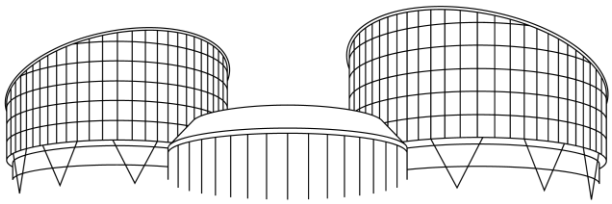

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VOLCHKOV v. RUSSIA

(Application no. 45196/04)

JUDGMENT

STRASBOURG

14 October 2010

FINAL

14/01/2011

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

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

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 23 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 45196/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Mikhail Mikhaylovich Volchkov ("the applicant"), on 7 October 2004.

2. The applicant was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg and Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 20 May 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

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

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in the town of Roslavl, Smolensk Region.

A. Conditions of detention between 1996 and 1998

6. The applicant was arrested on 31 January 1996 and detained in Smolensk remand centre no. 67/1. Following a medical check on 24 October 1997 the applicant was diagnosed with pulmonary tuberculosis. In April 1998 he was transferred to a prison.

7. In 2004 the applicant sued the remand centre for damage to health and sought compensation in respect of non-pecuniary damage caused by the allegedly appalling conditions of detention between January 1996 and April 1998. By a judgment of 8 June 2004, the Leninskiy District Court of Smolensk rejected the applicant's claims. The court found that the applicant had not adduced any evidence that the administration of the remand centre had wilfully caused him any damage. On 22 February 2005 the Smolensk Regional Court upheld the judgment.

8. Thereafter, the applicant unsuccessfully sought access to certain documents relating to the conditions of his detention in the remand centre in 1996. He asked for criminal proceedings to be brought against the centre's administration. On 5 September 2005 a prosecutor refused his request. On 10 April 2006 the District Court upheld that refusal.

B. Conditions of detention in Smolensk remand centre no. 67/1 between December 2004 and June 2006

1. The applicant's account

9. From 26 December 2004 to 12 January 2005, from 22 March to an unspecified date in late 2005, and in 2006 the applicant was detained in Smolensk remand centre no. 67/1.

10. In December 2004 he was placed in cell no. 173, measuring twelve square metres and designed for thirteen detainees. It actually housed no fewer than seventeen detainees. In March 2005 the applicant was placed in cell no. 203, measuring twelve square metres and designed for twelve detainees. It actually housed no fewer than seventeen inmates. Thereafter he was detained in cell no. 205.

11. In all cells the beds had dirty mattresses and no other bedding was provided. No tableware was provided. Food had to be kept on the floor next to the lavatory pan. The pan was not separated from the living area; the area around it was damp; the walls and ceiling were black with dust and mould. There were recurring problems with the water supply. Showers were allowed less than once a week.

12. The applicant submitted to the Court written statements from his cellmates from early 2005, who confirmed his description of the conditions of detention in the remand centre. He also submitted four photographs,

apparently showing the cell(s) in which he had been detained in 2004 and/or 2005.

2. The Government's account

13. The applicant was detained in the remand centre from 25 December 2004 to 13 January 2005, from 21 March to 10 April 2005, and from 10 March to 15 June 2006. In the intervening periods of time the applicant was detained in colonies.

14. The applicant was kept in the remand centre in cells nos. 143, 173 and 203. During the first period of time the applicant was afforded around one square metre of cell space; the cell population exceeded the number of beds. In March and April 2005, as well as in March and June 2006, the applicant had been afforded less than 1.5 square metres of the cell space and did not have his own bed. The remaining time there were between three and seven square metres per detainee in the cell.

3. Complaints to national authorities

15. On 12 and 22 January 2005 the applicant complained to the Regional Prosecutor's Office and the Regional Supervising Prosecutor's Office about the allegedly appalling conditions of detention. On 25 March 2005 he raised a similar complaint before the Leninskiy District Court of Smolensk.

16. On 30 March 2005 the Regional Ombudsman refused to inspect the remand centre when the applicant requested it.

17. On 5 April 2005 the District Court refused to process the applicant's request for institution of criminal proceedings against the administration of the remand centre.

18. By letters of 11 April 2005 the Regional Prosecutor's Office notified the applicant that his allegations concerning the conditions of detention "had been confirmed in part". That letter did not specify the nature of those allegations.

19. By a letter of 29 April 2005 the Regional Prosecutor's Office acknowledged the temporary unavailability of water and showers in the remand centre. The Prosecutor's Office also stated as follows:

> "... the sanitary conditions in cells nos. 173 and 203 are satisfactory but repair works are needed ...
>
> In reply to your complaints ... about lack of an individual bed, bedding, tableware and insufficient cell space per inmate ... the Regional Office of the Department of Execution of Sentences were instructed to remedy the situation."

20. By a letter of 25 March 2005 the Smolensk Region Supervising Prosecutor's Office informed the applicant that the replies to his complaints had been forwarded to the administration of the remand centre and that he was not entitled to a copy of those replies.

21. The applicant brought court proceedings against the administration of the remand centre. On 1 July 2005 the District Court refused to process his complaint under the Code of Criminal Procedure. On 20 September 2005 the Regional Court upheld that decision.

22. In reply to the applicant's renewed complaint, on 24 April 2006 the Regional Prosecutor's Office acknowledged that the cell space afforded per detainee in the remand centre had been in breach of national law.

23. The applicant also complained that the prison authorities had opened his correspondence with a human-rights non-governmental organisation. On 28 April 2006 the prosecutor decided that since there had been no indication that the NGO had been acting as legal counsel for the applicant, his correspondence with it was not privileged and thus was subject to monitoring.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained that the allegedly appalling conditions of his detention between 1996 and 2006 had been in breach of Article 3 of the Convention. Article 3 reads as follows:

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

A. Admissibility

25. The Court observes that the applicant's grievances concern four non-consecutive periods of detention in Smolensk remand centre no. 67/1:

- from 31 January (or 2 February) 1996 to April 1998, in respect of which the applicant alleged, *inter alia*, that during his detention he had contracted tuberculosis, which was diagnosed in 1997;
- from 25 December 2004 to 13 January 2005;
- from 21 March to 10 April 2005, and
- from 10 March to 15 June 2006.

26. Despite the court proceedings brought by the applicant in 2004, the Court considers that the applicant's grievances concerning the first period of the detention from 1996 to April 1998 are incompatible *ratione temporis*, since the Convention entered into force in respect of Russia on 5 May 1998 (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III, and *Brovchenko v. Russia* (dec.), no. 1603/02, 1 June 2006).

27. As to the second period, it has not been alleged, and the Court does not find, that there were any special circumstances to qualify the detention between December 2004 and June 2006 as a continuing situation (see *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; and *Novinskiy v. Russia* (dec.), no. 11982/02, § 96, 6 December 2007). Moreover, the Court notes that while the application was first introduced on 7 October 2004, the grievance concerning the conditions of detention from 25 December 2004 to 13 January 2005 was raised in substance only on 1 September 2005. Since the period complained of had ended on 13 January 2005 and, assuming in the applicant's favour, he had no remedies to exhaust, the Court considers that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

28. As to the third period of detention from 21 March to 10 April 2005, and the fourth period of detention from 10 March to 15 June 2006, the Court observes that the relevant grievances were introduced in substance in September 2005 and April 2006 respectively.

29. The Court considers that the complaint concerning the conditions of detention during these periods 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

30. As follows from the Government's submissions, for unspecified periods in March and April 2005 and in March and June 2006 the applicant was afforded less than 1.5 square metre of cell space. The Government acknowledged the general overcrowding problem in the remand centre at the relevant time. They argued, however, that the detainees, including the applicant, had had an hour's daily exercise in the courtyard of the detention facility and had been taken out of the cells for proceedings or visits from their next of kin or lawyers. Thus, the cell population was acceptable during the daytime.

31. The applicant maintained his allegations.

32. The Court reiterates that in a number of cases the lack of personal space afforded to detainees in Russian remand centres was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention. In those cases applicants were usually afforded less than three square metres of personal space (see, among others, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

33. The foregoing considerations are sufficient for the Court to conclude that the conditions of the applicant's detention between 21 March and 10 April 2005, as well as between 10 March and 15 June 2006, amounted to inhuman and degrading treatment. There has accordingly been a violation of Article 3 of the Convention.

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

34. The applicant further complained under Articles 3 and 13 of the Convention that he did not have at his disposal an effective remedy for his complaint, described above, about the conditions of his detention in the remand centre; that there had been no effective investigations into his complaint. The Court will examine the above grievances under Article 13 of the Convention, which 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."

35. The Government submitted that the applicant had used various effective remedies, such as complaints to a prosecutor or civil proceedings regarding the conditions of detention in 1996-1998. He could also complain to the administration of the detention facility and the Federal Prison Service. The prosecutor's office had carried out an inspection and had imposed disciplinary penalties on the staff responsible for the violations. The procedure for dealing with complaints, such as in the present case, in relation to criminal offences is detailed in the Code of Criminal Procedure.

36. The applicant maintained his complaint.

A. Admissibility

37. 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* 1997-VIII).

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

also follows from the Court's above findings as regards Article 3 of the Convention.

39. 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

40. The Court reiterates 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 on the part 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, and *Cobzaru v. Romania*, no. 48254/99, § 82, 26 July 2007). 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.

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

42. The Court further notes that the applicant argued that the inquiries into the complaint of appalling conditions of detention had been ineffective. Having examined the available material, the Court accepts his submission that a complaint to a prosecutor was not capable of constituting adequate redress as regards the conditions of detention, in particular due to the overcrowding problem (see *Benediktov*, cited above, §§ 29 and 30). In addition, it is not apparent that the grievance arising from the conditions of detention was capable of constituting a criminal offence, which could be attributable to any public official and would thus require, in the context of Article 3 of the Convention, a criminal inquiry or even a full-fledged investigation (see, for comparison, *Canali v. France* (dec.), no. 26744/05, 13 September 2007). Moreover, in the absence of any pending criminal proceedings the applicant did not have victim status, nor could he raise any civil claims. The Court reiterates in that connection that the Convention does not confer any right to "private revenge" or to an *actio popularis.* Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I).

43. The Court has previously found a violation of Article 13 on account of lack of an effective and accessible remedy under domestic law to complain about the general conditions of detention (see *Benediktov*, cited above, §§ 29 and 30). The Court finds no reason to reach a different conclusion in the present case.

44. In view of the foregoing, there has been a violation of Article 13 of the Convention in conjunction with its Article 3.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. The applicant also complained under Articles 3, 6 and 13 of the Convention that his appeal against the judgment of 8 June 2004 had not been examined. In his letter of 30 October 2006 the applicant complained under Article 8 of the Convention about monitoring of his correspondence with a non-governmental organisation. Lastly, he complained under Article 34 of the Convention about his transfer from one prison to another.

46. The Court has examined these grievances as submitted by the applicant. Having regard to all the materials in its possession, the Court finds that they 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 5,275 euros (EUR) in respect of non-pecuniary damage.

49. The Government contested this claim.

50. The Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

51. The applicant also claimed EUR 1,680 for costs and expenses incurred before the Court.

52. The Government contested the claim as unsubstantiated

53. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, in the absence of any supporting documents and in view of the above criteria, the Court rejects the claim.

C. Default interest

54. 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 conditions of detention from 21 March to 10 April 2005 and from 10 March to 15 June 2006, as well as concerning lack of effective remedies, 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 both periods of detention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two 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 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 14 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President