CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF STAROKADOMSKIY v. RUSSIA

(Application no. 42239/02)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

31/10/2008

This judgment may be subject to editorial revision.

In the case of Starokadomskiy 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,
Giorgio Malinverni, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 July 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 42239/02) 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 Nikolay Anatolyevich Starokadomskiy ("the applicant"), on 20 September 2002.

2. The applicant, who had been granted legal aid, was represented by Ms Y. Liptser, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. By a decision of 12 January 2006, the Court declared the application partly admissible.

4. The Government, but not the applicant, filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and is serving a sentence of imprisonment in the Sverdlovsk Region.

A. The applicant's arrest and detention

6. On 31 January 1998 the applicant was arrested. On 3 February 1998 the Yaroslavl regional prosecutor authorised his detention. On 14 April 1998 the Frunzenskiy District Court of Yaroslavl confirmed the detention order.

7. On 6 February 1998 the applicant was charged with aggravated murder. On an unspecified date, he was transferred to Moscow.

8. On 1 September 1998 the Preobrazhenskiy District Court of Moscow dismissed the applicant's complaint about an extension of his detention. On 17 September 1998 the Moscow City Court upheld the District Court's decision.

9. In September 2000 the criminal case against the applicant was listed for trial. On 29 September 2000 the Moscow City Court held that the measure of restraint in respect of defendants, including the applicant, had been lawful and should remain unchanged.

10. On 3 July 2002 the City Court extended the applicant's and his co-defendants' detention for three months, that is for the period from 1 July to 1 October 2002. The court relied on the fact that the defendants had been charged with particularly serious criminal offences. The applicant appealed against this decision on 12 July 2002. On 2 April 2003 the Supreme Court of the Russian Federation dismissed his appeal, finding that the trial court had authorised the extension in compliance with the applicable procedure and that the defendants could not be released in view of gravity of the charges against them.

11. On 30 September 2002 the City Court rejected the applicant's application for release, noted the gravity of the charges and, without giving further reasons, extended his detention on remand. The applicant lodged an appeal against that decision on 10 October 2002. On 12 February 2003 the Supreme Court dismissed it in the following terms:

> "...the defendants have been charged with particularly serious criminal offences. The court...extended the term of their detention. There were no breaches of the rules of criminal procedure that could entail quashing or amendment of that decision...The defendants' request to be relieved of the preventive measure fails because the defendants have been charged with particularly serious criminal offences."

12. On 18 December 2002 the City Court authorised a further extension relying solely on the gravity of the charges. According to the Government, the applicant had mistakenly submitted an appeal against this order directly to the Supreme Court. In March 2003 the Supreme Court returned the case file to the City Court for a proper notification of the parties and preparation of the case file. The file was submitted to the Supreme Court on 24 July 2003. The appeal was examined on 16 October 2003 (see below).

13. On 24 March, 30 June and 30 September 2003 the City Court extended the applicant's detention with reference to the gravity of the charges. The applicant and his co-defendants appealed on unspecified dates.

14. According to the Government, the remand file regarding the order of 30 September 2003 reached the Supreme Court on 26 March 2004; it examined the appeal against it on 22 April 2004 (see below).

15. On 16 October 2003 the Supreme Court considered the appeals against the extension orders of 18 December 2002, 24 March and 30 June 2003. Neither the applicant nor his counsel was present. The Supreme Court found that there had been no procedural violations which warranted an amendment or quashing of the contested orders, and that the defendants could not be released due to the gravity of the charges.

16. On 30 December 2003 the City Court extended the defendants' detention, noting that the defendants had been charged with particularly serious criminal offences and that, they might abscond or obstruct justice.

17. On 30 March 2004 the City Court extended the defendants' detention on remand until 1 July 2004, indicating that:

> "...[the defendants] have been charged with several counts of serious and particularly serious criminal offences committed by an organised gang in conspiracy with unidentified persons, against whom separate criminal proceedings are pending, and with another person, against whom criminal proceedings were disjoined because his whereabouts are not known; if released, [they] may abscond or obstruct justice".

The applicant's appeal against that decision was submitted to the City Court in April 2004. The file was received by the Supreme Court on 28 June 2004. A hearing was scheduled for 14 July 2004 but was adjourned for a decision on the composition of the bench. The appeal was examined on 22 July 2004 (see below).

18. On 22 April 2004 the Supreme Court upheld the order of 30 September 2003 on the same grounds as before. The court also refused the applicant's request for leave to appear at the appeal hearing because it was to be conducted without a prosecutor and because the applicant's arguments had been set out in sufficient detail in his notice of appeal.

19. On 1 July 2004 the City Court extended the defendants' detention until 1 October 2004, reproducing verbatim the reasoning of its decision of 30 March 2004.

20. On 22 July 2004 the Supreme Court upheld the order of 30 March 2004 and endorsed the City Court's reasoning.

21. On 27 October 2004 the City Court convicted the applicant as charged and sentenced him to ten and half years' imprisonment. On 10 November 2004 the judgment was pronounced in public. On 15 November 2005 the Supreme Court upheld the judgment.

B. Conditions of the applicant's detention at Moscow remand centre no. 77/1

22. From May 1998 to December 2005 the applicant was detained in Moscow remand centre no. 77/1, also known as "Matrosskaya Tishina".

1. The applicant's account

23. The applicant provided the following description of his conditions of detention:

From May 2001 to September 2004 he had been kept in cell no. 274 measuring sixteen square metres. That cell had never housed fewer than ten prisoners and occasionally as many as eighteen. The applicant had never had a bed he could call his own and slept in shifts with other prisoners on bunk beds. The bunk beds had been short and the space between them did not allow a detainee to remain in a seated position. The remaining floor-space had been occupied by a long table.

Windows had not been glazed but instead covered with thick bars and slanted plates welded to a metal screen approximately 2 cm apart. Those arrangements had impeded access to natural light and air. In winter, prisoners had stuffed blankets and mattresses in the window frame to keep the warmth inside. The walls, the ceiling and the floor were blackened by smoke, musty and badly damaged. Lights remained on day and night. The cell was infested with bugs, lice, fleas and cockroaches. The air had been stale and full of smoke. The cell had no ventilation whatsoever; ventilation conduits had been cemented in or stuffed with rubbish. Running water was cold and rusty, unfit for drinking. The lavatory pan had been approximately 30 cm in height; it had not been separated from the living area. Showers had been allowed once a month. No items of hygiene such as soap or toilet paper had been provided. There had been no replacements of bedding and no facilities for washing clothes.

From 9 September 2004 the applicant had been kept in cell no. 243, measuring twelve or thirteen square metres and with four berths. The cell had accommodated four to six inmates. The window frame had been partly glazed and partly covered with wooden boards. Showers had been allowed two to three times per month. The other conditions of detention had been similar to those in cell no. 274. In support of his submissions concerning cell no. 243, the applicant had produced written statements from his former cellmates.

The applicant denied that he had ever been held in cell no. 260. Rather, from 22 November to 2 December 2002 he had been held in a punishment cell in which his warm clothing had been taken away in exchange for dirty and torn overalls and trousers. From 6 a.m. to 10 p.m. a wooden bench had been lifted and chained to the wall and there had been no seating place, save for a tiny concrete post. There had been no heating. He had had no access to the shower. His books and legal documents had been taken away.

None of the cells had been renovated or cleaned during the relevant periods of time.

During the trial the applicant had not been allowed a daily one-hour outdoor walk; he had had no other out-of-cell activity. The courtyard was extremely dirty; it had no benches or shelter from inclement weather.

2. The Government's account

24. The Government submitted the following description of the applicant's conditions of detention:

The report of 1 February 2005 issued by the remand centre, and produced by the Government, records that the applicant was detained in a number of different cells, as follows:

From May 1998 to 31 May 2001 the applicant was held in cells nos. 311, 109, 410 and 267.

From 31 May 2001 to 22 November 2002, and from 5 May 2003 to 11 September 2004 the applicant was held in cell no. 274. It measured 16.3 square metres and was designed for eight persons. It housed five prisoners during the second period mentioned. A report of 1 February 2005 issued by the remand centre, and produced by the Government, states that the logbooks for the period preceding 2001 had been destroyed as the retention period had expired.

From 22 November 2002 to 5 May 2003 the applicant was held in cell no. 260. It had eighteen sleeping places and accommodated eight prisoners in the period from 22 February 2002 to 5 May 2003.

From 11 September 2004 to 23 December 2005 the applicant was held in cell no. 243. It measured 10.8 square metres and was designed for four persons. It housed two persons during the relevant period of time. According to a report of 21 February 2006 issued by remand centre no. 77/1, the applicant had been detained in that cell from 11 April 2004 to 23 December 2005 with three other inmates.

According to the above-mentioned report of 1 February 2005, the logbooks indicating the number of detainees held in the same cell(s) with the applicant between 1998 and 2001 had been destroyed on an unspecified date. It appears from the report of 21 February 2006 that the logbooks for 1998-2003 were destroyed in August 2004.

The windows in the cells gave access to natural light sufficient to read or write by. According to another report of 1 February 2005 issued by remand

centre no. 77/1, the window frames "were glazed for the winter period". The intensity of artificial lighting was reduced at night.

In early 2005 sanitary inspectors visited the remand centre. According to their report dated 2 February 2005, some of the above-mentioned cells had been renovated between 1998 and 2004. At the moment of the inspection, all cells had a sink and a toilet pan; in most of the cells a concrete partition separated the lavatory from the living area; the cells were naturally ventilated through ventlights and a system of exhaust ventilation; the cells had central heating; all prisoners had bedding and could take a shower once a week.

Punishment cells were equipped with a folding bed, seating, a table, a sink, a lavatory and a system of ventilation and lighting.

Detainees were allowed a daily one-hour walk. The remand centre had three courtyards measuring forty, forty-two and fifty-six square metres for the detainees' outdoor activity.

C. Conditions of the applicant's transport to and from, and confinement at, the Moscow City Court

1. The applicant's account

25. The applicant submitted that between 2000 and 2004 he had been transported between Moscow City Court and the remand centre on no less than one hundred and ninety-five days. He gave the following description of the days when he had been taken to the courthouse:

(a) Assembly premises at the remand centre

On each occasion he had been taken out of the cell at 5 or 6 a.m. and had not been given breakfast. No other food or drink had been made available because, in accordance with the established administrative practice, on the days of court hearings he had been excluded from the food distribution list. Once out of their cells, detainees had been brought to the assembly section of the remand centre. Over a hundred detainees had been divided between collective and "individual" cells: forty to fifty persons in a collective cell or up to nine persons in an "individual" cell of one square metre. Cells had been extremely dirty and had no benches, windows or ventilation. Detainees had been refused access to a toilet during their presence at the assembly section and had to relieve themselves in a bucket. The air had been stale and full of smoke. Detainees had waited for their departure until 9.30 or 10 a.m.

(b) Transport arrangements

Prison vans had transported forty to fifty persons so that they had to sit on each other's laps. In the absence of appropriate seating and fixtures for

each detainee, they had been exposed to a considerable risk in the case of a traffic accident. Ventilation and heating had not functioned in the van. At around 7 or 8 p.m. or later prisoners were called back to prison vans and taken to remand centres. After several hours of travel, the applicant was then brought back to his cell in the remand centre at around midnight or later.

(c) Convoy premises at the courthouse

At the Moscow City Court prisoners had been put in thirty "convoy cells" measuring 1 or 1.5 square metres each. The applicant had been placed in such a cell with two or three other persons. The walls had been covered with so-called *shuba*, a sort of abrasive concrete lining, designed to prevent detainees from leaning on them. There had been no bench, no ventilation, no heating and no access to natural light. He had not had unlimited access to a toilet. The applicant stayed in the cell until 7 or 8 p.m. or later.

2. The Government's account

26. The Government submitted that the applicant had been transported from the remand centre to the Moscow City Court between 2001 and 2003. In 2004 he had not been transported because the proceedings had been held in the remand centre.

(a) "Assembly" premises at the remand centre

The applicant had been taken out of his cell at around 6 a.m. and had been provided with a hot meal. He had then been brought to the assembly section of the remand centre where all detainees awaiting departure for court hearings had been gathered. The assembly section had eight cells measuring between 12.7 and 17.9 square metres each. Each cell had a bench, toilet facilities, windows and artificial lights. According to a report of 21 February 2006 issued by the remand centre, there had been no overcrowding in those cells in 2002 and 2003.

The applicant had been provided with a meal after his return to the remand centre. He had also been given a dry ration for the remainder of the day and had been allowed to bring food purchased in the prison shop or received from his relatives. The Government submitted that the catering logs had been destroyed because the retention period had expired.

(b) Transport arrangements

The applicant was transported in vans GAZ-3307(3309) and ZIL-4331. The detainees' section of the GAZ van measured 3.8 m (length) by 2.35 m (width) by 1.6 m (height). Such a van had one individual compartment and two compartments for twelve persons each. The detainees' section of the ZIL van measured 4.7 m by 2.4 m by 1.64 m and had two individual

compartments and two compartments for seventeen persons each. Both types of vans also had three or four seats for convoy officers.

Vans were equipped with fixed benches so that each detainee was provided with individual seating. Van walls had insulating lining. Van heaters and lights were powered by the van engine so that the heating and lighting systems were operational when the engine was running. Vans were naturally ventilated through the emergency hatch and additional hatches with controlled airflow.

Relying on statements from three convoy officers, the Government affirmed that the maximum passenger capacity of the vans had never been exceeded.

The Government submitted that the transportation logbooks for 2001 and 2002 had been destroyed because the retention period had expired.

In 2003 the applicant was transported to the courthouse fifty-eight times, mostly by the GAZ-3307 and ZIL vans. It appears from the logbook for 2003 that the applicant was transported in the GAZ van together with twelve to twenty-three detainees and several convoy officers; in the ZIL van, on many occasions, with no less than twenty and up to thirty-two detainees and several convoy officers. The reports produced by the Government and an excerpt from the logbook for 2003 show that the vans normally left the remand centre between 9 and 10.40 a.m. and returned before 6.30 p.m. On several occasions they returned to the remand centre after 9 p.m. and the average travel time on the way back amounted to three hours. Reports of 2 February 2005 and 27 February 2006 issued by the Moscow Department of the Interior show that the itinerary included stops at district courts and other remand centres; the transfer normally ended before 10 p.m. but there were sometimes late court hearings or traffic jams. According to the Department's report of 2 March 2006, the applicant had a direct transfer between the remand centre and the City Court.

(c) Convoy premises at the courthouse

Prior to their renovation in 2003 and 2004, the convoy premises of the Moscow City Court had consisted of three blocks of cells, each comprising seventeen cells and a toilet. The applicant had access to a toilet before or after each hearing or at any other time upon request. Cells measured 1.9 m by 1 m. Each cell had a bench and was equipped with ventilation, lighting and central heating. In winter the average temperature was 18 to 20^{o} C. The applicant had been held separately from other defendants. A report of 2 March 2006 issued by the Moscow convoy regiment states that the design capacity of the cells had not been exceeded and detainees had been provided with hot water at the premises of Moscow courts.

3. Examination of the applicant's complaints by the national authorities

27. In 2003 the applicant complained about unsatisfactory conditions of transport, hunger and overcrowded prison vans.

28. On 26 November 2003 the Moscow Department of Execution of Sentences reported on the results of an inquiry as follows:

> "On leaving for the court each prisoner receives a dry ration in his own hands and against his signature... On that day the prisoner is excluded from the food distribution list. The composition of the dry ration takes account of the sanitary and nutritional requirements and... includes pre-cooked first and second courses which do not require cooking and can be consumed as breakfast, lunch or dinner...
>
> The matter of providing [prisoners] with hot water was discussed with the President of the Moscow City Court...
>
> Prisoners are taken out of cells after 6 a.m. – in particular, for transport to courts – and brought back to cells before 10 p.m... The Department of Execution of Sentences controls the [resolution of] problems relating to the existing breaches by the convoy regiment (late return from the courts, overcrowded prison vans, use of unauthorised routes). On many occasions in 2002 the established breaches of the procedure for transport of prisoners were brought to the attention of the command of the convoy regiment – mostly because of late return from the courts. Such incidents also took place in the first three months [of 2003]; in that connection on 4 March 2003 a notice about the late return (after 10 p.m.) of prisoners from the courts in January and February 2003, was sent to the convoy regiment. Recently there have been no incidents of return of prisoners after 10 p.m.
>
> The assembly premises are indeed overcrowded if there are many defendants going to the courts – up to 150 persons, whereas the assembly premises are designed... to accommodate 75 to 80 persons."

29. On 10 December 2003 the Moscow city prosecutor forwarded the applicant's complaint to the commander of the convoy regiment of the Moscow police.

30. On 17 December 2003 the Moscow convoy regiment established that, contrary to the applicant's allegations, in 2003 the design capacity of prison vans had never been exceeded; the applicant had been transported in a ZIL van together with fifteen to thirty-five detainees. Detainees received dry rations in the remand centre but they could not use them because the convoy premises at the courthouse had no facilities for heating or eating food and because no kitchenware had been available. The officers concluded that the applicant's complaint had been "made up so as to have his conditions of detention improved and to provoke the convoy officers to act unlawfully".

II. RELEVANT DOMESTIC LAW

A. Detention on remand

31. For a summary of the applicable national legislation relating to detention on remand, see the Court's judgment in the case of *Khudoyorov v. Russia* (no. 6847/02, §§ 76-93, ECHR 2005).

B. Catering arrangements for detainees

32. On 4 May 2001 the Ministry of Justice adopted the Rules on food supply for convicts and persons detained in remand centres. According to Annex no. 3 to these Rules, a daily dry ration (bread, tinned beef or fish, sugar, tea and salt) is provided to the following categories of persons: convicts on their way to a prison, a remand centre or colony; persons released from custody on the way to their place of residence; persons during their stay in patient care institutions or convicted juveniles. Those Rules were amended in 2004 and repealed in 2005.

33. On 4 February 2004 the Ministry of Justice adopted the Rules on supply of dry ration, according to which persons suspected or accused of criminal offences should be supplied with a dry ration (bread, precooked first and second courses, sugar, tea, tableware) during their presence at a courthouse. Detainees should be supplied with hot water with which to consume the ration.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that the conditions of his detention in the remand centre, the conditions of his transport to and from the courthouse and the conditions of his confinement at the courthouse had been incompatible with Article 3 of the Convention, which provides:

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

A. Conditions of detention at remand centre no. 77/1 of Moscow

1. Periods under consideration

35. In view of the parties' submissions, the Court has examined the conditions of the applicant's detention during several periods of detention: from 31 May 2001 to 22 November 2002 (cell no. 274), from 5 May 2003 to 11 September 2004 (cell no. 274), and from 11 September 2004 to 23 December 2005 (cell no. 243). The applicant also alleged that he had been detained in a punishment cell from 22 November to 2 December 2002.

2. Cells nos. 274 and 243

36. The applicant claimed that he had been detained in cell no. 274, which measured sixteen square metres, together with no less than ten, and at times up to eighteen, other inmates. He had been detained in cell no. 243, measuring twelve square metres, together with four to six other inmates. In neither cell did he have a bed he could call his own and he had slept in shifts with other prisoners. Windows had not been glazed but instead covered with thick bars and slanted plates welded to a metal screen. In winter, prisoners had stuffed blankets and mattresses in the window frame to keep the warmth inside. Cells had no ventilation whatsoever; ventilation conduits had been cemented in or stuffed with rubbish. Running water had been cold and rusty, unfit for drinking. The lavatory had not been separated from the cell. The air had been stale and full of smoke.

37. The Government submitted that from May 2003 to September 2004 cell no. 274 had accommodated no more than five detainees; cell no. 243 had contained two detainees in 2004. The logbooks indicating the cell population before 2003 had been destroyed. The window frames in the cells had been glazed and gave access to natural light. All cells had a sink and a lavatory; "in a majority of cells" a concrete partition separated the lavatory from the living area. Detainees had individual beds and bedding.

38. The Court reiterates that to be regarded degrading or inhuman for the purposes of Article 3 of the Convention treatment must attain a minimum level of severity (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant.

39. The Court observes that the parties' accounts of the conditions of detention differ significantly. Some of the applicant's allegations, for example his complaint concerning the punishment cell, are not supported by sufficient evidence and, therefore, cannot be proved "beyond reasonable doubt", which is the standard of proof applied by the Court (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161; see also, by contrast, *Salman v. Turkey* [GC], no. 21986/93,

§ 100, ECHR 2000-VII, where the Court held that the burden of proof could be reversed in particular circumstances). However, in the present case the Court does not consider it necessary to establish the truthfulness of each and every allegation made by the applicant. Instead, the Court will concentrate on the allegations that have not been disputed by the respondent Government, or those in respect of which the Government did not comment, whereas they had been clearly and consistently formulated before the domestic authorities and later before the Court (see *Trepashkin v. Russia*, no. 36898/03, § 85, 19 July 2007). The Court will first examine the issue that lends itself to more or less precise quantification, namely cell space afforded per detainee in the above-mentioned cells.

40. As to cell no. 274, the Government provided no figures as to the number of persons detained with the applicant from May 2001 to November 2002. The report dated 1 February 2005, produced by the Government, states that the logbooks recording the cell population "between 1998 and 2001 had been destroyed". In the Court's opinion, that does not account for the Government's unexplained omission to provide the relevant data for the year 2002. The Court therefore accepts that during that period the applicant was detained with ten to eighteen other detainees, and thus was afforded less than two square metres of space.

41. As to the applicant's detention from May 2003 to September 2004, the Court detected certain inconsistencies in the Government's submissions. The Court notes that in the report of 1 February 2005, mentioned above, the authorities indicated that cell no. 274 had housed five persons during the relevant period. However, as can be seen from the attachment to the report of 21 February 2006, produced by the Government, the logbook for the year 2003 had been destroyed in August 2004. The Government provided no information as to the source of their information regarding the cell population from May 2003 to September 2004. In view of the above, the Court is inclined to give weight to the applicant's statement that he was detained during that period together with no less than ten, and at times up to eighteen, other inmates. The Court therefore finds that he was afforded less than two square metres of space during that period.

42. As to cell no. 243, whereas the Government argued that the applicant had been kept there with another detainee from September 2004 onwards, the report of 21 February 2006 indicates that the applicant "was kept in cell no. 243 with three other detainees". The applicant insisted that he had shared this cell with four to six other detainees. The Court notes that the Government did not contest the written statements submitted by the applicant's cellmates corroborating his allegations. Considering the evidence before it as a whole, the Court finds that the applicant was afforded less than three square metres of space in that cell.

43. The Court reiterates in that connection that in certain cases the lack of personal space afforded to detainees in Russian remand centres was so

extreme as to justify, in itself, a finding of a violation of Article 3 of the Convention. In those cases applicants usually were afforded less than three square metres of personal space (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005). By contrast, in other cases where the overcrowding was not so severe as to raise in itself an issue under Article 3 of the Convention, the Court noted other aspects of the physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the possibility of using the toilet in private, availability of ventilation, access to natural light or air, adequacy of heating arrangements, and compliance with basic sanitary requirements. Thus, even in cases where the prison cell was larger, the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, *Trepashkin*, cited above, § 94; and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III).

44. In the present case, the Court observes that save for one hour of daily outdoor exercise, except on the days of court hearings, the applicant was confined to his cell and was not allowed any other out-of-cell activity. That factor adds to the problem of the insufficient cell space per detainee (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005; *Khudoyorov v. Russia*, no. 6847/02, § 105, ECHR 2005-... (extracts)).

45. In addition, the Government did not refute the applicant's allegations that in both cells the window frames were not glazed. That conclusion may also be drawn from the report of 1 February 2005, which stated that the window frames "had been glazed for the winter period".

46. The Government did not make any specific comments on the applicant's submissions as regards access to natural light and ventilation in both cells. It also appears that the artificial lights in both cells remained on day and night, which undeniably contributed to the applicant's feeling of frustration related to the conditions of detention. The Court reiterates that its task is to assess the applicant's personal situation at the relevant time. Thus, the Court cannot accept the 2005 sanitary report, relied upon by the Government, since that report did not make any specific findings as to the conditions of the applicant's detention in cell no. 274 between 2001 and 2004. However, the Court cannot but note that according to this report, even in 2005 some of the cells in which the applicant had been detained still did not have a partition separating the lavatory from the living area.

47. It follows that for more than four years the applicant was confined to his cell with very limited space for himself, which must have caused him intense physical discomfort and mental suffering.

48. In sum, the above factors are sufficient for the Court to conclude that the applicant was detained in inhuman and degrading conditions, in breach of Article 3. In view of the above, the Court will not go any further and explore other aspects of the conditions of detention during the relevant periods of time.

49. The Court therefore finds that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention.

B. Conditions of transport to and from, and confinement at, the Moscow City Court

1. Submissions by the parties

50. The parties' detailed descriptions of the relevant circumstances are provided in paragraphs 25 and 26 above.

51. The applicant claimed in particular that he had been transported in cramped conditions to and from the City Court on one hundred and ninety-five days. At the courthouse he had been kept in a cell measuring 1.5 square metres with two to three other persons. There had been no bench, no ventilation and no natural light in the cell. He had been given no food or drink on those days. The applicant argued that his confinement at the assembly section of the remand centre prior to departure, his transport in overcrowded vans and confinement at the courthouse, including lack of food on those days, had amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

52. The Government claimed that the applicant had been transported in decent conditions not exceeding the design capacity of the vans. In 2003 he had been transported fifty-eight times by the itinerary which included other courts and remand centres. At the courthouse, the applicant had been kept alone in a cell measuring 1.95 square metres. Each cell had a bench and was equipped with ventilation, lighting and central heating. The applicant had had a meal before departure from the remand centre and after his return there. He had also been given a dry ration in accordance with the applicable Rules (see paragraph 32 above). He had been allowed to bring food purchased in the prison shop or received from his relatives.

2. The Court's assessment

53. The Court will examine the applicant's complaint in the light of the principles outlined in paragraphs 38 and 39 above, and against the background of the Court's conclusions in respect of the material conditions of the applicant's detention (see paragraph 48 above).

54. The Court observes that it has found a violation of Article 3 in a case where an applicant was transported together with another detainee in a

single-occupancy cubicle which measured one square metre (see *Khudoyorov*, cited above, §§ 118-120). The Court noted that the applicant in that case had to endure these cramped conditions twice a day on two hundred days when court hearings were held.

55. On the facts, the Court finds that in 2003 the applicant was transported in a GAZ van (measuring less than nine square metres) together with twelve to twenty-three detainees and, apparently, at least three convoy officers. He was also transported in a passenger compartment (measuring eleven square metres) in a ZIL van, on many occasions, with twenty to thirty-two detainees and, apparently, at least three convoy officers. Having regard to the above data, the Court concludes that less than 0.35 and 0.32 square metres were allowed per detainee, respectively. The Government's suggestion that the design capacity was not exceeded does not in itself refute the applicant's allegation that he was transported in cramped conditions.

56. As regards the applicant's transportation before 2003, the Government were unable to provide any detailed information in that respect since the relevant logbooks had been destroyed. However, the Court takes note of the national authorities' acknowledgement that in 2002 there had been "problems relating to the existing breaches by the convoy regiment (late return from the courts, overcrowded prison vans, use of unauthorised routes)" (see paragraph 28 above). The Court, therefore, cannot exclude the possibility that the applicant was not provided with individual seating in the van. Given the vans' height (1.6 metres), detainees should have been kept there only in a seated position. It seems to be inconceivable in such circumstances that the applicant could have been provided with adequate seating and fixtures that would prevent him from losing balance when the vehicle moved.

57. As to the applicant's confinement at the courthouse, the Government have not provided any official data as to the duration of such confinement and other details of the cells used. The Court is, therefore, inclined to accept the applicant's account and finds that he was confined in cramped conditions. The Court does not lose sight of the fact that he was kept there for only a part of the day (compare *Fedotov v. Russia*, no. 5140/02, § 68, 25 October 2005). However, in view of the significant number of times when the applicant was placed in those cramped conditions, the Court considers that this aspect of the case also raises a concern under Article 3 of the Convention.

58. Furthermore, it appears that the applicant did not receive appropriate nutrition on the days when he was transported to the court (compare *Bagel v. Russia*, no. 37810/03, §§ 67-71, 15 November 2007, and *Nakhmanovich v. Russia* (dec.), no. 55669/00, 28 October 2004). The Court is not convinced by the Government's unsupported assertion that he could eat breakfast and dinner at the remand centre on the relevant days. As can

be seen from the reports submitted by the Government, on many occasions the applicant was taken to the assembly section before breakfast time and was brought back to the remand centre after dinner time. No evidence was submitted to the effect that the applicant had received any dry ration instead. In any event, the reports submitted by the Government concede that detainees could not use dry rations because the convoy premises at the courthouse had no facilities for heating or eating food and because no kitchenware had been available. Permission to take one's own food cannot be a substitute for appropriate catering arrangements because it remains the State's obligation to ensure the well-being of persons deprived of their liberty (see *Stepuleac v. Moldova*, no. 8207/06, § 55, 6 November 2007; *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 55, 4 May 2006; compare *Valašinas v. Lithuania*, no. 44558/98, § 109, ECHR 2001-VIII).

59. Finally, in view of the national authorities' acknowledgement (see the report of 26 November 2003, cited in paragraph 28 above) and in the absence of any other official data in that respect, the Court considers that the assembly premises in the remand centre were overcrowded.

60. Thus, in the present case the applicant was transported in cramped conditions on no fewer than one hundred and ninety-five days over a period of several years. On those days he was not provided with adequate nutrition and was confined in unacceptable conditions at the assembly section in the remand centre and at the courthouse. The above treatment occurred during his trial, that is when he most needed his powers of concentration and mental alertness. The Court takes the view that the above considerations, taken cumulatively, are sufficient to warrant the conclusion that the inhuman and degrading treatment to which the applicant was subjected exceeded the minimum level of severity required for the finding that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

61. The applicant complained that his detention from 1 to 3 July 2002 had been unlawful. He relied on Article 5 § 1 of the Convention:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so..."

62. The Government acknowledged that there had been no valid judicial authorisation of the applicant's detention on 1 and 2 July 2002. They contended that that period had been counted toward the applicant's prison term under the judgment of 27 October 2004.

63. The applicant took note of the Government's admission.

64. The Court rejects as unsubstantiated the Government's argument that a deduction had been made from the applicant's sentence, and concludes that there has been a violation of Article 5 § 1 (c) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

65. The applicant complained under Article 5 § 3 of the Convention that his detention on remand had been excessively long and lacked sufficient justification. Article 5 § 3 provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

66. The Government submitted that the length of the applicant's detention had been accounted for by the large number of the defendants, the complexity of the criminal case and the difficulties relating to the jurisdictional issue in the case.

67. The applicant responded that a period of six years and nine months could by no means be considered "reasonable". The courts had extended his detention on remand only with reference to the gravity of the charges against him. The trial court had failed to conduct the proceedings with "special diligence".

68. The Court observes that the applicant's detention started on 31 January 1998, the date of his arrest, and ended on 10 November 2004, the date when the City Court gave judgment in his criminal case. The overall duration thus amounted to six years, nine months and eleven days. The Court has competence *ratione temporis* to examine the period after the entry into force of the Convention in respect of the Russian Federation on 5 May 1998, that is six years, six months and eight days.

69. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention, but with the lapse of time this no longer suffices and the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-...). Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings.

70. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (*loc. cit*.). The Court will therefore examine the reasons given by the Russian courts, namely the gravity of the charges against the applicant and that he might flee or obstruct justice.

71. The Court has repeatedly held that, although the gravity of the charges or the severity of the sentence faced is relevant in the assessment of the risk of an accused absconding, re-offending or obstructing justice, it cannot by itself serve to justify long periods of detention on remand (see, among others, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80 and 81, 26 July 2001).

72. The Court observes that the City Court used the same summary formula to extend the detention of several defendants, without describing their personal situation in any detail. The Court does not exclude the possibility that there might be a general risk flowing from the organised nature of the alleged criminal activities of an applicant which can be accepted as the basis for his or her detention for a certain period of time (see *Kučera v. Slovakia*, no. 48666/99, § 95, ECHR 2007-... (extracts), and *Celejewski v. Poland*, no. 17584/04, §§ 37 and 38, 4 May 2006). In such cases, involving numerous accused, the need to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-accused may constitute relevant and sufficient grounds for an applicant's detention during the period necessary to terminate the investigation, to draw up the bill of indictment and to hear evidence from the accused (*loc. cit*.). However, in the present case the domestic court did not demonstrate the existence of any concrete facts in support of the conclusions that the applicant would obstruct justice. It did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that there was a persistent risk that he would abscond.

73. The inordinate length of the applicant's detention is a matter of grave concern for the Court. At no point in the proceedings did the domestic authorities consider whether his right "to trial within a reasonable time or to release pending trial" had been violated. The Court considers that, in these circumstances, the Russian authorities should have put forward very weighty reasons for keeping the applicant in detention.

74. In the light of the above considerations, the Court finds that the authorities failed in their duty to provide sufficient reasons for the applicant's detention for more than six years. In those circumstances it is not necessary to determine whether the proceedings were conducted with "special diligence".

75. There has therefore been a violation of Article 5 § 3 of the Convention.

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

76. The applicant complained that his appeals against the remand orders of 3 July, 30 September and 18 December 2002, 24 March, 30 June and 30 September 2003 and 30 March 2004 had not been examined speedily, in breach of Article 5 § 4 of the Convention. This provision reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

77. The Government submitted that the Supreme Court had examined the applicant's appeals and rejected them. The delay in processing the appeal against the order of 18 December 2002 had been attributable to the applicant's failure to observe the appeal procedure. The appeals against the orders of 30 September 2003 and 30 March 2004 had been received by the Supreme Court on 26 March and 28 June 2004 respectively, after the parties had been properly notified thereof.

78. The applicant submitted that his notices of appeal had been considered by the Supreme Court with significant delays. Neither he nor his lawyer had taken part in the appeal hearings on 16 October 2003 and 22 April 2004, and they had therefore not been able to advance arguments for his release.

A. General principles

79. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland* [GC], no. 28358/95, ECHR 2000). There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

80. Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for a system of appeal, the appellate body must also comply with the requirements of Article 5 § 4, in particular, as concerns the speediness of the review by the appellate body of a detention order imposed by the lower court (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007). At the same time, the standard of "speediness" is less stringent when it comes to the proceedings before the court of appeal. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. However, if the detention is confirmed by a

court it must be considered to be lawful and not arbitrary, even where appeal is available (see *Tjin-a-Kwi and Van Den Heuvel v. the Netherlands*, no. 17297/90, Commission decision of 31 March 1993). Subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention (*loc. cit*.). Therefore, the Court would be less concerned with the speediness of the proceedings before the court of appeal, if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees.

B. Application in the present case

81. The Court observes that the applicant's appeal against the order of 3 July 2002 was filed on 12 July 2002, and examined by the Supreme Court on 2 April 2003. The appeal against the order of 30 September 2002 was filed on 10 October 2002, and examined by the Supreme Court on 17 February 2003. Therefore, the appeal proceedings took more than eight and four months, respectively.

82. The Court notes that the parties did not indicate the dates on which the applicant filed his appeals against the orders of 18 December 2002, 24 March, 30 July and 30 September 2003 and 30 March 2004. In the absence of any indication to the contrary, the Court will assume that the applicant filed the appeals within the statutory time-limit of ten days. Therefore, the Court finds that the delays varied from three to nine months.

83. The Government have not adduced any evidence which would disclose that, having lodged those appeals, the applicant caused any delays in their examination. Thus, the Court finds that the delays in the examination of the appeals against the above orders were attributable to the State (compare *Rokhlina v. Russia*, no. 54071/00, § 78, 7 April 2005).

84. The Court considers that such delays cannot be considered compatible with the "speediness" requirement of Article 5 § 4 (see *Lebedev*, cited above, §§ 102 and 108; *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, and *Khudoyorov*, cited above, §§ 198 and 204).

85. It appears that it was open to the applicant to lodge applications for release during the intervening periods of time (see *Khudobin v. Russia*, no. 59696/00, § 117, ECHR 2006-... (extracts)). However, the availability of such recourse did not absolve the national authorities from their obligation to decide "speedily" on the validity of an extension order (see *Smatana v. the Czech Republic*, no. 18642/04, § 131, 27 September 2007; compare *Yaresco v. France* (dec.), no. 75197/01, 30 June 2005; *Touroude v. France* (dec.), no. 35502/97, 3 October 2000; and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 56).

86. The Court deplores the fact that the appeals against the above remand orders were examined only after a fresh remand order had been issued by the City Court. The appeal against the order of 3 July 2002 was examined even after the date of the appeal decision in respect of the subsequent order of 30 September 2002. The appeals against the orders of 18 December 2002 and 24 March and 30 July 2003 were examined *en bloc* only on 16 October 2003. In such circumstances, the applicant's right of appeal was made devoid of any useful purpose.

87. There has therefore been a violation of Article 5 § 4 of the Convention. In the light of this finding, the Court does not need to determine whether the refusal of leave to appear also entailed a violation of Article 5 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage in relation to his complaint about unlawful detention on 1 and 2 July 2002 and the complaint about the conditions of his detention in the remand centre. He also claimed EUR 37,500 in respect of pecuniary damage in relation to his detention on remand.

90. The Government considered that the applicant's pecuniary claim was unrelated to the proceedings before the Court and, in any event, was unsubstantiated. His claim in respect of non-pecuniary damage was excessive.

91. The Court agrees with the Government and dismisses the applicant's pecuniary claim as unfounded. As regard his claim in respect of non-pecuniary damage, and in so far as it may be discerned from the applicant's submissions, the Court notes that this claim only concerned one period of the applicant's unlawful detention and the conditions of his detention in the remand centre. Making its assessment on an equitable basis, the Court awards EUR 15,500 under this head, plus any tax that may be chargeable.

B. Costs and expenses

92. The applicant was represented by Ms Y. Liptser, a lawyer practising in Moscow. In that connection, he submitted a copy of an agreement dated 21 January 2003 under which a Mr Statsenko had undertaken to pay Ms Liptser 240,000 Russian roubles (RUB, approximately EUR 7,000) of which RUB 30,000 was to pay for drafting a first letter to the Court, RUB 30,000 for drafting an application form and RUB 180,000 for managing the case following the procedure under Rule 54 § 2 (b) of the Rules of Court but prior to the adoption of an admissibility decision. It appears that in January and September 2003 Ms Liptser was paid RUB 33,000. The applicant claimed reimbursements of his lawyer's fees in the proceedings before the Court in the amount of EUR 6,000.

93. The Government submitted that the lawyer's fees were excessive and were not necessary in view of the relatively low amount of work done by her in the present case.

94. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). It was not contested that although the agreement with the lawyer was signed by a third person, this was done in the applicant's interests. Furthermore, the Court has no reasons to doubt that a part of the agreed fees (RUB 33,000) was actually paid. In other words, the expenses in this part have been "actually incurred". The Court notes that Ms Liptser represented the applicant throughout the proceedings before the Court. However, it considers that the applicant's claim is excessive. Regard being had to the information in its possession and the overall amount of work done by the applicant's lawyer, the Court awards EUR 1,500 in respect of legal costs, plus any tax that may be chargeable to the applicant, but deducting the amount of EUR 715 already paid to the lawyer by way of legal aid under Rule 91 § 1 of the Rules of Court.

C. Default interest

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

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's transport to and confinement at the Moscow City Court;

3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention as regards the applicant's detention on 1 and 2 July 2002;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

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

6. *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 15,500 (fifteen thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 785 (seven hundred eighty-five euros) in respect of legal costs, plus any tax that may be chargeable to the applicant, both sums to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President