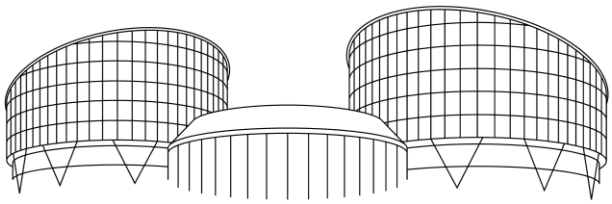

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VLADIMIR KOZLOV v. RUSSIA

(Application no. 21503/04)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

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

In the case of Kozlov 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 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 21503/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vladimir Nikolayevich Kozlov ("the applicant"), on 10 March 2004.

2. The applicant was represented by Ms Y. Liptser and Mr R. Karpinskiy, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights and 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 in remand prison no. IZ-77/3 in Moscow.

4. On 27 June 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Moscow.

A. Criminal proceedings against the applicant

6. On 11 September 1996 Mr Z., the applicant's business partner, was killed.

7. In 1997 Mr Zh. and 17 other persons were charged as an organised group with numerous counts of robbery and murder, including the murder of Mr Z. and the planning of the murder of Ms A., Mr Z.'s girlfriend.

8. On 9 April 1997 the applicant was arrested. He was charged with aiding and abetting the murder of Mr Z. and the planning of the murder of Ms A. The applicant remained in custody pending investigation and trial. His case was joined to the case of Mr Zh. and the others. The applicant's numerous requests to disjoin the cases were rejected both by the prosecutor and the court.

9. On 24 March 1999 the preliminary investigation was completed and the case file was transferred to the Moscow City Court for consideration.

10. On 6 April 1999 the Moscow City Court scheduled the trial for 20 April 1999.

11. The trial lasted from 6 April 1999 until 18 July 2001. The court held 82 hearings. On 36 occasions the court adjourned the proceedings on account of the illness of some of the defendants, a quarantine in place in their detention facilities or their lawyers' failure to appear. The proceedings were interrupted twice on account of a security threat in the courthouse. On six occasions the proceedings were adjourned on account of clashes in the judge's schedule, his illness or the authorities' failure to transport the defendants to the court house.

12. On 18 July 2001 the Moscow City Court found the applicant guilty as charged and sentenced him to eleven years' imprisonment.

13. From 20 July 2001 until 15 October 2002 the defendants studied six volumes of the minutes of the court hearings.

14. On 10 September 2003 the Supreme Court of the Russian Federation heard the case on appeal. The court upheld the applicant's conviction in substance and reduced his sentence to ten years' imprisonment.

B. Conditions of the applicant's pre-trial detention

1. Lefortovo remand prison

15. From 26 November 1997 to 17 August 2001 the applicant was detained in Lefortovo remand prison. He was held in a cell measuring 8 sq. m and had to share it with one or two other inmates. There was no hot water or shower facility in the cell. A partition separating the toilet from the living area of the cell was installed only in 1999.

2. Remand prison no. 77/3

16. On 17 August 2001 the applicant was transferred to remand prison no. IZ-77/3 where he was detained until October 2003.

(a) Description provided by the applicant

17. According to the applicant, the cell where he was detained measured 33 square metres and was equipped with twenty-four bunk beds. The minimum number of inmates detained with the applicant at any one time was twenty-three. In August 2001 the cell housed forty inmates; that number had increased to forty-seven by the end of the year. The inmates took turns to sleep due to the lack of beds. By the beginning of 2003 twenty-three inmates were kept in the cell. The cell did not have any ventilation. It was stiflingly hot in the summer and very cold in the winter. Most of the inmates smoked and the applicant, a non-smoker, was exposed the tobacco smoke of others. The cell was infested with cockroaches and lice. Disinfection of the cell was performed once every three months and was to no avail. The television and the light were constantly on. Window panes were installed only in late 2002. The toilet was elevated from the floor by 0.5 metres. It was separated from the living area of the cell by a partition measuring one metre in height. The person using the toilet could be seen by both the inmates and the guards watching the inmates through the peep-hole in the door. The dinner table was some four metres away from the toilet. On several occasions HIV-infected inmates were placed in the cell. The applicant was allowed to take a 20-minute shower once a week. On one occasion between December 2001 and January 2002 the applicant did not have the opportunity to take a shower for three weeks. He was allowed to be outside for approximately one hour per day. The meals were of poor quality.

(b) Description provided by the Government

18. According to the Government, at all times the applicant was afforded at least 4 sq. m of living space. In particular, the Government provided the following data concerning the cell measurements:

Cell number	Cell surface area
404	19.2 sq. m
410	32.4 sq. m
406	32.4 sq. m
407	32.4 sq. m
507	32.7 sq. m
519	32.7 sq. m

19. Each cell had a window measuring 0.89 by 0.94 metres. The windows were equipped with vents which could be kept open to let additional fresh air in. The ventilation system functioned properly. Upon arrival at the remand prison, the applicant was provided with two bed

sheets, a mattress, a blanket, a pillow, a pillow case, a towel, and cutlery. Each cell had a water heater and a potable water tank. The remand prison was equipped with a central water supply, sewage system, ventilation and lighting. In the day the lighting was on from 6 am to 10 pm. At night lower-voltage bulbs were used to maintain lighting for surveillance and safety reasons. The inmates were allowed to watch TV between 6 am and 10 pm. The use of the TV during the night-time was prohibited. The average temperature in the cells did not fall below $+18^0$C during the winter and did not exceed $+20^0$C during the summer. Window panes were installed for autumn and winter.

20. Each cell had a toilet, a sink, a table and benches. The toilet was separated from the living area of the cell by a one-metre-high partition and a screen to ensure the privacy of the person using the toilet. The applicant could take a shower once a week for at least fifteen minutes.

3. Confinement at the courthouse

21. During the time of the trial, that is from 6 April 1999 to 18 July 2001, on the days of the court hearings the applicant was held in custody at the courthouse.

(a) Description provided by the applicant

22. The cells at the courthouse measured 2 sq. m. Each time the applicant had to share the cell with two or three other persons. The ventilation system did not function properly and the cells were very hot in the summer. The applicant was not provided with food at all.

(b) Description provided by the Government

23. At the courthouse the applicant was detained in a cell measuring 1.95 by 1 metres. There was a bench in the cell. The cell was equipped with ventilation, lighting, and central heating. The metal door had a peephole. The average temperature in the cell was between 18 and 20^0C. The applicant was allowed to use the bathroom upon arrival and before departure or before the start of the court hearing, if necessary. He was provided with food and hot water.

C. Mass media comment about the applicant's case

24. According to the applicant, numerous newspapers and television channels covered his arrest and the circumstances of Z.'s murder before the trial was over.

25. A documentary made by Mr D. about the case was shown at least six times by one of the nationwide TV channels. The film featured footage of the applicant and Z. aboard a sea cruiser.

26. On 7 March 2002 the prosecutor's office dismissed the applicant's request for criminal proceedings to be instituted against Mr D.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained that his detention pending investigation and trial in remand prison no. IZ-77/3 and his confinement at the courthouse during the trial had been 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."

A. Admissibility

1. Submissions by the parties

28. The Government noted that the applicant had failed to bring his grievances to the attention of a competent domestic authority and considered that his complaint should be rejected for failure to comply with the requirements of Article 35 § 1 of the Convention. In particular, they submitted that it had been open to the applicant to bring his grievances to the attention of the prosecutor. They cited the following examples from the domestic practice in support of their position. In response to a Mr N.'s complaint about the conditions of his detention the Novosibirsk prosecutor's office conducted an inquiry which confirmed N.'s allegations that the food rations had been insufficient and the water supply had been irregular. As a result, the prison administration renovated the detention facility and purchased medical supplies. In the Vladimir Region, a special section for detention of inmates diagnosed with tuberculosis was established following an NGO's complaint on behalf of a Mr B. In the Khabarovsk Region the administration of the prison where Mssrs Sh. and Z. were detained renovated the shower and laundry rooms, upgraded the ventilation system in the disciplinary block and set up an area for medical consultations. Alternatively, in the Government's opinion, the applicant could have brought a civil action for damages resulting from the conditions of his detention. The Government cited three cases in this connection. The Yoshkar-Ola Town Court in the Mariy El Republic granted a Mr S.'s action for compensation for non-pecuniary damage resulting from a violation of

his rights set forth in Article 3 of the Convention on account of the appalling conditions of his detention in a remand prison. A Mr D. had been awarded 25,000 Russian roubles (RUB) in compensation for non-pecuniary damage arising from the unsatisfactory conditions of his pre-trial detention. On 23 April 2004 the Zheleznodorozhniy District Court of Oryol found that a Mr R.'s pre-trial detention had been unlawful that he had not received food for five days of his detention. The court awarded Mr R. RUB 30,000.

29. The applicant contested that argument. He submitted that the information provided by the Government was insufficient to substantiate their allegations that an effective remedy in fact existed in respect of the complaint about the conditions of his detention in 2001-2003.

2. The Court's assessment

30. In so far as the applicant's complaint concerns his confinement at the courthouse during the trial which ended on 18 July 2001, the Court reiterates that it may only deal with a matter within a period of six months from the date on which the final decision was taken or the event occurred. The applicant lodged his application on 10 March 2004. It follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

31. As regards the Government's objection concerning the applicant's alleged failure to exhaust domestic remedies in respect of his complaint about the conditions of his detention in remand prison no. IZ-77/3, the Court observes that in the case of *Benediktov*, in comparable circumstances, it found that the Government had failed to demonstrate what redress could have been afforded to the applicant by a prosecutor or a court, taking into account that the problems arising from the conditions of the applicant's detention had apparently been of a structural nature and had not concerned the applicant's personal situation alone (see *Benediktov v. Russia* no. 106/02, §§ 29-30, 10 May 2007).

32. The Court also notes that the Government have already raised the issue of non-exhaustion, referring to the same domestic case-law in a number of Russian cases concerning conditions of detention in Russia. The Court has examined and dismissed them, finding the said remedies ineffective (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 76-91, 12 March 2009). The Court discerns nothing in the Government's submissions which would persuade it to depart from its earlier finding. It follows that the applicant was not required to exhaust the domestic remedies, indicated by the Government, and the Government's objection must be dismissed.

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

B. Merits

1. Submissions by the parties

34. Relying on the certificates issued by the remand prison administration in August and September 2008, the Government submitted that the conditions of the applicant's detention in remand prison no. IZ-77/3 in Moscow had been in compliance with Article 3 of the Convention. At all times the applicant had been afforded at least 4 sq. m of personal space. According to the Government, it was not possible to provide any further detail, such as the number of persons detained in each cell together with the applicant and/or the number of sleeping places there, because all the official records had been destroyed after the expiry of the statutory period for their storage and the renovation of the remand prison carried out in 2005-2006.

35. The applicant maintained his complaint. He reiterated that he had been detained in severely overcrowded cells where he was afforded no more than 0.83-1.4 sq. m of personal space. He further referred to the case of *Belevitskiy* (see *Belevitskiy v. Russia*, no. 72967/01, 1 March 2007) where the Court had found a violation of the applicant's rights set out in Article 3 of the Convention on account of severe overcrowding of the cells in the same remand prison.

2. The Court's assessment

36. The Court reiterates that Article 3 enshrines one of the fundamental values of democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, 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 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 liberty may often involve such an element, in accordance with 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).

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

Government failed to refute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

38. In particular, the Court observes that the Government was unable to provide any information as to the number of inmates detained together with the applicant and/or the number of sleeping places in the cells where he had been detained, since the remand prison records pertaining to the period of the applicant's detention there had been destroyed after the expiry of the time-limit for their storage. Nevertheless, the Government refuted the applicant's allegations, stating that at all times the applicant had been afforded at least 4 sq. m of personal space. Their assertion was based on the certificates issued by the remand prison administration in 2008.

39. In this connection, the Court notes that on several previous occasions when the Government have failed to submit original records, it has held that documents prepared after a considerable period of time cannot be viewed as sufficiently reliable given the time that has passed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009). The Court opines that these considerations hold true in the present case. The certificates prepared by the Russian authorities almost five years after the events in question cannot qualify as sufficiently reliable sources of data.

40. The Court further reiterates that in certain instances the respondent Government alone have access to information capable of corroborating or refuting the applicant's allegations under Article 3 of the Convention and that a failure on the Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). Accordingly, the Court will examine the issue concerning the alleged overcrowding of the cells on the basis of the applicant's submissions.

41. The Court accepts the applicant's statement that the cells in the remand prison where he was detained pending trial were constantly overcrowded. The space they afforded did not exceed 1.42 sq. m per person. On certain occasions it was as low as 0.7 sq. m. Besides, the number of sleeping places was insufficient and the inmates had to take turns to sleep. The applicant spent approximately two years and two months in such conditions.

42. The Court reiterates that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006, and *Benediktov v. Russia*, no. 106/02, § 37, 10 May 2007).

43. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, among other authorities, *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).

44. 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.

45. 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-77/3 in Moscow between 17 August 2001 and October 2003, which it considers were inhuman and degrading within the meaning of this provision.

46. 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. 77/3 in Moscow.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. Lastly, the applicant complained under Article 3 of the Convention about the conditions of his detention in Lefortovo remand prison; under Article 5 § 3 of the Convention that his pre-trial detention had been unreasonably long; under Article 6 § 1 of the Convention about the length of the criminal proceedings against him; under Article 6 § 2 of the Convention that numerous publications and television programmes had portrayed him as an accessory to murder before he had been convicted; under Article 6 § 3 (c) of the Convention that he had been unable to prepare his defence due to the inhuman conditions of his pre-trial detention; and under Article 8 of the Convention that one of the television channels had showed a documentary about the case and that the court had admitted as evidence and watched a videotape featuring scenes from his private life.

48. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione temporis*, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

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

52. The Court accepts that the applicant suffered humiliation and distress because of the inhuman and degrading conditions of his detention. In these circumstances, the Court considers that the applicant's suffering cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards him EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

53. The applicant also claimed 32,000 Russian roubles (RUB) for the costs and expenses incurred before the domestic appeal court, RUB 5,680 for the preparation of the application form and RUB 34,000 for the costs and expenses incurred for the proceedings before the Court after the complaint had been communicated to the Government.

54. The Government did not comment.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 850 for the proceedings before the Court.

C. Default interest

56. 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 17 August 2001 and October 2003 in remand prison no. 77/3 in Moscow admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 850 (eight hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
   (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;

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

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President