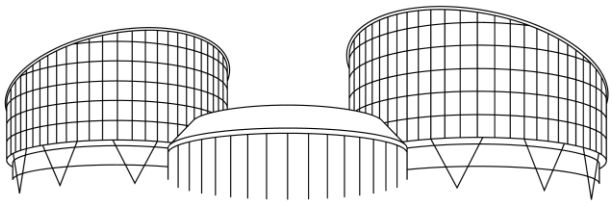

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SALAKHUTDINOV v. RUSSIA

(Application no. 43589/02)

JUDGMENT

STRASBOURG

11 February 2010

FINAL

11/05/2010

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

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

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

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

Having deliberated in private on 21 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 43589/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Khalil Sultanovich Salakhutdinov ("the applicant"), on 16 October 2002.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya, a lawyer living in Strasbourg. The Russian Government ("the Government") were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 14 November 2006 the President of the First Section decided to give notice of the application to the Government. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946 and is now serving a prison sentence in Kazan UE-148/19 correctional colony.

6. On 16 December 2001 he was arrested. On 28 December 2001 the prosecutor's office of the Novosheshminskiy District of the Republic of Tatarstan authorised his detention on charges of inflicting severe injuries which had caused the death of the victim.

7. By a judgment of 5 March 2002, the Novosheshminskiy District Court of the Republic of Tatarstan convicted the applicant as charged and sentenced him to ten years and six months' imprisonment in a correctional colony with a special regime. On 14 May 2002 the Supreme Court of the Republic of Tatarstan upheld the judgment on appeal.

8. During the relevant periods the applicant was detained in the following detention facilities. From 16 December 2001 to 9 January 2002 he was held in the temporary detention facility at Novosheshminskiy police station (*изолятор временного содержания Новошешминского РОВД*). He was then transferred to Bugulma IZ-16/03 remand centre (*следственный изолятор ИЗ-16/3 Главного управления Федеральной службы исполнения наказаний по Республике Татарстан*) where he was held from 9 January to 20 August 2002, except for a short period from 28 to 29 January 2002, which he spent in the temporary detention facility at Novosheshminskiy police station. From 20 August 2002 to 26 August 2003 he was held in Chistopol UE-148/T prison (*тюрьма УЭ-148/Т г. Чистополя Республики Татарстан*).

9. The parties' descriptions of the conditions of the applicant's pre-trial and post-trial detention significantly differ on a number of counts.

A. Conditions of detention in the temporary detention facility at Novosheshminskiy police station

1. The applicant's account

10. The applicant was detained in the temporary detention facility at Novosheshminskiy police station, in two different cells, from 16 December 2001 to 9 January 2002.

11. As the facility was only used for temporary detention, the cells were not equipped with sanitary facilities. Therefore the applicant had restricted access to a toilet and was only able to go to the lavatory, under escort, to a special room, twice a day. The authorities did not allow his relatives to bring him any necessary toiletries, which meant that for twenty-four days he did not have toothpaste, a toothbrush or a shaver. Nor could he take a shower, because the facility did not have one.

12. The cell windows were fitted with grilles which restricted natural light. The artificial lighting was provided by 25-40-watt light bulbs. The ventilation in the cells was very poor, if there was any. The applicant was not allowed outdoor exercise even once during the entire period of his detention. He was given only one meal a day and was almost starving.

Although he had been suffering from a cardio-vascular problem and coughing spells, he was refused medical assistance.

13. The applicant was again kept in this facility on 28-29 January 2002. Protesting against inhuman treatment, on 28 January he slit his wrists but was rescued. The next day he refused to return to Bugulma IZ-16/3 remand centre. His refusal angered the police officers, who beat him up and sent him back to the remand centre.

14. The applicant complained several times to prosecutors at different levels of authority of appalling conditions of detention and ill-treatment, but all to no avail. He particularly stressed that instead of the relatively short period of time which had been established by the relevant law, that is to say no more than ten days, he had been kept in a temporary detention facility for twenty-four days in appalling conditions.

2. The Government's account

15. According to the Government, throughout the time he was in the temporary detention facility the applicant was held in cell no.1, measuring 6.048 square metres with four sleeping places and cell no. 2, measuring 5.88 square metres with two sleeping places. The exact number of inmates held with the applicant could not be established but, in any event, the design capacity of the cells was never exceeded. The applicant was provided with an individual sleeping place. Bedding was available on demand though it is unclear whether he chose to use any.

16. In view of the fact that the facility was intended for short-term detention, the cells were not equipped with sanitary facilities. Inmates were allowed to go to the toilet twice a day, or more often when necessary. A shower was not provided. The facility was monitored and regularly fumigated by a special sanitary service.

17. The cells had central heating. Information about the average inside temperature at the material time could not be provided owing to the destruction of the relevant files. However, according to a report issued by the management of the police station, on 29 December 2006 the temperature in the cells was 21 degrees Celsius and it was 9 degrees Celsius in the corridor.

18. The cells were lit with natural light coming from glazed windows measuring 60 x 80 centimetres and with incandescent lighting of 100 to 150 watts. In addition to the natural ventilation provided by the windows, the cells were equipped with ventilation shafts.

19. The applicant was allowed one hour's exercise daily.

20. While he was detained there he was twice assisted with medical problems, on 16 December 2001 for alcohol withdrawal and on 28 January 2002 for a self-inflicted injury. Both times he was treated at the scene by ambulance staff and then taken to a local hospital.

21. No information was submitted by the Government in respect of the food provided to the inmates.

B. Conditions of the applicant's detention in Bugulma IZ-16/3 detention facility

1. The applicant's account

22. The applicant was held in Bugulma IZ-16/3 detention facility from 9 January to 20 August 2002, except for a short period from 28 to 29 January 2002.

23. According to his submissions, at the material time the cells where he was detained measured 5 x 1.5 metres on average, had six beds and accommodated between twelve and fifteen inmates, who had to take turns to sleep and were not provided with personal bedding. The lights were permanently on. The windows had no glass and were sealed with metal shutters. It was very hot in the summer and freezing in the winter. The toilet was placed very close to the dining table, with no privacy. Despite regular complaints about insects, the administration took no action to fumigate the cells. A shower was available twice a month. No outside exercise was offered to the applicant. The detainees' food consisted mainly of vegetables and soya products. The medical assistance was inadequate.

2. The Government's account

24. Relying on a certificate dated 27 December 2006 issued by the facility management, the Government submitted that the applicant had been held in five cells:

- cell no. 212, measuring 21 sq. m and accommodating five inmates including the applicant;
- cell no. 311, measuring 12 sq. m with six sleeping places;
- cell no. 312, measuring 12 sq. m with six sleeping places;
- cell no. 317, measuring 21 sq. m with fourteen sleeping places;
- cell no. 407, measuring 21 sq. m, with fourteen sleeping places.

25. In cell no. 212 the applicant was detained from 8 to 20 August 2002. Due to the destruction of the facility's records on the expiry of the statutory storage time-limit, it was not possible to establish the exact periods during which the applicant was detained in the other four cells and the exact number of inmates detained with him.

26. All cells were equipped with a sink and a lavatory separated from the living area by a partition of not less than one metre in height. Showers were available once a week with a simultaneous change of bedding. The inmates were provided with washbowls for their hygiene needs. The water was supplied centrally and could be heated with electric heaters.

27. The cells were ventilated through casement windows and in addition were equipped with ventilation shafts. The cells were aired daily, while the inmates were having their exercise. The average temperature and level of humidity met sanitary and hygiene requirements.

28. The windows were not covered with metal shutters, as a result there was enough natural light to allow reading and writing. The cells were also equipped with lamps which could be turned on when necessary. The lamps were covered with a protective fitting. During the night, the artificial lighting was dimmed.

29. The cells were fumigated regularly, with the assistance of a special sanitary service when necessary, and the detainees never complained about insects or rats.

30. The food met official nutritional standards. The quality of the food was controlled by the facility's medical unit. In addition, the applicant could receive parcels and could buy food and other things from the facility's shop.

31. During his detention the applicant was provided with an individual sleeping place, bedding, cutlery and utensils. He had an hour's daily exercise. His state of health was monitored regularly and he was provided with medical assistance when necessary. He never complained about the conditions of his detention while in Bugulma IZ-16/3.

C. Conditions of the applicant's detention in Chistopol UE-148/T prison

1. The applicant's account

32. According to the applicant, at the time of his detention, that is from 20 August 2002 to 26 August 2003, the facility served as a prison. Later it was converted into a pre-trial detention centre. Due to this, the size and the configuration of the cells changed.

33. At the material time the cells were severely overcrowded. Cell no. 13 measured 80 square metres and accommodated over forty inmates. Twenty two-tier bunks, three tables and a lavatory left almost no space in which to move. He did not have an individual sleeping place and had to share a bunk with other inmates. Due to the large number of people, access to the lavatory was restricted. The water supply was often cut off. There was no ventilation. Windows were completely sealed by metal shutters and let no air or daylight in. The inmates did not have enough oxygen. The cells were stuffy and unbearably hot during the summer months. The facility's exercise yards were very small, surrounded by solid concrete walls which prevented the free flow of air. Therefore, outside exercise was scarcely any different from staying in.

34. The insufficient lighting, either natural or artificial, impaired the applicant's eyesight which diminished by 1.5 dioptres and continued to

deteriorate. The inmates had to wash their bedding and clothing themselves. For this each of them was given a small piece of soap and had to share with others one tiny electric heater for warming the water. The inmates were only allowed to shower irregularly, that is once every ten, fifteen or twenty days. These unhygienic conditions resulted in skin diseases.

35. The food was very poor and consisted mainly of green tomatoes, cabbage and soya products. The applicant was later diagnosed with dystrophy. Medical assistance was inadequate and it was very difficult to arrange appointments with specialists.

36. The convicts were treated very badly and were often beaten up. On 23 August 2003 special armed forces ("*спецназ*") arrived in the colony and proceeded systematically to beat up the inmates, including the applicant.

2. The Government's account

37. Referring to a certificate of 16 January 2007 issued by the management of the facility, the Government submitted that the applicant had been held in cell no. 13, measuring 48 sq. m and accommodating eleven inmates including the applicant, and in cell no. 17, measuring 30 sq. m and accommodating twelve inmates including the applicant.

38. The Government further submitted that, at the material time, according to a certificate of 26 December 2006 issued by the governor of the facility, the cells had been equipped with a sink and a lavatory separated from the living area by a partition at least one metre high. Showers were available once a week with a simultaneous change of bedding.

39. The ventilation was natural, through casements in the windows. In addition, the cells were equipped with ventilation shafts. The cells were aired on a daily basis, for more than one hour, while the inmates were having their outside exercise. Overall, the temperature and humidity levels met sanitary and hygienic requirements. The windows were not covered with metal shutters but were reinforced with metal grilles. The cells were equipped with lamps which were turned on when necessary. The lamps were covered with a protective fitting. During the night the artificial lighting was dimmed.

40. On arrival at the facility all convicts were provided with an individual sleeping place and bedding. The cells were fumigated regularly with the assistance of a special sanitary service when necessary, and the inmates had never complained about insects and rats.

41. Nutrition met official standards. Hot meals were provided three times a day. The quality of the food was controlled by a commission comprised of a worker from the facility's medical unit and one of the governor's deputies. During the first two months, the applicant was given health food.

42. The applicant had an hour and a half's outside exercise every day. The space in the exercise yards was commensurate with the number of actual users.

43. During his imprisonment the applicant consulted doctors on a number of occasions and received all necessary and adequate medical treatment. The entries made in the applicant's medical case file submitted by the Government reflected that in August, September and November 2002 and March, June and July 2003 he was attended by a general practitioner, a phthisiologist and an ophthalmologist; in July 2002 he was treated for bronchitis. Throughout the period in question he had three X-ray examinations and was prescribed various medicines, including antibiotics, antipyretic drugs and vitamins.

44. No special armed forces were sent to the facility on 23 August 2003.

II. RELEVANT DOMESTIC LAW

A. Law on Detention

45. Section 8 of the Law on Detention (Federal Law no. 103-FZ of 15 July 1995) provides that persons detained in accordance with a court order should be held in remand centres.

46. According to section 9, persons whose detention has not yet been ordered by a court with jurisdiction should be held in temporary detention facilities. In exceptional circumstances, persons detained in remand centres can be transferred to and detained in temporary detention facilities for a period of no longer than ten days in a month (section 13).

47. Section 23 provides that detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and be given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell. Detainees should be given sufficient free food to keep them in good health in line with the standards established by the Government of the Russian Federation (Article 22).

B. Russian Penitentiary Code

48. Article 99 § 1 provides for a minimum standard of 2 sq. m of personal space for male convicts in correctional colonies and 2.5 sq. m in prisons.

49. According to Article 131, prisoners are housed in locked shared cells to which they are assigned on the basis of perceived security risk. They are allowed out of their cells for sixty minutes a day if they are on the strict regime and ninety minutes if they are on the ordinary regime. The inmates exercise in cell groups and in a designated area. A prisoner's exercise privileges can be stopped at any time if he breaks internal rules.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained that the conditions of his detention in the temporary detention facility of the Novosheshminskiy police station, Bugulma IZ-16/3 remand centre and Chistopol UE-148/T prison were in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

51. The Government submitted that every aspect of the applicant's detention had been satisfactory. They denied any issues under Article 3 and invited the Court to dismiss the complaint as manifestly ill-founded.

52. In their further observations, the Government argued that the applicant had failed to exhaust domestic remedies available to him. They suggested in particular that a civil action for damages lodged with a court could have been an effective remedy for his complaint about the poor conditions of his detention.

53. The applicant disagreed with the description of his conditions of detention provided by the Government and maintained his initial position. He did not submit any comments in respect of the Government's non-exhaustion argument.

B. The Court's assessment

1. Admissibility

(a) Compliance with the six-month rule

54. Pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken". The purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It also ought to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. Even if a respondent Government does not raise the issue of compliance with the rule, the Court is to do so of its own motion (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

55. In general, the time starts to run from the day after the final decision in the process of exhaustion of domestic remedies in respect of the relevant complaint. If no remedies are available or if they are judged to be ineffective, the six-month time-limit runs, in principle, from the date of the act or measure complained of (see *Hazar and others v. Turkey* (dec.), no. 62566/00, 10 January 2002) or from the end of the episode alleged to constitute a violation of the Convention (see *Mahmut Demir v. Turkey*, no. 22280/93, 9 January 1995).

56. Turning to the present case, the Court notes that the applicant complained of three periods of detention in poor conditions, that is from 16 December 2001 to 9 January 2002 in the temporary detention facility of the Novosheshminskiy police station, from 9 January to 20 August 2002 in Bugulma IZ-16/3 remand centre and from 20 August 2002 to 26 August 2003 in Chistopol UE-148/T prison.

57. The Court further notes that the application was lodged on 16 October 2002, that is nine months and six days after his twenty-four-day detention at the Novosheshminskiy police station had ended.

58. The Court reiterates that continuous detention in similar conditions, though in different facilities, may in certain circumstances warrant examination of the period of the detention as a whole (see *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008; and *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008). In the present case, the main characteristics of the detention conditions in the temporary detention facility of the Novosheshminskiy police station were inadequate sanitary conditions and lack of free access to a toilet, whereas a main characteristic of the detention conditions in Bugulma IZ-16/3 remand centre was overcrowding. Having regard to the difference in nature of the detention conditions at the two facilities, the Court does not find that the two periods construe a "continuing situation" which could bring the events concerning the applicant's detention at Novosheshminskiy police station within its competence (see *Maltabar and Maltabar v. Russia*, no. 6954/02, § 83, 29 January 2009).

59. It follows that the complaint in respect of the detention at the police station was introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) Exhaustion of domestic remedies

60. The Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v.*

France (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

61. In the present case the Government indicated such remedy as bringing a civil action. They however failed to refer to a relevant legal basis. Nor did they suggest that there was an established line of authorities in domestic practice where damages had in fact been awarded in situations comparable to the present case.

62. The Court observes that it has recently dismissed the Government's analogous argument in the case *Aleksandr Makarov v. Russia* (no. 15217/07, § 87, 12 March 2009). There is no cogent reason adduced convincingly by the Government in the present case for the Court to depart from the above finding. Accordingly, it dismisses their plea of non-exhaustion.

(c) Compliance with other admissibility criteria

63. In so far as the applicant's complaint under Article 3 of the Convention concerns the conditions of his detention in Bugulma IZ-16/3 remand centre and Chistopol UE-148/T prison, the Court notes that they 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) General principles

64. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). However, in order to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). The Court observes that measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, it is incumbent on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are

adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

65. The Court has frequently dealt with cases against Russia where applicants complained of inadequate conditions of detention. It should be noted that in relation to different types of detention facilities, the Court has applied varying approaches.

66. In respect of pre-trial facilities designed for detention over a longer period, on a number of occasions the Court has held that lack of personal space afforded to detainees was so extreme as to justify, in its own, a finding of a violation of Article 3 of the Convention. In those cases applicants usually disposed of less than 3 sq. m of personal space (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; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI). The Court has also established that the problems arising from the conditions of detention in Russian remand centres were of a structural nature (see *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006, and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 October 2008).

67. The Court further reiterates that it must be satisfied that the conditions of the applicant's detention constituted treatment which exceeded the minimum threshold for Article 3 of the Convention (see *Maltabar and Maltabar,* cited above, § 96). In assessing the circumstances of the case and the evidence presented, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

68. It should also be reiterated 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 information capable of corroborating or refuting the applicant's allegations. A failure on this 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 *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

(b) Application of the general principles to the present case

(i) Conditions of the detention in Bugulma IZ-16/3 remand centre

69. The Government asserted that the authorities had complied with all requirements concerning the conditions of detention in Bugulma IZ-16/3

remand centre. They provided information about the space and the equipment in the living premises, the provision of individual sleeping place and bedding, the food, the medical assistance and the availability of sanitary facilities and asked the Court to dismiss the applicant's complaint.

70. The applicant contested the Government's description of the conditions of his detention as factually incorrect. He claimed, in particular, that the level of overcrowding had been far more severe than submitted by the Government, that the sanitary facilities, the lighting and the ventilation had been inappropriate, that the catering had been very poor and the medical assistance inadequate.

71. In view of the applicant's failure to support his arguments with evidence, the Court will concentrate on the allegations that have been presented or are undisputed by the respondent Government (see §§ 24-31 above).

72. According to their submissions, the applicant was detained in the remand centre from 9 January to 20 August 2002, in five different cells. From 8 to 20 August 2002 he was held in cell no. 212, which measured 21 square metres and accommodated five inmates including the applicant. It follows that the living area per inmate was about 4.2 square metres. In respect of the other four cells where the applicant was detained, namely nos. 311,312, 317 and 402, the Government did not produce information about the number of inmates. They reported, however, that the first two cells measured 12 sq. m and had six sleeping places and the last two measured 21 sq. m and had fourteen sleeping places. It follows therefore that on any account, the designed floor area per inmate was from 1.5 to 2 square metres. Given the fact that each cell was equipped with bunks, a dining table, benches, a sink and a lavatory, which took up space, it appears that the actual living area per inmate was extremely small. This state of affairs in itself constituted a violation of Article 3 of the Convention (see § 66 above).

73. What is more, the Court observes that from the certificate of the governor of the remand centre submitted by the Government it follows that the metal shutters were removed from the remand centre cell windows only in 2003. In the light of this information, the Court cannot but accept the applicant's allegation on account of the inadequate lighting and ventilation.

74. Having regard to its case-law on the subject, the material submitted by the parties and the findings above, the Court concludes that, though not ill-intentioned, the detention of the applicant for more than seven months in a cramped, airless cell for twenty-four hours a day apart from one hour's daily exercise, must have caused him such intense physical discomfort and mental suffering which the Court considers amounted to inhuman treatment within the meaning of Article 3 of the Convention. There has accordingly been a violation of this provision.

(ii) Conditions of detention in Chistopol UE-148/T prison

75. The applicant alleged a violation of Article 3 of the Convention on account of the conditions in UE-148/T prison. In particular, he referred to severe overcrowding, inadequate lighting and ventilation, sanitary conditions and heating, poor catering and insufficient health care.

76. The Government contested the applicant's allegations. They made submissions to the effect that the facility had allowed from 2.5 to 4.36 sq. m per person, that the applicant had been provided with an individual sleeping place and bedding, that he had been afforded necessary medical assistance and that in all aspects the conditions in the facility complied with the standard requirements imposed by prison regulations and did not breach Article 3 of the Convention.

77. The Court observes that the applicant did not support his descriptions of the conditions in the facility with evidence which could be produced even in his prisoner status, for example, witness statements, complaints made to various authorities at the material time or official letters (see, by contrast, *Generalov v. Russia*, no. 24325/03, §§ 109-110, 9 July 2009). On the other hand, the respondent Government seem to have provided the Court with all available information: the dimensions of the cells, the number of inmates, the sanitary conditions and the cell clean regime, the ventilation, the lighting and the medical assistance (see §§ 37-44 above). Therefore, the Court will concentrate on the information submitted or undisputed by the national authorities.

78. It should be noted that in the present case the conditions of the applicant's detention in the correctional institution were rather similar to those in the remand centre. For twelve months and six days, the applicant was kept in a locked cell almost around the clock. The only recreation allowed was daily exercise of sixty or ninety minutes with his cellmates.

79. As regards the applicant's argument concerning severe overcrowding, the Court notes that even if the number of inmates had never exceeded the designed capacity of the cells, the conditions in the prison were extremely cramped. According to the Government's submissions, the applicant was held in two cells, one of which allowed 2.5 square metres per inmate and another 4.36 square metres. It is noted that the national authorities did not indicate the exact period of the applicant's detention in each cell. Furthermore, they did not specify what furnishings, apart from a lavatory and a sink, was installed in the cells. Assuming that there were certain other items of equipment which took up space, it can be concluded that the actual living area was so small as to constitute a violation of Article 3 of the Convention (see *Moiseyev*, cited above, §§ 122-23).

80. In the light of the foregoing considerations, the Court is not convinced by the Government's allegation that the prison conditions did not affect the applicant in a manner incompatible with Article 3. On the contrary, the Court is of the opinion that the conditions complained of diminished the

applicant's human dignity. In sum, the Court considers that the conditions of the applicant's detention in UE-148/T prison amounted to inhuman treatment within the meaning of Article 3 of the Convention. There has accordingly been a breach of this provision also in respect of this period of detention.

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

81. The applicant complained under Article 3 of ill-treatment during the pre-trial investigation and then in Chistopol UE-148/T prison, under Article 6 § 3 (b) of a lack of time to study the case file and, without referring to any particular provision, of inadequate legal assistance. Having regard to the relevant material in its possession, the Court finds that the applicant could reasonably be expected to raise these grievances at the domestic level by applying to the competent courts. It follows that the applicant has failed to exhaust the available domestic remedies in respect of his grievances and this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

82. The applicant further complained under Article 6 of a violation of his right to examine certain witnesses and of the appeal court's failure to apply the criminal law correctly. Having regard to the relevant material in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

84. The applicant claimed 300,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

85. The Government considered the applicant's claims unsubstantiated and excessive.

86. The Court notes that it has found in the present case a violation of Article 3 on account of the inhuman and degrading conditions of the

applicant's detention in the remand centre for seven months and in the prison for one year. It considers that the applicant's suffering cannot be compensated for by a mere finding of a violation. At the same time, the amount claimed by the applicant appears excessive. Making assessment on an equitable basis, the Court awards the applicant EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable.

B. Costs and expenses

87. The applicant did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant's detention in Bugulma IZ-16/3 remand centre and Chistopol UE-148/T prison 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 conditions of the applicant's detention from 9 January to 20 August 2002 Bugulma IZ-16/3 remand centre;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 20 August 2002 to 26 August 2003 in Chistopol UE-148/T prison;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at 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;

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

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President