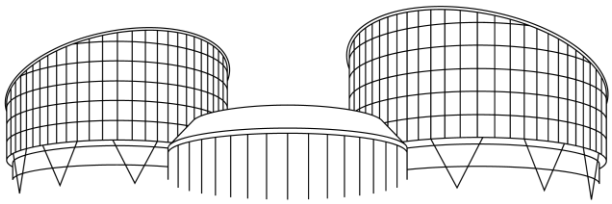

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VLADIMIR SOKOLOV v. RUSSIA

(Application no. 31242/05)

JUDGMENT

STRASBOURG

29 March 2011

FINAL

29/06/2011

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

In the case of Vladimir Sokolov v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 31242/05) 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 Vladimirovich Sokolov ("the applicant"), on 30 July 2005.

2. The applicant, who had been granted legal aid, was represented by Mrs K. Moskalenko and Mrs O. Preobrazhenskaya, 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, in particular, that he had been detained in appalling conditions in Nizhniy Novgorod remand prison IZ-52/1 and Moscow remand prison IZ-77/3 and had not received appropriate medical assistance during his detention in those prisons. He also alleged that Russian authorities had put pressure on him in connection with his application to the Court.

4. On 14 December 2005 the President of the First Section decided to grant priority treatment to the application under Rule 41 of the Rules of the Court.

5. On 7 March 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 § 1).

6. The Government objected to the joint examination of the admissibility and merits of the case. The Court examined their objection and dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1970 and lived, before his arrest, in Nizhniy Novgorod. He is currently serving a prison sentence in Nizhniy Novgorod.

A. Criminal proceedings against the applicant

8. On 27 June 2003 police arrested the applicant on suspicion of several murders and other serious crimes. The applicant alleged that policemen had refused to get him a lawyer and had beaten him to make him sign an acknowledgment of guilt. The applicant remained in detention pending the investigation and trial.

9. On 2 March 2004 the regional prosecutor's office charged the applicant with planning several murders and the unlawful acquisition and possession of firearms.

10. The applicant alleged that during the pre-trial proceedings he had been transferred on several occasions from the Nizhniy Novgorod remand prison to different police stations in Nizhniy Novgorod and was kept there for several days under the pretext of investigative activities. On 29 March 2004 the regional prosecutor replied to the applicant's complaint in this connection that he had been transferred to police stations on the lawful orders of the investigator in charge of his case to take part in investigative activities. The prosecutor further stated that his reply could be appealed against to a higher prosecutor or to a court. It appears that the applicant did not lodge any appeal before those authorities.

11. By a final decision of 27 April 2004 the Nizhniy Novgorod Regional Court (“the Regional Court”) dismissed the applicant's complaint against the prosecutor's refusal to initiate criminal proceedings against police officers who had allegedly beaten the applicant.

12. On 14 October 2004 the Regional Court convicted the applicant, along with seven co-defendants, as charged and sentenced him to nineteen years' imprisonment. The court held that the applicant's guilt in the impugned crimes had been proven by an extensive body of evidence examined during the trial, such as statements by the applicant's co-defendants and witnesses, expert examinations and other evidence. The court also observed that the applicant's allegations of ill-treatment by police to make him sign a confession had already been investigated by the prosecutor's office, which had refused to initiate criminal proceedings in this respect. The court also noted that the applicant's confessions could not be

regarded as an acknowledgment of guilt since they had been made after he had been arrested on suspicion of the impugned crimes.

13. On 29 April 2005 the Supreme Court of the Russian Federation upheld the applicant's conviction on appeal.

B. Conditions of the applicant's detention

14. During the criminal proceedings against him the applicant was detained in Nizhniy Novgorod remand prison IZ-52/1 (“remand prison no. 52/1”) and Moscow remand prison IZ-77/3 (“remand prison no. 77/3”). The parties agreed on the following timeline of the applicant's detention in those prisons:

- between 8 July 2003 and 12 January 2005 the applicant was detained in remand prison no. 52/1
- between 13 January and 5 December 2005 he was detained in remand prison no. 77/3
- between 6 December 2005 and 14 February 2006 the applicant was again detained in remand prison no. 52/1.

15. On 14 February 2006 the applicant was transferred to serve his prison sentence at a correctional colony in the Nizhniy Novgorod Region.

1. Detention in remand prison no. 52/1

(a) The applicant's account

16. The applicant was detained in different cells. All of them were overcrowded. Most of the time (between November 2003 and 12 January 2005 and between 6 December 2005 and 14 February 2006) the applicant was detained in cell no. 8/59, which measured approximately 49 square metres, had 32 beds and accommodated between 70 and 100 detainees. Two beds were used to store kitchenware and food. The applicant did not have an individual sleeping place. The cell was equipped with one toilet and washstand. The inmates were allowed one hour's exercise per day. The applicant was dissatisfied with many other aspects of his detention, such as a lack of bedding, natural light and ventilation, poor state of the drainage and water supply, and the presence of insects in the cells.

(b) The Government's account

17. The Government provided the following information on the cells in which the applicant was detained. They underlined that the number of detainees indicated by them corresponded to an average number of inmates per cell detained together with the applicant.

(i) Detention between 8 July 2003 and 12 January 2005

Cell number	Dates of the applicant's stay	Surface, square metres	Number of beds	Number of detainees
15/158	8 to 9 July 2003	-	-	-
21/256	9 to 24 July 2003	7.8	4	3
21/252	24 to 31 July 2003	7.3	4	3
21/250	31 July to 15 August 2003	7.1	4	4
15/163	15 August to 29 September 2003	8.5	4	5
25/299 Prison hospital	29 September to 21 October 2003	17.4	10	13
15/163	21 to 30 October 2003	8.5	4	5
8/61	30 October to 4 November 2003	39	22	30
15/163	4 November 2003 to 2 December 2003	8.5	4	6
8/59	2 December 2003 to 13 August 2004	56.2 or 57.9	32	46
6/47	13 to 16 August 2004	15.8	8	8
8/59	16 August to 23 December 2004	57.9	32	42
25/295 Prison hospital	23 to 31 December 2004	33	10	12
8/59	31 December 2004 to 12 January 2005	56.2 or 57.9	32	44

(ii) Detention between 6 December 2005 and 14 February 2006

Cell number	Dates of the applicant's stay	Surface, square metres	Number of beds	Number of detainees
8/59	6 to 12 December 2005	56.2 or 57.9	32	42
25/295 Prison hospital	12 to 28 December 2005	33	10	7
8/59	28 December 2005 to 24 January 2006	56.2 or 57.9	32	41-60
25/295 Prison hospital	24 January to 2 February 2006	33	10	7
8/59	2 to 14 February 2006	56.2 or 57.9	32	Up to 60

18. The Government further provided a report by the prison department of the Nizhniy Novgorod Region of 21 April 2006 ("prison department") on the investigation carried out into the complaints about conditions of detention raised by the applicant before the Court. The Government submitted that it could be seen from that document that other aspects of the applicant's detention fully complied with the requirements of the Convention. The applicant had been provided with an individual sleeping place and bedding. All cells in the remand prison had windows which let in sufficient fresh air and daylight. The applicant had been able to read and work by natural light. All cells were equipped with the mandatory ventilation system. The applicant had been allowed one hour's exercise per day. He had been provided with drinking water. The cells were not overrun with insects or rodents.

2. Detention in remand prison no. 77/3

(a) The applicant's account

19. During the first week the applicant was kept in cell no. 604 and then he was placed in cell no. 603 which measured approximately 32 square metres and accommodated between 30 and 37 detainees. He stayed in that cell until December 2005. The cell was equipped with bunk beds on which 16 detainees could sleep in summer time and 13 in winter time. The applicant did not have an individual sleeping place. He was provided with very old and dirty bedding. The cells were full of insects. Detainees had to sleep close to each other and very often they contaminated each other with

different diseases. All cells were equipped with only one toilet and washstand. The inmates were allowed one hour's exercise per day. The applicant was dissatisfied with many other aspects of his detention such as a lack of natural light and ventilation, and the poor quality of the water and electricity supply.

(b) The Government's account

20. The Government provided the following information on the cells in which the applicant was detained.

Cell number	Dates of the applicant's stay	Surface, square metres	Number of beds	Number of detainees
403	13 January 2005 (2-3 hours)	11.7	8	3-15
604	13 to 21 January 2005	32.7	32	21-26
603	21 January to 5 December 2005	26	18	15-30

21. The Government submitted that the other aspects of the applicant's detention had fully complied with the requirements of the Convention. The applicant had been provided with an individual sleeping place, bedding and kitchenware. He had been able to read and work by natural light. Fresh air came into the cells through the small windows which could be opened and closed without any difficulties. All cells were equipped with the mandatory ventilation system, toilet and washstands which the applicant could have used at any time and which offered privacy. The applicant had been allowed one hour's exercise per day. He had been provided with drinking water. The cells were not overrun with insects or rodents.

C. The medical assistance provided to the applicant in detention

22. The applicant suffers from a number of chronic diseases such as renal failure, hypertension and podagra. In 2002 he was designated Category 3 disabled, which had to be reassessed on a regular basis by medical examination.

1. Medical assistance in remand prison no. 52/1

23. According to the applicant, upon his arrival at remand prison no. 52/1 on 8 July 2003 he asked the prison medical staff to place him in the medical unit for examination. They refused him on the ground that there

was no available space and offered to place him there at his own expense. The applicant asked the general practitioner of the prison to prescribe him some treatment. The doctor replied that he (the applicant) would not receive any treatment until he agreed to collaborate with the investigating authorities. On 9 July 2003 the applicant's relatives paid the amount required, however he was not admitted to hospital.

24. On 15 August 2003 the applicant's lawyer lodged a request with the investigator in charge of the applicant's criminal case in which he asked for the applicant not to be transferred between remand prisons and different police stations in view of his poor health. In that request he also submitted that the applicant had not been admitted to the prison hospital. On the same day the investigator replied that the investigating authorities had been aware of the applicant's medical condition and that they had not hindered the applicant's access to medical assistance in the remand prison.

25. On 29 September 2003 the applicant was admitted to the prison hospital and remained there until 21 October 2003. Subsequently, he was hospitalised on several other occasions from 23 to 31 December 2004, 12 to 28 December 2005 and 24 January to 2 February 2006.

26. It appears that the applicant did not complain to the remand prison administration that there was a delay in placing him in the hospital. Neither did he contest the fact that he had to pay for his treatment. It also appears that he did not lodge any complaint with competent domestic authorities about the quality of treatment provided to him in the hospital of remand prison no. 52/1.

27. The Government submitted that upon the applicant's arrival to remand prison no. 52/1 he had been examined by medical staff and had been diagnosed with a number of chronic diseases such as renal failure, podagra and hypertension. During his stay in that prison the applicant had undergone out-patient and in-patient treatment. During his in-patient treatment the applicant had undergone regular blood and urine examinations to monitor his state of health. On several occasions the applicant had been examined by qualified specialists, such as a general practitioner, eye specialist, neurologist, dermatologist, rheumatologist, dentist and surgeon. In February 2004 and February 2006 the applicant had also undergone two medical examinations which had confirmed that he was Category 3 disabled.

2. Medical assistance in remand prison no. 77/3

28. An examination to reassess the applicant's disability status was to have taken place in January 2005. The applicant alleged that upon his transfer to remand prison no. 77/3 in January 2005 the head of the prison had informed him that the meeting of the commission could not take place there owing to the absence of qualified specialists in their medical unit. Therefore, the applicant's disability status was not renewed until 1 February 2006.

29. The applicant further alleged that most of the medicines provided to detainees in the remand prison had been out of date. There had been no dentist at the prison. In case of severe toothache the detainees had been transferred to another remand prison to have teeth removed. The food in the prison had been of very poor quality and the applicant had had stomach pains as a consequence.

30. It appears that the applicant did not lodge any complaints about the quality of medical assistance in remand prison no. 77/3 with the competent domestic authorities.

31. The Government submitted that in remand prison no. 77/3 the applicant had undergone out-patient treatment. Since the applicant's state of health had been stable he had not been placed in the prison hospital.

D. Alleged harassment of the applicant in connection with his application to the Court

1. Information provided by the applicant

32. The applicant submitted that on 7 February 2006 a certain Mr Sh., an official of the prison department questioned the applicant about his complaints to the Court and, in particular, about the conditions of his detention in remand prison no. 52/1. The applicant explained which aspects of his detention had been unsatisfactory to him. Mr Sh. asked the applicant to testify in writing that he had no complaints about the staff of the remand prison since the conditions of detention in the prison had been poor owing to a lack of funds. The applicant refused to produce such a statement.

33. On the same date a prison doctor asked the applicant about his health and examined him. Also on the same date the prison authorities measured cell no. 8/59, in which the applicant was detained, disinfected the floor and the mattresses.

34. On 8 February 2006 the head of one of the units of remand prison no. 52/1 interviewed the applicant about his application to the Court. He promised to provide him (the applicant) with bedding and asked him to prepare a written statement indicating that during his stay in the prison he had been provided with bedding. The applicant refused.

35. On 9 February 2006 the medical assistant of the remand prison asked the applicant to provide a written statement saying that he had no complaints about the medical staff of the prison. The applicant replied that he had a number of such complaints, which he had described in his application to the Court.

36. On the same date Mr Sh. again asked the applicant to provide a written statement saying he had no complaints about the staff of remand prison no. 52/1. The applicant refused.

37. In March 2006 the applicant's representative forwarded letters to the Court from Mrs Lisina, the applicant's acquaintance, and Mrs S. Gasanova, the applicant's mother, as well as copies of the complaints lodged with the prosecutor's office by counsel Ya., who had represented the applicant in the criminal proceedings against him.

38. Mrs Lisina, who had been a witness for the applicant during his trial, claimed that on 14 February 2006 at around 7.30 a.m. a certain Mr G. from the regional prosecutor's office had phoned her and invited her to come to the prosecutor's office to discuss the circumstances of the applicant's arrest in June 2003. Mrs Lisina had refused since she had already given testimony in this respect during the applicant's trial and she had nothing to add to her previous statements. She added that, should there be any further questions in this connection, the prosecutor's office should send her an official summons. Mrs Lisina was not contacted again by any state officials.

39. The applicant's mother submitted that on 27 March 2006 at 6 p.m. two officers from the Nizhniy Novgorod Department of the Interior had come to her apartment and questioned her about her son's whereabouts. At around 8 p.m. on the same date she had received a phone call from an unknown man who had told her to dissuade her son from writing complaints abroad or he would have problems in prison. On the next day the applicant's mother complained to the regional prosecutor about the events of 27 March 2006.

40. On 29 March 2006 counsel Ya. complained to the regional prosecutor that on 27 March 2006 an unknown man had called him and asked him to advise the applicant to stop writing complaints abroad and that, if he did not, he would have big problems in prison.

2. Information provided by the Government on the investigation carried out into the applicant's allegation of harassment

41. On 14 April 2006 the prosecution authorities replied to counsel Ya. that the investigation carried out in respect of his allegations had established that the applicant had had no problems in prison.

42. On 18 and 19 April 2006 the regional prosecutor interviewed Mr Sh., the official of the prison department, Mrs N., deputy head of the hospital of remand prison no. 52/1 and Mrs Ch., head of the unit of that hospital and drafted records of those interviews.

Mr Sh. confirmed that on 7 and 9 February 2006 he had met the applicant to find out his reasons for lodging an application with the Court and to verify his complaints. He had not asked the applicant to produce any written statements nor had he put any pressure on him.

Mrs N. and Mrs Ch. submitted that during his stay in the remand prison the applicant had been admitted to the prison hospital on several occasions. Hospital staff had never asked him to produce any written statements retracting his complaints lodged with the Court.

43. On 24 April 2006 the investigator with the prosecutor's office of the Leninskiy District of Nizhniy Novgorod refused to initiate criminal proceedings in respect of the applicant's mother's complaints of threats sent to her address. The decision stated that two officers of the Department of the Interior had interviewed the applicant's mother in connection with the criminal proceedings initiated in 2002 in respect of her other son, Mr R. Gasanov, who had fled the investigation. In particular, they had asked her about her son's whereabouts. The two officers had not threatened the applicant or his mother. On 6 May 2006 the deputy prosecutor of the Leninskiy District of Nizhniy Novgorod quashed the decision of 24 April 2006 on the ground that it had not been properly substantiated and referred the materials for additional verification.

44. On 6, 7 and 8 May 2006 an official from the Department of the Interior interviewed officers who had visited the applicant's mother on 27 March 2006. He also interviewed counsel Ya., Mrs Lisina and the applicant's mother in connection with their complaints of threats directed at the applicant.

45. It appears from the Government's submissions that on 12 May 2006 the regional prosecutor refused to initiate criminal proceedings in respect of the complaints lodged by the applicant's mother, counsel Ya. and Mrs Lisina.

II. RELEVANT DOMESTIC LAW

46. The Law “On the conditions of detention of suspects and accused persons” of 1995 (as amended) provides that detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and be given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell (Article 23). It also provides that inmates are entitled to medical assistance (Article 17). If an inmate's health deteriorates, the medical officers of the remand prison are obliged to examine him promptly and inform him of the results of the examination in writing. If the inmate requests to be examined by staff of other medical institutions, the administration of the detention facility is to organise such an examination. If the administration refuses, the refusal can be appealed against to a prosecutor or court. If an inmate suffers from a serious disease, the administration of the remand prison is obliged immediately to inform the prosecutor, who can carry out an inquiry into the matter (Article 24).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

47. The applicant complained that the conditions of his detention in Nizhniy Novgorod remand prison no. 52/1 (between 8 July 2003 and 12 January 2005 and between 6 December 2005 and 14 February 2006) and in Moscow remand prison no. 77/3 (between 13 January and 5 December 2005) 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

48. The Government argued that the applicant had not exhausted the domestic remedies available to him in respect of his complaints about conditions of detention in the remand prisons. Neither the applicant nor his representative lodged any complaints of poor conditions of detention in the above remand prisons to a competent court or a prosecutor.

49. The applicant replied that at the material time there had been no effective domestic remedies in Russia to deal with complaints concerning conditions of detention.

50. 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).

51. 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

52. The Government considered that the applicant's complaint about the conditions of his detention in remand prison no. 52/1 between 8 July 2003 and 12 January 2005 had been lodged out of time. In particular, the applicant's detention in different facilities should not be regarded as a continuous situation. The first period of the applicant's detention in remand prison no. 52/1 ended on 12 January 2005, whereas the application was lodged on 30 July 2005.

53. The applicant argued that his detention in different remand prisons should be regarded as a continuous violation of his rights, since the conditions of detention in the different facilities had been very similar. His detention ended on 14 February 2006 and therefore, by lodging his complaint on 30 July 2005, he had complied with the six-month requirement.

54. The Court reiterates that Article 35 § 1 of the Convention permits it to deal with a matter only if the application has been lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies. The object of the six-month time-limit is to promote legal certainty by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past events and decisions are not continually open to challenge. It also reiterates that in cases where there is a continuing situation, the six-month period runs from the cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). In the instant case, the applicant complains about conditions of detention in two detention facilities. Therefore, with respect to the Government's objection that the complaint about detention conditions in remand prison no. 52/1 between 8 July 2003 and 12 January 2005 had been submitted too late, the question to be resolved is whether the whole period of the applicant's detention constitutes a "continuing situation", and thus meets the six-month criterion.

55. The Court reiterates that the concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). Complaints which have as their source specific events which occurred on identifiable dates

cannot be construed as referring to a continuing situation (see *Camberrow MM5 AD v. Bulgaria*, (dec.), no. 50357/99, 1 April 2004).

56. In the present case, the applicant complained about the conditions of his detention in two remand prisons, and he did so consistently. Throughout the whole period of his detention he was not released at any time. His complaints do not relate to any specific event but concern the whole range of problems regarding the overcrowding, sanitary conditions and so on which he allegedly suffered during the entire period of his detention. It follows that the applicant's detention in remand prisons nos. 52/1 and 77/3 can be regarded as a continuous situation (see, for instance, *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Seleznev v. Russia*, no. 15591/03, § 36, 26 June 2008; and, more recently, *Goroshchenya v. Russia*, no. 38711/03, § 62, 22 April 2010; and, by contrast, *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 82-84, 29 January 2009). Accordingly, the Court dismisses the Government's objection to this effect.

3. Conclusion

57. Having regard to its conclusions in paragraphs 51 and 56 above, the Court considers that the applicant's complaints about the conditions of detention in remand prisons nos. 52/1 and 77/3 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

58. The Government considered that the mere fact of detention in one cell of a number of inmates exceeding the designed capacity of that cell was not in itself a ground for finding a violation of the applicant's rights under Article 3 of the Convention, since other aspects of his detention had been in compliance with the requirements of the Convention. In particular, during his detention the applicant had been provided with an individual sleeping place and bedding. Moreover, overcrowding in remand prisons was a common problem for many member States of the Council of Europe. In the Russian Federation the overcrowding was due to a high level of criminality and limited capacity of remand prisons. The remand prison administration had not had any intention to humiliate the applicant. The Government considered that the overcrowding of the cells in which the applicant had been detained could not in itself be a ground for drawing a conclusion about inhuman treatment of the applicant. In sum, the conditions of the applicant's detention in remand prisons nos. 52/1 and 77/3 had complied with the requirements of Article 3 of the Convention.

59. The applicant maintained his complaint.

60. The Court notes that the parties disagreed as to certain aspects of the applicant's conditions of detention in remand prisons nos. 52/1 and 77/3. However, there is no need for the Court to establish the truthfulness of each and every allegation, since it finds a violation of Article 3 on the basis of the evidence that have been presented or is undisputed by the Government, for the following reasons.

61. The Government conceded that the applicant had been detained in cells with a number of detainees exceeding the designed capacity of those cells, which is four square metres according to domestic law (see "Relevant domestic law" above). The Court observes that the Government provided detailed information on the cells in which the applicant had been detained, including the dates of the applicant's stay in each cell, surface of the cells and number of beds in each cell. In respect of the remand prison no. 77/3 they indicated a number of inmates per cell detained together with the applicant ranging from a minimum to a maximum number. In respect of the remand prison no. 52/1 the Government cited an average number of inmates per cell detained together with the applicant which implies that at times the actual number of detainees had been higher. As the Government have not produced any official record indicating the number of detainees per cell detained with the applicant, it is impossible for the Court to establish this number. Nevertheless, it is obvious that, in times when the number of inmates detained in the same cell together with the applicant reached the maximum number indicated by the Government in respect of remand prison no. 77/3 and, respectively, the average number cited for the remand prison no. 52/1, detainees were afforded less than three square metres of floor space per person (see paragraphs 17-18 and 20-21 above). Therefore, the Court finds that for the majority of the applicant's detention in remand prisons nos. 52/1 and 77/3 which lasted for approximately two years and seven months, the applicant was afforded less than three square metres of personal space and was confined to his cell day and night, save for one hour of outdoor exercise per day.

62. In this connection the Court reiterates that in many cases in which detained applicants had at their disposal less than three square metres of personal space, it has already found that the lack of personal space afforded to them was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention (see, among many others, *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). The Court is also mindful of the fact that the cells in which the applicant was detained contained some furniture and fittings, such as bunk beds and the lavatory, which must have further reduced the floor area available to him.

63. 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 applicant, the Court finds that the fact that for approximately two years and seven months the applicant 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 arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

64. The Court concludes that by keeping the applicant in overcrowded cells, the domestic authorities subjected him to inhuman and degrading treatment. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Nizhniy Novgorod remand prison no. 52/1 and in Moscow remand prison no. 77/3.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF A LACK OF MEDICAL ASSISTANCE GIVEN TO THE APPLICANT DURING HIS DETENTION

65. The applicant complained that he had not been provided with adequate medical treatment during his detention in remand prisons nos. 52/1 and 77/3. He relied on Article 3 of the Convention which was cited above (see paragraph 47 above).

66. The Government submitted that in both remand prisons the applicant had been provided with adequate medical assistance. They further claimed that the applicant had not complained of a lack of medical assistance or about the quality of medical treatment to the administrations of the remand prisons.

67. The applicant maintained his complaint.

68. The Court reiterates that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. The rule is based on the assumption that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24). At the same time, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one

available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

69. Turning to the circumstances of the present case, the Court observes that the applicant, who was assisted by a lawyer during the criminal proceedings against him, did not lodge any separate complaint of a lack of medical treatment or about the quality of the treatment provided in the remand prisons to their administrations, as suggested by the Government, or to a prosecutor or court.

70. In this connection, the Court reiterates that where the applicant's complaint stems not from a known structural problem, such as general conditions of detention, and overcrowding in particular, but from an alleged specific act or omission by the authorities, the applicant must be required, as a rule, to exhaust domestic remedies in respect of it. The Court has already established that applicants complaining of a lack of medical assistance in Russia should raise their complaints with the competent domestic authorities, including the administration of the detention facility (see, among the most recent authorities, *Popov and Vorobyev v. Russia*, no. 1606/02, §§ 65-67, 23 April 2009). In that case the Court noted that, under the applicable domestic laws, an inmate had the right to request that his or her medical examination be conducted by medical officers of other medical institutions and, if the administration of the detention facility refused to arrange such an examination, to appeal against that decision to a prosecutor or court. The Court discerned no indication that such a remedy would have been ineffective in the circumstances of that case. Accordingly, the Court did not find any grounds for absolving the applicants from the requirement to exhaust domestic remedies in connection with the alleged lack of medical care.

71. The Court sees no reason to reach a different conclusion in the present case. The Court accepts the Government's assertion that the applicant did not complain to domestic authorities about the lack or inadequacy of the medical assistance and therefore did not afford them an opportunity to address the issue and, if appropriate, to remedy the situation. It follows that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED FAILURE TO COMPLY WITH OBLIGATIONS UNDER ARTICLE 34 OF THE CONVENTION

72. The applicant complained that in February 2006 domestic authorities had questioned him in connection with his application to the Court and urged him to testify that his submissions to the Court had been untrue. He further complained that the authorities had put pressure on Mrs Gasanova, his mother, Mrs Lisina, his acquaintance and Mr Ya., his former counsel. The Court will examine this complaint under Article 34 of the Convention which provides as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

73. The Government submitted that state authorities had not put pressure on the applicant or any of his relatives or acquaintances. The remand prison officials had met the applicant, in the framework of their official duties, with a view to eliminating any possible violation of his rights. They had not asked him to retract his complaints to the Court. The state officials had contacted Mrs Lisina in order to get her explanations regarding the applicant's complaints of ill-treatment by police. The two investigators visited the applicant's mother in connection with the criminal proceedings initiated in 2002 against her other son, Mr R. Gasanov, who had been at large and the subject of a police search. As to the phone calls to the applicant's mother and counsel Ya., according to information provided by the phone company, on 27 March 2006 the applicant's mother had had phone conversations only with her relatives and acquaintances, and counsel Ya. had had phone contact only with his clients. Therefore, the prosecutor's office refused to initiate criminal proceedings in this respect. Furthermore, according to the statements given to the prosecutor's office by the applicant he had not been threatened or put under any other pressure since his arrival at the correctional facility.

74. The applicant submitted that the authorities had not provided any documents confirming that an official investigation was opened into the complaints described in his application to the Court. Neither had they provided the Court with records of the interviews held by state officials with the applicant.

B. The Court's assessment

75. The Court reiterates at the outset that a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Ryabov v. Russia*, no. 3896/04, § 56, 31 January 2008, with further references).

76. The Court further reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contact designed to dissuade or discourage them from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 160, *Reports of Judgments and Decisions* 1998-III, and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references).

77. Furthermore, whether or not contact between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In the context of the questioning of applicants about their applications under the Convention by authorities exercising a domestic investigative function, this will depend on whether the procedures adopted have involved a form of illicit and unacceptable pressure which may be regarded as hindering the exercise of the right of individual application (see, for example, *Aydin v. Turkey*, 25 September 1997, §§ 115-17, *Reports* 1997-VI, and *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII). Regard must also be had to the vulnerability of the applicant and his or her susceptibility to influence exerted by the authorities (see *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV). The applicant's position might be particularly vulnerable when he is held in custody with limited contact with his family or the outside world (see *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003). Even an informal "interview" of the applicant, let alone his or her formal questioning in respect of the Strasbourg proceedings, may be regarded as a form of intimidation (see, by contrast, *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 117 et seq,, ECHR 2007-II).

78. The Court also reiterates that the fact that the individual actually managed to pursue his application does not prevent an issue arising under Article 34: should the Government's action make it more difficult for the individual to exercise his right of petition, this amounts to "hindering" his rights under Article 34 (see *Akdivar and Others*, cited above, § 105). The intentions or reasons underlying the acts or omissions in question are of

little relevance when assessing whether Article 34 of the Convention was complied with; what matters is whether the situation created as a result of the authorities' act or omission complies with Article 34 (see *Paladi v. Moldova* [GC], no. 39806/05, § 87, 10 March 2009).

79. In the instant case the parties agreed that state officials had spoken to the applicant on several occasions in February 2006 and questioned him about his application to the Court. However, the parties' submissions differ as to the content of those interviews, in particular, in so far as the applicant alleged that the officers had asked him to testify in writing that he had no complaints about the staff of the remand prison.

80. The Court reiterates that where a Government have claimed that state officials contacted the applicant as part of a domestic investigation into complaints raised by the applicant before the Court, it has found that the Government were under an obligation to provide documents showing that such an investigation had been instituted and that this had been done in accordance with domestic procedure. They were also required to provide documents concerning the conduct and findings of such an investigation (see *Popov v. Russia*, no. 26853/04, § 249, 13 July 2006). In the present case the Government provided documents relating to their investigation of the applicant's complaints of harassment (see paragraph 42 above). As to his complaints lodged before the Court, it appears that a number of investigative measures were taken, in particular in respect of his allegations of poor conditions of detention, of which the report issued by the prison department testifies (see paragraph 18 above). However, the Government have not provided transcripts of meetings between the applicant and the remand prison officials. In the absence of those documents and of any other convincing evidence the Court is unable to verify the content of questions put to the applicant by the prison officials. It is regrettable that the Government have not provided those documents; however, the Court considers that the report issued by the prison department (see paragraph 42 above) testifies that there had been an official investigation into the applicant's complaints raised before this Court. Therefore, the Court is satisfied that the authorities had contacted the applicant in connection with the domestic investigation.

81. Furthermore, the Court considers that not every inquiry by the authorities on an application pending before the Court can be regarded as "intimidation". Article 34 does not prevent the State from taking measures in order to improve the applicant's situation or even from solving the problem which is at the heart of the Strasbourg proceedings. As it follows from the applicant's submissions, following his contact with the prison officials, the applicant was examined by a doctor and prison authorities disinfected the mattresses and the floor of the cell in which he was detained (see paragraph 33 above). Therefore, the Court is ready to accept that in February 2006 the prison officials contacted the applicant with a view to

improving his situation and considers that the actions of the authorities cannot be described as "improper". Furthermore, it cannot be said that at the time of the events the applicant was in a particularly vulnerable position. In the proceedings before the Court the applicant was represented by two lawyers with whom he had been in contact either directly or through his relatives and who had informed the Court of any new developments in his case, including his contact with the prison officials. Moreover, by that time the applicant's conviction had become final and he was about to be transferred to a correctional colony to serve his sentence. The Court also does not loose sight of the fact that the Government have investigated the applicant's complaints of his contact with the prison officials.

82. Taking into account all the relevant circumstances of the case, the Court considers that there is insufficient evidence to conclude that the state officials' interviews with the applicant in February 2006 should be regarded as a form of "pressure", "intimidation" or "harassment" which might have induced the applicant to withdraw or modify his application or hindered him in any other way in the exercise of his right of individual petition.

83. Regarding the alleged pressure put on the applicant's mother, his acquaintance Mrs Lisina and his counsel Ya, the Court observes that after this information had been communicated to the Government, the authorities took steps to investigate it and established that there had been no reason to initiate criminal proceedings in this respect. Having regard to the information in its possession, the Court considers that there is insufficient factual basis to enable it to conclude that any undue pressure or any form of coercion was put on the applicant's mother, his acquaintance Mrs Lisina and his counsel Ya.

84. Having regard to its findings in paragraphs 82 and 83 above the Court considers that in the present case the Government have not breached their obligations under Article 34 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. The Court has examined the remainder of the complaints raised by the applicant. However, in the light of the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearances 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

86. 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

87. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage sustained by him as a result of alleged ill-treatment by police. He further claimed EUR 45,000 in respect of non-pecuniary damage sustained as a result of poor conditions of detention and EUR 10,000 in respect of non-pecuniary damage sustained by his family. In respect of pecuniary damage, the applicant claimed EUR 500 for a disability allowance which had not been paid to him in 2005.

88. The Government submitted that the applicant's claims were excessive and unsubstantiated.

89. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, having regard to the nature of the violation found and making its assessment on an equitable basis, it awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

90. The applicant requested EUR 5,000 for legal costs incurred before the Russian courts in connection with the criminal proceedings against him. He further submitted that his representatives in the proceedings before the Court had provided him with free legal advice since he had no means to pay them. He requested that the Court award them any amount which it considered reasonable.

91. The Government considered that the award for costs and expenses should be determined in accordance with the Court's practice.

92. 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. Furthermore, the costs of the domestic proceedings can be awarded if they are incurred by the applicants in order to try to prevent the violation found by the Court or to obtain redress therefore (see, among many authorities, *Peck v. the United Kingdom*, no. 44647/98, § 127, ECHR 2003-I).

93. In the present case, regard being had to the nature of the violation found, the Court rejects the applicant's claim relating to legal costs before Russian courts. The Court further notes that it has granted legal aid to the applicant, which appears to be sufficient to cover expenses incurred in the proceedings before it.

C. Default interest

94. 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 complaints concerning the conditions of the applicant's detention in Nizhniy Novgorod remand prison IZ-52/1 and in Moscow remand prison IZ-77/3 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of conditions of the applicant's detention in Nizhniy Novgorod remand prison IZ-52/1 and in Moscow remand prison IZ-77/3;

3. *Holds* that the Government have not failed to comply with its obligations under Article 34 of the Convention;

4. *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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, 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;

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

Done in English, and notified in writing on 29 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President