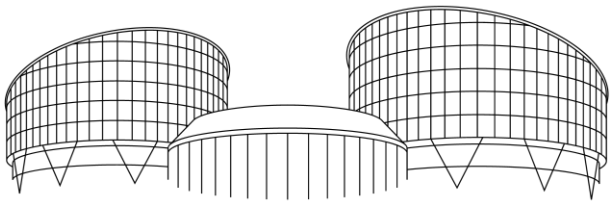

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KONDRATISHKO AND OTHERS v. RUSSIA

(Application no. 3937/03)

JUDGMENT

STRASBOURG

19 July 2011

FINAL

08/03/2012

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

In the case of Kondratishko and Others v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 3937/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Russian nationals, Mr Aleksandr Ivanovich Kondratishko, Mr Aleksandr Vasilyevich Burdeyev, Mr Dmitriy Nikolayevich Tsygankov, Mr Sergey Vasilyevich Kokhan and Mr Sergey Ivanovich Kondratishko ("the applicants"), on 18 December 2002.

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

3. The applicants complained, *inter alia*, that the length of the criminal proceedings against them had been excessive, the first applicant further complained about the conditions of his pre-trial detention, and the third applicant alleged that he had been subjected to beatings while in police custody.

4. On 20 May 2008 the President of the First Section decided to give notice of the above complaints to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1973, 1967, 1973, 1974 and 1971 respectively and lived until their arrest and subsequent conviction in the town of Bryansk, Russian Federation, except for the fourth applicant, who lived in the Bryansk Region, Russian Federation.

A. The applicants' arrest and trial

6. Between March and November 1999 (on 3 March, 4 March, 11 March, 6 March and 15 November 1999 respectively) the applicants were arrested. They were detained in custody and charged with robbery.

7. In February and March 2000 the applicants were charged with further crimes which included, *inter alia*, aggravated theft, aggravated robbery, extortion, theft and illegal possession of firearms.

8. In May 2000 the criminal investigation was completed, and on 19 May 2000 the case was submitted to the Bryansk Regional Court for trial.

9. On 8 July 2000 the Bryansk Regional Court remitted the case for further investigation, considering that it was necessary to rectify the indictment.

10. Following further investigation and the amendment of the charges against the applicants, the case was resubmitted to the Bryansk Regional Court on 18 July 2000.

11. On 27 July 2000 the Bryansk Regional Court set the date for the start of the trial, which was due to begin on 8 August 2000.

12. Between 8 August and 22 November 2000 twenty-one hearings were held by the Bryansk Regional Court.

13. On 22 November 2000, following a request by the alleged victims, the case was once again remitted for further investigation.

14. Between 17 January and 30 March 2001 the case was with the Bryansk Regional Prosecutor's Office.

15. On 30 March 2001 the case was resubmitted to the Bryansk Regional Court for examination on the merits.

16. Between 30 March and 9 August 2001 the Bryansk Regional Court held thirty-one hearings.

17. On 9 August 2001 the Bryansk Regional Court convicted the applicants, along with six other co-defendants, of robbery, unlawful deprivation of liberty, banditry, possession of firearms and theft. It sentenced them to twenty-three years, twenty-two years, eighteen years, six and a half years and ten years' imprisonment respectively. Although the trial

was public, the applicants' relatives were not allowed to attend it, except for the opening of the trial and the delivery of the court's judgment.

18. The trial record was finalised in October 2001. The applicants submitted certain objections concerning the trial record, but they were dismissed.

19. All the applicants except for the fifth applicant appealed against their conviction.

20. On 8 January 2002 the criminal case was sent to the Supreme Court of Russia for examination on appeal.

21. On 11 July 2002 the Supreme Court of Russia upheld the applicants' convictions with minor amendments. The terms of the applicants' sentences remained unchanged. The appeal decision did not refer to the fifth applicant.

B. The third applicant's alleged ill-treatment and the investigation thereof

1. Alleged ill-treatment

22. On 11 March 1999, the day of his arrest, the third applicant was at work at fire station no. 23 in Zhiryatino in the Bryansk Region. At about 9 a.m. unidentified persons wearing plain clothes handcuffed the third applicant and took him to the Bezhitskiy District police station in Bryansk. On the way to the police station the applicant was allegedly beaten up and threatened, in order to make him confess to a number of grave offences.

23. At the police station the applicant was taken to room no. 37, where the beatings allegedly continued.

24. Late at night on 12 March 1999 the applicant was taken to Bryansk regional remand prison IZ-32/1. However, the officer on duty refused to admit the applicant to the facility. The officer agreed to admit the applicant only following the latter's examination by the local trauma unit and upon receipt of a certificate attesting to the fact that the applicant's injuries were not life-threatening.

25. The applicant was taken to the local trauma unit. On the way to the trauma unit the applicant was allegedly threatened that he would be subjected to even worse ill-treatment, if not killed, unless he told the doctors that he had been injured by falling down a fire escape while at work. Having perceived the above-mentioned threats as real, in the light of his earlier abuse, the applicant told the doctors what the police officers had instructed him to say. The record of the applicant's medical examination of 13 March 1999 by the trauma unit was not made available to the Court.

26. It is unclear where the applicant was held between 13 March and 19 March 1999. It is clear, however, that on 19 March 1999 the police officers brought him again to the Bryansk regional remand prison IZ-32/1.

The record of the applicant's medical examination, which was carried out upon his admission, reads, in particular, as follows:

> "... The [applicant's] general condition is satisfactory. On the back surface of his shoulder [there is] a yellow-brown bruise measuring 4 x 4 cm. On his left thigh [there is] a pale yellow bruise measuring 3 x 3 cm. [According to the applicant] he was beaten up on 11 March 1999 at the Bezhitskiy District police station. ..."

2. Investigation of the events by the prosecution authorities

27. As emerges from the documents furnished by the Government, between 1999 and 2001 the applicant persistently complained to the prosecution authorities about his beatings at the Bezhitskiy District police station.

28. The Government were unable to provide copies of the decisions taken in response to the applicant's complaints as all the documents pertaining to the respective inquiries were destroyed on 28 January 2008, following the expiry of the time-limit for their retention. The Government, however, relied on the decisions of 19 January and 28 February 2001 with the following conclusions.

29. On 19 January 2001 the Bezhitskiy District Prosecutor's Office of Bryansk refused to institute criminal proceedings against the police officers in the absence of *corpus delicti* in their actions.

30. Following a further inquiry, on 28 February 2001 the Bryansk Regional Prosecutor's Office terminated the criminal prosecution against the police officers in the absence of *corpus delicti*.

3. Investigation of the events by the court

31. In the course of the criminal proceedings against the applicants which ended with their conviction on 9 August 2001, the third applicant also complained that he had been ill-treated during police custody and submitted that his confession had been made under duress.

32. According to the third applicant, at some point in the proceedings the court heard his co-workers, Mr Zh., the head of the fire station, and Mr L., commander of the fire guard, who submitted that no exercise had been performed at the fire station on 11 March 1999, so the applicant could not have fallen down a fire escape. They further confirmed having seen no traces of injuries on the applicant when he was changing into his uniform before starting his work at 8 a.m. that day. The testimony of the above persons does not appear in the text of the judgment by which the applicant was convicted. The Government did not contest that the above persons made the statements in question before the court.

33. The court held as follows:

> "... Analysing [the applicant's] statements about the alleged use on him of unlawful methods of interrogation (ill-treatment by [police officer] M.) and statements by

[witness P.] questioned at the court hearing, the court notes a manifest discrepancy as to how and under which circumstances [the applicant and witness P.] met in autumn 2000 in SIZO (remand prison), as to what they discussed ... and what particular form of ill-treatment was applied to the [applicant]; [as well as] a discrepancy between [the applicant's] own statements about the same circumstances made at this court hearing and at the court hearing of 26 September to 22 November 2000.

At the court [witness P.] submitted that he had known [the applicant] only by sight, [the applicant's] last name was conveyed to him by the investigator who questioned him in the [correctional] facility.

It follows from the statements of [witness P.] read out in accordance with Article 286 of the RSFSR Code of Criminal Procedure, that he knew [the applicant] well before the [latter's] arrest, since they lived close to each other, although they have never been friends.

[The applicant] submitted at the court hearing that he was never acquainted with [witness P.], and that he knew [the latter] only by sight.

At the same time it has been established at the court hearing that in SIZO [witness P.] met and talked to S. [one of the applicant's co-defendants], which the latter confirmed. On this occasion, S. submitted that it was [witness P.] who told him about [the applicant's] ill-treatment by the police officers, and that he told [the applicant] about [witness P.] when they were brought to court in autumn 2000, after which a request was made to summon [witness P.] and question him as an additional witness.

Taking into account the inconsistency of the statements made by [witness P.] and their manifest contradiction with [the applicant's] statements, the court considers [these] statements as to [witness P.] having seen the police officer beating [the applicant] [to be] unreliable.

According to [the certificate issued by the local trauma unit *(карточка травматика)*], [the certificate of the medical department of the remand prison *(справка МЧС СИЗО)*] and the report of the forensic medical expert, bodily injuries in the form of bruises were found on [the applicant]. At the same time, it is impossible to establish the exact features of the object used to cause the injuries, [as well as] the time that the injuries mentioned in the [trauma unit certificate] of 13 March 1999 were inflicted. The time of the infliction of the injuries recorded on 19 March 1999 at the [medical department of the remand prison] corresponds to 1-1.5 weeks prior to [the applicant's] examination at [the remand prison] (namely, 9 to 12 March 1999).

[Police officer M.] submitted that he had not been involved in [the investigation] of the crimes with which [the applicant] and [other defendants] had been charged, as at the material time he had been involved in investigating crimes committed by juvenile offenders.

These statements by [police officer M.] were corroborated by the head of the Bezhitskiy District police station.

[The applicant's] statements [to the effect] that he had had a conflict with [police officer M.] prior to his arrest, during which [police officer M.] allegedly swore to get even with [the applicant] and the reference to submissions by [witness D.], have been checked during the pre-trial investigation and have not been confirmed.

...

[Investigator P.] denied using physical force on [the applicant] or other defendants, as well as making any threats to use physical force. The defendants were in due time informed of their procedural rights. The records of the interrogations were drawn up verbatim ...

The verification of the allegations of [the applicant] that he had been beaten by [police officer M.] and other police officers and the allegations of defendants S., B., [the applicant], Ald., Abr., K., G., S. and V. regarding unlawful actions of police officers aimed at obtaining their confessions allows the court to acknowledge that the conclusions [contained in the refusal to institute criminal proceedings against the police officers] are well-founded ..."

34. The third applicant challenged the above conclusions of the trial court in his appeal against conviction.

35. In its judgment of 11 July 2002 the Supreme Court held as follows:

"The alleged use on the convicts of unpermitted methods in the course of the pre-trial investigation ...has been checked by the court and has been validly declared to be unfounded as contradicting the factual circumstances and the evidence in this case, a conclusion with which the [appeal court] agrees".

C. The first applicant's conditions of detention

36. From 15 March 1999 to 24 November 2002 the first applicant was held in Bryansk regional remand prison IZ-32/1 *(учреждение ИЗ-32/1 по Брянской области)* in cells nos. 24, 72, 74, 76, 77, 92, 109, and 111.

1. The Government's account

37. As regards the cells' measurements, the Government submitted as follows:

(a) **cell no. 24** measures 20.3 square metres;
(b) **cell no. 72** measures 48.5 square metres;
(c) **cell no. 74** measures 48.1 square metres;
(d) **cells no. 76** and **77** measure 46.1 square metres; and
(e) **cells no. 92, 109** and **111** measure 7 square metres.

38. The Government were unable to indicate the exact number of inmates detained in the above cells together with the applicant, owing to the destruction of the relevant prison documentation for the period in question. They asserted, however, that in each cell the applicant was afforded no less than four square metres of personal space, in compliance with the requirements under domestic law (see paragraph 71 below). In each cell the applicant was provided with an individual bed and bedding.

39. The windows in the cells, measuring 1.35-1.4 m by 0.9-1.05 m, were not covered with sheet metal. The white-painted metal screens were

removed in the course of 2003, following the instruction of the Prisons Directory of the Ministry of Justice of 26 November 2002.

40. Cells nos. 24, 72, 74, 76 and 77 were each lit with two 80-watt light bulbs, which conformed to the established legal norms. Cells nos. 92, 109 and 111 were lit with one 80-watt light bulb each. At night time the cells were lit with 60-watt security lights.

41. All cells had natural ventilation and were equipped with extractor fans. The cells were also equipped with a heating system providing an adequate temperature in line with sanitary norms. The average temperature during the summer was maintained at +22-24 ºC, and during winter at +18-20 ºC.

42. The cells were equipped with lavatory pans separated from the main area by partitions at least one metre high and a door. Such arrangements assured the detainees' privacy when using the lavatory.

43. The applicant could take a fifteen-minute shower once a week.

44. He was given food three times a day in accordance with the established legal norms. The quality of the food was monitored on a daily basis by the medical staff of the detention facility.

45. The cells were equipped with dining tables enabling the inmates to eat at the same time. They were situated at a distance of two to three metres from the lavatories.

46. The applicant was allowed a daily one-hour outside walk.

47. The authorities ensured regular disinfection and pest control in the detention facility.

48. In support of their observations the Government provided several certificates issued by the governor of IZ-32/1 remand prison on 14 July and 21 July 2008, certain documents which attested to the destruction of registration logs, following the expiry of the five-year time-limit for their retention (dated 30 March 2006), statements by wardens (undated) and an agreement of 1 January 2002 between the IZ-32/1 remand prison and Bryansk City Pest Control Station on carrying out disinfection works in the facility.

2. The first applicant's account

49. The cells were extremely overcrowded. There were some thirty to forty inmates held in each cell, which implied two or three inmates per four square metres of cell space. The inmates had to take turns to sleep as the sleeping places were not sufficient for everyone.

50. The windows in the cells were covered with metal screens, which provided little or no access to daylight. The screens were removed after the applicant had left the facility.

51. The artificial light was insufficient. It was impossible to read without having to strain one's eyes.

52. The ventilation did not function. As a result, it was always stuffy in the cells. The cells could only be ventilated when the windows and the doors were flung open during the summer which was, however, very rare.

53. The cells were not heated enough to avoid humidity from the very beginning of autumn until late spring. The walls were dirty, scuffed, with plaster falling off them. The walls near the lavatory area were covered with fungi caused by humidity. In cells nos. 76 and 77, where the applicant spent most of his time the roof was leaking from the corners. The corners of the cells were covered with mould. The temperatures were low and the inmates had to sleep with all their clothes on.

54. The floor in the cells was paved with asphalt and cement, which also caused constant humidity and filth. It was impossible to properly wash or sweep the floors.

55. The lavatory pans in cells nos. 24, 92, 109 and 111 were not separated from the rest of the cell. One had to use the toilet in plain view of one's cellmates. In cells nos. 72, 74, 76, and 77 there was a partition between the lavatory pan and the rest of the cell. The partition measured approximately one metre in width and one metre in height. The lavatory pan was elevated from the floor by half a metre. The guards removed the curtain that the inmates had installed for privacy. Despite the partition, one used the toilet in plain view of one's cellmates.

56. The cells were not equipped with sinks. Taps with cold water were the same ones used to flush the toilet; as a result, the inmates had to wash themselves and to take water from the tap above the toilet.

57. There was not sufficient furniture in the cells to store the inmates' kitchen- and tableware, bread and toiletries.

58. In cells nos. 72, 74, 76, and 77 there was one table and one bench which could accommodate fourteen to sixteen inmates at a time, whereas in the other cells twenty to thirty persons had to wait for their turn.

59. All persons detained in the same cell had to take a shower simultaneously. As there were only fifteen shower heads, one shower-head was used by two to three inmates at a time.

60. The food was poorly prepared. It was tasteless and monotonous. Fresh vegetables and fruit were not included in the ration.

61. The applicant lodged numerous complaints with the prison administration about the conditions of his detention. He was advised of the financial constraints which made it impossible to improve the conditions of detention.

62. On an unspecified date in August 2000 the applicant lodged a complaint with the Prosecutor's Office, which was forwarded to the Prisons Directorate of the Ministry of Justice of the Russian Federation for the Bryansk Region (*Управление исполнения наказаний* (*УИН*) *Министерства юстиции РФ по Брянской области*). After his complaint, half of cell no. 72 was whitewashed. An official from the Prisons

Directorate visited the applicant in connection with his complaint. On an unspecified date in September 2000 the applicant received a response to his complaint, which he found unsatisfactory. He lodged a further complaint with the Prosecutor's Office. The second complaint was dismissed on the grounds that it contained arguments which were substantially the same as the ones previously submitted.

63. On an unspecified date between September and October 2000 the guards entered cell no. 72 in the middle of the night, woke up the inmates, tore down the laundry lines and left. The applicant lodged a complaint against the guards with the Prosecutor's Office, which found no misconduct on their part. After that the applicant lodged no further complaints, believing that it would be futile to do so.

64. On 3 June 2002 the inmates were given soup prepared with rotten fish. On 4 June 2002 the applicant and four other inmates complained about this incident. The head of catering tried to convince the inmates that the soup was edible even though it smelled, but refused to taste it himself. He also refused to replace the soup. The applicant lodged a complaint with the Prosecutor's Office, which he later withdrew as the prison administration allegedly promised to follow up on his complaint. Ten days later, in the absence of any response, the applicant lodged another complaint, requesting the administration to follow up on the incident of 3 June 2002. The applicant was summoned to meet the administrative officers, who allegedly threatened him and transferred him to cell no. 92, where he spent one day.

65. On 21 June 2002 the applicant lodged a complaint with the Prosecutor's Office in relation to the incident of 3 June 2002 and his subsequent intimidation by the prison officers. Following his complaint, the applicant was transferred to cell no. 111.

66. On 23 June 2002 the applicant was given mashed jelly–like peas. On 1 July 2002 the applicant was served with yellowish water instead of soup. On 24 June 2002 and 2 July 2002 the applicant complained about the quality of the food.

67. On 22 July 2002 the applicant received a reply from the Prosecutor's Office, informing him that his allegations with regard to the quality of the food in prison were unfounded.

68. The applicant lodged subsequent complaints about the conditions of his detention with various administrative authorities, which all found that the statutory requirements had been complied with.

69. On 20 August 2002 the applicant lodged a complaint with the Sovetskiy District Court of Bryansk in respect of the substandard quality of the food in prison and his alleged intimidation by the prison officers. On 19 September 2002 the court dismissed the applicant's complaint. The decision read, *inter alia*, as follows:

> "... Section 23 of the Detention of Suspects Act sets the sanitary norm of 4 square metres of personal space per detainee.

> It appears from the explanation provided by the facility's representative and the documents pertaining to the inquiry conducted by the Prosecutor's Office that it is not possible to provide the detainees of [Bryansk regional remand prison IZ-32/1] with the established norm of personal space as the facility is currently 50% over its designated capacity.
>
> ..."

70. The applicant was served with a copy of the decision of 19 September 2002 on 30 October 2002, after the statutory time-limit for appealing had already expired.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

71. 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 the 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.

B. Investigation of criminal offences

72. The RSFSR (Russian Soviet Federative Socialist Republic) Code of Criminal Procedure (in force until 1 July 2002 - "the CCrP") established that a criminal investigation could be initiated by an investigator upon the complaint of an individual or on the investigative authorities' own initiative when there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for general supervision of the investigation (Articles 210 and 211). He could order a specific investigative action, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate a criminal investigation, the prosecutor or investigator would issue a reasoned decision to that effect, which had to be communicated to the interested party. The decision was amenable to appeal to a higher prosecutor or to a court of general jurisdiction (Article 113).

73. On 29 April 1998 the Constitutional Court of the Russian Federation held that anyone whose legitimate rights and interests had been affected by

a decision not to institute criminal proceedings should have the right to appeal against that decision to a court.

C. Time-limits for trial

74. The RSFSR CCrP established that within fourteen days of receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to return the case for additional investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court with jurisdiction to hear it (Article 221).

75. The trial was to begin no later than fourteen days after the judge had fixed the trial date (Article 239).

76. The duration of the trial was not limited.

77. The appeal court was required to examine an appeal against the judgment at first instance within ten days of its receipt. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court this time-limit could be extended by up to two months (Article 333). No further extensions were possible.

THE LAW

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

78. The first applicant complained that the conditions of his detention in Bryansk regional remand prison IZ-32/1 from 15 March 1999 to 24 November 2002 had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

79. The Government argued that the first applicant had not exhausted the domestic remedies available to him in respect of his complaint about the conditions of his detention in the remand prison. They submitted, in particular, that the applicant had not appealed against the decision of the

Sovetskiy District Court of Bryansk of 19 September 2002. Besides, he had never pursued any such complaints before the prosecution authorities.

80. The first applicant contended that he had repeatedly complained about the abject conditions of his detention to the facility's administration, the prosecution authorities and the court, to no avail. The applicant further maintained that his failure to appeal against the decision of 19 September 2002 was due to the late communication of the decision in question and the domestic authorities' subsequent refusal to count the statutory time-limit for appeal from the date of the decision's eventual communication. Finally, invoking the findings of the Court in the case of *Kalashnikov v. Russia*, the applicant stated that, in any, event, the remedies invoked by the Government had not been effective.

81. The Court has already on a number of occasions examined the same objection by the Russian Government and dismissed it. In particular, the Court held in the relevant cases that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court or another State agency, bearing in mind that the problems arising from the applicant's conditions of detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; and, more recently, *Guliyev v. Russia*, no. 24650/02, § 34, 19 June 2008).

82. In the present case, the Government have failed to submit evidence as to the existence of any domestic remedy by which the applicant could have complained about the general conditions of his detention, in particular with regard to the structural problem of overcrowding in Russian detention facilities, or demonstrating that the remedies available to him were effective, that is to say, that they could have prevented violations from occurring or continuing, or that they could have afforded the applicant appropriate redress (see, to the same effect, *Babushkin v. Russia*, no. 67253/01, § 37, 18 October 2007, and, more recently, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009). Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

2. Compliance with the six-month rule

83. The Government further objected to the examination of the conditions of the first applicant's detention as a continuous situation. They argued that, the application being lodged on 18 December 2002, the Court should only have regard to the period starting from 18 June 2002, claiming that the preceding period fell outside the six-month time limit set out in Article 35 § 1 of the Convention.

84. The first applicant did not agree with the approach suggested by the Government.

85. The Court has previously established that the continuous nature of detention in the same detention facility under similar conditions warranted examination of the detention without dividing it into separate periods (see *Gubkin v. Russia*, no. 36941/02, § 86, 23 April 2009). In the present case the applicant was held in the same detention facility uninterruptedly, and it appears that the conditions of his detention did not substantially vary from cell to cell. The Court considers, therefore, that the first applicant's detention from 15 March 1999 to 24 November 2002 should be examined as a whole and that the Government's objection should be dismissed.

3. Conclusion

86. Having regard to its conclusions in paragraphs 82 and 85 above, the Court considers that the first applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

87. Relying on their account of the conditions of the first applicant's detention in facility IZ-32/1, the Government submitted that they fully complied with the requirements of Article 3 of the Convention: the applicant was afforded sufficient space enabling him to move freely about his cell, to perform physical exercise and to use the sanitary and dining facilities.

88. The applicant disagreed and maintained his complaint. He challenged the Government's submissions as factually untrue.

2. The Court's assessment

89. The Court reiterates that to be regarded as degrading or inhuman for the purposes of Article 3 of the Convention a given form of 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 must be taken of the cumulative effect of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

90. The Court notes that the parties disputed most aspects of the conditions of the first applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, as it has sufficient documentary evidence in its possession to confirm the applicant's allegations of severe overcrowding in Bryansk regional remand prison

IZ-32/1, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

91. The Court notes the Government's argument to the effect that in each cell the applicant was afforded no less than four square metres of personal space in accordance with the established legal norms (see paragraph 38 above). It further notes the Government's excuse for their failure to provide original prison documentation which would have enabled the Court to verify the validity of the above assertion (see paragraph 48 above).

92. At the same time, the Court observes the decision of the Sovetskiy District Court of Bryansk of 19 September 2002 in response to one of the first applicant's complaints, from which it follows that the domestic court, basing itself on an explanation provided by the representative of IZ-32/1 at the material time and on the results of the inquiry conducted by the Prosecutor's Office, found that it had not been possible to provide the detainees of the facility in question with the established norm of personal space in view of the fact that the facility had been fifty per cent over its designated capacity (see paragraph 69 above). The Court further notes that following the applicant's complaints to the administration of IZ-32/1, he was informed of the financial difficulties which allowed no improvement to be made to the above conditions (see paragraph 61 above).

93. Regard being had to the foregoing, the Court is inclined to accept the applicant's account, according to which the cells where he had been held accommodated from thirty to forty cellmates at any given time, thereby affording each detainee at all times between 1.3 and two square metres of personal space. Furthermore, when the sleeping, sanitary and dining arrangements in the cells are taken into account it appears that the inmates were left with virtually no free space in which they could move.

94. In this connection, the Court reiterates that in many cases in which detained applicants have had at their disposal less than three square metres of personal space, it has found the lack of personal space afforded to them to be so extreme as to justify in itself a finding of a violation of Article 3 of the Convention (see, among many other authorites; *Andrey Frolov v. Russia*, no. 205/02, §§ 50-51, 29 March 2007; *Lind v. Russia*, no. 25664/05, §§ 61-63, 6 December 2007; *Lyubimenko v. Russia*, no. 6270/06, §§ 58-59, 19 March 2009; and, more recently, *Veliyev v. Russia*, no. 24202/05, §§ 129-130, 24 June 2010).

95. Irrespective of the reasons for overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its prison 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).

96. Having regard to its case-law on the subject, the material submitted by the parties and the findings above, 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. Although in the present case there is no indication that there was a positive intention to humiliate or debase the first applicant, the Court finds that the fact that for over three years and eight months he was obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

97. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the first applicant's detention from 15 March 1999 to 24 November 2002 in Bryansk regional remand prison IZ-32/1, which the Court considers to be inhuman and degrading treatment within the meaning of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE THIRD APPLICANT'S ILL-TREATMENT

98. The third applicant complained that on 11 March 1999 the police officers of the Bezhitskiy District police station of Bryansk had subjected him to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of that incident.

A. Admissibility

99. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

100. The Government argued, first of all, that the third applicant's submissions as to the origin of his injuries had been inconsistent: having alleged on 13 March 1999 at the trauma unit that he had fallen down a fire escape, he later reported on 19 March 1999 he that he had been beaten up by the police officers. Besides, his allegations had not been brought to the attention of the domestic authorities in due time. In any event, they had been addressed by the Prosecutor's Office, which on 19 January 2001 had refused to institute criminal proceedings against the police officers, a decision which the applicant had not challenged before a court. Subsequently, the applicant had been afforded an opportunity to make submissions regarding

the alleged beatings and to question those who had allegedly taken part in them. The police officers who had been questioned had denied having applied any physical force against the applicant, for which reason on 28 February 2001 the criminal prosecution against them had been terminated for lack of *corpus delicti*. The trial court had also examined the applicant's allegations and found them to be unsubstantiated. The Government concluded that the domestic authorities had undertaken all necessary measures in order to investigate the circumstances in question. However, it had not been established that the applicant had been subjected to any treatment contrary to Article 3 of the Convention.

101. The third applicant argued that the documents submitted by the Government confirmed his injuries and the fact that as early as March 1999 he had complained about having been injured by the police officers. The applicant noted that, although the Government had supplied numerous documents pertaining to his complaints about the beatings to prosecution authorities at various levels, they had failed to submit the investigation file, including the decision of 28 February 2001 on the termination of the criminal proceedings against the police officers, referring to the destruction of the file in question owing to the expiry of the time-limit for its retention. In such circumstances, the Government's statement to the effect that the domestic authorities had taken all measures necessary for the establishment of the truth had been unsubstantiated. The applicant maintained that the physical and mental suffering to which he had been subjected by the police officers had by far exceeded the minimum level of severity proscribed by Article 3 of the Convention and therefore amounted to a violation of that provision.

2. The Court's assessment

(a) Alleged ill-treatment of the third applicant

102. The Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Gladyshev v. Russia*, no. 2807/04, § 51, 30 July 2009; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

103. The Court further reiterates that to fall under Article 3 of the Convention ill-treatment must attain a minimum level of severity. The standard of proof relied upon by the Court is that "beyond reasonable

doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Gladyshev*, cited above, § 52; *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

104. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). The Court must apply a particularly thorough scrutiny where the applicant raises an arguable complaint of ill-treatment (see *Ribitsch*, cited above, § 32, and *Avşar*, cited above, § 283).

105. Turning to the facts of the present case, the Court notes that shortly after the alleged beatings, on 13 March 1999, the third applicant underwent a medical examination at the local trauma unit (see paragraph 25 above). The record of the above examination, which was not made available to the Court, had been considered and relied upon by the domestic court. The applicant was further examined on 19 March 1999 at the medical department of the remand prison upon his admission (see paragraph 27 above) and observed as having large bruises on the back surface of his shoulder and his left thigh. The results of the forensic medical examination subsequently conducted on an unspecified date indicated that the applicant's injuries had been caused approximately one to one and a half weeks prior to his medical examination on 19 March 1999 (that is, between 9 and 12 March 1999) (see paragraph 33 above).

106. The Court notes the Government's argument that the third applicant had cited a fall from a fire escape as the cause of his injuries when being examined at the local trauma unit. However, the Court has doubts as to the credibility of the applicant's statement. It is not surprising that the applicant did not disclose the real cause of his injuries to the doctors of the local trauma unit while still in the presence of the alleged culprits. The Court cannot rule out the possibility that the applicant felt intimidated by the persons he had accused of having ill-treated him (see *Nadrosov v. Russia*, no. 9297/02, § 33, 31 July 2008, with further references). The Court must

also have regard to the fact that the applicant, in his complaints to the prosecution authorities and later to the domestic courts, was unequivocal in his account that he had been ill-treated by police officers of the Bezhitskiy District police station during his arrest and while in custody. Furthermore, as it appears from the applicant's submissions, at some point during the criminal proceedings against him, the domestic court questioned his co-workers Mr Zh. and Mr L., who submitted that no exercise had been performed at the fire station on 11 March 1999, so the applicant could not have fallen down a fire escape, and that no traces of injuries had been seen by them on the applicant when he was changing into his uniform before starting his work that day. The Court notes that the Government did not contest that the above persons were questioned by the trial court and made these submissions (see paragraph 32 above).

107. Bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court finds it established to the standard of proof required in Convention proceedings that the injuries on the third applicant's body were the result of the treatment about which he complained and for which the Government bore responsibility.

108. The Court notes the third applicant's allegation that the police officers beat him up during his arrest and subsequently at the police station. However, the conclusion that the applicant's injuries were caused by the treatment he was subjected to whilst under the control of the authorities and the fact that the Government have not furnished any arguments providing a basis to explain or justify the force used make it unnecessary for the Court to inquire into the specific circumstances surrounding the use of violence against the applicant. The Court, nevertheless, considers it necessary to stress that it has never been argued that the applicant resisted arrest, attempted to escape or did not comply with the lawful orders of the police officers. Furthermore, there is no indication that at any point during his arrest or subsequent detention at the police station he threatened the police officers, for example by openly carrying a weapon or by attacking them (see, by contrast, *Necdet Bulut v. Turkey*, no. 77092/01, § 25, 20 November 2007, and *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002). The Court therefore does not discern any necessity which might have prompted the use of violence against the applicant. It appears that the use of force was retaliatory in nature and was aimed at debasing the applicant and driving him into submission. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering, even though it did not apparently result in any long-term damage to his health.

109. Accordingly, having regard to the nature and the extent of his injuries, the Court concludes that the State is responsible under Article 3 on

account of the inhuman and degrading treatment to which the third applicant was subjected on 11 March 1999 by the police and that there has thus been a violation of that provision.

(b) Alleged inadequacy of the investigation

110. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.

111. The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Lastly, there must be a sufficient element of public scrutiny of the investigation or its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory procedure (see, among many authorities, *Lopata v. Russia*, no. 72250/01, §§ 109-110, 13 July 2010; *Maksimov v. Russia*, no. 43233/02, § 83, 18 March 2010; *Nadrosov*, cited above, § 38; *Mikheyev v. Russia*, no. 77617/01, §§ 107-110, 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

112. Turning to the circumstances of the present case, the Court observes the Government's argument to the effect that the third applicant failed to bring his complaint of ill-treatment before the domestic authorities in good time (see paragraph 100 above). In this connection the Court notes that, while being admitted on 19 March 1999 to the remand prison, the

applicant claimed that the injuries on his body had been caused by police officers of the Bezhitskiy District police station on 11 March 1999 (see paragraph 27 above). The Court further notes that, as it appears from the documents furnished by the Government, between 1999 and 2001 the applicant repeatedly complained that he had been beaten up by the officers of the Bezhitskiy District police station (see paragraphs 27 and 31 above). The Court considers, therefore, that the applicant complied with his obligation to bring the matter before the domestic authorities at a time when they could reasonably have been expected to investigate the circumstances in question.

113. The Court further observes that the third applicant's allegations were corroborated by medical evidence attesting to a number of bruises on his body, namely the certificate issued by the local trauma unit on 13 March 1999 and the record of his examination at the medical department of the remand prison on 19 March 1999. The applicant's claim was therefore shown to be "arguable" and the domestic authorities were placed under an obligation to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible".

114. It appears from the Government's submissions that on 19 January 2001 the Bezhitskiy District Prosecutor's Office of Bryansk refused to institute criminal proceedings against the police officers in the absence of *corpus delicti* in their actions. Following an additional inquiry, on 28 February 2001 the Bryansk Regional Prosecutor's Office, invoking the same grounds, terminated the criminal prosecution against the police officers. Subsequently, the domestic courts at two instances, having examined the third applicant's allegations of ill-treatment in the course of the proceedings against him, found them to be unsubstantiated. The issue is consequently not so much whether there was an investigation as whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible, and, accordingly, whether the investigation was effective (see *Oleg Nikitin*, cited above, § 39).

115. The Court notes with regret that the copies of the decisions of 19 January and 28 February 2001 were not made available to it owing to the destruction of the relevant files on 28 January 2008 upon the expiry of the time-limit for their retention (see paragraph 28 above). The Court finds it peculiar that, having preserved documents pertaining to the third applicant's complaints about the events in question dating back to the same period and of relatively minor importance for the Court's analysis (see paragraph 27 above), the domestic authorities destroyed the major procedural documents which would have allowed the Court to assess the thoroughness, promptness and independence of the inquiries conducted. The Court will therefore make its assessment of the effectiveness of the investigation into the applicant's allegations on the basis of the findings of the domestic courts.

116. The Court observes that, having examined the medical evidence, including the results of the forensic medical examination which established that the third applicant's injuries had been caused at around the time he alleged, and having questioned the applicant, the police officers involved in the incident and the witnesses, the domestic court arrived at the conclusion that the applicant's allegations had been unsubstantiated. The Court, however, remains in doubt as to whether in fact the domestic authorities made any meaningful attempt to find out what really happened and to bring those responsible for the ill-treatment to account. Such doubt stems from the fact that no consideration at all was given to the medical findings, as well as the statements of the applicant's co-workers who had confirmed that he had had no injuries before being apprehended by the police, and from the fact that no attempt whatsoever was made to establish the cause of the applicant's injuries.

117. In view of the above considerations, the Court considers that the investigation carried out into the third applicant's allegations of ill-treatment was not thorough, adequate or effective and that it was not capable of leading to the establishment of the facts and to the identification and punishment of those responsible.

118. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

119. The applicants complained that the length of the criminal proceedings against them had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which provides, in its relevant part, as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

120. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued. The "charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", an alternative "test" being whether "the situation of the [suspect] has been substantially affected" (see, most

recently, *Kovaleva v. Russia*, no. 7782/04, § 92, 2 December 2010, with further references).

121. The periods to be taken into consideration in the present case began on the dates of the applicants' arrests on 3 March, 4 March, 11 March, 6 March and 15 November 1999 respectively, when they were first affected by the "charges" against them. The periods in question ended on 11 July 2002; when the Supreme Court of Russia upheld the applicants' convictions on appeal, save for the fifth applicant, who did not appeal against his conviction and in respect of whom, for that reason, the period in question ended with the judgment of 9 August 2001.

122. It follows that in so far as the complaint concerns the fifth applicant, it was introduced outside the six-month time-limit and must be dismissed pursuant to Article 35 §§ 1 and 4 of the Convention.

123. It follows, further, that, in so far as the complaint concerns the first four applicants, the periods to be taken into consideration lasted approximately three years and four months for the pre-trial proceedings and the court proceedings at two levels of jurisdiction. The complaint in this part is therefore not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

124. The Government submitted that the criminal case against the applicants had been rather complex, involving eleven co-accused charged with twenty instances of criminal activity, forty-two victims and forty-seven witnesses. The above circumstances had affected the overall length of the pre-trial investigation. As regards the proceedings before the court, they had been completed within a reasonable time-frame. On the whole, the Government submitted that the length of the proceedings in the present case had not exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention.

125. The applicants did not agree that the case was of any particular complexity. They argued, in particular, that the length of the pre-trial investigation (one year and seven months) had been unreasonable and resulted from the remittal of the case on two occasions for additional investigation, the responsibility for which lay entirely with the domestic authorities. As a result, the proceedings had been delayed by over six months. The applicants further submitted that the length of the proceedings before the court had amounted to one year and nine months. It had taken the trial court two months to prepare the record of the trial (in contrast to the three-day time-limit set out in domestic law) and another three months to

submit the case to the Supreme Court for examination on appeal. Moreover, it had taken the appeal court six months to start its examination of the case (in contrast to the maximum of two months set out in domestic law). In view of the foregoing, the applicants contended that the domestic authorities had failed to process their case within a reasonable time and had therefore breached the relevant requirement of Article 6 § 1of the Convention.

2. The Court's assessment

126. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law – in particular, the complexity of the case, the applicant's conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant also has to be taken into consideration (see, most recently, *Kovaleva,* cited above, § 94, with further references).

127. The Court accepts that the present case, involving eleven co-defendants and multiple serious charges, was somewhat complex.

128. Regarding the applicants' conduct, the Court cannot discern any delay in the proceedings attributable to the applicants.

129. Turning to the conduct of the domestic authorities, the Court observes that the case was being investigated for approximately sixteen months (from March 1999 to May 2000, from 8 July to 18 July 2000 and from 17 January to 30 March 2001). The delay of approximately six months occurred as a result of the remittal of the case twice for additional investigation. Subsequently, for nine months the case was being examined by the trial court (from 18 July to 22 November 2000 and from 30 March to 9 August 2001). The Court observes that during this time hearings were scheduled and held at regular intervals, and that no inactivity on the part of the trial court is detectable. A two-month delay occurred as a result of the belated drafting of the trial record and a three-month delay as a result of the belated referral of the case to the appeal court. Later, the case remained with the appeal court for a period of six months (from 8 January to 11 July 2002).

130. In the Court's view, despite a number of delays outlined above for which the domestic authorities should be held responsible, and having regard to the aggregate length of the proceedings in this case which was of a certain complexity, on the whole the domestic authorities were diligent and handled the case within what can be considered to be a reasonable time for its examination.

131. There has therefore been no breach of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

132. Finally, the applicants submitted a number of additional complaints under Articles 3, 5 and 6 of the Convention relating to their arrest, detention and trial.

133. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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

135. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage caused by the excessive length of the proceedings in their case. The first applicant claimed an additional EUR 15,000 in respect of non-pecuniary damage resulting from the inhuman and degrading conditions of his detention and the third applicant claimed an additional EUR 25,000 in respect of non-pecuniary damage resulting from his ill-treatment while in police custody.

136. The Government submitted that the claims were excessive and that, in any event, the finding of a violation would constitute sufficient just satisfaction.

137. The Court notes that it has found serious violations in respect of the first and third applicants in the present case: the first applicant was detained in inhuman and degrading conditions, and the third applicant was ill-treated while in police custody and the domestic authorities failed to carry out an effective investigation into the matter. In these circumstances, the Court considers that the first and third applicants' suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the first applicant EUR 15,000 and the third applicant EUR 18,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to them on those amounts.

B. Costs and expenses

138. The applicants did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

139. 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* admissible
   (a) the complaint under Article 3 concerning the conditions of the first applicant's detention in Bryansk regional remand prison IZ-32/1 from 15 March 1999 to 24 November 2002;
   (b) the complaint under Article 3 concerning the third applicant's ill-treatment while in police custody and the failure of the domestic authorities to carry out an effective investigation;
   (c) the complaint under Article 6 § 1 concerning the length of the criminal proceedings against the first four applicants;
   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 first applicant's detention from 15 March 1999 to 24 November 2002 in Bryansk regional remand prison IZ-32/1;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the third applicant's ill-treatment by the police officers on 11 March 1999 and the failure of the domestic authorities to carry out an effective investigation;

4. *Holds* that there has been no violation of Article 6 of the Convention on account of the length of the criminal proceedings against the first four applicants;

5. *Holds*
   (a) that the respondent State is to pay the first and third applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000

(fifteen thousand euros) and EUR 18,000 (eighteen thousand euros) respectively, plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

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

Done in English, and notified in writing on 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President