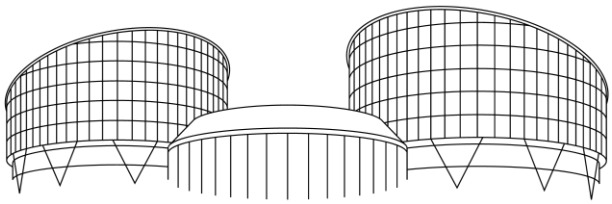

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHRISTOFOROV v. RUSSIA

(Application no. 11336/06)

JUDGMENT

STRASBOURG

29 April 2010

FINAL

29/07/2010

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 11336/06) 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 Khristoforov ("the applicant"), on 23 February 2006.

2. The applicant, who had been granted legal aid, was represented by Ms O. Druzhkova and Ms K. Moskalenko, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been detained pending investigation and trial in inhuman and degrading conditions.

4. On 22 May 2006 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).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and is serving a prison sentence in the Magadan Region.

7. On 3 January 2005 the applicant was arrested on suspicion of manslaughter and placed in a temporary detention facility at the Severo-Evensk District police station in the Magadan Region (*ИВС Северо-Эвенского РУВД*). According to the applicant, he was kept in a windowless cell without any other access to fresh air or daylight. It was dim and stuffy. There was no ventilation. The cell was not equipped with a toilet. During the day time, if requested, the guards took the applicant to a bathroom in the hallway. At night, if the applicant wished to go to toilet, he had to use a plastic bucket. There was no outdoor exercise area at the police station, so the applicant had to stay indoors all the time. His daily one-hour walk took place in a room which measured thirty-seven square metres and had two windows covered with metal bars.

8. The supervising prosecutor visited the applicant every week. The applicant complained to him about the conditions of his detention. On 25 March 2005 the applicant asked in writing for a transfer to a remand centre in Magadan. The prosecutor dismissed his request, referring to the distance between Severo-Evensk and Magadan and a lack of funds.

9. The applicant repeated his complaints in written applications to the prosecutor and the courts. All of them were to no avail.

10. On 5 July 2005 the applicant was found guilty of manslaughter. On 23 August 2005 he was transferred to a remand prison in Magadan.

11. On 7 July 2006 the Magadan Regional Police Department conducted an inquiry in response to the Government's request in connection with the present application pending at the time before the Court. In particular, Colonel S. in charge of the inquiry stated the following in his report:

> "The inquiry confirms the truthfulness of the [applicant's] allegations about the lack of proper living conditions in the temporary detention facility at the [police station] in the Severo-Evensk District.
>
> According to the technical passport, in March 1999 the [police station] and the temporary detention facility were deployed at the former premises of a [local] newspaper.
>
> No funds, either from the federal or local budget, had been allocated for the construction and equipping of the temporary detention facility, so all the work had to be carried out by [police station] personnel.
>
> ...

... Until 2006, no finance had been obtained for the repair and reconstruction of the [police station]. Accordingly, at the temporary detention facility, it had been impossible to comply with the standards set forth in the [federal legislation].

There are four cells at the temporary detention facility. The cells have no windows. There is no water supply or sewage system. Nor is there an outdoor exercise area or surrounding fence.

From 3 to 17 January and from 11 February to 23 March 2005 [the applicant] was detained in cell no. 1, which measured 7.2 square metres.

From 17 January to 11 February and from 23 March to 23 August 2005, he was detained in cell no. 2, which measured 10.9 square metres.

All the cells at the temporary detention facility are equipped with individual sleeping places. The detainees are provided with bed linen, plates, janitorial supplies, soap, detergent and drinking water tanks.

The cells are connected to the municipal central-heating system. The lighting is provided by electricity.

At the time of the applicant's detention, cell no. 2 was equipped with a fan... installed above the door. Furthermore, the cells are ventilated daily through the hatches in the doors. The hallway... is equipped with extractor fans.

As there is no designated area for outdoor exercise, the detainees (including [the applicant]) have a one-hour walk in a room measuring thirty-seven square metres. In that room, there are two big windows covered with metal bars. During the exercise break, the window hatches are kept open.

The temporary detention facility has one lavatory. The detainees are always taken there once in the morning and once in the evening. Throughout the rest of the day, they may use the lavatory, if they so request. At night, that is, between 10 p.m. and 6 a.m., they use plastic buckets provided in each cell."

II. RELEVANT DOMESTIC LAW

12. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences, in effect, as amended, since 21 June 1995, provides that suspects and defendants detained pending investigation and trial are held in remand prisons (Article 8). They may be transferred to temporary detention facilities if so required for the purposes of investigation or trial and if transportation between a remand prison and a police station or courthouse is not feasible because of the distance between them. Such detention at a temporary detention facility may not exceed ten days per month (Article 13). Temporary detention facilities at police stations are designated for the detention of persons arrested on suspicion of a criminal offence (Article 9).

13. According to the Internal Regulations of Temporary Detention Facilities, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996, as amended (in force at the time of the applicant's detention), the living space per detainee should be four square metres (para. 3.3 of the Regulations). It also made provision for cells in a temporary detention facility to be equipped with a table, toilet, tap water faucet, shelf for toiletries, drinking water tank, radio and refuse bin (para. 3.2 of the Regulations). Furthermore, the Regulations made provision for the detainees' right to outdoor exercise of at least one hour per day in a designated exercise area (para. 6.1, 6.40, and 6.43 of the Regulations).

III. RELEVANT INTERNATIONAL DOCUMENTS

14. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (92) 3) reads as follows:

> "42. Custody by the police is in principle of relatively short duration ...However, certain elementary material requirements should be met.
>
> All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.
>
> Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.
>
> 43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling."

The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained that he had been detained in appalling conditions in a temporary detention facility at the Severo-Evensk District police station in the Magadan Region 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

16. The Government considered that the application should be dismissed because the applicant had failed to exhaust domestic remedies. He had not appealed against the decision of the district prosecutor to dismiss his complaint. In particular, on 25 March 2005 the district prosecutor had received the applicant's complaint about the conditions of his detention. In response, the prosecutor had admitted that the applicant's allegations were true and had advised the applicant that the right existed to appeal against the decision to dismiss the complaint. However, the applicant had not done so. The Government further argued that the applicant had also had the opportunity to bring a compensation action for non-pecuniary damage resulting from the unsatisfactory conditions of detention. Lastly, the applicant, who had had an opportunity to meet regularly with his lawyer, could have complained to the latter that the conditions of his detention were poor. They provided a relevant statement signed by K., the court-appointed lawyer who had represented the applicant at the time. As regards the postal receipts submitted by the applicant as proof that his complaints about the conditions of his detention had been dispatched to the domestic authorities, the Government noted that those letters had been addressed to the judicial qualifications' board and had nothing to do with the applicant's grievances concerning the conditions of his detention.

17. The applicant submitted that he had complained repeatedly to the prosecutor and the court about the conditions of his detention. However, all his complaints had been to no avail. The district prosecutor had informed him that it had been impossible to transfer him to a remand prison because of a lack of funds or plane tickets. The regional prosecutor and the district court had remitted his complaints to the district prosecutor's office. The regional court had sent the complaint to the district court which, in its turn, remitted it to the district prosecutor. As regards K.'s statement submitted by the Government, the applicant considered it irrelevant. The purpose of the

lawyer's visits had been to discuss his client's defence. Moreover, the attempts by the Government to make the lawyer divulge confidential information concerning meetings with his client had been a flagrant breach of attorney-client privilege.

18. The Court notes that the Government have already raised the same arguments in respect of the issue of exhaustion of domestic remedies in a number of cases concerning conditions of detention in Russia. The Court has examined and dismissed them, finding the remedies ineffective (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 84-91, 12 March 2009). The Court discerns nothing in the Government's submissions to depart from its earlier findings. It follows that the Government's objection must be dismissed.

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

B. Merits

1. The parties' submissions

20. The Government acknowledged that the conditions of the applicant's detention at the temporary detention facility had not been in compliance with the standards set forth in Article 3 of the Convention. The premises had not been suitable for long-term detention. Nor had there been any funds allocated from the federal budget for their reconstruction until 2006. In 2006, as part of ongoing reconstruction work, the temporary detention facility had been equipped with an outdoor exercise area. Meanwhile, a ventilation system, a water supply system and toilets had started to be installed before the applicant had lodged his complaint with the Court.

21. The applicant maintained his complaint and noted that his allegations had been confirmed by the inquiry conducted by the authorities on 7 July 2006. He further contended that the lack of finance could not have justified the appalling conditions in the temporary detention facility. As regards the measures implemented by the authorities to upgrade the temporary detention facility, they had been taken only after he had lodged his complaints with the Court. Lastly, he considered that his detention had amounted to torture and resulted in the deterioration of his health.

2. The Court's assessment

22. Article 3, as the Court has observed on many occasions, 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 *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must, for a violation to be found, go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his 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 v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

23. The Court reiterates that it has on many occasions considered that the mere fact of holding an applicant in custody in a cell designed only for short-term detention disclosed a violation of Article 3 (see, for example, *Kaja v. Greece*, no. 32927/03, §§ 49-50, 27 July 2006, where the applicant was held for three months in detention without an opportunity to enjoy outdoor exercise, radio, television or free meals, and *Shchebet v. Russia*, no. 16074/07, §§ 84-96, 12 June 2008, where, for a month, the applicant was confined to a cell without a proper door (the cell had a sparse metal grille instead), window, toilet or sink and in the absence of any opportunity for outdoor exercise).

24. The Government did not dispute that the applicant had been detained pending investigation and trial at the police station in a cell designed only for short-term detention. Nor did they challenge the applicant's account of the conditions of his detention. They also conceded that those conditions had fallen short of the standards set forth in Article 3 of the Convention.

25. On the facts, the Court notes that the applicant could not be transferred to a remand prison because the nearest prison was located too far from Evensk and because the domestic authorities did not have the funds to pay for his transportation (see paragraph 8 above). This resulted in his detention taking place in premises which, from the legal and practical standpoint, were inappropriate for long-term detention (compare *Shchebet*, cited above, § 88).

26. The cell in which the applicant was held for over seven and a half months had been designed for short-term detention not exceeding ten days. Accordingly, it lacked the basic amenities indispensable for extended detention. The cell did not have a window and offered no access to natural light or air. There was no toilet or sink. At night, if the applicant wished to go to toilet, he had to use a bucket. Lastly, throughout that time the applicant was confined to his cell for practically twenty-four hours a day without any possibility to pursue physical and other out-of-cell activities.

27. In the Court's opinion, such conditions of detention must have caused him considerable mental and physical suffering diminishing his human dignity, which amounted to degrading treatment within the meaning of Article 3 of the Convention.

28. The Court further notes that there is no evidence in the present case of any positive intention to humiliate or debase the applicant. However, the absence of any such intention cannot exclude a finding of a violation of Article 3 of the Convention. Even if there had been no fault on the part of the administration of the temporary detention facility, it should be emphasised that the Governments are answerable under the Convention for the acts of any State agency, since what is in issue in all cases before the Court is the international responsibility of the State (see, among other authorities, *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005).

29. There has accordingly been a violation of Article 3 of the Convention on account of the degrading conditions of the applicant's detention in the temporary detention facility at the Severo-Evensk District police station in the Magadan Region.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

32. The Government considered the applicant's claims excessive and suggested that the acknowledgment of a violation would constitute adequate just satisfaction.

33. The Court observes that the applicant spent seven and a half months in inhuman and degrading conditions. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards him EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

34. The applicant also claimed compensation, without specifying the amount, for the legal costs incurred in the proceedings before the Court.

35. The Government submitted that the applicant had failed to demonstrate that he had actually and necessarily incurred any costs and expenses in the proceedings before the Court.

36. 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, the amount of EUR 850 has already been paid to the applicant by way of legal aid. In such circumstances, the Court does not consider it necessary to make an award under this head.

C. Default interest

37. 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 application admissible;

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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable on 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 amount 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 29 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Nina Vajić
Deputy Registrar	President