer on the same day; also that he had not been promptly informed of the reasons for his arrest or brought promptly before the prosecutor. As regards his pre-trial detention, the applicant complained that his counsel had not attended the hearing concerning the extension of his detention on 8 October 2003 and that he had been unable to appeal against the detention order of 14 August 2003. He further alleged that the investigator had presumed him guilty and had refused to examine certain witnesses for his defence, and that the criminal proceedings against him had been unfair and unreasonably long. He complained that his numerous complaints had received no response from the authorities; that the administration of remand prison no. 77/1 had destroyed some of his written complaints, and that an officer at remand prison no. 77/6 had forced him to stop complaining about the conditions of his detention. Lastly, he submitted that he had been detained in appalling conditions from 13 to 20 August 2003 and from 18 to 31 May 2005. The applicant relied on Articles 3, 5, 6 and 13 of the Convention.

70. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that there is no 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 as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

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

73. The Government submitted that the applicant's allegations should not give rise to an award of compensation for non-pecuniary damage. In any event, they considered the applicant's claims excessive and suggested that the acknowledgment of a violation would constitute sufficient just satisfaction.

74. The Court accepts that the applicant suffered humiliation and distress because of the inhuman and degrading conditions of his detention, the absence of an effective remedy in respect of his complaints about those conditions, and the inability to be present or represented before the appeal court carrying out the review of the lawfulness of his detention. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated by the mere finding of a violation. Making its assessment on an equitable basis, it awards him EUR 11,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

75. The applicant also claimed EUR 1,520 for the costs and expenses incurred before the Court. He noted that this amount would cover the time his representative had spent working on the case. In particular, she had dedicated twenty-two hours to studying the material in the case-file and sixteen hours to drafting the observations in response to those submitted by the Government.

76. The Government submitted that the applicant had failed to demonstrate that he had actually and necessarily incurred any costs and expenses in the proceedings before the Court.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the amount of EUR 850 has already been

paid to the applicant by way of legal aid. In such circumstances, the Court does not consider it necessary to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Decides* unanimously to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about the inhuman and degrading conditions of his detention, and rejects it;

2. *Declares* unanimously the complaints concerning the conditions of the applicant's pre-trial detention in remand prison no. 77/1 in Moscow, the absence of an effective remedy in respect of his complaints about those conditions, and his inability to participate in the appeal hearing of 3 November 2003 admissible and the remainder of the application inadmissible;

3. *Holds* unanimously that there has been a violation of Article 13 of the Convention on account of the absence of an effective remedy in respect of the applicant's complaint about the conditions of his detention;

4. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. 77/1 in Moscow;

5. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;

6. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,800 (eleven thousand and eight hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable;

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

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

Done in English, and notified in writing on 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President