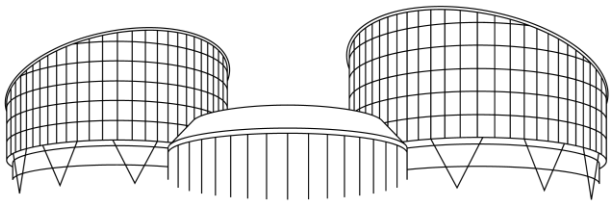

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANANYEV and OTHERS v. RUSSIA

(Applications nos. 42525/07 and 60800/08)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

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

In the case of Ananyev and Others v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in two applications 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 three Russian nationals, Mr Sergey Mikhaylovich Ananyev (no. 42525/07) and Mr Gennadiy Gennadyevich Bashirov and Ms Gulnara Sayfullayevna Bashirova (no. 60800/08) ("the applicants"), on 14 September 2007 and 10 November 2008, respectively.

2. The applicant Mr Ananyev was represented by Ms O. Preobrazhenskaya, a legal specialist resident in Strasbourg. The applicants Mr Bashirov and Ms Bashirova were represented by Mr A. Anokhin, a lawyer practising in Astrakhan.

3. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

4. The applicants alleged, in particular, that they had been detained in inhuman and degrading conditions and that they had not had effective domestic remedies at their disposal.

5. On 14 May 2009 the Court decided to communicate the applicants' complaints to the Government, raising specific additional questions about the structural nature of the underlying problems. The Court also decided to grant the cases priority under Rule 41 and to inform the parties that it was considering the suitability of applying a pilot-judgment procedure (see *Broniowski v. Poland* [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC] no. 35014/97, ECHR 2006-..., §§ 231-239 and the operative part).

6. The applicants and the Government each filed observations on the admissibility and merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. All three applicants were remanded in custody pending trial and were held in various Russian remand prisons. Their individual circumstances are detailed below.

A. The case of Mr Ananyev

8. On 27 December 2006 the Presidium of the Smolensk Regional Court quashed the appellate judgment in Mr Ananyev's criminal case and remitted the matter for a new hearing. On 20 January 2007 he was taken from the correctional colony to remand prison IZ-67/1 of Smolensk, where he stayed until 23 March 2007.

9. Mr Ananyev was held in cell 170 until 21 March 2007 and then in cell 153. Cell 170 measured 15 square metres and cell 153 – 10 square metres. They were equipped with 13 and 4 sleeping places, respectively.

10. Cell 170 accommodated 12 detainees for two weeks in January and February 2007; in the remaining period of Mr Ananyev's detention the cell population varied from 15 to 21 persons. Cell 153 housed Mr Ananyev and one other inmate.

11. The Government submitted certificates issued on 25 June 2009 by the governor of the remand prison that listed floor surface areas and cell population, and twelve pages from the prison population register of prison IZ-67/1 relating to various dates between 20 January and 23 March 2007, as well as photographs of cells 153 and 170.

12. Mr Ananyev produced written statements from his former co-detainees, Mr S. and Mr B., both dated 27 June 2009, from which it appears that between January and April 2007 cell 170 had accommodated up to 24 persons.

13. On 19 March 2007 Mr Ananyev sent complaints about unbearable conditions of his detention to the Prosecutor General, the Smolensk town prosecutor and to the Director of the Smolensk penitentiary facilities. On 4 May 2007 the Smolensk town prosecutor informed Mr Ananyev that he had checked his complaints and that the acting governor of prison IZ-67/1 had been instructed to remedy the violations of the Suspects and Defendants Detention Act.

B. The case of Mr Bashirov and Ms Bashirova

14. Mr and Ms Bashirov were taken into custody on 29 April 2005. Ms Bashirova was released on bail on 17 May 2005 and Mr Bashirov was

transferred to remand prison IZ-30/1 of Astrakhan. On 11 March 2008 they were both found guilty of drug-related offences and sentenced to eight and a half years' and six years' imprisonment, respectively. Ms Bashirova was re-detained on the same day. On 15 May 2008 the Astrakhan Regional Court upheld the conviction at last instance.

15. In prison IZ-30/1, Mr Bashirov stayed in cell 83 (from 3 May to 1 July 2005 and from 27 December 2007 to 22 April 2008), cell 69 (from 1 July 2005 to 11 January 2006 and from 9 August to 30 October 2006), cell 35 (from 11 January to 9 August 2006), cell 79 (from 30 October to 18 December 2007), and cell 15 (from 22 April to 21 May 2008). From 18 to 27 December 2007 Mr Bashirov underwent treatment in a prison hospital.

16. In the same prison Ms Bashirova stayed in cell 52 (from 3 to 17 May 2005), cell 40 (from 11 to 15 March 2008) and cell 45 (from 15 March to 7 June 2008).

17. Mr Bashirov's cells presented the following characteristics:

- cell 15: 23 square metres and 10 sleeping places;
- cell 35: 25 square metres and 10 sleeping places;
- cells 69 and 83: 24 square metres and 12 sleeping places;
- cell 79: 25 square metres and 12 sleeping places.

18. Ms Bashirova's cells had the following measurements:

- cell 52: 24 square metres and 10 sleeping places;
- cell 50: 22 square metres and 10 sleeping places;
- cell 45: 19 square metres and 6 sleeping places.

19. The parties disagreed on the number of detainees. The Government submitted that the number of detainees "had not exceeded the number of sleeping places". They relied on a certificate issued by the prison governor on 29 June 2009. The applicants gave the following cell population figures: cell 15 – 15 persons, cell 69 – 22 persons, cells 35, 50 and 83 – 14 persons, cell 79 – 20 persons, cell 52 – 30 persons on average but up to 40 persons on certain days, cell 45 – 9 persons.

20. The applicants submitted extracts from annual reports by the Ombudsman of the Astrakhan Region. The 2005 Report criticised the conditions of detention in the Astrakhan prisons:

> "According to the data of the Federal Penitentiary Service in the Astrakhan Region, the situation in the regional remand prisons deteriorated in 2005 and elementary rights of detainees were not respected. The number of suspects and defendants significantly increased in both remand prisons; at the end of the year their number was twice the norm. Thus, prison no. [IZ-30/]1 in the city of Astrakhan has the maximum capacity of 642 detainees; during the year it accommodated on average 1,031 persons (in 2004 – 750 persons) and at the end of the year 1,300 persons. The situation in prison no. [IZ-30/]2 in the town of Narimanov is similar... For that reason, cells in the remand prisons have constantly been overcrowded; whereas the sanitary norm is four square metres per person, the actual space was approximately two square metres. Detainees suffered from a shortage of sleeping places and were forced to take turns to sleep."

21. The 2006 Report showed that the situation had hardly improved:

"Unfortunately, it must be stated that there have been no noticeable changes for the better in 2006. Thus, a warning sent on 25 September 2006 by the Astrakhan Regional prosecutor's office to the director of the Federal Penitentiary Service in the Astrakhan Region indicated that the conditions of detention in prisons no. 1 (Astrakhan) and no. 2 (Narimanov) 'did not meet the hygienic, sanitary or fire-safety requirements'... The situation has further been aggravated by an extreme decrepitude of the buildings (especially in the case of prison no. 1 built in 1822) and a significant exceeding of the design capacity. The three-year trend of overcrowding is a reflection of a worsening situation and the figures clearly show this:

Remand prison	Maximum capacity (persons)	Actual prison population at the end of the year		
		2004	2005	2006
IZ-30/1	642	750	1,300	1,518
IZ-30/2	267	321	588	700

22. The 2007 Report acknowledged that the problem of overcrowding had remained "grave" and that prison IZ-30/1 actually accommodated 879 inmates.

23. The 2008 Report criticised the officially accepted limits:

"The officially recognised maximum capacity of remand prisons which is considered acceptable raises questions. It is considered that the capacity of prison IZ-30/1 is 651 persons. Yet the global living surface of all cells is 2,232.4 square metres. A simple division of this number by 4 sq. m (the legal sanitary norm of cell space per detainee) gives us the maximum prison capacity of 558 persons. However, on 31 January 2008 the actual number of detainees in prison no. 1 was 689."

24. The applicant Mr Bashirov also produced a copy of a letter which the Astrakhan Regional prosecutor's office had sent to his counsel on 28 February 2008 in response to a complaint about the conditions of detention raised by another detainee. The letter stated as follows:

"On 29 February [*sic*] 2008 a deputy district prosecutor and deputy heads of prison no. 1 in charge of logistics, the detention regime and the medical unit carried out a comprehensive technical examination of cell 79. At the time of the examination, cell 79 had twelve sleeping places but housed fifteen persons. The above-mentioned examination of cell 79 also established that similar violations had occurred in a majority of cells of the prison. In connection with the overcrowding, dilapidated state of the building and other violations of the Pre-trial Detention Act, the district prosecutor's office sent two warnings to the director of the Federal Penitentiary Service in the Astrakhan Region already in the first quarter of 2008..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

25. Personal dignity is protected by the State and may not be undermined for any reason (Article 21 § 1).

No one may be subject to torture, violence or any other cruel or degrading treatment or punishment (Article 21 § 2).

B. Pre-trial Detention Act (Federal Law no. 103-FZ of 15 July 1995)

26. Detention on remand must be based on the principles of lawfulness, fairness, presumption of innocence, equality before the law, humanism, respect for human dignity and must be carried out in accordance with the Russian Constitution, international legal principles and norms and international treaties, to which Russia is a party, and must not involve torture or other actions that purport to cause physical or moral suffering to the suspect or defendant (section 4).

27. Detention on remand may be effected in (a) remand prisons of the penitentiary system (следственные изоляторы), (b) temporary detention wards of the police (изоляторы временного содержания), and (c) temporary detention wards of the border service (section 7).

28. Detainees have, in particular, the right:

- to ask the prison governor for an appointment and to ask the same of the prison supervisors during their visit to the prison (section 17 § 3);
- to send suggestions, applications and complaints to authorities, including courts, concerning the lawfulness of their detention and violations of their lawful rights and interests (section 17 § 7);
- to receive free food, daily necessities and medical assistance, including during the time when they take part in investigative acts or court hearings (section 17 § 9);
- to have an eight-hour uninterrupted sleep at night time and a one-hour period of daily exercise (section 17 §§ 10 and 11).

29. Detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. All inmates should have at their disposal in their cell no less than four square metres of personal space (section 23).

30. The Prosecutor General and subordinate prosecutors must supervise the application of legal norms in remand prisons. Prison authorities must comply with the instructions of the supervising prosecutor in so far as they concern the detention rules as established in this Act (section 51).

C. Ombudsman Act (Federal Law no. 1-FKZ of 26 February 1997)

31. The Ombudsman may receive complaints concerning the actions by federal and municipal State bodies or employees, provided that the complainant has previously lodged a judicial or administrative appeal in this connection (section 16 § 1).

32. Having examined the complaint, the Ombudsman may apply to a court or prosecutor for the protection of the rights and freedoms which have been breached by an unlawful action or inaction of a State official or petition the competent authorities for institution of disciplinary, administrative or criminal proceedings against the State official who has committed such a breach (section 29 § 1).

33. The Ombudsman prepares a summary of individual complaints and he or she may submit to State and municipal authorities recommendations of a general nature on the ways to improve the protection of individual rights and freedoms or suggest legislative amendments to the lawmakers (section 31).

D. Prosecutors Act (Federal Law no. 2202-1 of 17 January 1992)

34. The list of prosecutors' official powers includes the rights to enter premises, to receive and study materials and documents, to summon officials and private individuals for questioning, to examine and review complaints and petitions containing information on alleged violations of individual rights and freedoms, to explain the avenues of protection for those rights and freedoms, to review compliance with legal norms, to institute administrative proceedings against officials, to issue warnings about unacceptability of violations and to issue reports pertaining to the remedying of the violations uncovered (sections 22 and 27).

35. A prosecutor's report pertaining to the remedying of the violations uncovered is served on an official or a body, which has to examine the report without delay. Within a month specific measures aimed at the elimination of the violation should be taken. The prosecutor should be informed about the measures taken (section 24).

36. Chapter 4 governs the prosecutors' competence to review compliance with legal norms by the prison authorities. They are competent to verify that the prisoners' placement in custody is lawful and that their rights and obligations are respected, as well as to oversee the conditions of their detention (section 32). To that end, prosecutors may visit the detention facilities at any time, to talk to detainees and to study their personal files, to require the prison administration to ensure respect for the rights of detainees, to obtain statements from officials and to institute administrative proceedings (section 33). Decisions and requests by the prosecutors must be unconditionally enforced by the prison authorities (section 34).

E. Code of Civil Procedure: Complaints about unlawful decisions

37. Chapter 25 sets out the procedure for a judicial examination of complaints about decisions, acts or omissions of the State and municipal authorities and officials. Pursuant to Ruling no. 2 of 10 February 2009 by the Plenary Supreme Court of the Russian Federation, complaints by suspects, defendants and convicts about inappropriate conditions of detention must be examined in accordance with the provisions of Chapter 25 (point 7).

38. A citizen may lodge a complaint about an act or decision by any State authority which he believes has breached his rights or freedoms, either with a court of general jurisdiction or by sending it to the directly higher official or authority (Article 254). The complaint may concern any decision, act or omission which has violated rights or freedoms, has impeded the exercise of rights or freedoms, or has imposed a duty or liability on the citizen (Article 255).

39. The complaint must be lodged within three months of the date when the citizen learnt of the breach of his rights. The time-period may be extended for valid reasons (Article 256). The complaint must be examined within ten days; if necessary, in the absence of the respondent authority or official (Article 257).

40. The burden of proof as to the lawfulness of the contested decision, act or omission lies with the authority or official concerned. If necessary, the court may obtain evidence of its own initiative (point 20 of Ruling no. 2).

41. If the court finds the complaint justified, it issues a decision requiring the authority or official to fully remedy the breach of the citizen's rights (Article 258 § 1). The court determines the time-limit for remedying the violation with regard to the nature of the complaint and the efforts that need to be deployed to remedy the violation in full (point 28 of Ruling no. 2).

42. The decision is dispatched to the head of the authority concerned, to the official concerned or to their superiors, within three days of its entry into force. The court and the complainant must be notified of the enforcement of the decision no later than one month after its receipt (Article 258 §§ 2 and 3).

F. Civil Code

43. Civil rights may be protected in many forms, including in particular, recognition of the right, re-establishment of the *status quo ante* and the discontinuance of violations of the right or the prevention of such violations, and compensation in respect of non-pecuniary damage (Article 12).

44. An individual's life and health, personal dignity and integrity, honour and goodwill are considered to be the person's "non-property rights" or "intangible assets", which are protected under the Civil Code and other laws in the cases and to the extent that the forms of the protection of civil rights listed in Article 12 correspond to the essence of the violated intangible right and to the consequences of such violation (Article 150).

45. If certain actions impairing an individual's personal non-property rights or encroaching on other intangible assets have caused him or her non-pecuniary damage (physical or mental suffering), the court may impose on the perpetrator an obligation to pay pecuniary compensation for that damage. The amount of compensation is determined by reference to the gravity of the perpetrator's fault and other significant circumstances. The court also takes into account the extent of physical or mental suffering in relation to the victim's individual characteristics (Article 151).

46. Damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. The tortfeasor is not liable for damage if he proves that the damage has been caused through no fault of his own (Article 1064 §§ 1, 2).

47. State and municipal bodies and officials shall be liable for damage caused to a citizen by their unlawful actions or omissions (Article 1069). Irrespective of any fault by State officials, the State or regional treasury are liable for damage sustained by a citizen on account of (i) unlawful criminal conviction or prosecution; (ii) unlawful application of a preventive measure, and (iii) unlawful administrative punishment (Article 1070).

48. Compensation for non-pecuniary damage is effected in accordance with Article 151 of the Civil Code and is unrelated to any award in respect of pecuniary damage (Article 1099). Irrespective of the tortfeasor's fault, non-pecuniary damage shall be compensated for if the damage was caused (i) by a hazardous device; (ii) in the event of unlawful conviction or prosecution or unlawful application of a preventive measure or unlawful administrative punishment, and (iii) through dissemination of information which was damaging to honour, dignity or reputation (Article 1100).

G. Code of Criminal Procedure on placement in custody

49. "Preventive measures" (меры пресечения) include an undertaking not to leave a town or region, personal surety, bail, house arrest and detention on remand (Article 98).

50. Placement in custody may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108). A court may order detention on remand if there are sufficient reasons to believe that the suspect might abscond, re-offend or threaten a witness, destroy evidence or otherwise obstruct the preliminary investigation or trial of the criminal case

(Article 97). The circumstances to be taken into account when imposing a preventive measure include, apart from those specified in Article 97, the seriousness of the charges and the suspect's personality, age, health, family status, occupation and other circumstances (Article 98).

51. After arrest, the suspect is placed in custody "pending investigation". The maximum permitted period of detention "pending investigation" is two months but it can be extended for up to eighteen months in "exceptional circumstances" (Article 109 §§ 1-3).

52. On 29 October 2009 the Plenary Supreme Court of the Russian Federation adopted Ruling no. 22 governing the application of preventive measures, including placement of custody, bail and house arrest. It provided in particular that detention on remand may be ordered only if it is impossible to impose a more lenient preventive measure (point 2). When examining an application for a detention order, the courts were required to assess the existence of a reasonable suspicion that the person concerned had been involved in the commission of the offence (point 19). When issuing further extension orders, courts were to specify concrete facts justifying the continued detention and the supporting evidence (point 21). In addition, the courts had to explain why it was not possible to apply a more lenient measure (point 26).

H. Statistics on placement in custody and trial outcomes

53. The information submitted by the Government and the statistical data available on the website of the Judicial Department of the Supreme Court (www.cdep.ru) show the number of cases in which first-instance courts granted prosecutors' applications for an initial detention order or for its extension, and the total number of individuals convicted or acquitted at first instance (excluding the cases that were discontinued and did not end in either a conviction or an acquittal) during the reference year:

	2007	2008	2009	2010[1]
Applications for a detention order *granted* (% total)	223,412 (90.7%)	207,456 (90.1%)	187,793 (90.1%)	148,156 (90.0%)
Applications for a detention order *rejected* (% total)	22,936 (9.3%)	22,813 (9.9%)	20,623 (9.9%)	16,398 (10.0%)
Applications for an extension order *granted* (% total)	194,307 (98.5%)	201,499 (98.1%)	208,760 (98.1%)	180,686 (97.9%)
Applications for an extension order *rejected* (% total)	3,013 (1.5%)	3,921 (1.9%)	4,059 (1.9%)	3,857 (2.1%)
Cases in which defendant(s) was in custody on opening date of trial	206,281	191,696	177,047	n/a
Total persons convicted	931,057	941,936	906,664	861,694
Total persons acquitted	10,216	10,027	9,179	9,138

I. Federal Programme for Development of the Penitentiary

54. By Resolution no. 540 of 5 September 2006, the Russian Government approved a federal expenditure programme under the title "Development of the Criminal Justice and Penitentiary System in 2007-2016". As amended by subsequent Government Resolutions, the programme description reads as follows:

1. Description of the problem

"The contemporary criminal justice and penitentiary system is a complex of institutions and organs that enforces various types of penalties. It comprises 1,060 institutions, including 844 correctional facilities, 7 prisons and 209 remand prisons. At present more than 812,000 individuals are being held in those institutions.

The number of suspects and defendants who were remanded in custody and are held in remand prisons (hereinafter – "untried prisoners") and the number of convicted defendants in correctional facilities (hereinafter – "convicted prisoners") do not depend on the functioning of the Federal Penitentiary Service and are chiefly determined by the level of crime in the country and the judicial practice.

...

Pursuant to the requirements of the Russian Federation's laws, untried and convicted prisoners must be allocated to cells, taking into account their character and psychological compatibility, as well as their gender and age... The sanitary norm is four square metres of floor space per untried prisoner.

As a consequence of construction and renovation work carried out in remand prisons in the framework of the federal expenditure programme 'Reform of the penitentiary system in 2002-2006', the number of places in remand prisons in which the conditions of detention are compatible with the requirements of Russian laws will reach 94.4%

1. The 2010 data was extracted from the operative report for the 12 months of 2010.

by the end of 2006. The federal expenditure programme 'Development of the Criminal Justice and Penitentiary System in 2007-2016' (hereinafter – "the Programme") will be a logical continuation of this work.

At present only the facilities in forty Russian regions are actually capable of providing accommodation that is compatible with the sanitary norm of floor space per inmate. It follows that the remand prison population exceeds the established prison capacity, and in certain regions it does so to a significant extent. In twenty Russian regions the sanitary norm of cell surface per detainee is less than four square metres, in eighteen regions (Altay, Tyva, Sakha (Yakutiya), Chuvash and Udmurt Republics, Krasnodar, Perm, Khabarovsk, Astrakhan, Kaluga, Kostroma, Kurgan, Moscow, Novosibirsk, Sverdlovsk, Smolensk, Tomsk and Tula Regions) it is less than three square metres, which is a violation of the rights of untried prisoners.

Three Russian regions (Khakassiya Republic, Yevreyskiy and Yamalo-Nenetskiy Regions) have no remand prisons, which leads to various excesses in enforcing custodial measures and carrying out investigative acts.

A majority of remand prisons are located in old buildings. In recent years, constructions have collapsed in remand prisons of the Astrakhan, Magadan, Moscow, Tambov, Chita and other regions owing to their unsatisfactory condition. It is now being debated whether twelve remand prisons (Dagestan, Karelia and Chuvash Republics, Astrakhan, Belgorod, Vologda, Voronezh, Kamchatka, Kostroma, Sverdlovsk, Tambov and Tula Regions) should be put out of operation...

Since Russia acceded to the Council of Europe in 1996 and ratified the European Convention on Human Rights in 1998, it has become an urgent objective to bring the penitentiary system into compliance with the Council of Europe's legal standards, which have significantly evolved in recent years with respect to prison management and treatment of detainees... Taking into account the fact that the minimum sanitary norm per detainee is set by the [Committee for the Prevention of Torture, "CPT"] at seven square metres, the European Court refers in its judgments to this approximate standard for prisoners' accommodation. The Council of Europe's commentary on the European Prison Rules gives reasons to believe that the [CPT] will set the sanitary norm per inmate in the range of nine or ten square metres.

At present the sanitary norm per inmate meets the international standard only in three remand prisons (Dagestan and Kalmykiya Republics, Kamchatka Region); however, two of them (Dagestan and Kamchatka) are under threat of collapse and will have to be closed...

2. Main objective and goals, time-limits for implementation and the most important targets of the Programme

The Programme's objective is to bring the conditions of detention of untried and convicted prisoners in line with Russian laws with a view to attaining international standards for the detention of defendants in remand prisons.

The Programme's goals are:

- reconstruction and construction of remand prisons in which the conditions of detention of untried prisoners are compatible with Russian laws...

- construction of twenty-six remand prisons, in which the conditions of detention are compatible with international standards.

The most important targets of the Programme are [Annex 1]:

Target name	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Percentage of remand prisons compatible with Russian standards	53.7	53.9	54.2	57.5	60	61.1	72.8	84.9	95.6	100
Percentage of remand prisons compatible with international standards	0.5	0.5	0.5	0.5	0.9	1.4	1.8	2.7	6.2	11.4

3. The Programme's measures

In 2007-2009, the construction of seven new remand prisons will be completed; they will offer conditions of detention compatible with Russian standards. In addition, the construction of thirty-two remand prisons that has begun in the framework of the 2002-2006 federal expenditure programme, is about to be completed. Starting from 2010, the conditions of detention in ninety-seven old-style remand prisons will be brought into compliance with Russian laws. New-style remand prisons are being built in twenty-four Russian regions (Dagestan, Karelia, Tyva, Khakassiya and Chuvash Republics, Krasnodar, Perm, Stavropol, Astrakhan, Vladimir, Voronezh, Kamchatka, Kemerovo, Kostroma, Moscow, Novosibirsk, Samara, Leningrad, Sverdlovsk, Tomsk, Tula, Chita, Yamalo-Nenetskiy and Yevreyskiy Regions, St Petersburg). The conditions of detention in those facilities will meet the international standards (sanitary norm of seven square metres per detainee).

By 2017 the total number of remand prisons – taking into account the fact that twelve prisons will probably be closed – will grow to 230. The conditions of detention will be compatible with Russian laws, and in 26 prisons also with international standards...

4. Allocation of resources to the Programme

Resources will be allocated to the Programme at the expense of the federal budget. The total amount of the financing represents 54,588,200,000 roubles [approximately 1,350,000,000 euros]..."

III. RELEVANT INTERNATIONAL MATERIAL

55. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular, as follows:

"10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid

to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation...

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all time.

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness...

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

45... (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited...”

56. The relevant extracts from the General Reports prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

“46. Overcrowding is an issue of direct relevance to the CPT’s mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of

life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard... It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations...”

Extracts from the 7th General Report [CPT/Inf (97) 10]

“13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee’s mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention...”

Extracts from the 11th General Report [CPT/Inf (2001) 16]

“28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of

detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis...”

57. On 30 September 1999 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, which provides in particular as follows:

“Considering that prison overcrowding and prison population growth represent a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Considering that the efficient management of the prison population is contingent on such matters as the overall crime situation, priorities in crime control, the range of penalties available on the law books, the severity of the sentences imposed, the frequency of use of community sanctions and measures, the use of pre-trial detention, the effectiveness and efficiency of criminal justice agencies and not least public attitudes towards crime and punishment...

Recommends that governments of member states:

- take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply the principles set out in the appendix to this recommendation...

Appendix to Recommendation No. R (99) 22

I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.

2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity...

II. Coping with a shortage of prison places

6. In order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set.

7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modem management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise.

8. In order to counteract some of the negative consequences of prison overcrowding, contacts of inmates with their families should be facilitated to the extent possible and maximum use of support from the community should be made...

III. Measures relating to the pre-trial stage

Avoiding criminal proceedings - Reducing recourse to pre-trial detention

10. Appropriate measures should be taken with a view to fully implementing the principles laid down in Recommendation No R (87) 18 concerning the simplification of criminal justice, this would involve in particular that member states, while taking into account their own constitutional principles or legal tradition, resort to the principle of discretionary prosecution (or measures having the same purpose) and make use of simplified procedures and out-of court settlements as alternatives to prosecution in suitable cases, in order to avoid full criminal proceedings.

11. The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation No R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre trial detention can be ordered.

12. The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision

of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities tor supervising a requirement to remain in a specified place through electronic surveillance devices.

13. In order to assist the efficient and humane use of pre-trial detention, adequate financial and human resources should be made available and appropriate procedural means and managerial techniques be developed, as necessary."

58. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member States on the European Prison Rules, which replaced Recommendation No. R (87) 3 on the European Prison Rules accounting for the developments which had occurred in penal policy, sentencing practice and the overall management of prisons in Europe. The amended European Prison Rules lay down the following guidelines:

"1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

...

10.1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction."

Allocation and accommodation

"18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

19.3. Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

22.1. Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

22.4. There shall be three meals a day with reasonable intervals between them.

22.5. Clean drinking water shall be available to prisoners at all times.

27.1. Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2. When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise."

IV. COMMITTEE OF MINISTERS' INTERIM RESOLUTIONS

59. On 4 June 2003 the Committee of Ministers of the Council of Europe adopted Interim Resolution CM/ResDH(2003)123 concerning the Court's judgment in the *Kalashnikov v. Russia* case of 15 July 2002, final on 15 October 2002. It read in particular as follows:

"Noting that the general measures required by the present judgment are closely connected to the ongoing reform of the Russian Federation's criminal policy and the penitentiary system and welcoming progress achieved so far in this respect;

Noting in particular with satisfaction the significant decrease of the overcrowding in pre-trial detention facilities (SIZOs) and the ensuing improvement of sanitary conditions, as demonstrated by the recent statistics submitted to the Committee by the Russian authorities [];

Considering however that further measures are required in this field to remedy the structural problems highlighted by the present judgment;

Stressing in particular the importance of prompt action by the authorities to remedy the overcrowding in those SIZOs where this problem still remains (57 out of the 89 Russian regions) and to align the sanitary conditions of detention on the requirements of the Convention,

CALLS UPON the Russian authorities to continue and enhance the ongoing reforms with a view to aligning the conditions of all pre-trial detention on the requirements of the Convention, particularly as set out in the Kalashnikov judgment, so as effectively to prevent new, similar violations...”

60. On 4 March 2010 the Committee of Ministers adopted Interim Resolution CM/ResDH(2010)35 on the execution of the thirty-one judgments against Russia mainly concerning conditions of detention in remand prisons. It provided in particular as follows:

“Having regard to the judgments in which the Court has found violations of Article 3 of the Convention in respect of the conditions under which the applicants were detained in remand prisons (SIZOs) which amounted to degrading treatment due, in particular, to the severe lack of personal space or to the combination of the space factor with other deficiencies of the physical detention conditions such as the impossibility of using the toilet in private, lack of ventilation, lack of access to natural light and fresh air, inadequate heating arrangements, and non-compliance with basic sanitary requirements;

Recalling further that in a number of judgments the Court found violations of Article 5 due to the unlawful detention of the applicants, its excessive length in the absence of relevant and sufficient grounds for prolonged detention and the lack of effective judicial review of the lawfulness of detention;

Recalling finally that the Court also found violations of Article 13 of the Convention due to the lack of an effective domestic remedy in respect of conditions of detention on remand;

Recalling that the existence of structural problems and the pressing need for comprehensive general measures were stressed by the Committee and acknowledged by the Russian authorities since the adoption by the Court of the judgment in the case of Kalashnikov against Russia in 2002...

As regards material conditions of detention:

...

Recalling that... the creation of new places of detention cannot in itself provide a lasting solution to the problem of prison overcrowding, and that this measure should be closely supported by others aimed at reducing the overall number of remand prisoners;

Noting with satisfaction in this respect the Russian authorities’ position that there should be an integrated approach to finding solutions to the problem of overcrowding in remand prisons, including in particular changes to the legal framework, practices and attitudes;

As regards the number of remand prisoners:

Recalling the constant position of the Committee of Ministers that, in view both of presumption of innocence and the presumption in favour of liberty, remand in custody shall be the exception rather than the norm and only a measure of last resort, and that

to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures shall be made available;

Noting the repeated statements by the President of the Russian Federation and high-ranked officials, including the Prosecutor General and the Minister of Justice, that thousands of persons detained on remand – up to 30 % of those currently detained – should not have been deprived of their liberty, being suspected or accused of offences of low or medium gravity;

Welcoming the unambiguous commitment, renewed at the highest political level, to change this unacceptable situation and to adopt urgent legislative and other measures to that effect...

Noting that the statistical data provided demonstrates a slight but constant decrease in the overall number of remand prisoners;

Further noting that the statistics nonetheless demonstrate wider yet still limited recourse to alternative preventive measures by the Russian courts, prosecutors and investigators...

As regards remedies in respect of conditions of detention on remand:

Recalling the Court's consistent position that available remedies are considered effective if they could have prevented violations from occurring or continuing, or could have afforded the applicant appropriate redress;

Noting that the statistics and several cases presented to the Committee demonstrate a developing practice before domestic courts on compensation for non-pecuniary damage sustained in relation to poor conditions of detention in remand prisons;

Noting further that in view of the problems at issue, any compensatory remedy should as far as possible be supplemented by other remedies capable of preventing violations of Article 3 of the Convention;

Noting in this respect information on the avenues provided by Russian legislation to address the violations of Article 3 at issue;

Noting in particular the provisions of Chapter 25 of the Code of Civil Procedure and the Ruling of the Supreme Court of Russia of 10 February 2009 providing the possibility to challenge before courts acts or inaction of remand prison administrations concerning improper detention conditions;

Considering however that the effectiveness of this remedy in particular with regard to overcrowding, has not yet been demonstrated;

ENCOURAGES the Russian authorities to pursue the ongoing reforms with a view to aligning the conditions of detention in remand prisons with the requirements of the Convention, taking also into account the relevant standards and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

EXPRESSES CONCERN that notwithstanding the measures adopted, a number of remand prisons in Russia still do not afford the personal space guaranteed by domestic legislation, and remain overpopulated;

STRONGLY ENCOURAGES the Russian authorities to give priority to reforms aiming at reducing the number of persons detained on remand and to other measures combating the overcrowding of remand facilities by

• ensuring that judges, prosecutors and investigators consider and use detention on remand as a solution of last resort and make wider use of alternative preventive measures;

• ensuring the availability at the national level of effective preventive and compensatory remedies allowing adequate and sufficient redress for any violation of Article 3 resulting from poor conditions of detention on remand...”

V. PILOT-JUDGMENT PROCEEDINGS CONCERNING THE OVERCROWDING PROBLEM IN POLAND

61. On 22 October 2009 the Court adopted pilot judgments in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05), in which it found under Article 46 of the Convention that, for many years, namely from 2000 until at least mid-2008, the overcrowding in Polish remand centres had revealed a structural problem consisting of a “practice that [was] incompatible with the Convention” (see § 151 and §§ 155-156, respectively).

62. On 9 October 2009 the Polish Parliament enacted a law amending the Code of Execution of Criminal Sentences which entered into force on 6 December 2009. It introduced a number of new rules governing temporary placement of detainees in cells below the statutory norm of three square metres per inmate.

63. A new provision lists the emergency situations in which the prison governor may place a detainee for a specified period not longer than ninety days in a cell in which the area per inmate will be less than three square metres but not less than two square metres. The situations include the introduction of martial law, natural disasters, epidemics, and a threat to prison security (Article 110 § 2b). It also defines the categories of prisoners who may be held in such conditions for a period not exceeding fourteen days: recidivists, sexual offenders, escapees, temporary transfers from other prisons, etc. (§ 2c). An appeal against the governor’s decision lies with a penitentiary judge (§ 2d). Detainees who have been placed in a cell with restricted personal space shall be assured an additional half-hour of daily walks and a wider range of out-of-cell cultural, educational and sports activities (§ 2h).

64. On 17 March 2010 the Polish Supreme Court allowed a cassation appeal by a prisoner against the dismissal of his claim for compensation in

respect of an infringement of his personal rights on account of severe prison overcrowding (sixteen inmates in a cell designed for eleven persons). The Supreme Court reiterated that the right to be detained in conditions respecting one's dignity belonged to the catalogue of personal rights and that the State treasury should be liable for an infringement of such rights. It determined that the prison authorities had failed to show the existence of a "particularly justified case" for placement of detainees in an already overcrowded facility and in that way had acted unlawfully.

65. On 12 October 2010 the Court issued admissibility decisions in the cases of *Łatak v. Poland* (no. 52070/08) and *Łomiński v. Poland* (no. 33502/09) in the framework of the pilot-judgment procedure. It re-examined the applicants' situation in the light of the above-mentioned developments at domestic level and found that the Supreme Court's judgment of 17 March 2010 constituted a material element which was indispensable for the consolidation of the previous practice of civil courts in cases concerning claims for compensation on account of prison overcrowding (*Łatak*, § 80). Accordingly, the applicants were required to seek redress at domestic level and bring a civil action for compensation before Polish courts (*ibid*., § 81) and their applications to the Court were inadmissible for non-exhaustion of domestic remedies (§ 82). The Court also noted that the amended Article 110 § 2 of the Code of Execution of Criminal Sentences provided detainees with a new legal means for contesting the governor's decision to reduce the available cell space. It could not therefore be excluded that applicants would be required to make use of the new complaints system before applying to the Court (§ 87).

THE LAW

I. JOINDER OF THE APPLICATIONS

66. The Court notes at the outset that all the applicants complained about the allegedly inhuman conditions of their detention in Russian detention facilities and also about the absence of an effective domestic remedy in that connection. Having regard to the similarity of the applicants' grievances, the Court is of the view that, in the interests of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ADMISSIBILITY

A. The applicants' complaints concerning their conditions of detention and the alleged absence of an effective domestic remedy

67. The Court will begin its examination with a verification of whether or not the admissibility criteria in Article 35 of the Convention have been met in each individual case. Paragraph 1 of Article 35 provides as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

1. Exhaustion of domestic remedies

68. The Government submitted that the applicants had not exhausted the domestic remedies because they had not applied to Russian courts with claims for compensation in respect of non-pecuniary damage in connection with the allegedly inhuman conditions of their detention. The procedure for making claims was established in Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's Ruling no. 2 of 10 February 2009. Articles 151 and 1069 allowed individuals to claim compensation for non-pecuniary damage caused by unlawful actions of State authorities. According to the information from the Russian courts, in the period from 2006 to the first six months of 2009 detainees had submitted 1,419 complaints about inappropriate detention conditions and claims for non-pecuniary damage. Of those, 505 had been declared inadmissible on procedural grounds. As a result of an examination of the merits, the claims had been granted in 315 cases and rejected in 599 cases.

69. The Government further pointed out that the prosecutors had competence to review compliance with laws in penitentiary institutions. They carried out monthly inspections of remand prisons, during which they checked in particular the conditions of detention and medical assistance. In the Government's view, such inspections were an effective remedy capable of preventing breaches of law and putting an end to them. This remedy was accessible to everyone who was held in custody. The applicant Mr Ananyev complained to a prosecutor about unsatisfactory conditions of detention in cell 160 and was transferred to another cell, following the prosecutor's intervention.

70. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicants' complaint that they did not have at their disposal an effective remedy for complaining about inhuman conditions of detention. Thus, the Court finds it necessary to join the Government's objection to the merits of the complaint under

Article 13 of the Convention (compare *Benediktov v. Russia*, no. 106/02, § 25, 10 May 2007).

2. Compliance with the six-month time-limit

71. The Court reiterates that, in contrast to an objection as to the non-exhaustion of domestic remedies, which must be raised by the respondent Government, it cannot set aside the application of the six-month rule solely because a government have not made a preliminary objection to that effect (see *Maltabar and Maltabar v. Russia*, no. 6954/02, § 80, 29 January 2009; *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I; and also *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-...).

72. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008, and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

73. The Court observes that Mr Ananyev and Mr Bashirov spent the entire period of their detention in their respective remand prisons and that there were no appreciable variations in the conditions of their detention or interruptions during that period. As they introduced their complaints within six months of the end of their respective detention periods, they have complied with the six-month criterion. On the other hand, the case of Ms Bashirova requires particular attention on the part of the Court in terms of her compliance with the six-month rule.

74. In her initial application form dated 10 November 2008, Ms Bashirova complained about a short period of her detention that had ended on 17 May 2005. In her observations on the admissibility and merits of the application submitted on 2 November 2009, she complained about a further period of detention that had lasted from March to June 2008. The Court has to determine whether or not it would be appropriate to make a cumulative assessment of the two periods of her detention in the same facility.

75. 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 *Nevmerzgitskiy v. Ukraine* (dec.), no. 58825/00, 25 November 2003, where the applicant was subjected to force-feeding, and *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October

2005, where the applicant's son was denied medical assistance). However, in the event of a repetition of the same events, such as an applicant's transport between the remand prison and the courthouse, even though the applicant was transported on specific days rather than continuously, the absence of any marked variation in the conditions of transport to which he had been routinely subjected created, in the Court's view, a "continuing situation" which brought the entire period complained of within the Court's competence (see *Vlasov v. Russia* (dec.), no. 78146/01, 14 February 2006, and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004). Similarly, in a situation where the applicant's detention in the police ward was not continuous but occurred at regular intervals when he was brought there for an interview with the investigator or other procedural acts, the Court accepted that in the absence of any material change in the conditions of his detention, the breaking-up of his detention into several periods was not justified (see *Nedayborshch v. Russia*, no. 42255/04, § 25, 1 July 2010). In another case, the applicant's absence from the detention facility for carrying out a certain procedural act did not prevent the Court from recognising the continuous nature of his detention in that facility (see *Romanov v. Russia*, no. 63993/00, § 73, 20 October 2005, where the applicant spent one month out of the remand prison in a psychiatric institution). Nevertheless, where an applicant was released but subsequently re-detained, the Court limited the scope of its examination to the later period (see *Belashev v. Russia*, no. 28617/03, § 48, 4 December 2008; *Grishin v. Russia*, no. 30983/02, § 83, 15 November 2007; and *Dvoynykh v. Ukraine*, no. 72277/01, § 46, 12 October 2006).

76. An applicant's detention in the domestic system is rarely effected within the confines of the same facility: usually he or she would spend a few first days in the police custody, move later to a remand prison during the investigation and trial and, if convicted, begin to serve the sentence in a correctional colony. Different types of detention facilities have different purposes and vary accordingly in the material conditions they can offer. Thus, temporary detention wings located inside police stations are designed for short-term custody only and often lack the amenities indispensable for prolonged detention, such as a toilet, sink, or exercise yard (see for example *Shchebet v. Russia*, no. 16074/07, § 89, 12 June 2008), whereas in correctional colonies – in contrast to remand prisons – the restricted space in the dormitories is compensated for by the freedom of movement enjoyed by the detainees during the day-time (see *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). The difference in material conditions of detention creates the presumption that an applicant's transfer to a different type of facility would require the submission of a separate complaint about the conditions of detention in the previous facility within six months of such transfer (see *Volchkov v. Russia*, no. 45196/04, § 27, 14 October 2010; *Gultyayeva v. Russia*, no. 67413/01, § 148, 1 April 2010; *Maltabar*, cited above, §§ 82-84, and *Nurmagomedov* (dec.), cited above). Only in a few

exceptional cases, having regard to the allegation of severe overcrowding as the main characteristic of the detention conditions in both facilities, has the Court recognised the existence of a "continuous situation" encompassing the applicant's stay both in police custody and in the remand prison (see *Lutokhin v. Russia*, no. 12008/03, §§ 40-42, 8 April 2010; *Seleznev*, cited above, § 36, and *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008).

77. As long as the applicant stays within the same type of detention facility, and provided the material conditions have remained substantially the same, it matters not that he or she was transferred between cells or wings within the same remand prison (see *Trepashkin v. Russia (no. 2)*, no. 14248/05, §§ 108-109, 16 December 2010, and *Nazarov v. Russia*, no. 13591/05, § 78, 26 November 2009), from one remand prison to another within the same region (see *Romokhov v. Russia*, no. 4532/04, § 74, 16 December 2010; *Mukhutdinov v. Russia*, no. 13173/02, § 77, 10 June 2010; *Goroshchenya v. Russia*, no. 38711/03, § 62, 22 April 2010; and *Benediktov*, cited above, § 31) or even to a remand prison in a different region (see *Aleksandr Matveyev v. Russia*, no. 14797/02, § 67, 8 July 2010, and *Buzhinayev v. Russia*, no. 17679/03, § 23, 15 October 2009). Nevertheless, a significant change in the detention regime, even where it occurs within the same facility, has been held by the Court to put an end to the "continuous situation" as described above and the six-month time-limit would thus be calculated from that moment: this would be the case for instance where the applicant has moved from a communal cell to solitary confinement (see *Zakharkin v. Russia*, no. 1555/04, § 115, 10 June 2010) or from an ordinary cell to the hospital wing.

78. The Court's approach to the application of the six-month rule to complaints concerning the conditions of an applicant's detention may therefore be summarised in the following manner: a period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months from the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion.

79. Examining the case of Ms Bashirova in the light of the above principles, the Court notes that she was held in the remand prison on two occasions. As she was released in-between, her detention is not regarded as a "continuing situation" but rather as two distinct periods. The complaint about an initial period of her detention followed by her release was submitted more than three years after it had ended and the complaint about

her subsequent stay in the remand prison until her transfer to a correctional colony was introduced more than one year after the transfer. In both instances the complaint was raised more than six months after the respective detention period had ended. It follows that they have been introduced out of time and must also be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. Preliminary conclusion as to the admissibility of the complaints relating to the conditions of detention and the existence of an effective remedy

80. The Court has found that the issue of exhaustion of domestic remedies must be joined to the merits of the complaint under Article 13 of the Convention and that the complaints by Ms Bashirova' relating to the conditions of her detention were submitted out of time and were inadmissible. As to the remainder of their complaints concerning the conditions of their detention and the existence of effective domestic remedies, the Court considers that they raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established.

B. The remainder of the applicants' complaints

81. The applicants also raised additional complaints about various alleged deficiencies in the criminal proceedings against them, their pre-trial detention, property issues, spousal visits and other matters. The Court has given careful consideration to these grievances in the light of all the material in its possession and considers that, in so far as the matters complained of are within its competence, 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 in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Conclusion as to the admissibility

82. In the light of the foregoing, the Court declares admissible the complaints by the applicants Mr Ananyev and Mr Bashirov about the conditions of their detention in remand prisons IZ-67/1 and IZ-30/1 and about the alleged absence of an effective domestic remedy and joins to the merits the Government's objection relating to the alleged non-exhaustion of the domestic remedies.

83. The Court further declares inadmissible the remainder of the complaints by the applicants Mr Ananyev and Mr Bashirov and all of Ms Bashirova's complaints.

III. PARTIES' SUBMISSIONS ON THE MERITS OF THE CASE

84. The Court requested the parties to comment on whether the present applications disclosed the persistence of a structural problem relating to conditions of detention which had been highlighted in various aspects in the Court's previous judgments (see Annex) and the Committee of Ministers' decisions and on whether the applicants had effective domestic remedies at their disposal for their complaints about the allegedly inhuman conditions of their detention. The parties' submissions may be summarised in the following manner.

A. The Government

85. The Government submitted that the applicants' complaints under Articles 3 and 13 of the Convention were unsubstantiated. They pointed out that the Russian authorities were making considerable efforts to reduce recourse to preventive measures of a custodial nature. The President of the Russian Federation had declared the "humanisation of justice" and expedited processing of cases to be the priorities for development of the judicial system. The Government explained that the Supreme Court had prepared the text of a ruling governing the application of preventive measures, including those of a custodial nature, in which it clarified that placement in custody should be applied only if a less restrictive preventive measure was not an available option (see paragraph 52 above). The Prosecutor General's Office had directed the prosecutors to specify, in each application for a detention order, the concrete circumstances which made it impossible to use less restrictive preventive measures. The statistics, cited in paragraph 53 above, demonstrated that the prosecutors and courts had adopted a more nuanced approach to using custodial measures.

86. In order to implement Recommendation No. R (99) 22 (see paragraph 57 above), from 1999 to date the Russian authorities had carried out major reforms of the penitentiary system with a view to reducing the overall prison population. The measures included amending acts and regulations relating to the functioning of the penitentiary system, expansion of the network of remand prisons and construction of new cells, reducing the number of individuals transiting through remand prisons, and co-ordinated action of the police, prosecution and courts with a view to expediting the processing of cases. As a result of those measures, the prison population in SIZOs had decreased from 282,000 individuals in 1999 to 133,000 in January 2009.

87. In 2002-2006, a federal expenditure programme for the reform of the penitentiary system had been implemented. It had allowed the prison authorities to make an additional 13,100 places available. In 2006, the Russian Government had approved a new expenditure programme for the period from 2007 to 2016 (see paragraph 54 above). In the first two years of the programme's implementation more than 3,600 places had been created in remand prisons. By the end of 2008, the percentage of remand prisons that met Russian detention standards had risen to 34%. However, in 2009 the financing of the programme had been cut by 30% and a further cut by 45% was expected in 2010. From 1999 to 2009 the number of remand prisons had increased from 187 to 225, their design capacity from 112,500 to 151,000 places and the average cell space per inmate from 1.6 to 4.5 square metres. As at 1 July 2009 the remand prisons accommodated 133,200 detainees, representing 88.2% of their capacity. In sixty-seven regions, detainees had at their disposal four or more square metres of cell space per person.

88. In the past four years the total investment in capital and current repairs for remand prisons had amounted to 1,5 billion roubles (RUB), equivalent to approximately 38 million euros. Cells had been equipped with PVC windows, mandatory ventilation and new piping. Walls had been painted in light colours. Metal blinds had been removed from all windows, unblocking access to natural air and light.

89. The Government also submitted that the legislative framework governing pre-trial detention issues had evolved in the light of the recommendations of the Committee for the Prevention of Torture. For example, untried prisoners had been granted the right to make telephone calls to their relatives; the practice of accommodating foreign prisoners on separate premises had been discontinued; letters addressed to the federal and regional Ombudsmen and to the Court were exempt from censorship; the minimum exercise time for detainees in the punishment cell had been increased from 30 minutes to one hour. Improvements in the provision of medical care and assistance had been achieved.

B. The applicants

90. The applicants maintained their complaints under Articles 3 and 13 of the Convention. They submitted that unsatisfactory conditions of detention in remand prisons represented a structural problem in Russia and that repeated applications to the Court in connection with this issue proved the existence and reality of the problem. Although the Russian authorities had undertaken some insignificant and sporadic measures to improve the conditions, those measures had proved to be insufficient owing to inadequate financing and the extensive use of custodial measures as a means of prevention.

91. The applicants denied that they had at their disposal any effective domestic remedies for their complaints. Admittedly, a judicial complaint against unlawful actions by the prison administration in accordance with the provisions of Chapter 25 of the Code of Civil Procedure could, at least in theory, lead to a declaration of unlawfulness and a judicial order requiring the facility administration to remedy the situation. In practice, however, a detainee who filed such a complaint while still being under the full control of the prison administration, ran the risk of retaliation on the part of the prison warders. Besides, where all detainees were held in substantially similar conditions, the individual situation of the complainant could only be improved at the expense of other inmates and to their detriment. It would be impossible for the prison administration to comply with court orders if all or a majority of detainees filed complaints about the conditions of their detention.

92. As to the possibility of claiming compensation for unsatisfactory conditions of detention, the applicants deemed that it was not sufficiently established in judicial practice to be considered effective. In any event, it had no preventive effect and a prospective claimant would be required to endure inhuman conditions of detention for a considerable period of time before filing such a claim. He would also be faced with a nearly insurmountable problem of collecting appropriate evidence: a majority of potential witnesses would be transferred to different facilities or correctional colonies located in remote regions. In addition, it had become an established judicial practice to deny the detained claimant the possibility of attending the hearing to state his position to the court in person (here they referred to the cases of *Artyomov v. Russia*, no. 14146/02, 27 May 2010; *Shilbergs v. Russia*, no. 20075/03, 17 December 2009; and *Skorobogatykh v. Russia*, no. 4871/03, 22 December 2009). Likewise, it would be virtually impossible for a detainee to obtain copies of prison registers to which he had no access.

IV. EXHAUSTION OF DOMESTIC REMEDIES AND ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. General principles

93. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity –, that there is an effective remedy available

to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. 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 *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

94. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, inter alia, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). 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, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

95. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

96. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice

as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, cited above, §§ 157-158, and *Wasserman v. Russia (no. 2)*, no. 21071/05, § 45, 10 April 2008).

97. In the area of complaints about inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention and compensation for the damage or loss sustained on account of such conditions (see *Roman Karasev v. Russia*, no. 30251/03, § 79, 25 November 2010, and *Benediktov*, cited above, § 29). If an applicant has been held in conditions that are in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment, is of the greatest value. Once, however, the applicant has left the facility in which he or she endured the inadequate conditions, he or she should have an enforceable right to compensation for the violation that has already occurred.

98. Where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. In contrast to the cases concerning the length of judicial proceedings or non-enforcement of judgments, where the Court accepted in principle that a compensatory remedy alone might suffice (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 187, ECHR 2006-V, and *Burdov v. Russia (no. 2)*, no. 33509/04, § 99, ECHR 2009 -...), the existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. Indeed, the special importance attached by the Convention to that provision requires, in the Court's view, that the States parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any such treatment rapidly. Had it been otherwise, the prospect of future compensation would have legitimised particularly severe suffering in breach of this core provision of the Convention and unacceptably weakened the legal obligation on the State to bring its standards of detention into line with the Convention requirements.

99. The Court reiterates that it has examined the effectiveness of various domestic remedies suggested by the Russian Government in a number of cases concerning inadequate conditions of an applicant's detention and found them to be lacking in many regards. On that basis, it has rejected the Government's objection as to the non-exhaustion of domestic remedies and has also found a violation of Article 13 of the Convention. The Court has held in particular 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

conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see, among recent authorities, *Kozhokar v. Russia*, no. 33099/08, §§ 92-93, 16 December 2010; *Skachkov v. Russia*, no. 25432/05, §§ 43-44, 7 October 2010; *Vladimir Krivonosov v. Russia*, no. 7772/04, §§ 82-84, 15 July 2010; *Lutokhin*, cited above, § 45; *Skorobogatykh v. Russia*, cited above, § 52; *Aleksandr Makarov v. Russia*, no. 15217/07, § 87-89, 12 March 2009; *Benediktov*, cited above, §§ 27-30; and also *Moiseyev* (dec.), cited above). Nevertheless, the Court considers it important to review those findings in the light of the situation in the Russian legal system both on the date of the submission of the individual applications in the instant case and on the date of the present judgment. In doing so, it will depart from its ordinary practice of confining the scope of its review to the remedies explicitly invoked by the Government, but rather make a global assessment of the remedies available in the domestic legal system that appear prima facie capable of offering either preventive or compensatory relief to the aggrieved individual.

B. Analysis of existing remedies

1. Complaint to the prison authorities

100. The Pre-trial Detention Act establishes the detainee's right to petition for an appointment with the prison governor or prison supervisors, with a view to stating his or her grievances (section 17 § 3, cited in paragraph 28 above). The Court observes that the prison governor is the official in charge of the detention facility with primary responsibility for ensuring the appropriate conditions of detention, whereas the prison supervisors are his or her direct superiors at regional level. It follows that a complaint about inadequate prison conditions would necessarily call into question the way in which they have discharged their duties and complied with the Pre-trial Detention Act.

101. Accordingly, the Court does not consider that the prison authorities would have a sufficiently independent standpoint to satisfy the requirements of Article 13 (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61): in deciding on a complaint concerning conditions of detention for which they are responsible, they would in reality be judges in their own cause.

2. Complaint to a prosecutor

102. In the Russian legal system, prosecutor's offices have competence and responsibility, as well as dedicated staff, for overseeing compliance by the prison authorities with the applicable legal regulations. This function is regulated in Chapter 4 of the Prosecutors Act (see paragraph 36 above) and

the prosecutors are entrusted with broad powers to carry out the task. They may pay unannounced visits to detention facilities, talk to detainees and study prison records, obtain statements from the prison officials and issue proceedings if a breach of the Pre-trial Detention Act has been detected. The prison authorities have a legal obligation to examine the prosecutor's report on disclosed violations and report back to him or her within one month about the measures that have been taken (section 51 of the Pre-trial Detention Act and section 24 of the Prosecutors Act).

103. It appears from the information submitted by the Russian Government to the Committee of Ministers, in the framework of the execution proceedings in respect of thirty-one judgments against Russia concerning conditions of detention in remand prisons, that prosecutors had carried out 4,290 inspections of remand prisons in 2008 and 4,646 inspections in 2009. During these inspections they had identified 1,330 and 2,491 cases of inadequate detention conditions, respectively, and issued 1,998 and 1,335 reports requiring the prison authorities to eliminate the violations. They had also instituted 52 and 168 court actions against the prison authorities, seeking to oblige them to comply with the domestic legislation (see point III.3 in Appendix II to Interim Resolution CM/ResDH(2010)35).

104. Even though the prosecutors' control undeniably plays an important part in securing appropriate conditions of detention, a complaint to the supervising prosecutor falls short of the requirements of an effective remedy because of the procedural shortcomings that have been previously identified in the Court's case-law (see, for instance, *Pavlenko v. Russia*, no. 42371/02, §§ 88-89, 1 April 2010; *Aleksandr Makarov*, § 86, and *Benediktov*, § 29, both cited above). Pursuant to section 17 § 7 of the Pre-trial Detention Act, detainees may send their complaints to a prosecutor. However, there is no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings that would entirely be a matter between the supervising prosecutor and the supervised body. The complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint. Moreover, the Court has already seen cases in which an applicant did complain to a prosecutor but his complaint did not elicit any response (see *Antropov v. Russia*, no. 22107/03, § 55, 29 January 2009). Since the complaint to a prosecutor about unsatisfactory conditions of detention does not give the person using it a personal right to the exercise by the State of its supervisory powers, it cannot be regarded as an effective remedy.

3. Complaint to an ombudsman

105. The Court further observes that in some cases detainees have submitted complaints about inhuman or degrading conditions of their

detention to a regional or the federal ombudsman (see, for instance, *Gladkiy v. Russia*, no. 3242/03, § 67, 21 December 2010). Even though the complainants have received a personal reply, the Court reiterates that, as a general rule, an application to an ombudsman cannot be regarded as an effective remedy as required by Article 35 of the Convention because the ombudsman has no power to render a binding decision granting redress (see *Aleksandr Makarov*, cited above, § 84, with further references).

106. For a remedy to be considered effective it should be capable of providing redress for the complainant. Both the regional and the federal ombudsmen, however, lack the power to issue a legally binding decision that would be capable of bringing about an improvement in the complainant's situation or would serve as a basis for obtaining compensation. Their task is different: they identify various human rights issues on the basis of individual complaints and other information at their disposal, highlight problems in their annual reports and work out solutions in co-operation with regional and federal authorities (see paragraphs 32 and 33 above). While their activities may usefully contribute to general improvement of conditions of detention, the ombudsmen remain unable, in view of their specific remit, to provide redress in individual cases as required by the Convention. It follows that recourse to an ombudsman does not constitute an effective remedy.

4. Judicial complaints about infringements of rights and freedoms

107. By virtue of the provisions of Chapter 25 of the Code of Civil Procedure, Russian courts are endowed with a supervisory jurisdiction over any decision, action or inaction on the part of State officials and authorities that has violated individual rights and freedoms or prevented or excessively burdened the exercise thereof. Such claims must be submitted within three months of the alleged violation and adjudicated in a speedy fashion within ten days of the submission. In those proceedings, the complainant must demonstrate the existence of an interference with his or her rights or freedoms, whereas the respondent authority or official must prove that the impugned action or decision was lawful. The proceedings are to be conducted in accordance with the general rules of civil procedure (see paragraphs 37 to 40 above).

108. If the complaint is found to be justified, the court will require the authority or official concerned to make good the violation of the complainant's right and set a time-limit for doing so. The time-limit will be determined with regard to the nature of the violation and the efforts that need to be deployed to ensure its elimination. A report on the enforcement of the decision should reach the court and the complainant within one month of its service on the authority or official concerned (see paragraphs 41 and 42 above).

109. The Court notes that judicial proceedings instituted in accordance with Chapter 25 of the Code of Civil Procedure provide a forum that guarantees due process of law and effective participation for the aggrieved individual. In such proceedings, courts can take cognisance of the merits of the complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation. The proceedings are conducted diligently and at no cost for the complainant. The ensuing judicial decision will be binding on the defaulting authority and enforceable against it. The Court is therefore satisfied that the existing legal framework renders this remedy prima facie accessible and capable, at least in theory, of affording appropriate redress.

110. Nevertheless, in order to be "effective", a remedy must be available not only in theory but also in practice. This means that the Government should normally be able to illustrate the practical effectiveness of the remedy with examples from the case-law of the domestic courts. The Russian Government, however, did not submit a single judicial decision showing that the complainant had been able to vindicate his or her rights by having recourse to this remedy. The Court, for its part, has not noted any examples of the successful use of this remedy in any of the conditions-of-detention cases that have previously come before it. The absence of an established judicial practice on this matter appears all the more baffling in the light of the fact that the Code of Civil Procedure, including its Chapter 25, has been in force since 1 February 2003 and that Chapter 25 merely consolidated and reproduced the provisions concerning a substantially similar procedure that had been available under Law no. 4866-1 of 27 April 1993 on Judicial Complaints against Actions and Decisions which Impaired Citizens' Rights and Freedoms. The remedy, which has not produced a substantial body of case-law or a plethora of successful claims in more than eighteen years of existence, leaves genuine doubts as to its practical effectiveness. Admittedly, the ruling of the Plenary Supreme Court, which explicitly mentioned the right of detainees to complain under Chapter 25 about their conditions of detention, was only adopted in February 2009, but it did not alter the existing procedure in any significant way and its effectiveness in practice still remains to be demonstrated (see Interim Resolution CM/ResDH(2010)35 in paragraph 60 above).

111. Moreover, as the Court has noted in previous conditions-of-detention cases, the malfunctioning of such a preventive remedy in a situation of overcrowding is to a large extent due to the structural nature of the underlying problem. In the context of another structural problem in Russia, that of non-enforcement of final judicial decisions, the Court has already observed that the Russian courts' capacity to order remedial action under Chapter 25 of the Code of Civil Procedure was essentially restricted to the issuing of a declaratory judgment reiterating what was in any case evident from the original judgment, namely that the State was to pay for its debts (see *Burdov (no. 2)*, cited above, § 103). In the instant case, as the

applicants rightly pointed out, even if they were to obtain a judgment requiring the prison authorities to make good a violation of their right to an individual sleeping place and to the sanitary norm of floor surface, their personal situation in an already overcrowded facility could only be improved at the expense and to the detriment of other detainees. The prison governor of such a facility would obviously be in no position to enforce a large number of simultaneous judgments requiring him to remedy a violation of the detainees' right to have at their disposal at least four metres of personal space.

112. The Court finds that, although Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's ruling of 10 February 2009, provides a solid theoretical legal framework for adjudicating the detainees' complaints about inadequate conditions of detention, it falls short of the requirements of an effective remedy because its capacity to produce a preventive effect in practice has not been convincingly demonstrated.

5. Claim for compensation

113. The Court finally has to consider whether the tort provisions of the Civil Code constituted an effective domestic remedy capable of providing an aggrieved individual with compensation for the detention that had already occurred in inhuman or degrading conditions. The Court has already examined this remedy in several recent cases, in the context of both Article 35 § 1 and Article 13 of the Convention, and was not satisfied that it was an effective one. The Court found that, while the possibility of obtaining compensation was not ruled out, the remedy did not offer reasonable prospects of success, in particular because the award was conditional on the establishment of fault on the part of the authorities (see, for instance, *Roman Karasev v. Russia*, no. 30251/03, §§ 81-85, 25 November 2010; *Shilbergs*, cited above, §§ 71-79; *Kokoshkina v. Russia*, no. 2052/08, § 52, 28 May 2009; *Aleksandr Makarov*, §§ 77 and 87-89; and *Benediktov*, §§ 29 and 30, both cited above; see also *Burdov (no. 2)*, cited above, §§ 109-116).

114. The provisions of the Civil Code on tort liability impose special rules on compensation for damage caused by State authorities and officials. Articles 1070 and 1100 contain an exhaustive list of instances of strict liability in which the treasury is liable for the damage irrespective of the State officials' fault. Inadequate conditions of detention do not appear in this list. Only the unlawful institution or conduct of criminal or administrative proceedings gives rise to strict liability; in all other cases, the general provision in Article 1069 applies, requiring the claimant to show that the damage was caused through an unlawful action or omission on the part of a State authority or official.

115. The Court has already had occasion to criticise as unduly formalistic the approach of Russian courts based on the requirement of

formal unlawfulness of the authorities' actions. In the *Aleksandr Makarov* case, Mr Makarov's detention in most aspects, including the lighting, food, medical assistance, sanitary conditions, etc., complied with domestic legal regulations, yet their cumulative effect was such as to constitute inhuman treatment in breach of Article 3 of the Convention (see *Aleksandr Makarov*, cited above, §§ 98-100). The Court found it questionable whether, in a situation where domestic legal norms prescribed such conditions of his detention, Mr Makarov would have been able to argue his case effectively before a court, and noted that such approach by the Russian courts offered no prospect of success for his tort action and rendered this remedy theoretical and illusory rather than adequate and effective (ibid., §§ 88-89; see also *Silver and Others*, cited above, §§ 117-118, in which the jurisdiction of the English courts was limited to determining whether or not the prison authorities had exercised their powers in compliance with the Prison Act and the Rules).

116. Even in cases where the claimant was able to prove that the actual conditions of detention deviated from, or fell short of, the standards required by applicable Russian laws, the Russian courts have routinely absolved the State of tort liability, finding that the inadequacy of material conditions was not attributable to some shortcoming or omission on the part of the prison authorities but rather to a structural problem, such as insufficient funding of the penitentiary system. Thus, in the *Skorobogatykh* case, the Russian courts acknowledged the accuracy of Mr Skorobogatykh's allegations of severe overcrowding in the remand prison where he had been detained, but rejected his claim against the State, noting that the overcrowding was due to "objective reasons" (see *Skorobogatykh*, cited above, §§ 17-18 and 31-32). In another case the Russian courts explicitly stated that the prison management and State authorities in general could not be held liable in tort for the overcrowded cells and the state of disrepair into which the remand prison had fallen, owing to a lack of funding from the federal budget (see *Artyomov*, cited above, §§ 16-18 and 111-112). A similar situation obtained in the *Roman Karasev* case, where the courts consistently absolved the authorities of all liability, citing "objective factors" (see *Roman Karasev*, cited above, §§ 17, 24 and 82). As the Court put it, 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 (ibid., § 85). The Court considered this approach adopted by the Russian courts unacceptable because it allowed a large number of well-founded cases where the unsatisfactory conditions of detention resulted from a lack of funds or a limited capacity of detention facilities, to remain unresolved at the domestic level (see *Artyomov*, cited above, § 112; also compare *Orchowski v. Poland*, no. 17885/04, § 108, ECHR 2009-... (extracts), where the Polish courts had considered that the policy of reducing the space for each individual in overcrowded establishments was in accordance with domestic law).

117. Finally, the Court notes that even in cases where the Russian courts awarded compensation for conditions of detention that had been unsatisfactory in the light of the domestic legal requirements, the level of the compensation was unreasonably low in comparison with the awards made by the Court in similar cases (see, for instance, *Shilbergs*, cited above, where the applicant was awarded RUB 1,500, that is less than 50 euros (EUR), for his detention in an extremely cold and humid cell, without adequate lighting, food or a personal sleeping place). In the *Shilbergs* case, the Court was furthermore concerned with the reasoning of the Russian courts, which had assessed the amount of compensation by reference in particular to the "degree of responsibility of the management and its lack of financial resources". The Court accepted that, applying the compensatory principle, national courts might make an award taking into account the motives and conduct of the defendant and making due allowance for the circumstances in which the wrong was committed. However, it reiterated its finding made in a number of cases that financial or logistical difficulties, as well as the lack of a positive intention to humiliate or debase the applicant, could not be relied upon by the domestic authorities as circumstances relieving them of their obligation to organise the State's penitentiary system in such a way as to ensure respect for the dignity of detainees (see, among other authorities, *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006). The Court found it anomalous for the domestic courts to decrease the amount of compensation to be paid to the applicant for a wrong committed by the State by referring to the latter's lack of funds. It considered that in circumstances such as those under consideration the scarcity of means available to the State should not be accepted as mitigating its conduct, and were thus irrelevant in assessing damages under the compensatory criterion. Furthermore, the Court emphasised that the domestic courts, as the custodians of individual rights and freedoms, should have felt it their duty to mark their disapproval of the State's wrongful conduct to the extent of awarding an adequate and sufficient quantum of damages to the applicant, taking into account the fundamental importance of the right of which they had found a breach, even if they considered that breach to have been an inadvertent rather than an intended consequence of the State's conduct. As a corollary this would have conveyed the message that the State could not set individual rights and freedoms at nought or circumvent them with impunity (see *Shilbergs*, cited above, § 71-79).

118. In the light of the above considerations, the Court is not satisfied that the present state of the Russian law allows tort claimants to recover adequate damages on proof of their allegations of inhuman or degrading conditions of detention. The Court is not prepared, therefore, to change its position, as expressed in previous cases, that a civil claim for damages incurred in connection with inhuman or degrading conditions of detention does not satisfy the criteria of an effective remedy that offers both a reasonable prospect of success and adequate redress.

C. Conclusion

119. In the light of the above considerations, the Court concludes that for the time being the Russian legal system does not provide an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention. Accordingly, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies and finds that the applicants did not have at their disposal an effective domestic remedy for their grievances, in breach of Article 13 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

120. The applicants complained under Article 3 of the Convention that they had been detained at remand prisons IZ-67/1 (Mr Ananyev) and IZ-30/1 (Mr Bashirov) in conditions that had been so harsh as to constitute inhuman and degrading treatment in breach of this provision, which reads as follows:

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

A. Assessment of evidence and establishment of facts

1. General considerations

121. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of

the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; and *Akdivar and Others*, cited above, § 168).

122. The Court is mindful of the objective difficulties experienced by the applicants in collecting evidence to substantiate their claims about the conditions of their detention. Owing to the restrictions imposed by the prison regime, detainees cannot realistically be expected to be able to furnish photographs of their cell or give precise measurements of its dimensions, temperature or luminosity. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government.

123. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts)).

124. In previous conditions-of-detention cases, the extent of factual disclosure by the Russian Government was rather limited and the supporting evidence they produced habitually consisted in a series of certificates issued by the director of the impugned detention facility after they had been given notice of the complaint. The Court repeatedly pointed out that such certificates lacked references to the original prison documentation and were apparently based on personal recollections rather than on any objective data and, for that reason, were of little evidentiary value (see, among other authorities, *Veliyev v. Russia*, no. 24202/05, § 127, 24 June 2010; *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007; and *Belashev*, cited above, § 52).

125. The Court emphasised that in every case the Government had to account properly for the failure to submit the original records, in particular those concerning the number of inmates detained together with the applicant. The Government frequently advanced the explanation that the complaint had been communicated to them after a considerable lapse of time and that by then the original prison documentation had been destroyed upon the expiry of the time-limit for its safe-keeping. In this connection the Court noted that the destruction of the relevant documents did not absolve the Government from the obligation to support their factual submissions with appropriate evidence. Moreover, it often found that the Russian authorities did not appear to have acted with due care and diligence in handling the prison records because some of them had actually been destroyed after the Government had been put on notice that the Court was dealing with the case (see *Shcherbakov v. Russia*, no. 23939/02, § 78, 17 June 2010; *Gultyayeva*, cited above, § 154; and *Novinskiy v. Russia*, no. 11982/02, §§ 102-103, 10 February 2009). In other cases the Government did submit extracts from the original prison records but they were too disparate and spaced out in time to present a credible refutation of the applicant's claim of severe overcrowding at the material time (see *Gubin*, § 54; *Kokoshkina*, § 32, both cited above; and *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008).

126. The Court notes with regret that the regulation on the functioning of the department of prison records (*отдел специального учета*) has never been published and appears to have been classified as being for internal use only. Accordingly, the limited knowledge the Court has of the accounting and statistical forms used in the Russian penitentiary system is based on the sample prison documents that the Government have produced in past and present cases. Of those, the prison population register and cell records of individual detainees are of particular value for the assessment of a claim of overcrowding.

127. The prison population register (*книга количественного учета лиц, содержащихся в следственном изоляторе*) is filled out by morning and night shifts of prison warders with information about the number of detainees present in each cell. The information entered into the page-wide table includes the cell number and two figures representing the number of sleeping places in the cell and the actual number of inmates. It is signed by the warders on duty from the outgoing and incoming shifts.

128. A cell record (*камерная карточка*) is an index card filled in upon a new detainee's arrival at the remand prison. It contains his or her name, date of birth, information on past convictions and on-going criminal proceedings, and inventories of his or her personal belongings and of the items that were given to him or her in prison. All cell transfers are recorded in a separate table and show the cell number and transfer date.

129. Read together, the prison population register and cell records are capable of presenting both a general situation in the entire prison during the

relevant period of time and the specific situation in the applicant's cell. They enable the Court to see whether or not and how severely the overcrowding problem affected the detention facility and, if inmates were unevenly distributed among the cells, whether or not the applicant's cell was filled beyond design capacity. They also allow the Court to verify that the inmates whose statements may have been produced by an applicant in support of his or her allegations had actually shared the cell with the applicant during the specified period.

130. The recognition of the utility of the aforementioned records for the establishment of facts in a conditions-of-detention case is, however, without prejudice to the use of any other evidence that the parties may wish to submit in such a case. As noted above, the Convention proceedings lay down no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The Court's findings of fact are based on a global evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions.

2. Findings of fact in respect of individual cases

(a) The case of Mr Ananyev

131. Mr Ananyev was held in the Smolensk remand prison IZ-67/1 from 20 January to 23 March 2007. During his two months' stay he was accommodated in cell 170, save for the last two days.

132. Cell 170 measured 15 square metres and featured 13 sleeping places. The parties agreed that the cell was filled beyond the design capacity and that its population peaked at 21 prisoners. This is confirmed by the applicant's own submissions, written statements from his co-detainees, and the extracts from the prison population register produced by the Government.

133. The Court finds it established that Mr Ananyev had at his disposal less than 1.25 square metres of personal space and that the number of detainees significantly exceeded the number of sleeping places available.

(b) The case of Mr Bashirov

134. Mr Bashirov was held in the Astrakhan remand prison IZ-30/1 for more than three years, from 3 May 2005 to 21 May 2008. He stayed in five different cells and, for one week in December 2007, in the prison hospital.

135. All of Mr Bashirov's cells were similar in size, in the range of 23 to 25 square metres, and were designed to provide sleeping accommodation to 10 or 12 persons. As to the actual cell population, Mr Bashirov gave numbers that significantly exceeded the number of sleeping places, whereas the Government denied the existence of overpopulation.

136. The Court notes that in the case of Mr Bashirov the Government did not submit any original documents showing the actual number of

inmates or account for the absence of such documents. They solely referred to a certificate which had been issued by the prison governor in June 2009, that is more than four years after Mr Bashirov's detention had begun and one year after it had come to an end. The certificate did not specify the actual number of detainees during any specific period of Mr Bashirov's detention; it merely asserted that it "had not exceeded the number of sleeping places". As the Court has pointed out on many occasions when the Government failed to submit original records, documents prepared after a considerable period of time cannot be viewed as sufficiently reliable sources, given the length of time that has elapsed.

137. On the other hand, Mr Bashirov's assertion of severe overpopulation is corroborated by extracts from annual reports by the regional Ombudsman (compare *Gladkiy*, § 67, and *Roman Karasev*, § 11, both cited above, in which the Ombudsman of the Kaliningrad Region reported a serious overcrowding issue in prison IZ-39/1). The reports for the years from 2005 to 2008 deplored poor sanitary and hygienic conditions of detention in prison IZ-30/1 and indicated that the prison had been filled at all times well beyond its design capacity. The actual number of detainees at the end of 2005 and 2006 was more than double the capacity. Even though the situation had somewhat improved by the end of 2008, the Ombudsman pointed out that the estimated design capacity had been set too high to ensure compliance with the domestic sanitary norm of four square metres per person.

138. Having regard to the material presented by Mr Bashirov in support of his assertions, together with the fact that the Government did not submit any credible evidence to the contrary, the Court finds that the cells were overcrowded and that Mr Bashirov was provided with less than two square metres of personal space.

B. Compliance with Article 3

1. General principles

139. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

140. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

141. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

142. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

(a) Overcrowding

143. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005).

144. The Court notes that the General Reports published by the Committee for the Prevention of Torture do not appear to contain an explicit indication as to what amount of living space per inmate should be considered the minimum standard for a multi-occupancy prison cell. It transpires, however, from the individual country reports on the CPT's visits and the recommendations following on those reports that the desirable standard for the domestic authorities, and the objective they should attain, should be the provision of four square metres of living space per person in pre-trial detention facilities (see, among others, CPT/Inf (2006) 24 [Albania], § 93; CPT/Inf (2004) 36 [Azerbaijan], § 87; CPT/Inf (2008) 11 [Bulgaria], §§ 55, 77; CPT/Inf (2008) 29 [Croatia], §§ 56, 71; CPT/Inf (2007) 42 [Georgia], §§ 42, 51, 61, 74; CPT/Inf (2009) 22 [Lithuania], § 35;

CPT/Inf (2006) 11 [Poland], §§ 87, 101, 111; CPT/Inf (2009) 1 [Serbia], § 49, and CPT/Inf (2008) 22 [FYRO Macedonia], § 38).

145. Whereas the provision of four square metres remains the desirable standard of multi-occupancy accommodation, the Court has found that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3 (see, among many other authorities, *Trepashkin (no. 2)*, § 113, and *Kozhokar*, § 96, both cited above; *Svetlana Kazmina v. Russia*, no. 8609/04, § 70, 2 December 2010; *Kovaleva v. Russia*, no. 7782/04, § 56, 2 December 2010; *Roman Karasev*, cited above, §§ 48-49; *Aleksandr Leonidovich Ivanov v. Russia*, no. 33929/03, § 35, 23 September 2010; *Vladimir Krivonosov*, § 93, and *Gubin*, § 57, both cited above; *Salakhutdinov v. Russia*, no. 43589/02, § 72, 11 February 2010; *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 98, 12 February 2009; *Guliyev*, cited above, § 32; *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).

146. In some earlier cases, the number of detainees exceeded the number of sleeping places in the cell and insufficiency of floor surface was further aggravated by the lack of an individual sleeping place. Inmates had to take turns to sleep (see *Gusev v. Russia*, no. 67542/01, § 57, 15 May 2008; *Dorokhov v. Russia*, no. 66802/01, § 58, 14 February 2008; *Bagel v. Russia*, no. 37810/03, § 61, 15 November 2007; *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Igor Ivanov*, § 36, *Benediktov*, § 36, *Khudoyorov*, § 106, *Romanov*, § 77, and *Labzov*, § 45, all cited above; and *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI).

147. Where the cell accommodated not so many detainees but was rather small in overall size, the Court noted that, deduction being made of the place occupied by bunk beds, a table, and a cubicle in which a lavatory pan was placed, the remaining floor space was hardly sufficient even to pace out the cell (see *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 87, 27 January 2011; *Petrenko v. Russia*, no. 30112/04, § 39, 20 January 2011; *Gladkiy*, § 68, *Trepashkin (no. 2)*, § 113, both cited above; *Arefyev v. Russia*, no. 29464/03, § 59, 4 November 2010; and *Lutokhin*, cited above, § 57).

148. It follows that, in deciding whether or not there has been a violation of Article 3 on account of the lack of personal space, the Court has to have regard to the following three elements:

(a) each detainee must have an individual sleeping place in the cell;

(b) each detainee must have at his or her disposal at least three square metres of floor space; and

(c) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items.

The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3.

(b) Other aspects

149. In cases where the inmates appeared to have at their disposal sufficient personal space, the Court noted other aspects of physical conditions of detention as being relevant for the assessment of compliance with that provision. Such elements included, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements. Thus, even in cases where a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Babushkin*, cited above, § 44; and *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007).

(i) Outdoor exercise

150. Of the other elements relevant for the assessment of the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. The Prison Standards developed by the Committee for the Prevention of Torture make specific mention of outdoor exercise and consider it a basic safeguard of prisoners' well-being that all of them, without exception, be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities. The Standards emphasise that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather (see paragraph 48 of the 2nd General Report, cited in paragraph 56 above).

151. The Court has frequently observed that a short duration of outdoor exercise limited to one hour a day was a factor that further exacerbated the situation of the applicant, who was confined to his cell for the rest of the time without any kind of freedom of movement (see, most recently, *Yevgeniy Alekseyenko*, § 88, *Gladkiy*, § 69, and *Skachkov*, § 54, all cited above). In one case the applicant's situation was even worse because the exercise yard had been closed for renovation and he was forced to stay indoors for more than a month (see *Trepashkin*, cited above, §§ 32 and 94).

152. The physical characteristics of outdoor exercise facilities also featured prominently in the Court's analysis. In *Moiseyev v. Russia*, the exercise yards in a Moscow prison were just two square metres larger than the cells and hardly afforded any real possibility for exercise. The yards were surrounded by three-metre-high walls with an opening to the sky

protected with metal bars and a thick net. The Court considered that the restricted space coupled with the lack of openings undermined the facilities available for recreation and recuperation (see *Moiseyev v. Russia*, no. 62936/00, § 125, 9 October 2008).

(ii) Access to natural light and fresh air

153. The Court has constantly emphasised the importance of giving prisoners unobstructed and sufficient access to natural light and fresh air within their cells. Until the early 2000s Russian remand prisons were equipped with metal shutters or inclined plates fitted to windows, which had apparently been designed to prevent communication between prisoners. As the Committee for the Prevention of Torture noted, not only did such contraptions have the effect of depriving prisoners of access to natural light and preventing fresh air from entering the accommodation but they also created conditions favourable to the spread of diseases and in particular tuberculosis (see paragraph 30 of the 11th General Report, cited in paragraph 56 above).

154. In the Court's view, restrictions on access to natural light and air owing to the fitting of metal shutters seriously aggravated the situation of prisoners in an already overcrowded cell and weighed heavily in favour of a violation of Article 3 (see *Goroshchenya*, § 71, *Salakhutdinov*, § 73, *Shilbergs*, § 97, all cited above; *Grigoryevskikh v. Russia*, no. 22/03, § 64, 9 April 2009; *Aleksandr Makarov*, § 96, *Belashev*, § 59, *Moiseyev*, § 125, *Vlasov*, § 82, all cited above; and *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005). However, absent any indications of overcrowding or malfunctioning of the ventilation system and artificial lighting, the negative impact of shutters did not reach, on its own, the threshold of severity required under Article 3 (see *Pavlenko*, cited above, §§ 81-82, and *Matyush v. Russia*, no. 14850/03, § 58, 9 December 2008).

155. The Court has also made it clear that the free flow of natural air should not be confused with inappropriate exposure to inclement outside conditions, including extreme heat in summer or freezing temperatures in winter. In some cases the applicants found themselves in particularly harsh conditions because the cell window was fitted with shutters but lacked glazing. As a result, they suffered both from inadequate access to natural light and air and from exposure to low winter temperatures, having no means to shield themselves from the cold freely penetrating into the cell from the outside (see *Zakharkin*, §§ 125-127, *Gultyayeva*, §§ 159-162, both cited above, and *Starokadomskiy v. Russia*, no. 42239/02, § 45, 31 July 2008).

(iii) Sanitary facilities and hygiene

156. The Court considers, as does the Committee for the Prevention of Torture, that access to properly equipped and hygienic sanitary facilities is

of paramount importance for maintaining the inmates' sense of personal dignity (see paragraph 49 of the 2nd General Report, cited in paragraph 56 above). Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean (see point 15 of the Standard Minimum Rules for the Treatment of Prisoners and point 19.4 of the European Prison Rules, cited in paragraphs 55 and 58 above, respectively).

157. As regards access to toilets, the Court has noted in many cases that in Russian remand prisons the lavatory pan was placed in the corner of the cell and either lacked any separation from the living area or was separated by a single partition approximately one to one a half metres high. Such close proximity and exposure was not only objectionable from a hygiene perspective but also deprived a detainee using the toilet of any privacy because he remained at all times in full view of other inmates sitting on the bunks and also of warders looking through the peephole (see, among other authorities, *Aleksandr Makarov*, § 97, *Trepashkin*, § 94, *Grishin*, § 94, and *Kalashnikov*, § 99, all cited above). In one case the Court considered that the lack of privacy resulting from the openness of the toilet area must have taken a particularly heavy toll on the applicant, who was undergoing treatment for haemorrhoids and had to apply his medication in front of his cellmates and warders (see *Moiseyev*, cited above, § 124).

158. The Court has frequently noted that the time for taking a shower which has normally been afforded to inmates in Russian remand prisons has been limited to fifteen to twenty minutes once a week and has been manifestly insufficient for maintaining proper bodily hygiene. The way the showering was organised did not afford the detainees any elementary privacy, for they were taken to shower halls as a group, one cell after another, and the number of functioning shower heads was occasionally too small to accommodate all of them (see *Goroshchenya*, § 71, *Shilbergs*, § 97, *Aleksandr Makarov*, § 99, *Seleznev*, § 44, *Grishin*, § 94, and *Romanov*, § 79, all cited above).

159. Finally, the necessary sanitary precautions should include measures against infestation with rodents, fleas, lice, bedbugs and other vermin. Such measures comprise sufficient and adequate disinfection facilities, provision of detergent products, and regular fumigation and checkups of the cells and in particular bed linen, mattresses and the areas used for keeping food. This is an indispensable element for the prevention of skin diseases, such as scabies, which appear to have been a common occurrence in Russian remand prisons (see *Kozhokar*, § 87, *Shcherbakov*, § 14, *Buzhinayev*, § 17, *Grigoryevskikh*, § 25, *Belashev*, §§ 34-35, *Novoselov*, § 23, and *Kalashnikov*, §§ 18 and 29, all cited above).

2. Application in the present case

160. The Court will now proceed to assess, in the light of the above-mentioned general principles and requirements, whether or not the facts, as established above, disclosed a violation of Article 3 in relation to the applicants.

(a) Personal space

161. The present case concerned the conditions of detention in two different remand prisons: Smolensk prison IZ-67/1 and Astrakhan prison IZ-30/1. The Court found it established, to the standard required under Article 3 of the Convention, that at the material time both of those prisons were plagued with a severe shortage of personal space available to inmates.

162. The applicant Mr Bashirov in the Astrakhan prison was held in conditions that provided no more than two square metres of floor surface per inmate (see paragraph 138 above). The situation of the applicant Mr Ananyev was even worse: not only was the personal space per detainee marginally greater than one square metre, but also the number of detainees per cell significantly exceeded the number of sleeping places (see paragraph 133 above).

(b) Other aspects

163. In the light of the parties' submissions and the legal and normative regulations regarding the regime in Russian remand prisons, as applicable at the material time (see paragraph 26 et seq. above), the Court considers the following additional elements to be established.

164. The applicants were allowed a one-hour period of outdoor exercise daily. Windows were not fitted with metal shutters or other contraptions preventing natural light from penetrating into the cell. Where available, a small window pane could be opened for fresh air. Cells were additionally equipped with artificial lighting and ventilation.

165. As regards sanitary and hygiene conditions, both the dining table and the lavatory pan were located inside the applicants' cells, sometimes as close to each other as one or one and a half metres. A partition, approximately one to one a half metres in height, separated the toilet on one side; the prison regulations did not allow the toilet to be completely shielded from view by means of a door or a curtain. Cold running water was normally available in cells and detainees had access to showers once every seven to ten days.

(c) Conclusion

166. It has been established that the applicants Mr Ananyev and Mr Bashirov were afforded less than three square metres of personal space. They remained inside the cell all the time, except for a one-hour period of outside exercise; they had to have their meals and answer the calls of nature

in those cramped conditions. As far as Mr Bashirov is concerned, it is noted that he spent in those conditions more than three years. The Court therefore considers that the applicants Mr Ananyev and Mr Bashirov were subjected to inhuman and degrading treatment in breach of Article 3 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

167. 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. Pecuniary damage

168. The applicant Mr Bashirov claimed interest on the money which had been seized from his flat during a search in 2005. The Government pointed out that on 17 July 2009 a district court had directed the authorities to return the money to him but he had not submitted a writ of enforcement to the bailiffs. The Court notes that the complaint under Article 1 of Protocol No. 1 was declared inadmissible and rejects this claim for pecuniary damage.

B. Non-pecuniary damage

169. The applicant Mr Ananyev claimed EUR 2,000 and the applicant Mr Bashirov EUR 50,000 in respect of non-pecuniary damage.

170. The Government considered their claims to be excessive.

171. The Court has found a violation of Article 3 of the Convention in respect of the two applicants who were subjected to inhuman and degrading treatment on account of the inadequate conditions of their detention. It has also found a violation of Article 13 of the Convention since they did not have at their disposal an effective domestic remedy.

172. As regards compensation in respect of a violation of Article 3, the Court considers that the suffering and frustration caused to an individual who was detained in manifestly inappropriate conditions cannot be compensated for by a mere finding of a violation. The length of stay in such conditions is undeniably the single most important factor that is relevant for the assessment of the extent of non-pecuniary damage. It is also known that an initial period of adjustment to poor conditions exacts a particularly heavy mental and physical toll on the individual. Having regard to the fundamental nature of the right protected by Article 3, the Court finds it appropriate to award Mr Bashirov EUR 6,000 for the first year of his detention in inhuman

and degrading conditions and EUR 3,500 for each subsequent year, that is the global amount of EUR 13,000. As to Mr Ananyev, the Court considers it reasonable to award him the full amount he claimed, that is EUR 2,000.

173. As regards the violation of Article 13, the Court holds that the finding of a violation constitutes sufficient just satisfaction.

174. Having regard to the above principles, the Court awards Mr Ananyev EUR 2,000 and Mr Bashirov EUR 13,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of the claims under this head.

C. Costs and expenses

175. The applicant Mr Ananyev did not claim any costs or expenses. The applicant Mr Bashirov claimed RUB 35,800 in domestic legal fees and RUB 11,908 in copying and postal expenses. The Government submitted that the domestic legal fees were not connected with the subject matter of the Strasbourg proceedings and that the postal receipts only confirmed the amount of RUB 4,191.

176. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

177. In the case of Mr Bashirov, a portion of his complaints was declared inadmissible. Regard being had to the documents in its possession, the Court considers it reasonable to award Mr Bashirov the sum of EUR 850 covering costs under all heads, plus any tax that may be chargeable to him.

D. Default interest

178. 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.

VII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

179. The Court notes that inadequate conditions of detention appear to constitute a recurrent problem in Russia which has led it to find violations of Articles 3 and 13 of the Convention in more than eighty judgments that have been adopted since the first such finding in the *Kalashnikov* case in 2002. The Court therefore considers it timely and appropriate to examine the present case under Article 46 of the Convention which reads, in the relevant part, as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution..."

A. General principles

180. The Court recalls that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008 ...). This obligation has consistently been emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, among many authorities, Interim Resolutions DH(97)336 in cases concerning the length of proceedings in Italy; DH(99)434 in cases concerning the action of the security forces in Turkey; ResDH(2001)65 in the case of *Scozzari and Giunta v. Italy*; ResDH(2006)1 in the cases of *Ryabykh* and *Volkova v. Russia*).

181. In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them (see *Broniowski v. Poland* [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC] no. 35014/97, ECHR 2006-... §§ 231-239 and the operative part). This adjudicative approach is, however, pursued with due respect for the Convention organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see, *mutatis mutandis*, *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX, and *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 42, 28 April 2008).

182. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task, as defined by Article 19, that is to "ensure the

observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in a large series of cases (see, *mutatis mutandis, E.G. v. Poland* (dec.), no. 50425/99, § 27, 23 September 2008). The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order (see *Wolkenberg and Others v. Poland* (dec.), no. 50003/99, § 34, ECHR 2007 ... (extracts)). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court may decide to adjourn examination of all similar cases, thus giving the respondent State an opportunity to settle them in such various ways (see, *mutatis mutandis*, *Broniowski*, cited above, § 198, and *Xenides-Arestis v. Turkey*, no. 46347/99, § 50, 22 December 2005).

183. If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment so as to ensure effective observance of the Convention (see *Burdov (no. 2)*, cited above, § 128).

B. Existence of a structural problem warranting the application of the pilot-judgment procedure

184. Since its first judgment concerning the inhuman and degrading conditions of detention in Russian pre-trial remand centres (see *Kalashnikov*, cited above), the Court has found a violation of Article 3 on account of similar conditions of detention in more than eighty cases (see Annex). A number of those judgments also concluded that there had been a violation of Article 13 on account of the absence of any effective domestic remedies for the applicants' complaints about the conditions of their detention. According to the Court's case management database, there are at present approximately two hundred and fifty prima facie meritorious applications against Russia awaiting first examination which feature, as their primary grievance, a complaint about inadequate conditions of detention. The above numbers, taken on their own, are indicative of the existence of a recurrent structural problem (see, among other authorities, *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V; *Lukenda*, cited above, §§ 90-93; and *Rumpf v. Germany*, no. 46344/06, §§ 64-70, 2 September 2010).

185. The violations of Article 3 found in the previous judgments, as well as those found in the present case, originated in remand centres that were located in various administrative entities of the Russian Federation and in geographically diverse regions. Nevertheless, the set of facts underlying these violations was substantially similar: detainees suffered inhuman and degrading treatment on account of an acute lack of personal space in their cells, a shortage of sleeping places, unjustified restrictions on access to natural light and air, and non-existent privacy when using the sanitary facilities. It appears, therefore, that the violations were neither prompted by an isolated incident, nor attributable to a particular turn of events in those cases, but originated in a widespread problem resulting from a malfunctioning of the Russian penitentiary system and insufficient legal and administrative safeguards against the proscribed kind of treatment. This problem has affected, and has remained capable of affecting, a large number of individuals who have been detained in remand centres throughout Russia (compare *Broniowski*, § 189, and *Hutten-Czapska*, § 229, both cited above).

186. It is further recalled that the obligation to improve without delay the "practically inhuman conditions" in pre-trial detention centres in line with Recommendation R(87)3 on European prison rules (cited in paragraph 58 above) was one of the accession commitments of the Russian Federation which it undertook to implement when joining the Council of Europe (see Parliamentary Assembly's Opinion No. 193 (1996), § 7 (ix)). In its Resolution 1277 (2002) on the honouring of obligations and commitments by the Russian Federation, the Parliamentary Assembly noted a sharp decrease in the numbers of detainees in custodial institutions but deplored detention conditions, in particular prison overcrowding, poor health care and insufficient financing. It called on Russian authorities to improve the conditions in pre-trial detention centres and ensure respect for the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to implement the recommendations made by the Committee for the Prevention of Torture (point 8 (ix)). A more recent report by the Monitoring Committee on the honouring of obligations and commitments by the Russian Federation (Doc. 10568, 3 June 2005) noted that, as a result of mass amnesties, the use of alternative sentencing and reduction of penalties in the Criminal Code, as well as the transfer of competence for the ordering and extending of pre-trial detention from prosecutors to courts, and the construction of new remand centres, the average overcrowding in pre-trial detention had been reduced to only one per cent above the facilities' normal capacity. Nevertheless, a detailed region-by-region analysis showed that pre-trial detention centres remained overcrowded at different levels in thirty-four regions: in fifteen of them the overcrowding is less than 20%, in sixteen between 20 and 50%. In three regions – the Tuva Republic, the Chita and Kostroma regions – the pre-trial detention facilities remained more severely overcrowded (§§ 204-210 of the report).

187. Since the adoption of the *Kalashnikov* judgment in 2002, the problem of overcrowding in Russian remand centres has featured prominently on the agenda of the Committee of Ministers of the Council of Europe in accordance with Article 46 of the Convention. In its first Interim Resolution concerning the execution of the *Kalashnikov* judgment, the Committee of Ministers noted that the problem of overcrowding plagued remand centres in fifty-seven out of eighty-nine Russian regions and that prompt action was necessary to remedy the problem and to align the sanitary conditions of detention with the requirements of the Convention (Interim Resolution CM/ResDH(2003)123, cited in paragraph 59 above). A second interim resolution adopted in 2010 concerned the execution of the *Kalashnikov* judgment and thirty-one further similar judgments that the Court had issued in the meantime (Interim Resolution CM/ResDH(2010)35, cited in paragraph 60 above). The resolution recalled that the existence of structural problems and the pressing need for comprehensive general measures had been stressed by the Committee of Ministers and acknowledged by the Russian authorities, and reiterated the need for an integrated approach to finding solutions to the problem of overcrowding in remand prisons, including in particular changes to the legal framework, practices and attitudes.

188. The Russian authorities did not deny the existence of a structural problem related to overcrowding in pre-trial detention facilities. Its magnitude and urgency were acknowledged both in the Government's submissions in the present case and in the documents and position papers adopted at national level, such as for instance the Federal Programme for Development of the Penitentiary of 5 September 2006 (cited in paragraph 54 above). The Programme expressly referred to Russia's accession commitments and the standards for pre-trial detention set by the Court and the Committee for the Prevention of Torture and declared as its objective the alignment of the conditions of detention with the Russian legal norms and further transition to international standards. Taking stock of the situation in the penitentiary system, it noted that only forty Russian regions possessed facilities capable of providing accommodation to detainees in accordance with the domestic sanitary norm of four square metres per inmate, whereas pre-trial detention centres in eighteen regions could offer less than three square metres per inmate. The Programme's annual targets were to bring sixty per cent of remand centres into compliance with the Russian sanitary norm by 2011 and all of them by 2016. However, less than one per cent of remand centres were expected to be compatible with the international standard of seven square metres per inmate by 2011 and only 11.4 per cent by 2016.

189. Notwithstanding a perceptible trend towards an improvement in material conditions of detention and a reduction in the number of prisoners awaiting trial, the urgency of the problem of overcrowding has not abated in recent years. The Court's findings in the instant case and the continuing

influx of new applications illustrate the gravity of the situation in some remand centres where inmates still do not have at their disposal an individual sleeping place, as was the case for Mr Ananyev, and highlight the absence of effective domestic remedies for either putting an end to an ongoing violation or obtaining compensation for a period of detention that has already ended. It is a reason for grave concern for the Court that the violations identified in the present judgment occurred more than five years after the *Kalashnikov* judgment in which the problem of overcrowding had been identified for the first time, notwithstanding the respondent Government's obligation under Article 46 to adopt, under the supervision of the Committee of Ministers, the necessary remedial and preventive measures, both at individual and general levels (compare *Burdov (no. 2)*, cited above, § 134).

190. Taking into account the recurrent and persistent nature of the problem, the large number of people it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at the domestic level, the Court considers it appropriate to apply the pilot-judgment procedure in the present case (see *Burdov (no. 2)*, cited above, § 130, and *Finger v. Bulgaria*, no. 37346/05, § 128, 10 May 2011). As it has emphasised above, the mere repetition of the Court's findings in similar individual cases would not be the best way to achieve the Convention's purpose. The Court thus feels compelled to address the underlying structural problems in greater depth, to examine the source of those problems and to provide further assistance to the respondent State in finding the appropriate solutions and to the Committee of Ministers in supervising the execution of the judgments (see Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem, and the Declarations adopted by the High Contracting Parties at the Interlaken and Izmir conferences).

C. Origin of the problem and general measures required to address it

191. The Court acknowledges that the recurrent violations of Article 3 resulting from inadequate conditions of detention in some Russian remand centres constitute an issue of considerable magnitude and complexity. It is not the product of a defective legal provision or regulation or a particular lacuna in Russian law. Rather, it is a multifaceted problem owing its existence to a large number of negative factors, both legal and logistical in nature. Some of them – such as the insufficient number of remand prisons, their antiquity and poor state of repair, misallocation of resources, and a lack of transparency in prison management – may be traced back to the penitentiary system, whereas others – such as the excessive and often unjustified recourse to detention on remand, rather than alternative

preventive measures, or a lack of efficient remedies to ensure that the conditions comply with the Russian legislation – have originated elsewhere.

1. Avenues for improvement of detention conditions

192. It is undisputable that the situation in Russian remand centres as described above still requires comprehensive general measures at national level, measures which must take into consideration a large number of individuals who are currently affected by it. The Court welcomes the efforts that have been deployed so far by the Russian authorities with a view to bringing the conditions of detention in remand centres into line with the domestic and international standards. In the period from 2002 to 2006, a federal programme for reforming prisons permitted renovation and reconstruction of a number of remand centres and resulted in a tangible increase in the number of places and floor space per inmate. It was followed by a still more ambitious programme, approved by a Government decision of 5 September 2006 for a period from 2007 to 2016, which provides in particular for the construction of more than twenty new remand centres providing remand prisoners with seven square metres of personal space. Most importantly, one of the programme's objectives is to ensure that, by the year 2016, the accommodation in all remand prisons should meet the Russian legal requirement of four square metres per person.

193. The Court, however, notes with regret that the other measures for improvement of the material conditions of detention that can be implemented in the short term and at little extra cost – such as for instance shielding the toilets located inside the cell with curtains or partitions, removal of thick netting on cell windows blocking access to natural light and a reasonable increase in the frequency of showers – have not yet been implemented. The Court also observes that the adoption of such measures has been considered by the Committee of Ministers in close co-operation with the Russian authorities (see the Interim Resolutions cited in paragraphs 59 and 60 above). The Committee's Resolutions demonstrate that some progress has been achieved and that further action is being considered and taken to tackle the problem.

194. The Court, like the Committee of Ministers, supports the Russian authorities' position that there should be an integrated approach to finding solutions to the problem of overcrowding in remand prisons, including in particular changes to the legal framework, practices and attitudes (see the Committee's Interim Resolution CM/ResDH(2010)35, cited above). Having examined a variety of the measures already adopted and still being taken for the improvement of conditions of pre-trial detention in Russia, the Court notes that this process raises a number of complex legal and practical issues which go, in principle, beyond the Court's judicial function. It is not the Court's task to advise the respondent Government about such a complex reform process, let alone recommend a particular way of organising its

penal and penitentiary system. While the pilot-judgment procedure has been instrumental in helping Contracting States to comply with their obligations under the Convention, the Court does not have the capacity, nor is it appropriate to its function as an international court, to involve itself in reforms of that type in parallel with the Committee of Ministers or to order a specific general measure to be adopted in that process by the respondent State. The Committee of Ministers is better placed and equipped to monitor the measures that need to be adopted by Russia to ensure adequate conditions of pre-trial detention in accordance with the Convention (see, *mutatis mutandis*, *Finger*, cited above, § 115; *Burdov (no. 2)*, cited above, §§ 136 and 137; and *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 90-92, ECHR 2009-... (extracts)).

195. The above considerations do not prevent the Court, however, from indicating the existence of a general issue or voicing a particular concern that warrant the respondent State's in-depth consideration in the light of its findings in individual cases. Such indications from the Court would be all the more useful and appropriate as they contribute to a better identification of complex structural problems underlying the violations and to the establishment of appropriate solutions to such problems.

196. Thus, the Court considers it important for the purposes of the present judgment to highlight two such issues which need inevitably to be addressed by the Russian authorities in their ongoing struggle against persistent overcrowding of remand centres. The first issue concerns the close affinity between the problem of overcrowding, which falls to be considered under Article 3 of the Convention, and an excessive length of pre-trial detention, which has been found by the Court to violate another provision of the Convention, namely Article 5, in an equally significant number of Russian cases. The second issue, which is closely linked to the first, concerns possible additional ways of combating the overcrowding through provisional arrangements and safeguards for the admission of prisoners in excess of the prison capacity.

(a) Reducing recourse to pre-trial detention

197. It has been the constant and common position of all Council of Europe bodies that a reduction in the number of remand prisoners would be the most appropriate solution to the problem of overcrowding. The Court has reiterated in many of its judgments that, in view of both the presumption of innocence and the presumption in favour of liberty, remand in custody must be the exception rather than the norm and only a measure of last resort (see, among many others, *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X). The Committee for the Prevention of Torture considered that in the context of high incarceration rates, such as those persisting in Russia, "throwing increasing amounts of money at the prison estate will not offer a solution" (see paragraph 28 of the 11th General

Report, CPT/Inf(2001)16), and has advocated active review of pre-trial custody policy. As recently as in 2010 the Committee of Ministers indicated that "the creation of new places of detention cannot in itself provide a lasting solution to the problem of prison overcrowding and that this measure should be closely supported by others aimed at reducing the overall number of remand prisoners" (see Interim Resolution CM/ResDH(2010)35, and also point I(2) of the Appendix to Recommendation R(99)22, cited in paragraph 57 above).

198. The statistical information from the Russian judicial system demonstrates a substantial reduction in the number of initial applications for a detention order, down approximately thirty-four per cent in 2010 as compared to 2007 (see paragraph 53 above). The number of applications for an extension order also diminished but in a much less perceptible manner, only by some eight per cent in the same four-year period. A decreasing number of applications for initial detention orders may be interpreted as a consequence of the recent steps towards decriminalising certain non-violent offences and also as an indication of a more reserved approach on the part of investigative authorities to using custody as a preventive measure at the pre-trial stage. Even though the number of requests by the prosecutors has decreased in relative terms, the absolute number still appears to be much too high.

199. What seems to be a reason for concern is that in the same time period the percentage of applications for a detention order granted by courts has remained at a constant and inordinately high level and has never varied despite a decreasing global number of such applications. Indeed, in the years 2007 to 2010 the Russian courts have ordered placement in custody in more than ninety per cent of cases in which this measure was sought by the investigative authorities, and approved applications for a further extension order in approximately ninety-eight per cent of cases. In practical terms, this meant that the prosecutor's request for a custodial measure was rejected only in respect of one in ten defendants and that only one out of fifty incarcerated defendants was set free before the opening day of the trial. In the second half of the year 2008, bail was used in 407 cases; in the first half of 2009, their number grew to 599 (see point II (4) of Appendix II to Interim Resolution CM/ResDH(2010)35, cited above), which still represented less than one per cent of the cases in which the suspect was remanded in custody. The statistics for the year 2010 did not show any visible change in the judicial practice and the percentage of rejected applications for detention or extension orders increased by less than 0.2 per cent, notwithstanding the fact that on 22 October 2009 the Supreme Court of the Russian Federation adopted a special ruling (see paragraph 52 above) by which it reminded the courts that detention on remand should only be ordered if other preventive measures could not be applied.

200. The Court, for its part, has already identified a malfunctioning of the Russian judicial system on account of excessively lengthy detention on

remand without proper justification. Starting with the *Kalashnikov* judgment in 2002, the Court has to date found a violation of the obligation to guarantee a trial within a reasonable time or release pending trial, under Article 5 § 3 of the Convention, in more than eighty cases against Russia where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and employing the same stereotyped formulae, without addressing specific facts or considering alternative preventive measures (see, among many other authorities, *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Mamedova*, cited above, §§ 72 et seq.; *Dolgova v. Russia*, no. 11886/05, §§ 38 et seq., 2 March 2006; *Khudoyorov*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, no. 54071/00, §§ 63 et seq., 7 April 2005; *Panchenko v. Russia*, no. 45100/98, §§ 91 et seq., 8 February 2005; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)). The Court noted in particular that "the lack of reasoning was not an accidental or short-term omission but rather a customary way of dealing with applications for release" (see *Khudobin v. Russia*, no. 59696/00, § 108, ECHR 2006-... (extracts)).

201. Unjustified and excessive recourse to custodial measures at the pre-trial stage of criminal proceedings has also been pinpointed by the Committee of Ministers as a structural problem in Russia. Its existence has been confirmed by the continuous flow of new similar applications to the Court and by the data available at national level and it has been closely linked with the problem of overcrowding in pre-trial detention centres (see points 3 and 4 of the Memorandum "Detention on remand in the Russian Federation: Measures required to comply with the European Court's judgments" prepared by the Department of the Execution of Judgments of the European Court of Human Rights CM/InfDH(2007)4 of 12 February 2007, and Interim Resolution CM/ResDH(2010)35, cited above). The Committee of Ministers noted the repeated statements by the Russian President and high-ranking State officials, including the Prosecutor General and the Minister of Justice, to the effect that up to thirty per cent of individuals held in custody should not have been deprived of their liberty, having been suspected or accused of offences of low or medium gravity, and welcomed the unambiguous commitment at the highest political level to change this unacceptable situation and to adopt urgent legislative and other measures to that effect (see Interim Resolution CM/ResDH(2010)35, cited above).

202. The Court welcomes the steps that have already been taken by the Russian authorities to reduce the number of individuals remanded in custody at the pre-trial stage of criminal proceedings. It reiterates that Russian prosecutors should be formally encouraged to decrease the number of applications for detention orders, except in the most serious cases involving violent offences. However, the above judicial statistics, read together with the findings of a violation of Article 5 § 3 in the Court's

recent judgments and the Committee of Ministers' assessment, demonstrate that the successful prevention of overcrowding of remand centres is contingent on further consistent and long-term measures for achieving full compliance with the requirements of Article 5 § 3. In addition to the Committee of Ministers' conclusions in its Interim Resolution CM/ResDH(2010)35 and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, the Court strongly doubts that the existing trend to use deprivation of liberty as the preventive measure of predilection can be reversed unless the relevant provisions of the Russian Code of Criminal Procedure have been amended to reflect expressly the requirements flowing from Article 5 of the Convention. As the Court has consistently reiterated, the first among these requirements is that the presumption should in all cases be in favour of release and that remand in custody should be an exceptional measure rather than the norm. Until conviction, the defendant must be presumed innocent and may be remanded in custody only if it has been convincingly established by reference to specific facts and evidence collected by the prosecution that (i) there is reasonable suspicion that he or she committed an offence, and (ii) there is a substantial risk of his or her absconding, reoffending, obstructing the course of justice or threatening public order, and (iii) these risks cannot be satisfactorily allayed through the use of bail or any other preventive measure not related to deprivation of liberty (see points II (6)-(9) of Recommendation Rec(2006)13, and, among other authorities, *Bykov v. Russia* [GC], no. 4378/02, §§ 61-64, ECHR 2009-..., and *Kudła*, cited above, §§ 110 et seq.).

203. Finally, any such amendment to the existing legislative framework should be accompanied by effective measures to implement the changes in judicial practice. The Court notes, as an interesting example, that some Contracting States responded to its judgments by redistributing judicial duties and appointing special judges to decide on the application of preventive measures and supervise the observance of human rights in criminal proceedings (see, in particular, Resolution CM/ResDH(2009)131 on the execution of the Court's judgments in *Lavents* and *Jurjevs* against Latvia; see also Resolution ResDH(2003)50 on the execution of the Court's judgment in *Muller* against France presenting the French Law on Presumption of Innocence of 15 June 2000, which introduced the function of *juge des libertés et de la detention*). Adequate in-service training of judges dealing with applications for detention orders is also indispensable, as was highlighted in the Committee of Ministers' Recommendation (2004)4 of 12 May 2004 on the Convention and professional training.

(b) Provisional arrangements for preventing and alleviating overcrowding

204. A realistic outlook on the situation as it obtains at the present time in Russian pre-trial detention centres demonstrates that a significant number

of them are still suffering from overcrowding and other deviations from the standards of detention established in Russian legislation. Notwithstanding a marked improvement in material conditions over recent years and the additional efforts that have already been planned and budgeted for, substandard conditions of detention are likely to persist for several more years (see, for instance, the data in Appendix II to Interim Resolution CM/ResDH(2010)35 and in the Federal Programme for Development of the Penitentiary, both cited above). This situation calls for the prompt introduction of additional legal safeguards that would be capable of preventing or at least alleviating the overcrowding in those prisons where it has remained, and ensuring effective respect for the rights of individuals who have been or will be detained there.

205. The European Prison Rules require that the national law set specific minimum requirements in respect of the accommodation provided for prisoners, with particular regard being had to the floor space, cubic content of air, lighting, heating and ventilation (Rules 18.1-18.3). It would appear therefore appropriate to establish the maximum capacity (*numerus clausus*) for each remand prison through the definition of space per inmate as a minimum of square and possibly cubic metres, which would at least be compatible with the current requirements of the Pre-trial Detention Act and would be periodically reviewed to reflect the evolving penitentiary standards. In addition, an operational capacity may be defined which is different from the maximum capacity and based on control, security and the proper operation of the regime, with a view to ensuring a smooth turnover of inmates and accommodating partial renovation work or other contingencies.

206. In order to ensure better compliance with the rules set out in law, the powers and responsibility of the governors of remand centres need to be reviewed. At present, there does not appear to be any possibility for the governors not to accept detainees beyond the prison capacity. The situation could be improved by creating such a possibility in connection with the introduction of rules on maximum capacity, as described in the preceding paragraph, in order to ensure that the operational capacity of remand centres is not exceeded other than in strictly defined and exceptional circumstances.

207. The law may, however, provide for special transitional arrangements which could apply pending an overall improvement of conditions of detention in the remand prison. By way of example, the Court would point to the legislative amendments that were introduced in the Polish Code of Execution of Sentences in the wake of the pilot judgment concerning the conditions of detention in Polish prisons (see paragraph 61 et seq. above). The crucial features of special transitional arrangements should be the following: (i) a short and defined duration; (ii) judicial supervision; and (iii) availability of compensation.

208. Allowing only a short period in which to find a detention facility that meets the adequate conditions requirements should ensure that the

endurance of inadequate conditions would not be long enough to entail a violation of Article 3. The duration of the transitional period in a specific case should be decided upon by a court by reference to concrete factual circumstances, but the law should set the maximum duration of such detention which should not be exceeded under any circumstances. The law should also exhaustively define the situations in which the court may order the detainee's temporary placement in an overcrowded facility. It is finally important to establish some form of compensation for such temporary placement, whether it is monetary compensation, extended hours of outdoor exercise, increased access to out-of-cell recreational activities, or a combination of these.

209. The Court further notes that it would be advisable if prosecutors and prison governors could use the additional time gained through transitional arrangements to examine the possibilities for freeing up places in the remand prison that offer adequate conditions of detention. Working in co-operation, they would be able to diligently identify the detainees whose authorised period of detention is about to expire or is no longer needed, and to make a proposal to the judicial or prosecutorial authorities for their immediate release. Such concerted action by the prison and prosecution authorities is an important element for easing the level of overcrowding and ensuring adequate material conditions.

2. Setting-up of effective remedies

210. The Court further reiterates that the applicants in the present case were victims of a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy for ventilating arguable claims of allegedly inadequate conditions of detention. The Court reached this conclusion following a careful examination of the situation obtaining in Russian law. The Court also noted the structural nature of this problem in the Russian legal system, finding that it does not currently allow the aggrieved individual either to put an end to an ongoing violation or to obtain adequate compensation for a period of detention that has already ended.

211. In view of the time elapsed since its first judgments highlighting that problem, the Court considers that the Russian Federation's obligations under the Convention compel it to set up the effective domestic remedies required by Article 13 without further delay. The need for such remedies is all the more pressing as large numbers of people affected by violations of a fundamental Convention right have no other choice but to seek relief through time-consuming international litigation before the Court. This situation is at odds with the principle of subsidiarity, which is prominent in the Convention system (see *Demopoulos and Others v. Turkey* (dec.), nos. 46113/99 *et al*., § 69, ECHR 2010-...; *Nagovitsyn and Nalgiyev* (dec.), nos. 27451/09 and 60650/09, § 40, 23 September 2010). Less than full application of the guarantees of Article 13 in this context would

unacceptably weaken the effective functioning, on the national and international level, of the scheme of human rights protection set up by the Convention (see *Finger*, cited above, § 121, and *McFarlane v. Ireland* [GC], no. 31333/06, § 112, ECHR 2010-..., with further references). The Contracting States have consistently emphasised the need for effective domestic remedies, not least in the context of repetitive cases, which become vital for guaranteeing the long-term effectiveness of the Convention and containing the Court's workload (see Recommendation Rec(2004)6 to member States on the improvement of domestic remedies, and the Declarations adopted by the High Contracting Parties at the Interlaken and Izmir conferences).

212. The Court reiterates that it has expressly abstained from requiring the respondent State to take any specific general measure for the purpose of bringing the conditions of detention in remand centres into line with Article 3 of the Convention. While voicing its concerns and indicating possible ways to address the existing deficiencies, the Court has found that any substantive mandate in this area would go beyond its judicial function, given the nature of the issues involved. The situation is, however, not the same as regards the violation of Article 13 on account of the lack of effective domestic remedies in respect of the applicants' complaints about inadequate conditions of detention. In accordance with Article 46 of the Convention, the Court's findings under this provision require clear and specific changes in the domestic legal system that would allow all people in the applicants' position to complain about alleged violations of Article 3 resulting from inadequate detention conditions and to obtain adequate and sufficient redress for such violations at domestic level.

213. The Court has already highlighted the existing shortcomings in Russian law and set out the Convention principles which should guide the authorities in setting up effective domestic remedies as required by the Convention. It is recalled that the respondent State is free to choose the means to meet those requirements subject to supervision of the Committee of Ministers under Article 46 of the Convention. In order to assist the authorities in finding the appropriate solutions, the Court will give further consideration to that matter. It will do by addressing first the preventive remedies and then turning to the compensatory remedy.

(a) Preventive remedies

214. An important safeguard for the prevention of violations resulting from inadequate conditions of detention is an efficient system of detainees' complaints to the domestic authorities (see *Orchowski*, cited above, § 154). To be efficient, the system must ensure a prompt and diligent handling of prisoners' complaints, secure their effective participation in the examination of grievances, and provide a wide range of legal tools for the purpose of eradicating the identified breach of Convention requirements.

215. Filing a complaint with an authority supervising detention facilities is normally a more reactive and speedy way of dealing with grievances than litigation before courts. The authority in question should have the mandate to monitor the violations of prisoners' rights. The title of such authority or its place within the administrative structures is not crucial as long as it is independent from the penitentiary system's bodies, such as for instance Independent Monitoring Boards in the United Kingdom (formerly Boards of Visitors) or the Complaints Commission (*beklagcommissie*) in the Netherlands. In the Russian legal system, this mandate is entrusted to prosecutors' offices that have independent standing and responsibility for overseeing compliance by the prison authorities with the Russian legislation.

216. In addition to being independent, the supervising authority must have the power to investigate the complaints with the participation of the complainant and the right to render binding and enforceable decisions. As the Court has observed above, the Pre-trial Detention Act and Prosecutors Act have vested broad investigative powers with supervising prosecutors and instituted a requirement on the prison authorities to report to them on the enforcement of their decisions. However, a complaint to a prosecutor falls short of the requirements of an effective remedy in so far as the process of its examination does not provide for participation of the detainee. The Court considers that, for the procedure before the supervising prosecutor to be compliant with such requirements, the complainant must at least be provided with an opportunity to comment on factual submissions by the prison governor produced at the prosecutor's request, to put questions and to make additional submissions to the prosecutor. The treatment of the complaint does not have to be public or call for the institution of any kind of oral proceedings, but there should be a legal obligation on the prosecutor to issue a decision on the complaint within a reasonably short time-limit.

217. Turning now to the possibility of complaining to a court of general jurisdiction about an infringement of rights or liberties under the provisions of Chapter 25 of the Code of Civil Procedure ("a Chapter 25 claim"), the Court notes that proceedings on a Chapter 25 claim are attended with appropriate safeguards of their adversarial nature and make provision for a fair trial and effective participation of the claimant. It also welcomes the ruling by the Plenary Supreme Court of 10 February 2009, which explicitly characterised complaints about inadequate conditions of detention as being actionable Chapter 25 claims. The Court has little doubt that this type of claim has the potential of becoming an effective domestic remedy, subject, however, to the following reservations.

218. Under the Code of Civil Procedure, a justified Chapter 25 claim may result in a declaration of unlawfulness and a requirement to make good the violation found. There is no mention of the possibility of claiming, or being awarded, compensation in respect of the violation that has already occurred. It is likewise unclear whether a Chapter 25 claim may be

combined with an ordinary claim for damages under Articles 151 and 1064 of the Civil Code and be examined in the same set of proceedings. If the joining of these claims is impossible as a matter of law or judicial practice, this would impose an excessive burden on the claimant, who would be required first to litigate over his or her substantive grievance and then to bring the declaration of unlawfulness back to the same court with a view to instituting a new set of proceedings for compensation. The Court considers that the Chapter 25 claim should provide for the possibility of granting compensation in respect of an infringement of the claimant's right that has already occurred.

219. Furthermore, enforcement of a Chapter 25 judgment may be frustrated by legal and practical impediments. The Code of Civil Procedure does not specify the kind of remedial action a court may order and, as the Court has observed above, there is no case-law that could give indications as to the prevailing judicial practice. It is therefore impossible to ascertain whether a Chapter 25 judgment would be limited to a general statement that the established violation be removed or could also order specific measures that would be needed to combat overcrowding and other forms of ill-treatment, affecting not just the claimant but large segments of the prison population. Taking into account the pervasive and structural nature of the problem of overcrowding, consideration should be given to equipping the Russian courts with appropriate legal tools allowing them to consider the problem underlying an individual complaint and effectively deal with situations of massive and concurrent violations of prisoners' rights resulting from inadequate detention conditions in a given remand facility.

220. Finally, an important issue arises with regard to enforcement of a Chapter 25 court order and a lack of appropriate sanctions for non-enforcement. The recently enacted Compensation Act of 30 April 2010 is not applicable to Chapter 25 court orders as it only allows the creditor to claim monetary compensation in connection with the belated enforcement of a judgment debt against the State budgets (see *Nagovitsyn and Nalgiyev* (dec.), cited above). Furthermore, Chapter 25 orders do not appear to be subject to mandatory enforcement by the court bailiffs. It follows that such a judicial order may remain without effect in practice. Admittedly, a State official who persistently sabotages enforcement of a judicial decision may be held criminally liable under Article 315 of the Criminal Code; however, the Court has not yet seen evidence of an established practice of instituting criminal proceedings against defaulting officials (see *Burdov (no. 2)*, cited above, § 104). It is therefore important to introduce measures which ensure that the requirement to report back to the court is respected.

(b) Compensatory remedy

221. In all cases where a violation of Article 3 has already occurred, the Court considers that the State must be prepared to acknowledge the

violation and make readily available some form of compensation to the aggrieved individual. The introduction of the preventive remedy alone would clearly not be sufficient because a remedy designed to prevent the overcrowding and other violations of Article 3 from occurring would not be adequate to redress a situation in which the individual has already endured for some time inhuman or degrading treatment. The respondent Government must therefore put in place a remedy which can provide redress for the violations that have already occurred. The Court would add that the introduction of an effective compensatory remedy would be particularly important in view of the subsidiarity principle, so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopoulos and Others* (dec.), cited above, § 69, and also, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 188, ECHR 2006-V).

222. A mitigation of sentence may under certain conditions be a form of compensation afforded to defendants in connection with violations of the Convention that occurred in the criminal proceedings against them. The Court has previously accepted that in cases concerning the failure to observe the reasonable-time requirement guaranteed by Article 6 § 1 of the Convention, the national authorities can afford adequate redress in particular by reducing the applicant's sentence in an express and measurable manner (see *Finger*, cited above, § 128; *Morby v. Luxembourg* (dec.), no. 27156/02, 13 November 2003; *Beck v. Norway*, no. 26390/95, §§ 27-28, 26 June 2001, and *Laurens v. Netherlands*, no. 32366/96, Commission decision of 1 July 1998). In the Court's view, such a mitigation of the sentence is also capable of affording adequate redress for a violation of Article 5 § 3 in cases in which the national authorities had failed to process the case of an applicant held in pre-trial detention with special diligence (see *Dzelili v. Germany*, no. 65745/01, § 83, 10 November 2005).

223. The Court has not yet had an opportunity to decide on a case in which the applicant's sentence has been mitigated in redress for a prior violation of Article 3 of the Convention. It notes that, according to the official bulletin of the State Duma of the Russian Federation, a draft amendment of the sentencing provisions of the Criminal Code, introduced and prepared for first reading, provides for an increased crediting of the period spent in pre-trial detention towards the sentence (Draft Law no. 73983-5 amending Article 72 of the Criminal Code). The proposal envisages that the time in pre-trial detention would be multiplied by certain standard reduction coefficients and the resulting period deducted from the duration of the custodial sentence. Whereas it is not for the Court to express an opinion on such an legislative issue, it considers it relevant to reiterate in this connection the requirements of an effective remedy, set out in paragraph 94 above, which may be useful for the Russian authorities in their

implementation of the present judgment irrespective of the outcome of the above legislative amendment.

224. First, a compensatory remedy in the form of a mitigation of sentence will necessarily be of a limited remit, for it will be accessible only to the persons convicted and sentenced to a period of imprisonment of a certain duration. It does nothing to accommodate the rights of persons who have been acquitted or convicted but given a sentence shorter than the time they had already spent in pre-trial detention adjusted by the applicable coefficient.

225. Second, the courts must acknowledge the violation of Article 3 in a sufficiently clear way and afford redress by reducing the sentence in an express and measurable manner. Without a specific explanation in the domestic courts' judgments as to the extent to which the finding and acknowledgement of a violation of Article 3 entailed a reduction of the sentence, the mitigation of the sentence would not deprive, on its own, the aggrieved individual of his status as a victim of the violation (see *Dzelili*, cited above, § 85). This measurability requirement presupposes the legal possibility for an individualised assessment of the impact of the violation on the Convention rights and of the specific redress that should be afforded to the aggrieved individual. An automatic mitigation operated by means of standard reduction coefficients is unlikely to be compatible with individualised assessment. Besides, it should be taken into account that an automatic reduction of sentence for convicted criminals on account of their previous stay in substandard detention facilities may adversely affect the public interest of criminal punishment (see *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09, § 129, 10 May 2011).

226. Finally, it is also clear that while an automatic mitigation of sentence on account of inhuman conditions of detention may be considered as a part of a wide array of general measures to be taken, it will not provide on its own a definitive solution to the existing problem of deficient remedies nor contribute, to a decisive extent, to eradication of genuine causes of overcrowding, namely the excessive use of custodial measures at the pre-trial stage and poor material conditions of detention.

227. As regards the possibility of obtaining monetary compensation for a violation of Article 3, in the light of the Court's conclusions set out in paragraphs 113-118 above, it appears unlikely that an effective compensatory remedy can become operational without changing the provisions of the domestic legislation on certain crucial points (see *Burdov (no. 2)*, cited above, § 138). For the sake of clarity and given the importance of the matter, the Court finds it appropriate to provide guidance to the Government, in order to assist them in the performance of their duty under Article 46 § 1 of the Convention.

228. Monetary compensation should be accessible to anyone who has been subjected to inhuman or degrading treatment in breach of Article 3 of the Convention and who has made an application to that effect. The Court

emphasises that the burden of proof imposed on the claimant in compensation proceedings should not be excessive. He or she may be required to show a prima facie case of ill-treatment and produce such evidence as is readily accessible to him or her, such as a detailed description of conditions of detention, statements from witnesses or replies from supervisory bodies. It would then fall to the authorities to refute the allegations of ill-treatment by means of documentary evidence capable of demonstrating that the conditions of the claimant's detention were not in breach of Article 3. The procedural rules governing the examination of such a claim must conform to the principle of fairness enshrined in Article 6 of the Convention, including that it be heard within a reasonable time, and the rules governing costs must not place an excessive burden on litigants where their claim is justified (see *Finger*, cited above, § 125).

229. The finding of an incompatibility of the conditions of detention with the requirements of Article 3, on the basis of the criteria outlined in paragraphs 143-158 above, is of a factual nature and creates a strong legal presumption that such conditions have occasioned non-pecuniary damage to the aggrieved individual. The domestic law on compensation must reflect the existence of this presumption rather than, as it does now, make the award of compensation conditional on the claimant's ability to prove the fault of specific officials or bodies and the unlawfulness of their actions. As the Court has previously found, substandard material conditions are not necessarily due to failings of prison governors or other officials but may be the product of structural malfunctioning of the domestic framework of detention on remand, whereas overcrowding may result from deficiencies originating outside the penitentiary system, for instance in courts or prosecutorial offices. It is also recalled in this connection that, even in a situation where every aspect of the conditions of detention complies with the domestic regulations, their cumulative effect may be such as to constitute inhuman treatment (see paragraph 115 above). It must therefore be made clear that neither a high crime rate, nor a lack of resources, nor other structural problems may be regarded as circumstances excluding or attenuating the domestic authorities' liability for non-pecuniary damage incurred through inhuman or degrading conditions of detention. As the Court repeatedly stressed, it is incumbent on the Government to organise its penitentiary system in such a way that it ensures respect for the dignity of detainees, regardless of any financial or logistical difficulties (see, among others, *Yevgeniy Alekseyenko*, § 87, and *Mamedova*, § 63, both cited above).

230. The level of compensation awarded for non-pecuniary damage must not be unreasonable in comparison with the awards made by the Court in similar cases. The principles outlined by the Court in paragraph 172 above may serve as guidance for the Russian authorities in determining the amount of compensation. The right not to be subjected to inhuman or degrading treatment is so fundamental and central to the system of the protection of human rights that the domestic authority or court dealing with

the matter will have to provide exceptionally compelling and serious reasons to justify their decision to award lower or no compensation in respect of non-pecuniary damage (compare *Finger*, cited above, § 130).

231. The Court would finally emphasise that, to be truly effective and compliant with the principle of subsidiarity, a compensatory remedy needs to operate retrospectively and provide redress in respect of the violations of Article 3 which predated its introduction, both in situations where the detention has already ended with the detainee's release or transfer to a different detention regime and in situations where the detainee is still held in the conditions that fall short of the requirements of Article 3 (compare *Finger*, cited above, § 131).

3. Time-limit for making effective domestic remedies available

232. The Court decided to apply the pilot-judgment procedure in the present case, referring notably to the large number of people affected and the urgent need to grant them speedy and appropriate redress at domestic level. It is therefore convinced that the purpose of the present judgment can only be achieved if the required changes take effect in the Russian legal system without undue delay. It is not the Court's task to specify what would be the most appropriate way to set up the necessary remedies. The State may either amend the existing range of legal remedies or add new remedies to secure genuinely effective redress for the violation of the Convention rights concerned in the light of the Court's findings and recommendations set out above. It is also for the State to ensure, under the supervision of the Committee of Ministers, that such combination of remedies respects both in theory and in practice the requirements of the Convention as set out in this judgment (see *Burdov (no. 2)*, cited above, § 140).

233. Whatever the approach chosen by the authorities, the creation of effective domestic remedies for complaints concerning inadequate conditions of detention may require, in the Court's preliminary assessment, a longer period of time than that which was required for the setting-up of a compensatory remedy in respect of the non-enforcement of domestic judicial decisions in response to the *Burdov* pilot judgment (see *Nagovitsyn and Nalgiyev* (dec.), cited above, § 38). The Court is convinced that a reasonable time-limit must be fixed for the adoption of the measures, given the importance and urgency of the matter and the fundamental nature of the right which is at stake. Nonetheless, it does not find it appropriate' to indicate a specific time frame for the introduction of a combination of preventive and compensatory remedies in respect of alleged violations of Article 3, involving as it does the preparation of draft laws, amendments and regulations, then their enactment and implementation, together with the provision of appropriate training for the State officials concerned. The Committee of Ministers is better equipped for that kind of task.

234. In view of the foregoing, the Court concludes that the Russian Government must produce, in co-operation with the Committee of Ministers, within six months from the date on which this judgment becomes final, a binding time frame in which to make available preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention.

D. Redress to be granted in similar cases

235. The Court reiterates that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at the domestic level to the large numbers of people suffering from the structural problem identified in the pilot judgment (see *Burdov (no. 2)*, cited above, § 142). Rule 61 § 6 of the Rules of Court provides for the possibility of adjourning the examination of all similar applications pending the implementation of the remedial measures by the respondent State. The Court would emphasise that adjournment is a possibility rather than an obligation, as clearly shown by the inclusion of the words "as appropriate" in the text of Rule 61 § 6 and the variety of approaches used in the previous pilot-case judgments (see *Burdov (no. 2)*, cited above, §§ 143-146, where the adjournment concerned only the applications lodged after the delivery of the pilot judgment, or *Rumpf*, cited above, § 75, where an adjournment was not considered to be necessary).

236. Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance and urgency of complaints about inhuman or degrading treatment, the Court does not consider it appropriate to adjourn the examination of similar cases. On the contrary, the Court observes that continuing to process all conditions-of-detention cases in a diligent manner will remind the respondent State on a regular basis of its obligations under the Convention and in particular those resulting from this judgment (see *Rumpf, loc. cit.*).

237. Furthermore, as regards the applications that were lodged before the delivery of this judgment, the Court considers that it would be unfair if the applicants in such cases who had already suffered through periods of detention in allegedly inhuman or degrading conditions and, in the absence of an effective domestic remedy, sought relief in this Court, were compelled yet again to resubmit their grievances to the domestic authorities, be it on the grounds of a new remedy or otherwise (compare *Burdov (no. 2)*, cited above, § 144, and *Łatak*, cited above, § 85).

238. The Court is convinced, however, that adjudication of hundreds pending cases of this kind will be a time-consuming process which can only be accelerated by the respondent State's efficient response to the present judgment, including the resolution of the well-founded cases at the domestic level by means of friendly settlements or unilateral remedial offers. An

accelerated settlement of the individual cases at the domestic level is not only required because of the gravity of the applicants' allegations under Article 3, a provision of fundamental importance in the Convention system. The need for such a settlement is also dictated by the principle of subsidiarity: once the Court has clarified the obligations of the respondent State under the Convention, it is in principle for the latter to take the necessary remedial measures, so that the Court does not have to reiterate its finding of a violation in a long series of comparable cases.

239. The Court therefore considers that the respondent State must grant adequate and sufficient redress to all victims of inhuman or degrading conditions of detention in Russian remand prisons (SIZOs) who lodged their applications with the Court before the delivery of this judgment. Such redress will have to be made available within twelve months from the date on which this judgment become final or from the date on which the application will have been communicated to the Government under Rule 54 § 2 (b) of the Rules of Court, whichever comes later. In the Court's view, such redress may notably be achieved through *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements (see *Burdov (no. 2)*, cited above, § 145). It is recalled that the compatibility of the conditions of detention with the requirements of Article 3 of the Convention will be assessed by reference to the criteria defined in this judgment (see paragraphs 143-158 above) and that the amounts of compensation in respect of non-pecuniary damage will be determined in the light of the Court's case-law and the principles outlined in paragraph 172 above.

240. The Court will examine the information provided by the Government regarding the redress offered in each particular case and accordingly decide whether the circumstances justify its continued examination.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* admissible the complaints by the applicants Mr Ananyev and Mr Bashirov about the conditions of their detention in remand prisons IZ-67/1 and IZ-30/1 and about the alleged absence of an effective domestic remedy in this connection, joins the Government's objection as to the alleged non-exhaustion of domestic remedies to the merits, and declares inadmissible the remainder of the application;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants Mr Ananyev and Mr Bashirov;

4. *Holds* that there has been a violation of Article 13 of the Convention in respect of the applicants Mr Ananyev and Mr Bashirov and dismisses the Government's objection as to the alleged non-exhaustion of domestic remedies;

5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) Mr Ananyev EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;

(ii) Mr Bashirov EUR 13,000 (thirteen thousand euros) in respect of non-pecuniary damage and EUR 850 (eight hundred and fifty euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant Mr Bashirov's claim for just satisfaction;

7. *Holds* that the respondent State must produce, in co-operation with the Committee of Ministers, within six months from the date on which this judgment becomes final, a binding time frame in which to make available a combination of effective remedies having preventive and compensatory effects and complying with the requirements set out in the present judgment;

8. *Holds* that the respondent State must grant redress to all victims of inhuman or degrading conditions of detention in Russian remand prisons (SIZOs) who lodged their applications with the Court before the delivery of this judgment, within twelve months from the date on which this judgment becomes final or from the date on which their application will have been communicated to the Government under Rule 54 § 2 (b) of the Rules of Court, whichever comes later.

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

ANNEX. LIST OF JUDGMENTS

The following is a list of final judgments against Russia in which at least one violation of Article 3 of the Convention was found on account of inadequate conditions of the applicant's detention in a remand centre (SIZO). The number of each remand centre, the city or region where it was located and the years when the applicant was held in that centre are given in brackets.

1. *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI (IZ-47/1, Magadan, 1999-2000)
2. *Mayzit v. Russia*, no. 63378/00, 20 January 2005 (IZ-39/1, Kaliningrad, 2000-2001)
3. *Novoselov v. Russia*, no. 66460/01, 2 June 2005 (IZ-18/3, Novorossiysk, 1998-1999)
4. *Labzov v. Russia*, no. 62208/00, 16 June 2005 (IZ-21/2, Tsivilsk, Chuvashiya, 2000)
5. *Romanov v. Russia*, no. 63993/00, 20 October 2005 (IZ-48/2, Moscow, 1999-2000)
6. *Khudoyorov v. Russia*, no. 6847/02, ECHR 2005-X (extracts) (OD-1/T-2, Vladimir, 2000-2004)
7. *Mamedova v. Russia*, no. 7064/05, 1 June 2006 (IZ-33/1, Vladimir, 2004-2005)
8. *Popov v. Russia*, no. 26853/04, 13 July 2006 (IZ-77/1, Moscow, 2002-2004)
9. *Belevitskiy v. Russia*, no. 72967/01, 1 March 2007 (IZ-77/3, Moscow, 2001-2002)
10. *Andrey Frolov v. Russia*, no. 205/02, 29 March 2007 (IZ-47/1, St Petersburg, 1999-2003)
11. *Benediktov v. Russia*, no. 106/02, 10 May 2007 (IZ-77/2 and IZ-77/3, Moscow, 1999- 2001)
12. *Igor Ivanov v. Russia*, no. 34000/02, 7 June 2007 (IZ-77/1 and IZ-77/2, Moscow, 2000-2002)
13. *Trepashkin v. Russia*, no. 36898/03, 19 July 2007 (IZ-50/2, Moscow Region, 2005)
14. *Babushkin v. Russia*, no. 67253/01, 18 October 2007 (IZ-52/1, Nizhny Novgorod, 2000)
15. *Mironov v. Russia*, no. 22625/02, 8 November 2007 (IZ-50/9, Moscow Region, 2002)
16. *Grishin v. Russia*, no. 30983/02, 15 November 2007 (IZ-24/1, Krasnoyarsk, 1999-2000)
17. *Bagel v. Russia*, no. 37810/03, 15 November 2007 (IZ-17/1, Barnaul, 2000-2003)

18. *Lind v. Russia*, no. 25664/05, 6 December 2007 (IZ-77/2, Moscow, 2004-2005)
19. *Dorokhov v. Russia*, no. 66802/01, 14 February 2008 (IZ-48/1, Moscow, 1999)
20. *Korobov and Others v. Russia*, no. 67086/01, 27 March 2008 (IZ-37/1, Ivanovo, 1999-2001)
21. *Sukhovoy v. Russia*, no. 63955/00, 27 March 2008 (IZ-33/1, Vladimir, 2000)
22. *Gusev v. Russia*, no. 67542/01, 15 May 2008 (IZ-47/1, St Petersburg, 2000)
23. *Vlasov v. Russia*, no. 78146/01, 12 June 2008 (IZ-99/1 (aka IZ-48/4), Moscow, 1999-2002)
24. *Guliyev v. Russia*, no. 24650/02, 19 June 2008 (IZ-7/2, Sosnogorsk, Komi Republic, 2000-2002)
25. *Seleznev v. Russia*, no. 15591/03, 26 June 2008 (IZ-47/1, St Petersburg, 2001-2003)
26. *Sudarkov v. Russia*, no. 3130/03, 10 July 2008 (IZ-77/2 and IZ-77/3, Moscow, 2000-2002)
27. *Starokadomskiy v. Russia*, no. 42239/02, 31 July 2008 (IZ-77/1, Moscow, 2001-2005)
28. *Moiseyev v. Russia*, no. 62936/00, 9 October 2008 ("Lefortovo", Moscow, 2000-2002)
29. *Buzychkin v. Russia*, no. 68337/01, 14 October 2008 (IZ-52/1, Nizhny Novgorod, 1998-1999, and IZ-48/3, Moscow, 1999)
30. *Belashev v. Russia*, no. 28617/03, 4 December 2008 (IZ-77/3, Moscow, 2002-2003)
31. *Matyush v. Russia*, no. 14850/03, 9 December 2008 (IZ-55/1, Omsk 1999-2003)
32. *Maltabar and Maltabar v. Russia*, no. 6954/02, 29 January 2009 (IZ-69/1, Tver, 2000-2001)
33. *Andreyevskiy v. Russia*, no. 1750/03, 29 January 2009 (IZ-77/1, Moscow, 2002-2005)
34. *Antropov v. Russia*, no. 22107/03, 29 January 2009 (IZ-25/2, Ussuriysk, Primorye, 2001-2003)
35. *Novinskiy v. Russia*, no. 11982/02, 10 February 2009 (IZ-63/1, Samara, 2001, and IZ-77/3, Moscow, 2001)
36. *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, 12 February 2009 (IZ-77/2, Moscow, 2001-2002)
37. *Bychkov v. Russia*, no. 39420/03, 5 March 2009 (IZ-77/2 and IZ-77/3, Moscow, 2000-2003)
38. *Aleksandr Makarov v. Russia*, no. 15217/07, 12 March 2009 (IZ-70/1, Tomsk, 2006-2007)
39. *Lyubimenko v. Russia*, no. 6270/06, 19 March 2009 (IZ-34/1, Volgograd, 2003- 2008)

40. *Grigoryevskikh v. Russia*, no. 22/03, 9 April 2009 (IZ-36/2, Borisoglebsk, 2001-2002)
41. *Popov and Vorobyev v. Russia*, no. 1606/02, 23 April 2009 (IZ-25/1, Vladivostok, 2000-2001)
42. *Gubkin v. Russia*, no. 36941/02, 23 April 2009 (IZ-61/1, Rostov-on-Don, 1998- 2005)
43. *Kokoshkina v. Russia*, no. 2052/08, 28 May 2009 (IZ-50/3, Serpukhov, Moscow Region, 2006-2008)
44. *Shteyn (Stein) v. Russia*, no. 23691/06, 18 June 2009 (IZ-70/1, Tomsk, 2004-2005)
45. *Bakhmutskiy v. Russia*, no. 36932/02, 25 June 2009 (IZ-61/1, Rostov-on-Don, 1999-2005)
46. *Ananyin v. Russia*, no. 13659/06, 30 July 2009 (IZ-34/1, Volgograd, 2003-2007)
47. *Bordikov v. Russia*, no. 921/03, 8 October 2009 (IZ-61/1, Rostov-on-Don, 2001- 2003)
48. *Buzhinayev v. Russia*, no. 17679/03, 15 October 2009 (IZ-4/1, Ulan-Ude, Buryatiya, 1998-2002, and IZ-77/3, Moscow, 2002)
49. *Nazarov v. Russia*, no. 13591/05, 26 November 2009 (IZ-33/1, Vladimir, 2004-2005)
50. *Shilbergs v. Russia*, no. 20075/03, 17 December 2009 (IZ-39/1, Kaliningrad, 2001-2003)
51. *Skorobogatykh v. Russia*, no. 4871/03, 22 December 2009 (IZ-39/1, Kaliningrad, 1998)
52. *Melnikov v. Russia*, no. 23610/03, 14 January 2010 (IZ-69/1, Tver, 2003-2004)
53. *Salakhutdinov v. Russia*, no. 43589/02, 11 February 2010 (IZ-16/3, Bugulma, Tatarstan, 2002)
54. *Gultyayeva v. Russia*, no. 67413/01, 1 April 2010 (IZ-62/1, Yuzhno-Sakhalinsk, Sakhalin, 2000-2002)
55. *Pavlenko v. Russia*, no. 42371/02, 1 April 2010 (IZ-22/1, Barnaul, 2002)
56. *Lutokhin v. Russia*, no. 12008/03, 8 April 2010 (IZ-47/1, St Petersburg, 2001-2003)
57. *Goroshchenya v. Russia*, no. 38711/03, 22 April 2010 (IZ-47/1, IZ-47/4, St Petersburg, 1999-2004)
58. *Kositsyn v. Russia*, no. 69535/01, 12 May 2010 (IZ-39/1, Kaliningrad, 1999-2000)
59. *Vladimir Kozlov v. Russia*, no. 21503/04, 20 May 2010 (IZ-77/3, Moscow, 2001-2003)
60. *Artyomov v. Russia*, no. 14146/02, 27 May 2010 (IZ-39/1, Kaliningrad, 1999-2000 and 2003-2004)
61. *Mukhutdinov v. Russia*, no. 13173/02, 10 June 2010 (IZ-16/1 and IZ-16/2, Kazan, Tatarstan, 1999-2000)

62. *Zakharkin v. Russia*, no. 1555/04, 10 June 2010 (IZ-66/1, Yekaterinburg, 1999-2003)
63. *Ovchinnikov v. Russia*, no. 9807/02, 17 June 2010 (IZ-49/1 (formerly IZ-47/1), Magadan, 1999-2003)
64. *Shcherbakov v. Russia*, no. 23939/02, 17 June 2010 (IZ-71/1, Tula, 2000-2002)
65. *Gubin v. Russia*, no. 8217/04, 17 June 2010 (IZ-77/1, Moscow, 2003-2004)
66. *Veliyev v. Russia*, no. 24202/05, 24 June 2010 (IZ-33/1, Vladimir, 2004-2007)
67. *Aleksandr Matveyev v. Russia*, no. 14797/02, 8 July 2010 (IZ-47/4, St Petersburg, 2000-2002, and IZ-77/3, Moscow, 2001-2002)
68. *Vladimir Krivonosov v. Russia*, no. 7772/04, 15 July 2010 (IZ-61/1, Rostov-on-Don, 2001-2005)
69. *Danilin v. Russia*, no. 4176/03, 16 September 2010 (IZ-77/3 and IZ-77/5, Moscow, 2000-2002)
70. *Aleksandr Leonidovich Ivanov v. Russia*, no. 33929/03, 23 September 2010 (IZ-55/1, Omsk, 2001-2003)
71. *Skachkov v. Russia*, no. 25432/05, 7 October 2010 (IZ-77/2, Moscow, 2001-2005)
72. *Volchkov v. Russia*, no. 45196/04, 14 October 2010 (IZ-67/1, Smolensk, 1996-1998, 2004-2006)
73. *Arefyev v. Russia*, no. 29464/03, 4 November 2010 (IZ-37/1, Ivanovo, 2003)
74. *Roman Karasev v. Russia*, no. 30251/03, 25 November 2010 (IZ-39/1, Kaliningrad, 1999-2002)
75. *Kovaleva v. Russia*, no. 7782/04, 2 December 2010 (IZ-61/1, Rostov-on-Don, 2001-2005)
76. *Svetlana Kazmina v. Russia*, no. 8609/04, 2 December 2010 (IZ-61/1, Rostov-on-Don, 2001-2005)
77. *Kozhokar v. Russia*, no. 33099/08, 16 December 2010 (IZ-71/1, Tula, 2006-2007)
78. *Romokhov v. Russia*, no. 4532/04, 16 December 2010 (IZ-77/2 and IZ-77/3, Moscow, 2002-2003)
79. *Trepashkin v. Russia (no. 2)*, no. 14248/05, 16 December 2010 (IZ-77/1, Moscow, 2003-2004, and IZ-50/2, Moscow Region, 2004-2005)
80. *Gladkiy v. Russia*, no. 3242/03, 21 December 2010 (IZ-39/1, Kaliningrad, 1998-2002)
81. *Petrenko v. Russia*, no. 30112/04, 20 January 2011 (IZ-47/1, St Petersburg, 2001-2004)
82. *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, 27 January 2011 (IZ-18/1, Izhevsk, 2002-2004)
83. *Dorogaykin v. Russia*, no. 1066/05, 10 February 2011 (IZ-22/1, Barnaul, 2004-2005)

84. *Tsarenko v. Russia*, no. 5235/09, 3 March 2011 (IZ-47/1, St Petersburg, 2007-2009)
85. *Vladimir Sokolov v. Russia*, no. 31242/05, 29 March 2011 (IZ-52/1, Nizhniy Novgorod, 2003-2006, and IZ-77/3, Moscow, 2005)
86. *Ilyadi v. Russia*, no. 6642/05, 5 May 2011 (IZ-77/2, Moscow, 2003-2004)
87. *Popandopulo v. Russia*, no. 4512/09, 10 May 2011 (IZ-47/1, St Petersburg, 2005-2008)
88. *Vadim Kovalev v. Russia*, no. 20326/04, 10 May 2011 (IZ-61/1, Rostov-on-Don, 2004-2006)
89. *Khodorkovskiy v. Russia*, no. 5829/04, 31 May 2011 (IZ-77/1, Moscow, 2005)
90. *Chudun v. Russia*, no. 20641/04, 21 June 2011 (IZ-17/1, Kyzyl, 2000-2004)