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

FIRST SECTION

CASE OF SKACHKOV v. RUSSIA

(Application no. 25432/05)

JUDGMENT

STRASBOURG

7 October 2010

FINAL

07/01/2011

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

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

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

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

Having deliberated in private on 16 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 25432/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Igor Olegovich Skachkov (“the applicant”), on 11 June 2005.

2. The applicant, who had been granted legal aid, was represented by Ms Ye. Krutikova, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in inhuman and degrading conditions and had not received medical assistance while in detention.

4. On 9 June 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Lyubertsy, Moscow Region.

A. The applicant's arrest and the ensuing investigation

6. On 23 May 2001 D., who was the director general of a commercial bank, was kidnapped by four men. They took him to a park outside the city where they took the cash they found on him, his watch and mobile phone, and the keys and documents for his car, a Toyota Land Cruiser. Later the same day one of the kidnappers stole D.'s car from the garage. The kidnappers then released D., who reported the incident to the police.

7. On 14 March 2002 the applicant was arrested by the police on suspicion of involvement in D.'s kidnapping. According to the applicant, the police stopped the car in which he was travelling with two other persons. The applicant was asleep in the back seat of the car. He had no shoes or jacket on. The policemen pulled him out of the car, put his arms behind his back and handcuffed him. They then pushed him to the ground and kicked and punched him. His ear started bleeding from one of the blows.

8. The police operation lasted over three hours. The temperature was no more than 2^0C. The applicant was not allowed to put his jacket or shoes on. His feet were numb with cold.

9. The applicant was then taken to a police station to take part in an identification parade in front of D. The applicant waived his right to be represented during the parade. D. identified him as one of the kidnappers. According to the applicant, the identification parade was carried out with numerous procedural violations. In particular, it was held at night between 2.25 and 2.45 a.m. D. was not asked before the parade for a description of the alleged kidnappers; D. saw the applicant, who was handcuffed, in the hallway of the police station before the parade; two other participants were easily distinguishable from the applicant (M. was nine years older and six centimetres taller and K. was eleven years younger). Besides, the applicant had a swollen face and was wearing creased and dirty clothes.

10. On an unspecified date the applicant was charged with kidnapping, robbery, extortion and organising a criminal gang and placed in custody pending the investigation and trial.

B. Trial

11. On an unspecified day the Moscow City Court started hearing the case in respect of the applicant and three other defendants.

12. D. testified during the trial. He identified the defendants, including the applicant, as the people who had kidnapped him. He also denied having seen the applicant in the hallway of the police station before the identification parade. D. claimed that he had a very clear recollection of the face of his kidnappers.

13. The applicant claimed that on 23 May 2001, the day D. was kidnapped, he had been at his friends' place at a birthday party. His alibi

was confirmed by his mother and six other persons, who testified on his behalf in court. He further asked the court to obtain from the investigator the photographs that had been taken by his friends at the party on 23 May 2001 and the negatives. The court dismissed his request as unsubstantiated.

14. On 30 June 2004 the Moscow City Court found the applicant guilty of organising a criminal gang, robbery and kidnapping and sentenced him to ten years' imprisonment. The court relied on D.'s testimony, which was supported by the statements made by other witnesses, including the police officers in charge of the investigation phase, and forensic evidence. As regards the evidence of the witnesses called by the applicant, the court rejected it as unreliable and contradictory to the other evidence examined in the course of the trial.

15. The applicant appealed, alleging that the City Court had unlawfully refused to examine the photographs that confirmed his alibi and that D. had erred in identifying him as one of the kidnappers because of his poor eyesight and the stress he was under. He maintained his innocence, and referred to the witness statements confirming his alibi.

16. On 28 December 2004 the Supreme Court of Russia considered the matter on appeal. It acquitted the applicant on the charge of organising a criminal gang and reduced his sentence to nine years' imprisonment. It noted that the City Court had properly admitted and assessed the evidence before it. The identification parade had been carried out in accordance with the applicable rules of criminal procedure, which did not prevent it being held at night if the circumstances of the case so required. As regards D.'s testimony, the court further noted that he had claimed to have a clear recollection of the faces of his kidnappers and found no reason not to believe him.

C. The applicant's detention in the remand prison

17. On 25 March 2002 the applicant was placed in remand prison no. 77/2 in Moscow, where he was held until 25 February 2005.

1. The description provided by the Government

18. The Government provided the following information concerning the applicant's detention there.

Period of detention	Cell no.	Surface area (in square metres)	Number of beds
From 25 March to 7 April 2002	159	55.4	22
From 7 April 2002 to 11 February 2003	153	53.4	22
From 11 February to 8 August 2003	159	55.4	22

From 8 August to 5 September 2003	151	56.4	22
5 September 2003	299	12.0	4
From 5 September to 30 October 2003	151	56.4	22
From 30 October to 26 December 2003	153	53.4	22
From 26 December 2003 to 28 January 2005	162	58.6	22
From 28 January to 25 February 2005	122	55.1	22

19. The Government did not provide information concerning the number of inmates per cell for the periods from 25 March 2002 to 25 August 2004 and from 2 to 13 January 2005. As regards the period of the applicant's detention from 25 March 2002 to 26 December 2003, they referred to the destruction of the official relevant records due to the expiration of the statutory time-limit for their storage. They presented a copy of the list of the official records destroyed on 18 August 2006. The list included registers of incoming and outgoing correspondence, lists of the inmates discharged from the remand prison, personnel data, minutes of the remand prison administration's meetings, financial statements and registers of the inmates' complaints. The Government did not explain as to why the records concerning the applicant's detention from 26 December 2003 to 25 August 2004 and from 2 to 13 January 2005 were unavailable.

20. According to the excerpts from the remand prison population register concerning the applicant's detention from 25 August 2004 to 2 January 2005 and from 13 January to 25 February 2005 submitted by the Government the number of inmates detained in the same cells with the applicant varied from fifteen to twenty-two persons in cells nos. 162 and 122 with the following exceptions: one day in November, eleven days in December 2004, five days in January and ten days in February 2005 the number of the inmates varied from twenty-three to twenty-seven.

21. The applicant was not confined to his cell for the whole of the day. He left the cell to meet with his lawyer, relatives and the prison administration. He was entitled to one hour's exercise in the prison courtyard and had the right to use the shower at least once a week for at least fifteen minutes.

22. All the cells in the remand prison were equipped with natural and piped ventilation which was in good working order. The average temperature in the cells was at least $+18^0$C during the winter and did not exceed $+23^0$C in the summer.

23. At all times the applicant was provided with an individual sleeping place, bedding and cutlery. The cells were disinfected regularly. The

lavatory was located some distance from the beds and the dining table. In cell no. 299 there was a 1.5-metre high partition separating the toilet from the living area of the cell. In cells nos. 122, 151, 153, 159 and 162 the toilet was completely isolated from the living area of the cell by a solid brick wall and a door.

2. The description provided by the applicant

24. The cells where the applicant was detained were severely overcrowded. At the beginning, the cells housed at least eighty persons. From August to November 2003 that number increased to 120 inmates per cell. In 2004 the cells with a designed capacity of twenty-two persons housed thirty-five inmates instead. The inmates took turns to sleep. Apart from brief meetings with the lawyer and relatives and an hour's daily exercise, the applicant was confined to the cell for practically twenty-four hours a day.

The ventilation and heating systems did not work properly. The inmates smoked in the cell and there was no fresh air in it. It was very cold in the winter and stiflingly hot in the summer. The cells were infested with cockroaches, bedbugs and lice. The lighting was constantly on. The lavatory was very close to the dining table and offered no privacy. The food was prepared as if for animals.

D. Access to medical assistance at the remand prison

25. According to the applicant, he became ill after his arrest. He developed a fever and a bad cough and had pain in his ear. However, the prison administration refused to provide him with any medical assistance.

26. As regards his state of health, the applicant submitted as follows:

> "On several occasions I asked for medical assistance because of my deteriorating health. The doctor did not come even once... In 2002 my teeth started to chip away. The pain was unbearable. I asked several times for dental treatment (I could not sleep because of the toothache). Finally I was invited to the medical unit where they offered to fix one of my teeth (I was supposed to choose which one). At the time I had problems with fourteen teeth. [My] health was deteriorating. I practically lost the sight in my left eye and the hearing in one of my ears. My teeth continue to chip away and sixteen of them require medical treatment. I cough all the time... My relatives have not been allowed to send me medicine..."

27. On 2 September 2002, in response to the applicant's complaint, the Moscow Prosecutor's Office asked the remand prison to organise a medical examination for the applicant with regard to headaches and deterioration of his hearing and eyesight. The medical unit of the remand prison responded as follows:

> "In response to your request of 2 September 2002..., please be advised that currently the medical unit of [the remand prison] does not have a staff ophthalmologist or

> otolaryngologist. In order to examine the deterioration of [the applicant's] eyesight and hearing (if his allegations are true), it is necessary to provide us with the medical documentation concerning [the applicant's] eyesight and hearing prior to his arrest.
>
> Please be further advised that [the applicant] undergoes a medical examination... twice a week and does not complain about his condition. His current medical condition is considered satisfactory. He is fit for detention in [the remand prison] and can participate in investigative and judicial proceedings."

28. According to the applicant's medical file, upon his placement in the remand prison on 25 March 2002, he was examined by a paramedic. On 4 March 2003 he received preventive treatment for tuberculosis. On 14 April 2004 the applicant received dental treatment described in the file as follows: "tooth preparation, treatment, application of arsenic paste for forty-eight hours, temporary filling. Advice."

E. The applicant's post-conviction detention

29. From 16 June to 14 November 2005 the applicant served his sentence in correctional colony IK-7. Then he was transferred to correctional colony IK-3 where he was detained from 14 November 2005 to 23 April 2007. On 23 April 2007 he was transferred to correctional colony IK-4.

30. On 18 April 2008 the Tosno Town Court of the Leningrad Region authorised the applicant's release on parole.

31. According to the certificates issued by the administration of the correctional colonies where the applicant had served his sentence, during the time of his confinement there he did not seek medical assistance with regard to the alleged deterioration of eyesight or hearing or dental problems.

II. RELEVANT DOMESTIC LAW

32. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

III. RELEVANT INTERNATIONAL DOCUMENTS

33. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in remand establishments and the complaints procedure read as follows:

> "45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.
>
> When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.
>
> ...
>
> The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

34. The applicant complained that he had been detained in appalling conditions in remand prison no. 77/2 in Moscow in contravention 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."

He also claimed that he did not have at his disposal an effective remedy in respect of the conditions of his pre-trial detention as required under Article 13 of the Convention, which provides as follows:

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

A. Submissions by the parties

1. The Government

35. The Government noted that the applicant had failed to bring his grievances to the attention of competent domestic authorities, including the department of corrections, prosecutor or the court and considered that his complaint should be rejected because he had failed to comply with the requirements of Article 35 § 1 of the Convention.

36. Relying on the certificates issued by the remand prison administration in July 2009, the Government submitted that the conditions of the applicant's detention had been in compliance with the standards set forth in Article 3 of the Convention and applicable domestic laws. At all times the applicant had been provided with an individual bed and bedding. The cells where he had been detained had a capacity to accommodate twenty-two persons and the average number of inmates detained with the applicant had been eighteen to nineteen. In any event, he had not been confined to the cell for twenty-four hours a day. He had spent a considerable amount of time outside the cell when meeting with his lawyer and family. He had been able to take at least one hour's daily exercise and have showers. It had been open to him to request meetings with the remand prison administration or medical consultations which would have taken place outside his cell.

37. The Government provided excerpts from the remand prison population register for the periods from 25 August 2004 to 2 January 2005 and from 13 January to 25 February 2005.

2. The applicant

38. The applicant maintained his complaint. He submitted that he had been detained in inhuman and degrading conditions for two years and eleven months and did not have an effective remedy for the violation of his rights. He did not challenge the data contained in the excerpts from the remand prison population registers concerning the number of inmates per cell. However, he asserted that at all times the cells where he had been detained had been severely overcrowded. He noted that, apart from the excerpts from the official records for the periods from 25 August 2004 to 2 January 2005 and from 13 January to 25 February 2005, the Government

had failed to substantiate their statements concerning the population of the cells at the remand prison. He further noted that, apart from an hour's daily exercise and brief meetings with his lawyer and relatives, he had been confined to his cell for twenty-four hours a day. In his view, the living conditions in the cells, including the hygiene, had been unsatisfactory. With reference to the Court's case-law (the cases of *Benediktov v. Russia*, no. 106/02, 10 May 2007, and *Lind v. Russia*, no. 25664/05, 6 December 2007) the applicant pointed out that the Court had previously examined the issue of the conditions of detention at remand prison no. IZ-77/2 in Moscow and found them in contravention of Article 3 of the Convention.

B. The Court's assessment

1. Admissibility

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

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

2. Merits

(a) Article 13 of the Convention

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

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

43. As regards the Government's contention that the applicant should have brought his grievances in respect of the allegedly inhuman and

degrading conditions of his detention to the attention of a prosecutor or a court or department of corrections, the Court observes that it has previously found that the opportunity to make such an application cannot be regarded as an effective domestic remedy (see, among other authorities, *Benediktov*, cited above §§ 27-30). Having regard to the material submitted by the Government, the Court notes that they have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

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

(b) Article 3 of the Convention

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

46. Turning to the facts of the instant case, the Court notes that the parties disagreed as to most aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation. It can find a violation of Article 3 on the basis of the facts presented by the applicant which the respondent Government failed to refute.

47. The main characteristic which the parties did agree upon is the size of the cells. Furthermore, the applicant did not dispute the data submitted by the Government in respect of the number of inmates detained with him from 25 August 2004 to 2 January 2005 and from 13 January to 25 February 2005. Nevertheless, he claimed that the cells had been overcrowded.

48. The Court further notes that the Government were unable to indicate the exact number of inmates per cell for the period of the applicant's

detention from 25 March 2002 to 26 December 2003 alleging that the relevant official records had been destroyed due to the expiry of the statutory time-limit for their storage. Nor did they produce the official records or offer any explanation in respect of the applicant's detention from 26 December 2003 to 25 August 2004 and from 2 to 13 January 2005.

49. In this connection the Court observes that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. 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 *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

50. Having regard to the above-mentioned principle, together with the fact that the Government did not offer any convincing explanation for not submitting relevant information, the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions in respect of the period from 25 March 2002 to 25 August 2004.

51. According to the applicant, during the periods in question he was afforded no more than 0.8 sq. m of personal space. The applicant spent in those conditions more than two years and five months.

52. As regards the remaining periods of the applicant's detention, namely from 25 August 2004 to 2 January 2005 and from 13 January to 25 February 2005, the Court observes that the inmates were afforded from 2.66 to 3.9 sq. m of personal space, which is below the domestic statutory requirements (see paragraph 32 above). It was even lower on more than twenty-seven days, when the number of inmates per cell exceeded their designed capacity and they had to take turns to sleep (see paragraph 20 above).

53. In sum, the Court considers that even though during the periods from 25 August 2004 to 2 January 2005 and from 13 January to 25 February 2005 the number of inmates detained in the same cell as the applicant was considerably lower than in the preceding period, this was nevertheless insufficient for the Court to conclude that the problem of overcrowding had been alleviated by the authorities.

54. The Court further notes that apart from an hour's daily exercise, the applicant was confined to the cell for the rest of the time. The Court does not consider that occasional meetings the applicant had with his lawyer or family outside the cell or a fifteen-minute weekly use of the shower facilities significantly altered the conditions of his detention. In any event,

the Government did not provide any specifics as to the number and duration of such meetings.

55. The Court reiterates that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006, and *Benediktov*, cited above, § 37).

56. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see, among other authorities, *Belevitskiy v. Russia*, no. 72967/01, §§ 75 et seq., 1 March 2007; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005).

57. Furthermore, the Court has on previous occasions examined the issue of conditions of detention in remand prison no. IZ-77/2 in Moscow and found them in contravention of the standards set forth in Article 3 of the Convention (see *Benediktov*, cited above, §§ 31-41, conditions of detention in 1999-2000; *Bychkov v. Russia*, no. 39420/03, §§ 33-43, 5 March 2009, conditions of detention in 2000-02; *Lind v. Russia*, no. 25664/05, §§ 58-63, 6 December 2007, conditions of detention in 2004-05; and *Sudarkov v. Russia*, no. 3130/03, §§ 40-51, 10 July 2008, conditions of detention in 2000-02).

58. Having regard to its case-law on the subject and the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

59. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-77/2 in Moscow between 25 March 2002 and 25 February 2005, which it considers were inhuman and degrading within the meaning of this provision.

60. In view of the above finding, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention in remand prison no. 77/2 in Moscow.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ALLEGED LACK OF MEDICAL ASSISTANCE

61. The applicant complained that he had not had access to medical assistance while in detention in remand prison no. IZ-77/2 in Moscow. He relied on Article 3 of the Convention.

A. Submissions by the parties

62. The Government contested that argument. They submitted that the applicant had been examined by medical professionals on a regular basis. He had never complained about loss of eyesight or hearing ability while in detention. When he consulted the dentist on 14 April 2004, he received proper treatment. The Government submitted a copy of the applicant's medical file.

63. The applicant maintained his complaint. He submitted that the prison administration had been aware of his condition, including eyesight and hearing problems. However, the medical unit of the remand prison had been unable to provide the required medical aid for lack of resources. As regards dental treatment, he had received it only in respect of one tooth while he had problems with fourteen of them. In any event, “application of arsenic paste, temporary filling and advice” could not be regarded as adequate medical aid.

B. The Court's assessment

64. The Court reiterates that Article 3 always requires that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła*, cited above, § 94; see also *Hurtado v. Switzerland*, 28 January 1994, § 79, Series A no. 280-A, opinion of the Commission; *Kalashnikov*, cited above, §§ 95 and 100; and *Khudobin v. Russia* (no. 59696/00, § 96, ECHR 2006-XII).

65. The Court further reiterates that in assessing evidence it 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).

66. Turning to the facts of the present case, the Court notes, and it is not disputed by the parties, that while in detention in the remand prison the applicant had been unable to consult an ophthalmologist or otolaryngologist. Nor had he received dental treatment, except for a temporary filling in one tooth. The Court finds this standard of medical care at the remand prison regrettable. Nevertheless, having regard to the materials in its possession, the Court is unable to conclude that the domestic

authorities' failure to provide the applicant with the access to the medical services sought by him had reached a minimum level of severity to fall within the ambit of Article 3 of the Convention.

67. In this connection, the Court notes that, although the applicant claimed that his eyesight, hearing and teeth had deteriorated while he was in detention, he did not provide any medical documentation to confirm his allegations. While the Court accepts that it might have been problematic for the applicant to procure such documentation while he was in custody, there does not, in the Court's view, appear to be any good reason for this omission after the applicant's release in 2008.

68. In view of the above, the Court considers that the documentary evidence submitted by the applicant does not substantiate his allegation that the authorities' failure to provide him with access to the medical services requested by him amount to treatment with a severity above the Article 3 threshold. Furthermore, while it is true that the attainment of the standard of proof the Court employs for assessment of evidence (see paragraph 65 above) may follow from the coexistence of sufficiently strong, clear and concordant inferences or unrebutted presumptions (see, for example *Kaya v. Turkey*, 19 February 1998, § 77, *Reports of Judgments and Decisions* 1998-I), in view of the information provided by the parties in the instant case, the Court discerns no *prima facie* evidence indicating that the applicant indeed suffered from deterioration of his eyesight and hearing or dental problems.

69. Accordingly, the Court finds no basis to conclude that the applicant suffered extensively as a result of insufficient medical care. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. Lastly, the applicant complained that he had been beaten up and left without his shoes or jacket during his arrest despite the cold weather. He further complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been unfair. In particular, he alleged that he had not been permitted to confront witness D. during the investigation phase; that the court had rejected as untruthful the testimony of the witnesses called to testify on his behalf and refused to examine certain photographs in support of his alibi. The applicant complained under Article 6 § 2 of the Convention that the identification parade had been carried out with serious violations of the rules of criminal procedure.

71. However, having regard to all the material in its possession, the Court finds that the complaints, to the extent that they fall within the Court's competence to examine, do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows

that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

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

75. The Court observes that the applicant was detained for two years and eleven months in inhuman conditions. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant the amount sought, namely EUR 10,000, in respect of non- pecuniary damage.

B. Costs and expenses

76. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers there is no call to award him any sum on that account.

C. Default interest

77. 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 between 25 March 2002 and 25 February 2005 in remand prison no. 77/2 in Moscow 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 in remand prison no. IZ-77/2 in Moscow between 25 March 2002 and 25 February 2005;

3. *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, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 7 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Section Registrar	President