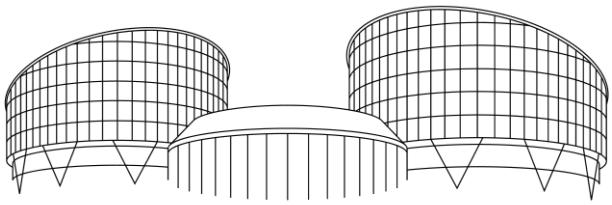

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MAKSIM PETROV v. RUSSIA

(Application no. 23185/03)

JUDGMENT

STRASBOURG

6 November 2012

FINAL

06/02/2013

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

In the case of Maksim Petrov 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 16 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 23185/03) 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 Maksim Vladimirovich Petrov ("the applicant"), on 21 April 2003.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya, a lawyer practising in the city of Moscow. The Russian Government ("the Government") were initially represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative Mr G. Matyushkin.

3. The applicant alleged, in particular, that the conditions of his detention and transportation had been appalling, and that the authorities had repeatedly breached his right to presumption of innocence before the delivery of the judgment in his criminal case. He relied on Articles 3 and 6 of the Convention.

4. On 7 January 2008 the President of the First Section decided to communicate 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and is currently serving a sentence of life imprisonment in the town of Solikamsk, Perm Region.

A. Criminal proceedings

6. In 1999 there were incidents in St Petersburg in which many elderly and sick people were attacked in their homes by a criminal posing as a doctor.

7. On 17 January 2000 the applicant, a doctor working for an emergency service, was caught on the spot while trying to enter an elderly person's apartment. He was arrested on charges of multiple robbery and murder and has remained in detention since that date. The applicant submits that he was ill-treated during his arrest.

8. On 21 November 2003 the St Petersburg City Court examined the applicant's criminal case and convicted him on multiple charges of murder, attempted murder and robbery. The applicant was sentenced to life imprisonment.

9. The court established that the applicant had posed as a doctor and, having entered his victims' flats, injected them with soporifics, sometimes in lethal quantities, and then robbed them, killing some of them. In total, there were eleven victims in the case who either died or could have died as a result of the applicant's criminal activity.

10. The conviction was based on several pieces of evidence, including the applicant's bag with needles and prepared soporific materials, expert examinations of these materials, oral evidence given by numerous witnesses, including a pawnshop owner who had bought various items from the applicant on numerous occasions, the surviving victims, the applicant's own statements and the autopsy reports on the victims.

11. During the proceedings the applicant complained that his lawyer had failed to take some investigative actions. The court examined this grievance, questioned both the applicant and his lawyer, and concluded that the lawyer's lack of action had been due to the applicant's own deliberate decision.

12. The applicant also tried to retract his self-incriminating statements given at the pre-trial stage of proceedings, with reference to torture and coercion. The court examined this argument in detail, having, among other things, ordered an additional investigation in the matter, and explicitly rejected it as unsubstantiated. The decisions to discontinue the investigation with reference to the lack of indication that any crime had been committed

were taken by the relevant prosecutor's office on 27 March and 14 May 2003.

13. They established that the applicant had actively resisted arrest and the police officers had therefore had to apply physical force. The decisions also concluded that the officers had only applied physical force in so far as it was rendered unavoidable by the applicant's own conduct.

14. The applicant did not appeal against the prosecutor's decisions to discontinue the investigation in court.

15. The applicant's sentence was upheld by the Supreme Court on appeal on 24 June 2004.

16. It appears that the applicant was, among other things, dissatisfied with the fact that the first-instance court had consisted of a single judge. Having examined this argument, the appeal court noted that the applicant had been given a choice between the single judge composition and the composition consisting of a professional judge and two lay assessors. The applicant had explicitly chosen the former option.

17. It does not appear that the applicant brought any court proceedings in respect of the detention orders in his case.

B. The conditions of the applicant's detention and transportation

1. The conditions of the applicant's detention

18. Following his arrest on 17 January 2000 the applicant was placed in the Inter-district Temporary Detention Centre of the Principal Department of the Ministry of the Interior in St Petersburg (the Detention Centre, *Межрайонный изолятор временного содержания ГУВД*). He remained there until 28 January 2000.

19. The applicant submits that the conditions in the centre were terrible. The overcrowded cell measured no more than eight square metres without windows or ventilation. There were more than ten inmates in the cell. They were not provided with blankets or bed linen or with any opportunity to exercise or even walk. They were only given 300 ml of drinking water per day. There were no proper washing arrangements in the cells, the light was on all the time and there was an exceptionally high humidity level.

20. On 28 January 2000 the applicant was transferred to remand prison IZ-45/1 in St Petersburg (later renumbered IZ-47/1). It appears that he was transported back to the Detention Centre from time to time during the investigation stage of the proceedings. His stay in the centre usually lasted for no more than ten days.

21. According to the applicant, all the prison cells were severely overcrowded, exceeding their design capacity at least twofold. The cells measured around eight square metres and contained between eight and twelve inmates. Until he was transferred to a solitary cell on 21 November

2003, he had to take turns to sleep. There was no proper ventilation and the toilet facilities were not partitioned off from the rest of the cell. The light was constantly on, the food was of poor quality, and the heating system was either lacking or out of order.

22. The Government submitted the following information concerning the applicant's detention in the IZ-47/1. The applicant was held in this detention facility between 28 January 2000 and 3 October 2004, when he was transferred to penal facility IK-2.

23. In remand facility IZ-47/1 the applicant was held in cells 760, 780, 740, 376, 468, 456, 453, 64 and 126. Apart from cell no. 780, which measured some ten square metres, had one window and held up to seven inmates, including the applicant, the rest of the cells were identical. They all measured around eight square metres, had one window and contained up to seven inmates.

24. Between 31 January 2000 and 4 November 2001 the applicant was detained in cell no. 760. From 31 January to 17 June 2000 the cell contained a total of three inmates. The rest of the time there were seven inmates in the cell.

25. Between 4 November 2001 and 8 April 2002 the applicant was detained in cell no. 740. From 13 January 2001 to 1 April 2002 the cell contained a total of three inmates, whilst the rest of the time this number was up to seven.

26. From 9 to 26 April 2002 the applicant was held in cell no. 376. From 12 to 20 April 2002 there were three inmates in the cell in total and the rest of the time it contained seven inmates.

27. From 26 April to 10 September 2002 the applicant was held in cell no. 468. The cell contained a total of four inmates between 20 May and 15 July 2002 and seven inmates for the rest of the time.

28. The applicant was held in the same cell also between 12 September 2002 and 10 January 2003. Between 30 September and 29 December 2002 he was held in the cell with two other inmates, whilst the rest of the time the cell contained up to seven inmates.

29. Between 10 and 15 January 2003 the applicant was held in cell no. 456. On 11 and 12 January 2003 there were three inmates in the cell, whilst the rest of the time there were up to seven.

30. From 15 January to 4 April 2003 the applicant was again detained in cell no. 468. Between 15 February and 10 March 2003 there were three inmates in the cell. The rest of the time it held up to seven inmates.

31. The applicant was moved to cell no. 453 on 4 April 2003, until 30 May 2003. From 21 to 30 April 2003 there were three inmates in the cell, whilst the rest of the time there were up to seven.

32. The applicant was held in the same cell from 2 June to 21 July 2003. Between 12 June and 10 July 2003 the cell held three inmates and the rest of the time it held seven inmates.

33. The applicant was moved to cell no. 64 on 21 July 2003, until 21 November 2003. Between 28 September and 25 October 2003 there were three inmates in the cell. The rest of the time there were up to seven inmates in the cell.

34. The applicant was transferred to cell no. 126 on 21 November 2003, and thereafter was held in solitary confinement.

35. The Government admitted that the detention facility was overcrowded, but denied that there had been any problems or issues with any other conditions of the applicant's detention such as ventilation, toilets, food arrangements and so on. In particular, the Government referred to various certificates issued by the prison administration confirming that the prison at issue was equipped with a proper ventilation system, had appropriate washing arrangements and that proper measures to control rats and insects had been in place.

36. The Government also referred to certificate no. 65/14-866 dated 14 March 2003, issued by the prison administration, which specifically admitted that there was a lack of precise information about the number of inmates during the applicant's stay in IZ-47/1. It referred to records confirming the destruction of the relevant prison logs on 14 January 2003, 13 January and 20 December 2005 and 20 December 2006.

37. The applicant agreed with the Government concerning the surface area of the cells, but disputed the numbers of the inmates. He also specified that between January and November 2000 he was constantly being transferred from the Detention Centre to the remand prison, staying in both intermittently.

2. The conditions of transportation

38. The applicant submitted that the conditions of his transportation to and from the court hearings had been appalling.

39. According to him, on the hearing days he was usually taken out of his cell at 4 a.m. and placed in a preliminary reception cell, which measured some eight square metres and usually contained 20 inmates. An hour later, the inmates were placed in a prison van, which was originally designed for sixteen or seventeen passengers but which in reality contained no fewer than thirty. Given the length of the journey and frequent traffic jams, each return trip took around four hours. On these days the inmates did not receive any food between 4 a.m. and 8 p.m.

40. The Government relied on prison certificate no. 65-1690 dated 19 March 2008 issued by the Regional Department of the Ministry of Justice, which confirmed that during his stay in IZ-47/1 the applicant had made a total of thirty-two trips. The trips took place on 17 September, 21, 23 and 25 October, 12 November and 4 and 5 December 2002, and 27 January, 20 February, 28 and 31 March, 5 and 7 May, 16, 17 and

18 June, 1 and 4 July, 22, 23, 25 and 26 September, 1, 6, 8, 13, 16, 20, 28 and 30 October, and 18 and 21 November 2003.

41. The Government submitted that the applicant had received a hot breakfast before leaving and a hot supper after his return to prison. In addition, he was allowed to take food with him to the hearings. The Government stated that a one-way trip lasted around thirty to forty minutes and the prison vans were never overcrowded. They did not rely on any original documentation to confirm these submissions.

42. According to the certificate issued by the prison administration no. 65-1630 dated 17 March 2008, the original documentation recording the number of inmates transported on each such occasion with the exact routes and durations of the respective trips could not be submitted because transportation was carried out by the Regional Department of the Ministry of the Interior.

43. The Government submitted a copy of the record from the Regional Department of the Ministry of the Interior dated 4 May 2005 and confirming the destruction of some logs concerning the period from January to the end of August 2000. According to the Government, these were the logs concerning the applicant's trips.

44. The applicant agreed with the dates of the trips and their overall number. He maintained on his initial account of the events as regards the rest of the details.

3. The applicant's attempts to obtain damages in connection with the conditions of his detention and transportation

45. On an unspecified date after his transfer to a penal establishment the applicant sued the Ministry of Finance for damages in connection with the allegedly appalling conditions of detention and transportation in prison. Among other things, he relied on Article 3 of the Convention and the Court's case-law.

46. By a judgment of 23 July 2009 the Kalininskiy District Court (St Petersburg) rejected his claim in full as unsubstantiated. The court considered that the applicant had failed to submit sufficient evidence in support of his allegations. Given that the prison administration denied the applicant's allegations, his claim was rejected as unsubstantiated.

47. The first-instance judgment was upheld on appeal by the St Petersburg City Court on 5 November 2009.

C. The media coverage of the applicant's criminal case

48. The applicant's case received country-wide media coverage both before his arrest, pending the criminal investigation and court proceedings as well as after the trial.

1. The articles published before and shortly after the applicant's arrest

49. On 15 January 1999 a local newspaper, *Nevskoye Vremya* published an article 'A killer in the city with a syringe' describing robberies and murders, involving a person yet uncaught posing as a doctor. The article reported the deaths of two elderly people and then stated:

> "... According to the police, it would seem that both [deceased] persons became victims of a criminal posing as a medical officer. A series of such crimes began in St Petersburg about a year ago ..."

50. On 26 January 2000 a local newspaper, *Peterburg Ekspress*, reported that "a few days ago a maniac was captured in St Petersburg". It also published a photofit picture of the wanted person with a description: "a doctor, whose photofit you can see here, killed nine old people". The newspaper also published a map of the city on which the locations of the applicant's activities were marked, and interviews with surviving victims.

51. On 5 April 2000 a national newspaper, *Komsomolskaya Pravda*, published an article headed 'Doctor killed old women for smoked sausage', describing episodes of the applicant's alleged criminal activity and disguising his name.

52. It appears that during the summer of 2000 some reports were broadcast on various television channels reporting on the applicant's criminal case.

2. The articles published in 2002 and 2003, before the delivery of the judgment in the applicant's case

53. On 5 March 2003 the *Moskovskiy Komsomolets* newspaper published an article headed 'Did you call a butcher?' and describing the charges against the applicant. The article gave an overview of the case and then quoted police comments on the applicant's actions and personality:

> "... police officer S. Z. says: 'What repentance [by the applicant]? ... What are you talking about? He killed old ladies, stole their pasta and the same evening was eating this pasta with his family'.
>
> ... All the victims in this case have already been questioned, the evidence studied. But the verdict will not be delivered very soon – the judge has yet to check all the applicant's arguments. So let us not run ahead of the train with suppositions about the possible verdict ..."

54. On 4 November 2003 the Peterburg Ekspress newspaper published an article "Murderous doctor in the dock" which, in its relevant parts, read as follows:

> "... Two years ago, in our issue ... of 26 January 2000, we wrote about the arrest of the murderous doctor who paid visits to elderly people, injected them with soporifics, and when they fell asleep robbed them of their personal belongings. Overall, his personal score is over fifty attacks and seventeen murders. Maksim Petrov, accused of these cruel crimes, was apprehended by police officers of the Frunzenskiy District

Department of the Interior in the winter of 2000, and only on 21 October the first hearing took place at the City Court in what is being called the doctor's case.

... Police officers of the Frunzenskiy District Department of the Interior in charge of the investigation concluded that this was a case of a serial killer. At the same time, they learned that the criminal found his future victims by using fluorographic pictures stolen from a district polyclinic.

... 'We had to find a potential victim of the doctor', says A.K., the head of the department in charge of homicide investigations in the Frunzenskiy District Department of the Interior. [He then continued:] 'We seized the registration books from the polyclinic and composed a carefully checked list of retired people, each of whom could be subject to an attack of the doctor. The first list contained 3,500 names, the next list 600 and, as a result, we ended up with seventy-two addresses which could be visited by the maniac.

... A.K., the head of the department in charge of investigations of homicides in the Frunzenskiy District Department of the Interior, hopes that the doctor-maniac gets a life sentence, because he is responsible for over sixteen murders and over fifty robbery episodes. ..."

55. An article published in *Komsomolskaya Pravda* (in St Petersburg) newspaper on 17 November 2003 and headed "How many [years in prison] will they give to Doctor Petrov?" gave the background of the applicant's case and some details about the ongoing trial proceedings. It then stated:

"... our journalist managed to meet the police agents who had arrested Maksim Petrov. Now that the verdict is close, they agreed for the first time to tell us about the operation, which was later called 'Medical Brother'. So the cast (with their offices during the operation): Yu. D., senior police agent of the Frunzenskiy District Department of the Ministry of the Interior, Yu. Sh., senior police agent of the [same department], V. T., head of [that] department and of the special operation itself ...

...'He is the scariest person I've ever seen during my time in the criminal police' − Yu. D. shared his thoughts [He then continued:]

'We in our city have never had, or not at least since 1917 and the gang syndicate of Lyon'ka Panteleev, such a killer who has knowingly and in such cold blood killed so many people. Over ten killings proven! And how many others have there been? Not known! He is a dreadful maniac! Look at this: he has killed some of our parents for a dime. I only regret one thing – that when we arrested him we were not 100% certain that he was the killer. Had I known this for sure, I would not have taken him alive. A skunk like that deserves only death!' ..."

56. On 20 November 2003 the *Smena* newspaper, in its issue no. 6, reported on the applicant's case and trial, mentioning that during the trial the applicant denied the charges against him.

3. The applicant's attempts to raise the complaint about the alleged breach of the presumption of innocence before the domestic authorities

57. In October 2002 the applicant made a pleading before the trial court, mentioning the disclosure of investigation materials by the police officers

before the delivery of the verdict in his criminal case. He also mentioned this issue in his appeal arguments. These arguments remained unanswered.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

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

59. Rule 44 stated that cells in pre-trial detention centres were to be equipped, among other things, with a table and benches with a number of seating places corresponding to the number of inmates, sanitation facilities, tap water and lamps to provide daytime and night-time illumination.

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

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

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

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

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

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

65. The programme mentions detention centre IZ-47/1 in St Petersburg among those affected, with a number of detainees which seriously exceeded capacity (by as much as 152,4 %). The other remand prisons in and around St Petersburg, IZ-47/2 (the town of Tikhvin of the Leningrad Region), IZ-47/3 (the town of Vyborg of the Leningrad Region), IZ-47/4 (St

Petersburg), IZ-47/5 (St Petersburg) and IZ-47/6 (the town of Gorelovo of the Leningrad Region), are all mentioned as affected to various degrees by the same problem.

C. Rules on the presumption of innocence

66. Article 49 of the Constitution of the Russian Federation provides that everyone accused of committing a crime shall be considered innocent until proven guilty according to the rules fixed by the federal law and confirmed by the sentence of a court which has come into legal force.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

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

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

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should

be based exclusively on security concerns of an appreciable nature or resource considerations ..."

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

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

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

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

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

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONDITIONS OF DETENTION

68. Under Article 3 of the Convention the applicant complained that the conditions of his detention in the Inter-District Temporary Detention Centre and remand prison IZ-47/1 in St Petersburg from 17 January 2000 to 21 November 2003 had been deplorable. Article 3 provides as follows:

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

A. Submissions of the parties

69. The Government argued that the complaint about the applicant's stay in the Detention Centre had been made too late and that the applicant had failed to exhaust the available domestic remedies in connection with these grievances. They conceded nevertheless that the remand prison had been overcrowded and there had been a violation of the Convention on that account.

70. The applicant maintained his complaints.

B. The Court's assessment

1. Admissibility

(a) Exhaustion of domestic remedies

71. In as much as the Government claim that the applicant has not complied with the rule on exhaustion of domestic remedies, the Court recalls its conclusions in the recent *Ananyev and Others v. Russia* judgment (nos. 42525/07 and 60800/08, §§ 100-19, 10 January 2012) that 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 finds that this part of the application cannot be rejected for non-exhaustion of domestic remedies.

(b) Simultaneous examination of the complaints about the conditions of detention in both detention facilities

72. The Court notes the essentially continuous character of the applicant's detention in the Inter-District Temporary Detention Centre and remand prison IZ-47/1 until at least November 2000. Even though the

applicant was officially transferred to IZ-47/1 on 28 January 2000, he remained in the Detention Centre for intermittent ten-day periods for a further ten months pending criminal investigation of his case. The Court observes that the applicant's dissatisfaction in respect of both facilities was directed at the problem of overcrowding and the general lack of living space. Accordingly, the Court finds that the whole period of time from the applicant's arrest on 17 January 2000 to his transfer to solitary confinement on 21 November 2003 should be regarded as a "continuing situation" for the purposes of calculation of the six-month time-limit (see *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Benediktov v. Russia*, no. 106/02, § 12, 10 May 2007; and *Guliyev v. Russia*, no. 24650/02, § 31, 19 June 2008, and compare to *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 82-84, 29 January 2009; *Aleksandr Matveyev v. Russia*, no. 14797/02, §§ 67-68, 8 July 2010). The Court finds that the applicant lodged his complaints about the conditions of detention during that period on 21 April 2003. It follows that the Government's objection in this respect must be rejected as well.

(c) Compliance with other admissibility criteria

73. On the basis of the material submitted, the Court observes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

74. The Court observes that the applicant did not support his allegations about the conditions of detention with any particular evidence. The Government submitted no information regarding the applicant's detention in the temporary detention centre.

75. In this connection, it should be noted that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in certain instances the respondent Government alone have access to the information capable of corroborating or refuting the applicant's allegations. A failure on the Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of these allegations (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI).

76. Having regard to the above principles and the fact that the Government did not submit any convincing relevant data, the Court accepts the applicant's argument that his cell in the temporary detention centre was severely overcrowded.

77. Having examined the documents submitted by the parties, the Court finds that the case file contains sufficient documentary evidence to confirm

the applicant's allegations of severe overcrowding in remand prison IZ-47/1 in St Petersburg. It follows from the Government's submissions that the cells in which the applicant was detained measured eight square metres, except for one cell which measured ten square metres. At all times there were no less than three inmates and most of the time up to seven inmates in the cells

78. The existence of a deplorable state of affairs may furthermore be inferred from the information contained in Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 (see paragraphs 63-65 above), which expressly acknowledges the issue of overcrowding in the remand prison concerned in 2004.

79. The Court also observes that in its judgments in the cases of *Andrey Frolov v. Russia*, no. 205/02, §§ 43-51, 29 March 2007; *Gusev v. Russia*, no. 67542/01, §§ 51-61, 15 May 2008; *Seleznev v. Russia*, no. 15591/03, §§ 38-48, 26 June 2008; *Lutokhin v. Russia*, no. 12008/03, §§ 56-59, 8 April 2010; and *Petrenko v. Russia*, no. 30112/04, §§ 35-41, 20 January 2011 it has previously examined the conditions of detention in IZ-47/1 in 2000-03 and found them to be incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding.

80. Finally, the Government acknowledged that the conditions in the remand centre were such that the applicant's rights under Article 3 of the Convention were breached.

81. In these circumstances, the Court accepts that the problem of overcrowding existed in the remand prison at the time the applicant was detained there.

82. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

83. Having regard to its case-law on the subject and the material submitted by the parties, the Court sees no fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was an intention of humiliating or debasing the applicant, the Court finds that the fact that the applicant had to spend three years, ten months and five days in overcrowded cells in the Inter-District Temporary Detention Centre and remand prison IZ-47/1 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.

84. In view of the above, 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 during the period in question.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONDITIONS OF TRANSPORTATION

86. The applicant was also dissatisfied with the conditions of his transportation to and from the court-house during his detention in remand prison IZ-47/1. The Court will examine this complaint under Article 3 of the Convention, the relevant text of which is set out above.

A. Submissions of the parties

87. The Government denied that there had been any issues with the conditions of the transportation.

88. The applicant disagreed and maintained his complaints.

B. The Court's examination

1. Admissibility

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

2. Merits

90. The Court notes that the applicant submitted a detailed and coherent description of the conditions of his transportation, whilst the Government informed the Court about the dates of the applicant's journeys and the types of prison van and gave a general description of the journeys, but failed to submit any specific information concerning the number of inmates in the prison vans on each of the journeys, the original documentation on the catering arrangements on these days and the real length of each of the daily journeys.

91. The Court observes that in certain instances the respondent Government alone have access to information capable of firmly

corroborating or refuting allegations under Article 3 of the Convention and that a failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, for example, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). Thus, the first issue to be examined is whether on the basis of the facts of the present case the Government's failure to submit copies of the relevant prison documentation has been properly accounted for.

92. In this connection, the Court would note that the destruction of the relevant documents due to expiry of the time-limit for their storage cannot in itself be regarded as a satisfactory explanation for the failure to submit them. The Court also has to look at the timing of that act as well as other relevant factual circumstances. In particular, regard should be had to whether the authorities appeared to have been acting with due care in this respect (see, for example, *Oleg Nikitin v. Russia*, no. 36410/02, §§ 48-49, 9 October 2008).

93. Having examined the copies of materials submitted by the Government, the Court notes that they reveal that the authorities did not display sufficient diligence in handling the relevant prison documentation in the Strasbourg proceedings. The description of the logs in the document referred to by the Government to confirm the destruction of the prison documentation recording the number of inmates transported on each occasion does not fit the circumstances of the case in that the logs in question refer to the period from January to the end of August 2000, whilst the trips in the present case took place in 2002 and 2003.

94. Accordingly, the Court finds that the Government have not accounted properly for their failure to submit detailed information supported by copies of the original documentation concerning the applicant's trips, with the result that the Court may draw inferences from their conduct (see *Novinskiy v. Russia*, no. 11982/02, §§ 101-03, 10 February 2009). In view of the above, the Court will examine the issue concerning the conditions of transportation from and to that remand prison on the basis of the applicant's submissions (see *Igor Ivanov*, cited above, §§ 34-35).

95. The Court notes that the applicant was transported in prison vans occupied by a number of inmates which was twice that of the vans' design capacity. He was transported in cramped conditions on no fewer than thirty-two occasions over a period of one year, two months and four days. On those days he was not provided with adequate nutrition and was confined in unacceptable conditions at the assembly section in the remand centre. The above treatment occurred during his trial, that is when he most needed his powers of concentration and mental alertness (see *Starokadomskiy v. Russia*, no. 42239/02, §§ 53-60, 31 July 2008).

96. The Court takes the view that the above considerations, taken cumulatively, are sufficient to warrant the conclusion that the treatment to

which the applicant was subjected exceeded the minimum level of severity and constituted inhuman and degrading treatment within the meaning of Article 3 of the Convention (see *Trepashkin v. Russia (no. 2)*, no. 14248/05, §§ 131-36, 16 December 2010). There has therefore been a violation of that Convention provision.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

97. The applicant complained that various State officials had repeatedly breached his presumption of innocence before he was found guilty by a court. He referred to publications in the newspapers *Moskovskiy Komsomolets*, *Komsomolskaya Pravda*, *Nevskoye Vremya* and *Peterburg Ekspress*. The Court will examine this grievance under Article 6 § 2 of the Convention, which provides as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. The parties' submissions

98. The Government contested that argument, denying the State's responsibility for the publications in private media. They accepted that officials of the prosecutor's office of St Petersburg may have given out information to the press during the interviews and did not contest the accuracy of the statements published by the media and referred to by the applicant. However, the Government did not consider that these statements disclosed any appearance of a violation of the applicant's right to presumption of innocence.

99. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

100. The Court notes that the applicant's complaints in respect of the publications made in 1999 and 2000 were introduced in April 2003. It follows that in respect of this part of the application the applicant did not comply with the six-month rule. It should therefore be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

101. The Court considers on the other hand that his complaint about the publications made in 2002 and 2003 (see paragraphs 53-56) 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.

2. Merits

102. The Court reiterates that Article 6 § 2 is aimed at preventing the undermining of the fairness of a criminal trial by prejudicial statements made in relation to those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 of that Convention (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). It prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62) but it also covers statements made by other public officials, including police officers or prosecutors, about pending criminal investigations which could encourage the public to believe the suspect to be guilty and to prejudge the assessment of the facts by the relevant judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II; *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, §§ 46-51, 28 October 2004 and *Samoilă and Cionca v. Romania*, no. 33065/03, §§ 91-101, 4 March 2008).

103. It has been the Court's consistent approach that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of committing a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court would underline that Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (*Karakaş and Yeşilırmak v. Turkey*, no. 43925/98, § 50, 28 June 2005 and *Huseyn and Others v. Azerbaijan*, nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 225, 26 July 2011). The Court has thus consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002; *Nešťák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007 and *Karadağ v. Turkey*, no. 12976/05, §§ 62-65, 29 June 2010).

104. Turning to the facts of the present case, the Court observes that, before the verdict at the first level of jurisdiction in the applicant's case on charges of multiple murder and robbery, a number of newspapers published

interviews with S.Z. and Yu. D., the policemen of the Frunzenskiy District Department of the Interior, and their superior A.K., the head of the department in charge of homicide investigations in that police department, commenting on the merits of the charges made against the applicant during the trial. In this connection, the Court notes the Government's argument to the effect that the State could not be held responsible for material published in private media. However, it was not in dispute between the parties that the statements referred to by the applicant had indeed been made and that they had been authored by the officials in question, who apparently never objected to the publication of these statements before the delivery of the first-instance judgment in the case. In view of the above, the Court considers that the contents of the interviews are attributable to the respondent State.

105. As regards the contents of the statements, the Court notes that police agents S.Z., Yu. D. and A.K. all stated in affirmative terms that the applicant had committed the crimes in question. In particular, S.Z. stated that "[the applicant] killed old ladies, stole their pasta and the same evening was eating this pasta with his family" (see paragraph 53); Yu.D. stated that "[the applicant] was dreadful maniac" and that "he has killed [the elderly people] for a dime" (see paragraph 55); A.K. stated that the applicant was "responsible for over sixteen murders and over fifty robbery episodes" (see paragraph 54). Their statements were not limited to describing the status of the pending proceedings or a "state of suspicion" against the applicant but represented, as an established fact, without any qualification or reservation, that he had committed the offences.

106. The Court considers that those statements made by public officials amounted to a declaration of the applicant's guilt and prejudged the assessment of the facts by the relevant judicial authority. Given that the police officers who commented could be seen as representing the prosecuting authorities when interviewed, they should have exercised particular caution in their choice of words when describing the criminal proceedings pending against the applicant (see, *mutatis mutandis*, *Khuzhin and Others v. Russia*, no. 13470/02, § 96, 23 October 2008). The Court considers that the statements must have encouraged the public to consider the applicant a murderer before he had been proved guilty according to law. Accordingly, the Court finds that there has been a breach of the presumption of innocence in his case.

107. There has therefore been a violation of Article 6 § 2 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

108. Finally, the applicant submitted a number of other complaints under Articles 3, 5, 6 and 8 of the Convention relating to his arrest, detention and

his trial. However, having regard to all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that the applicant's complaints 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 as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage allegedly sustained.

111. The Government disagreed and invited the Court to reject the claim as excessive.

112. The Court considers that the applicant must have sustained stress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

113. The applicant also claimed EUR 2,200 for legal fees and costs incurred in the proceedings before the Court.

114. The Government contested the claim as unsubstantiated and generally excessive.

115. Regard being had to the information in its possession and the Government's submissions, the Court finds it appropriate to grant the applicant EUR 1,350, which represents the requested sum, less EUR 850, already paid to the applicant's lawyer in legal aid.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints concerning the conditions of his detention and transportation and the complaint about the breach of the presumption of innocence admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of transportation;

4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

5. *Holds*
   (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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,350 (one thousand three hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President