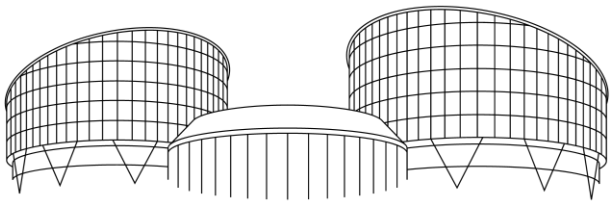

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ROMAN KARASEV v. RUSSIA

(Application no. 30251/03)

JUDGMENT

STRASBOURG

25 November 2010

FINAL

11/04/2011

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

In the case of Roman Karasev v. Russia**,**

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

Peer Lorenzen, *President,*
Rait Maruste,
Anatoly Kovler,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 30251/03) 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 a Russian national, Mr Roman Vasilyevich Karasev ("the applicant"), on 1 September 2003.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg and Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 20 February 2007 the President of the Fifth 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 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in the town of Kaliningrad.

A. Criminal proceedings against the applicant

6. In April 1999 the applicant was arrested on suspicion of murder. On 15 June 2000 the Nesterovskiy District Court of the Kaliningrad Region discontinued the criminal proceedings against the applicant on the charge of acquisition of stolen goods in connection with an act of general amnesty adopted by Parliament. The applicant was released.

7. On 4 May 2001 the applicant was arrested and charged with armed robbery and unlawful possession of weapons. By a judgment of 22 October 2001 the District Court convicted the applicant as charged and sentenced him to twelve years' imprisonment. On 18 December 2001 the Kaliningrad Regional Court upheld the conviction on the charge of robbery but ordered a new trial on the charge of unlawful possession of weapons. The proceedings were then discontinued because the prosecution dropped the case.

B. Conditions of detention in Kaliningrad remand centre no. 39/1

8. In relation to the above proceedings, the applicant was detained in Kaliningrad remand centre no. 39/1 from 25 April 1999 to 15 June 2000, from 24 May 2001 to 16 January 2002, and from 23 January to 8 August 2002. On this last date the applicant was transferred to colony no. 13 in the Kaliningrad Region to serve his prison sentence.

1. The applicant's account

9. The applicant provided the following description of the conditions of his detention in the remand centre. During the first period he was held in a cell measuring ten square metres. The cell was equipped with twelve beds but housed up to twenty-four inmates who took turns to sleep. There was constant noise and movement within the cell. The windows were covered with metal blinds blocking access to daylight and fresh air. There was no sink and the water tap was positioned above the toilet pan, which gave off a fetid smell. Inmates were allowed no more than one hour of outdoor exercise per day. The cell was infested with bugs and cockroaches. In support of his description of the conditions the applicant submitted an affidavit by his former cellmate, Mr B., who had been held in the same cell between February and June 2000. B. stated that the cell measured twelve square metres and had housed between twenty-one to twenty-seven persons, while it had had only twelve beds.

10. During the second and third periods applicant was held in a six-square-metre cell that contained three two-tier bunks and housed seven inmates. The windows were covered with metal blinds blocking access to natural light and air. There was no ventilation in the cell and in summer, the temperature peaked at 45ºC. In the absence of a sink the water tap was positioned directly above the toilet pan, which was not separated from the

rest of the cell. The dining table was only 50 cm away from the toilet. The cell was infested with bugs and cockroaches. The applicant contracted chronic bronchitis. In support of his submissions the applicant produced a written affidavit by his former cellmate, Mr R., who had been held in the same cell from 7 June 2001 to 6 July 2002.

11. The applicant also submitted a copy of a letter dated 28 June 2001 sent by the Kaliningrad Regional Ombudsman to a Mr G., who was detained in remand centre no. 39/1 at the time. As follows from this letter, an inquiry carried out by the Office of the Ombudsman disclosed that detainees in that remand centre were provided with less than one square metre of space per person in the cells. The inquiry also disclosed unspecified deficiencies in the sanitary installations and medical services in the remand centre.

2. The Government's account

12. The Government affirmed, with reference to a certificate dated 27 April 2007 issued by the administration of the remand centre, that from 25 April 1999 to 15 June 2000 the applicant was held in cells nos. 67, 150, 143, 10, 54, 86, 140, 17, 15, 4/12, 4/8 and 76. These cells measured from seven to twenty-one square metres. Between 24 May 2001 and 8 August 2002 the applicant was held in cells nos. 15, 54, 129, 22, 55, 111, 4/20, 18, 109, 17, 4/11, 158, 14, 155 and 4/19. These cells measured from seven to eighteen square metres. The certificate indicated that it was impossible to supply data about the number of detainees in each cell during the relevant periods because the logbooks for 1999-2002 had been destroyed. According to a certificate dated 20 February 2007, the logbook for the year 2002 was destroyed on the same date in compliance with the five-year storage limit.

13. With reference to a number of other certificates issued by the national authorities in April 2007, the Government affirmed as follows. In all cells the applicant had been provided with a bed and bedding. Each cell had a table situated at a suitable distance from the toilet, benches and a tap with running water. Each cell had a toilet with a functional flushing system; each toilet was separated from the main area by a screen of one metre in height. Ventilation was provided through openings in the windows; the metal shutters/blinds on the windows did not block the normal flow of air. Each cell also had a functional ventilation system. The shutters/blinds were removed between December 2002 and March 2003. The cells were properly heated to no less than 18ºC. All the necessary sanitary measures were carried out. The remand centre had twenty courtyards, each measuring twelve square metres. The applicant was allowed a one-hour outdoor walk per day. The artificial night light was not strong, but was left on for suicide watch. The applicant was given three meals per day. The applicant had access to medical services and was not intentionally placed with anyone suffering from tuberculosis.

3. Civil proceedings for compensation

(a) The claim concerning the applicant's detention in 2001 and 2002

14. From August 2002 the applicant served his sentence of imprisonment in a colony in the Kaliningrad Region. In January and February 2003 he brought civil proceedings against the Ministry of Finance, claiming compensation for unlawful deprivation of liberty from October 2001 to August 2002 and appalling conditions of detention during that period. The case was submitted to the Tsentralniy District Court of Kaliningrad, which indicated remand centre no. 39/1 and the Prisons Directorate of the Kaliningrad Region as co-defendants of the Ministry of Finance.

15. By letter of 5 March 2003, the District Court advised the applicant that a hearing on his claim was listed for 27 March 2003 and explained his procedural rights to him. As regards the applicant's participation, the judge wrote:

> "Civil law does not make a provision for transporting detained convicts to a civil court hearing. Thus, the court has no right to bring you to the hearing because that would breach the detention regulations. You have the right to appoint a representative to take part in the examination of your case ... You may also submit a written statement giving your consent to the case being examined in your absence."

16. Following complaints by the applicant, who insisted on his right to be present at the hearing, on 25 March and 15 April 2003 the deputy President of the Kaliningrad Regional Court reiterated that the refusal to bring him to the hearing had been lawful and that he could make written submissions or appoint a representative.

17. On 22 April 2003 the District Court held a hearing. The representative of the Ministry of Finance waived his right to be present and made written submissions. It appears that the representative of the other two defendants was present at the hearing. The court considered that the applicant had been afforded an opportunity to appoint a representative and that in any event the written submissions were sufficient. The court held that the applicant's detention had been lawful because he had been ultimately convicted of a criminal offence. As regards the conditions of detention, the District Court held that the applicant had not proved the presence of bugs and cockroaches, that the one-hour outdoor exercise allowance was compatible with the detention regulations, and that there was no credible evidence that the applicant had contracted bronchitis. Although the overcrowding of the remand centre was undisputed, the District Court found that it had been caused by (unspecified) objective factors unrelated to the defendants' actions.

18. The applicant lodged an appeal. He submitted, in particular, that he had been denied the right to take part in the hearing.

19. On 23 July 2003 the Regional Court upheld the judgment, endorsing the reasoning of the District Court. It interpreted the applicant's failure to appoint a representative as a valid and lawful ground for examining the case in his absence.

(b) The claim concerning the applicant's detention in 1999 and 2000

20. In the meantime, the applicant filed another claim against the Ministry of Finance, seeking compensation in respect of pecuniary and non-pecuniary damage incurred through unlawful detention in 1999 and 2000 and appalling conditions in the remand centre.

21. The Tsentralniy District Court indicated the Kaliningrad Regional Prosecutor's Office, remand centre no. 39/1 and the Regional Prisons Directorate as co-defendants.

22. The judge advised the applicant, by the same standard letter, of the hearing date. She indicated that it would take place in his absence because he was a detainee but that he could appoint a representative.

23. The administration of the remand centre provided the court with the following information. The cell space of two hundred and forty-eight cells amounted to 1,630 square metres. Between April 1999 and May 2000 the population of the remand centre varied from 1,682 to 1,945 detainees.

24. On 24 June 2003 the District Court gave its judgment. It dismissed all the claims, finding that the detention had been lawful because the proceedings had been discontinued not by an acquittal but by an act of general amnesty. It also held that the employees of the detention centre had not been responsible for the overcrowding.

25. On 24 September 2003 the Regional Court upheld the judgment on appeal. The applicant was not present or represented.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions of detention

26. Section 22 of the Custody Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy the 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.

27. Order no. 7 issued on 31 January 2005 by the Federal Service for the Execution of Sentences deals with implementation of the “Remand centre 2006” programme. The programme is aimed at improving the functioning of

remand centres so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in pre-trial detention centres and seeks to reduce and stabilise the number of detainees in order to resolve the problem. The programme mentions Kaliningrad remand centre no. 39/1 as one of the detention centres affected. As of 1 July 2004, its design capacity was 524 detainees, but it actually housed 830 inmates.

B. Civil-law remedies against unlawful acts by public officials

28. Article 1064 § 1 of the Civil Code of the Russian Federation provides that damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. Pursuant to Article 1069, State agencies and State officials shall be liable for damage caused to an individual by their unlawful actions or failure to act. Such damage is to be compensated at the expense of the federal or regional treasury. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespective of any award for pecuniary damage.

C. Provisions on attendance at hearings

29. The Code of Civil Procedure of the Russian Federation (CCP) provides that individuals may appear before a court in person or act through a representative (Article 48 § 1). The court may appoint an advocate to represent a defendant whose place of residence is not known (Article 50). The Advocates Act (Law no. 63-FZ of 31 May 2002) provides that free legal assistance may be provided to indigent plaintiffs in civil disputes concerning alimony or pension payments or claims concerning damage to health in employment-related disputes (section 26 § 1). In 2005 the Russian Government launched a test project in a number of regions concerning provision of free legal assistance in civil-law matters (decree no. 534 of 22 August 2005).

30. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77 § 1). The Code does not mention any possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or a defendant.

31. On several occasions the Constitutional Court has examined complaints by detainees whose requests for leave to appear in civil proceedings were refused by the courts. It has consistently declared the complaints inadmissible, finding that the impugned provisions of the Code

of Civil Procedure and the Penitentiary Code did not, as such, restrict the convicted person's access to court. It has emphasised, nonetheless, that the convicted person should be able to make submissions to the civil court, either through a representative or in any other way provided by law. If necessary, the hearing may be held at the location where the convicted person is serving his or her sentence, or the court hearing the case may instruct the court with territorial jurisdiction over the correctional colony to obtain the applicant's submissions or carry out any other procedural steps (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004 and no. 94-O of 21 February 2008).

D. Other relevant provisions of CCP

32. Articles 57 and 149 of the CCP provide that the parties can seek the court's assistance in obtaining evidence. The relevant party should indicate the circumstances impeding the access to such evidence and its relevance to the case, as well as the location such evidence should be collected from. An unjustified failure to comply with the court order can lead to a fine on the person or official in possession of the relevant evidence.

33. In a given civil case a civil court can request a court in another location to take specific measures in relation to evidence situated in that location (Article 62 of the CCP). Carrying out such a request is mandatory and must be done within one month of its receipt.

34. Under Articles 58 and 184 of the CCP, a court may hold a session outside the courthouse if, for instance, it is necessary to examine evidence which cannot be brought to the courthouse.

35. Article 392 of the CCP contains a list of situations which may justify a reopening of a finalised case on account of newly-discovered circumstances. By a ruling of 26 February 2010 the Constitutional Court of Russia indicated that this Article should be interpreted as, in principle, allowing the launching of a procedure to have a final judgment re-examined on account of newly-discovered circumstances, such as the finding of a violation of the European Convention in a given case by the European Court of Human Rights.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that the conditions of his detention in Kaliningrad remand centre no. 39/1 on several occasions between 1999 and

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."

37. The applicant alleged that there had been a severe and persisting problem of cell overcrowding as a result of which, in particular, he did not have an individual bed. He also contended that the material conditions had been deplorable (see paragraphs 9 and 10 above).

38. The Government provided information about the cells in which the applicant had been detained. The logbooks concerning the number of inmates in each relevant cell in 1999-2002 had been destroyed due to the expiry of the time-limit for storing them. The Government also contested the applicant's allegations in respect of the material conditions, with reference to various statements by public officials in 2007 (see paragraphs 12 and 13 above).

A. Admissibility

39. The applicant was detained in the remand centre from 25 April 1999 to 15 June 2000, from 24 May 2001 to 16 January 2002, and from 23 January to 8 August 2002. The present application was lodged on 1 September 2003, after the completion of the first civil case and before the appeal hearing in the second case.

40. The Court observes at the outset that it has not been alleged that the applicant's claims before the civil courts were not the remedies to be taken into account as the relevant final decisions for the purpose of Article 35 § 1 of the Convention (see, in a similar context, *Moskalyuk v. Russia*, no. 3267/03, §§ 45-48, 14 January 2010). There is a close affinity between the exhaustion requirement and the six-month rule under Article 35 § 1 of the Convention, on the one hand, and its Article 13, on the other. The Court reiterates in that connection that where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot be interpreted, however, in a manner which would require an applicant to bring a complaint before the Court before his position in connection with the matter has been finally determined at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to calculate the six-month time-limit from the date when the applicant first became or ought to have become aware of those circumstances (see *Keenan v. the United Kingdom* (dec.), no. 27229/95, 22 May 1998, and *Zenin v. Russia* (dec.), no. 15413/03, 24 September 2009). The effectiveness of a particular remedy

is normally assessed with reference to the date on which the application was lodged with the Court (see *Sürmeli v. Germany* [GC], no. 75529/01, § 110, ECHR 2006-VII). This rule is subject to exceptions which may be justified by the specific circumstances of each case (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII).

41. The Court has so far rejected, mostly as unsubstantiated, the Russian Government's arguments that applicants had failed to exhaust domestic remedies by lodging civil court actions in relation to their grievances about the conditions of their detention on account of the general problem of overcrowding in Russian detention facilities, in particular remand centres (see, among others, *Benediktov v. Russia*, no. 106/02, §§ 29 and 30, 10 May 2007, and *Kokoshkina v. Russia*, no. 2052/08, § 52, 28 May 2009; see also *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 77 and 87-89, 12 March 2009). In 2007 in the *Benediktov* case the Court found a violation of Article 13 of the Convention on that account.

42. The above considerations, however, should not lead, in the circumstances of the present case, to the conclusion that the six-month time-limit be calculated from the end date of the periods complained about. The applicant, who was not well-versed in law, could at the time reasonably have considered that a civil action for damages was capable of affording him adequate redress for the allegedly appalling conditions of his detention in the detention facility he had previously been held in. Thus, the applicant's civil cases, which were finally determined in July and September 2003, should be taken into account for the application of the six-month time-limit. Thus, the applicant has complied with that requirement (see, in a similar context, *Skorobogatykh v. Russia*, no. 4871/03, §§ 32-34, 22 December 2009). This finding is, however, without prejudice to the applicant's complaint under Article 13 of the Convention (see paragraphs 71-86 below).

43. The Court concludes that the complaint under Article 3 of the Convention 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

44. The Court observes that the parties disagreed on various aspects pertaining to the material conditions of the applicant's detention during the relevant periods of time, in particular regarding the focal matter of cell overcrowding.

45. The Court reiterates that Convention proceedings, such as those arising from the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of

corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, among others, *Fedotov v. Russia*, no. 5140/02, §§ 60 and 61, 25 October 2005, and *Kokoshkina v. Russia*, no. 2052/08, § 60, 28 May 2009 in the context of complaints about material conditions in detention facilities).

46. The Government submitted information about the cell size. However, they did not provide any data on the design capacity of the cells (number of beds); nor did they contest the applicant's submissions on that point. As to the actual cell population, the Government submitted that the relevant documents had been destroyed due to the expiry of the time-limit for their storage, which apparently amounted to five years. The Court observes, however, that the certificate supplied by the Government only concerns the year 2002. The Court finds it surprising that the relevant logbook had been destroyed in February 2007, that is, apparently before the expiry of the five-year storage period. Furthermore, the Court was not afforded any opportunity to verify whether the alleged destruction of the documents had been carried out in compliance with the national law. At the same time, the Government provided no verifiable source for their information concerning the exact cells in which the applicant had been detained. No information was supplied for the years 1999, 2000 and 2001.

47. The Government relied on written statements by public officials which were made years after the end of the applicant's detention in the remand centre. In this connection the Court notes that on several previous occasions when the Government have failed to submit original records, the Court has held that documents prepared or statements made after a considerable period of time cannot be viewed as sufficiently reliable given the length of time that has elapsed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009). The above considerations have led the Court not to accord any particular weight to the information provided by the Government (cf. *Starokadomskiy v. Russia*, no. 42239/02, §§ 40 and 41, 31 July 2008).

48. At the same time, there are convincing indications to support the applicant's allegation of severe overcrowding in the cells, where less than one square metre of personal space was available per detainee. In particular, the Court observes that as can be deduced from the certificate supplied by the administration of the remand centre in the civil court proceedings, one detainee could not be afforded on average more than one square metre of cell space between April 1999 and May 2000 (see paragraph 23 above, and *Bagel v. Russia*, no. 37810/03, § 53, 15 November 2007, for a similar approach). It also appears that in 2001 the regional ombudsman carried out an inquiry concluding that detainees in the remand centre were provided with less than one square metre per person in the cells (see paragraph 11

above). Making a global assessment of the available information and evidence, the Court accepts that the applicant was afforded less than or around one square metre of cell space during the three periods of his detention in the remand centre.

49. The available material also discloses that at least during the first period of his detention the applicant was not afforded an individual sleeping place and was compelled to sleep in shifts. The above also entails that it is unlikely that he was provided with individual bedding and, more importantly, that he was able to have an adequate night's sleep.

50. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary 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). The Court has previously held, albeit in a different context, that it is not open to a State authority to cite lack of funds as an excuse for not honouring their obligations (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). This consideration applies *a fortiori* in the context of Article 3 of the Convention, as in the present case.

51. 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 *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court cannot but note that it has previously found a violation of Article 3 on account of detention in overcrowded conditions in the same detention facility (see *Mayzit*, cited above, §§ 34-43, and *Shilbergs v. Russia*, no. 20075/03, § 94, 17 December 2009).

52. The foregoing considerations have led the Court to conclude that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in Kaliningrad remand centre no. 39/1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

53. The applicant also complained under Articles 6 and 14 of the Convention that the above-mentioned civil proceedings had been unfair. The Court will examine this complaint under Article 6 § 1, which provides, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

54. The Government submitted that Russian law did not provide for personal participation of convicted detainees in civil proceedings. However, they could appoint a representative. The civil court was not empowered to appoint a representative. The applicant had been properly notified of the hearings. The refusal to give him access to the case file was based on the lack of legal provisions requiring his transport to the courthouse. The applicant was provided with a copy of the documents submitted by the respondents and the trial verbatim record; he was given the opportunity to submit comments on them. The fact that those documents were first sent to the applicant after the first-instance proceedings had ended and before the appeal hearing did not impair his procedural rights since he did lodge additional observations based on the study of them.

55. The applicant argued that he had not been afforded an adequate opportunity to participate in the civil court proceedings, to refute the respondents' submissions and to adduce additional evidence. Being absent from the hearings, he had been deprived of the opportunity to challenge the judge and to contest the evidence. The applicant had no financial means to retain a lawyer for the civil cases. Besides, only the applicant had first-hand knowledge of the relevant facts.

B. The Court's assessment

1. Admissibility

56. The Court notes at the outset, and it is not in dispute between the parties, that at the national level there was "a genuine and serious dispute" over a "civil right" which could be said, at least on arguable grounds, to be recognised under domestic law (see, by contrast, *Skorobogatykh v. Russia* (dec.), no. 37966/02, 8 June 2006).

57. The Court considers that this part of the application 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.

2. Merits

(a) General principles

58. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence

adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

59. Article 6 of the Convention does not expressly provide for a right to a hearing in one's presence; rather, it is implicit in the more general notion of a fair trial that a criminal trial should take place in the presence of the accused (see, for example, *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). However, in respect of non-criminal matters there is no absolute right to be present at one's trial, except in respect of a limited category of cases, such as those where the personal character and manner of life of the person concerned is directly relevant to the subject matter of the case, or where the decision involves the person's conduct (see, for example, *Kabwe and Chungu v. the United Kingdom* (dec.), nos. 29647/08 and 33269/08, 2 February 2010).

60. A party's presence at the trial is closely linked to the right to an oral, public hearing since, if Article 6 does not require an oral hearing there is, by extension, no right to be present. An oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1 (see *Jussila v. Finland* [GC], no. 73053/01, §§ 40-42, ECHR 2006-XIII). There may be proceedings in which an oral hearing may not be required: for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see, among others, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 74, ECHR 2007-IV).

61. The Court has further acknowledged that the national authorities may have regard to the demands of efficiency and economy and has found, for example, that the systematic holding of hearings could be an obstacle to the particular diligence required in social security cases and ultimately prevent compliance with the reasonable-time requirement of Article 6 § 1 (see *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, § 58, Series A no. 263, with further references). Although the earlier cases emphasised that a hearing had to be held before a court of first and only instance unless there were exceptional circumstances that justified dispensing with one (see, for instance, *Håkansson and Sturesson v. Sweden*, cited above, § 64; *Fredin v. Sweden (no. 2)*, judgment of 23 February 1994, §§ 21 and 22, Series A no. 283-A, and *Allan Jacobsson v. Sweden (no. 2)* judgment of 19 February 1998, § 46, *Reports* 1998-I), the Court has clarified that the character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may be

justified only in rare cases (see *Miller v. Sweden*, no. 55853/00, § 29, 8 February 2005). The overarching principle of fairness embodied in Article 6 is the key consideration.

(b) Application of the above principles

62. The Court notes at the outset that the applicant focused on his wish to be present at the civil hearings, arguing, among other things, that he did not have the means to pay for a lawyer. The Court reiterates in that connection that the right of access to a court does not necessarily entail a right to legal assistance in non-criminal matters. Only where a party would not receive a fair hearing without the provision of legal aid, with reference to all the facts and circumstances of the case, will Article 6 require legal aid, including legal assistance (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 61, ECHR 2005-II). The Court observes that the option of legal aid was not available to the applicant (see paragraph 29 above).

63. In such a situation the only possibility for him was to appoint a relative, friend or acquaintance to represent him in the proceedings. However, as is clear from the domestic courts' judgments, after the courts had refused the applicant leave to appear they did not consider how to secure his effective participation in the proceedings. They did not inquire whether the applicant was able to designate a representative and in particular whether, having regard to the time which he had already spent in detention, he still had a person willing to represent him before the domestic courts and, if so, whether he had been able to contact that person and give him authority to act.

64. As to the applicant's own presence at the civil hearing, the Court observes that the Russian legislation provided for a party's right to an oral hearing (see, by contrast, *Súsanna Rós Westlund v. Iceland*, no. 42628/04, § 41, 6 December 2007, and *Gülmez v. Turkey*, no. 16330/02, § 37, 20 May 2008). The Russian law, however, did not provide for bringing detainees to the courthouse in civil proceedings. However, Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris*, cited above, §§ 59 and 60).

65. It is noted in that connection that the Russian law afforded the applicant an opportunity to seek a domestic court's assistance in obtaining the necessary evidence in support of his claim, if such evidence was not readily accessible (see paragraph 32 above; see also *Trapeznikova v. Russia*, no. 21539/02, § 101, 11 December 2008). Also, a civil court could request a court in another location to take specific measures in relation to the evidence situated in that location (see paragraph 33 above). It does not transpire that the applicant was denied these procedural tools.

66. This being so, the Court found a violation of Article 6 of the Convention in a case where a Russian court, after having refused leave to appear to the detainees, who had wished to make oral submissions on their defamation claim, failed to consider other legal possibilities for securing their effective participation in the proceedings (see *Khuzhin and Others v. Russia*, no. 13470/02, §§ 53 et seq., 23 October 2008; see also *Mokhov v. Russia*, no. 28245/04, §§ 45-51, 4 March 2010). The Court also found a violation of Article 6 in a case where a Russian court refused leave to appear to a detainee who had wished to make oral submissions on his claim that he had been ill-treated by the police. Despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

67. Indeed, while bearing in mind that the applicant was not represented by a lawyer in the domestic proceedings, the Court does not lose sight of the fact that his claims in those proceedings were, to a certain extent, based on his personal experience and served, *inter alia*, as a basis for the assessment of the non-pecuniary damage which his detention entailed for him in terms of distress and anxiety. The Court finds that in the circumstances the applicant's testimony describing the conditions of his detention, of which he had first-hand knowledge, would have constituted an indispensable part of the plaintiff's presentation of the case (see, in a similar context, *Shilbergs*, cited above, §§ 107-114, and, by contrast, *Kozlov v. Russia*, no. 30782/03, 17 September 2009, the latter concerning a contested title to reside in a certain flat).

68. Furthermore, the Court notes that the domestic courts refused the applicant leave to appear, relying on the absence of any legal norm making his presence mandatory. In this connection, it is noted that another possibility was open to the domestic courts as a way of securing the applicant's effective participation in the proceedings, namely by holding a session in the detention facility (see paragraph 34 above). However, this option was not considered. The legislative ban did not make it necessary to deal with any eventual security considerations which would have arisen from transporting the convicted prisoner outside the territory of the detention facility.

69. Lastly, the applicant did not comment on the Government's admission that the copies of the documents adduced by the defendants had been sent to the applicant for comment after the first-instance judgment(s) had been delivered. The Court will not determine whether that shortcoming was or could be remedied by the appeal court, since the considerations in the preceding paragraphs suffice for the Court to conclude that the applicant was not afforded an adequate opportunity to present his case effectively

before the civil courts, and that the principle of equality of arms was not observed in the proceedings under consideration (see, in a similar context, *Shilbergs*, cited above, §§ 107-114).

70. There has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ITS ARTICLE 3

71. The applicant further complained under Article 13 of the Convention that he had not had at his disposal an effective remedy for his above complaint under Article 3 of the Convention about the conditions of his detention in the remand centre. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

72. The Government submitted that the applicant had had the opportunity to complain about the conditions of detention to the administration of the remand centre and the prosecutor's office or to challenge the administration's actions in a court. The applicant did bring civil proceedings for compensation in respect of pecuniary and non-pecuniary damage, as well as in respect of damage to his health. The civil courts examined his claims and rejected them as unfounded.

73. The applicant argued that the Government adduced no evidence to prove the effectiveness of the suggested remedies. Complaints to the non-judicial authorities would have had no effect, given the nationwide nature of the problem of the conditions of detention.

A. Admissibility

74. The effect of Article 13 is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as arguable in terms of the Convention (see *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports of Judgments and Decisions* 1997-III, and *Camenzind v. Switzerland*, 16 December 1997, § 53, *Reports of Judgments and Decisions* 1997-VIII).

75. It is common ground in this case that the applicant's grievances about the allegedly appalling conditions of detention were arguable.

76. The Court considers that the complaint under Article 13 of the Convention 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

77. The Court further considers that, where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 107, ECHR 2001-V (extracts)). The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention (see, for instance, *Muminov v. Russia*, no. 42502/06, § 101, 11 December 2008). Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant.

78. The Court has found in the present case that there was a violation of Article 3 of the Convention on account of the severe overcrowding in the cell in which the applicant was detained.

79. As regards the conditions of detention, the Court observes that at least two types of relief are possible: an improvement of the relevant material conditions of detention and compensation for the damage or loss sustained on account of such conditions (see *Benediktov*, cited above, § 29, with further references).

80. As previously noted, the Court does not consider that a complaint to the administration of the remand centre would as such have been capable of affording him any adequate redress, given the structural nature of the problem. Nor would a complaint to the prosecutor have afforded such redress. As to a court action against the administration of the remand centre, the Court notes that the Government did not specify the nature of such recourse or its legal basis.

81. In so far as the Government may be understood to be referring to the civil claim for damages brought by the applicant (see paragraphs 14-25 above), the Court makes the following observations.

82. Indeed, the applicant's civil claim was processed and examined on the merits. Despite the defendants' implicit acknowledgment of the cell overcrowding, the civil courts dismissed the applicant's related claim for compensation in respect of non-pecuniary damage, referring to the absence of any unlawfulness in the actions of the defendants. In April 2003 the judge noted in that connection that the problem of overcrowding in 2001 and 2002 was due to, albeit unspecified, "objective reasons"; thus there was no causal link between the overcrowding and the defendants' actions. In the second set of proceedings, the civil judge added that since the applicant's

detention had been lawfully authorised, the applicant's references to Articles 1069 and 1070 of the Civil Code concerning State liability were irrelevant.

83. The Court observes, and it was not in dispute between the parties, that under Russian law it was possible, at least on arguable grounds, to assert a right to compensation in relation to conditions of detention (see also the relevant findings in paragraphs 40-42 and 56 above). The Court reiterates that it is not normally within its province to substitute its own assessment of the facts for that of the domestic courts because, as a general rule, it is for the domestic courts to assess the evidence before them (see, among others, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B, and *Vidal v. Belgium*, 22 April 1992, §§ 33 and 34, Series A no. 235-B). However, in the present case the applicant's claim did not fail because of a lack or non-substantiation of justiciable damage but because of the provisions of the applicable legislation, as interpreted and applied by the domestic courts (see, by contrast, *A.D. and O.D. v. the United Kingdom*, no. 28680/06, §§ 102-104, 16 March 2010).

84. The Court finds, however, that the way the domestic courts interpreted and applied the relevant provisions of the Russian Civil Code deprived the applicant's action for damages lodged against State authorities of affording him an effective remedy (see also *Skorobogatykh*, cited above, §§ 31 and 32).

85. In view of the above, the Court concludes that the civil proceedings in the present case did not afford the applicant an effective remedy in relation to his complaint about the material conditions of his detention in the remand centre, in particular on account of the overcrowding problem (see also the cases cited in paragraph 41 above).

86. The Court concludes that there has been a violation of Article 13 of the Convention in conjunction with its Article 3.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

87. The applicant also complained under Articles 5 and 13 of the Convention that his detention was unlawful and that he had no effective remedies in that respect.

88. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary and health-related damage on account of the conditions of his detention and the alleged unlawfulness of his detention. He also asked for a reopening of the criminal proceedings against him.

91. The Government contested the claims.

92. The Court observes at the outset that the complaint concerning the alleged unlawfulness of the detention was declared inadmissible. The Court further observes that the applicant provided no details or evidence in relation to his claim concerning health-related damage; it therefore rejects this claim as unsubstantiated. On the other hand, having regard to the nature of the violation under Article 3 of the Convention, the Court awards the applicant EUR 14,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

93. Lastly, the Court considers that the request for a reopening of the criminal proceedings against the applicant is unrelated to the findings of the violation made by the Court in the present case. Thus, this claim is dismissed.

B. Costs and expenses

94. The applicant also claimed reimbursement of "all costs and expenses" and payment for his representative's services before the Court.

95. The Government contested this claim.

96. 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. The applicant submitted no detailed claims or supporting documents. It is also noted that legal aid was granted in the present case under Rule 91 of the Rules of Court. The Court rejects the claims under this head.

C. Default interest

97. 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 detention, the lack of effective remedies on that account and the unfairness of the civil proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with its Article 3;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 14,000 (fourteen thousand euros), 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 amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Peer Lorenzen President