FIRST SECTION

CASE OF BELASHEV v. RUSSIA

(Application no. 28617/03)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/05/2009

This judgment may be subject to editorial revision.

In the case of Belashev v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 28617/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vladimir Ilyich Belashev (“the applicant”), on 17 August 2003.

2. The applicant, who had been granted legal aid, was represented by Mr Valerian Chernikov, Mr Gennadiy Zhuravlyov and Mr Mikhail Trepashkin, lawyers practising in Moscow. The Russian Government (“the Government”) were initially represented by Mr P. Laptev and subsequently by Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that he had been detained in appalling conditions, that the length of the criminal proceedings against him had been excessive and that his case had not been heard in public.

4. On 4 April 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lived until his arrest in Moscow.

A. Arrest and indictment

6. On 1 April 1997 a statue of Russia’s last Tsar, Nicholas II, was blown up near the village of Tayninskoye in the Mytishchi District of the Moscow Region.

7. On the same day the mass media reported that an organisation called “The Revolutionary Military Council” (*«Революционный Военный Совет»* – hereafter “the RMC”) had claimed responsibility for the destruction of the monument. In the morning of 6 July 1997 newspapers published a statement by the RMC, which claimed that its members were planning to perform “a conditional destruction” of the statue of another Russian Tsar, Peter the Great. According to the RMC, packets of plastic explosives had been planted inside the statue to protest against plans to bury Bolshevik leader Vladimir Lenin’s body. The RMC had planned to explode the bombs at about 6 a.m. but had eventually dropped its plans for fear of injuring innocent victims.

8. Responding to the RMC’s warning, the police found seven explosive devices planted under Peter the

Great's monument near the Kremlin in Moscow. On 6 July 1997, following the discovery of the explosive devices, the Moscow Investigation Department of the Federal Security Service ("the FSB") instituted criminal proceedings.

9. According to the applicant, since 15 July 1997 he and his wife had been under surveillance by the FSB.

10. On 22 April 1998, at about 9.40 a.m., a group of armed FSB officers arrested the applicant in his office in the Main Department for the Fight against Organised Crime of the Ministry of Internal Affairs of the Russian Federation and brought him to the FSB Investigation Department in Moscow where he was questioned about his participation in the bombings on 1 April and 6 July 1997. An investigator apprised the applicant of his rights as a defendant, including the right to remain silent, and insisted that the applicant should not testify. However, the applicant considered that his silence could be interpreted as "a confession" and decided to make a statement. He claimed that he had nothing to do with the bombings.

11. On the same day the applicant was charged with terrorism and unlawful production of weapons and explosive devices. His detention on remand was authorised and he was escorted to the Lefortovo remand prison, run by the Federal Security Service. The applicant's detention was subsequently extended on several occasions. His office and flat were searched and his personal belongings and money were seized.

12. On 29 October 1998 the applicant was additionally charged with organising a criminal undertaking, abuse of position, unlawful possession of weapons, abetting forgery of documents and actions aimed at a violent overthrow of the State.

13. On 2 February 1999 the pre-trial investigation was completed and the applicant and his lawyers were granted access to the case file. They finished examining the file on 22 July 1999.

14. On 3 August 1999 a deputy prosecutor of Moscow approved the bill of indictment and the case file was sent to the Moscow City Court for trial.

15. On 23 August 1999 the Moscow City Court fixed the first hearing for 6 September 1999. That hearing was postponed until 4 October 1999 because the presiding judge was involved in other unrelated proceedings. The following two hearings were adjourned because a co-defendant, M., failed to attend.

16. On 12 October 1999 the Moscow City Court remitted the case to the Moscow Prosecutor's office for additional investigation. The City Court held that the investigating authorities had violated the right of the applicant's co-defendant to present his defence. That decision became final on 18 November 1999, following an appeal to the Supreme Court of the Russian Federation.

17. On 6 January 2000 the FSB Investigation Department in Moscow received the case file. On the same day the applicant was released on his own recognisance.

18. On 17 May 2001 the new round of pre-trial investigation was completed. Between 24 May and 23 August 2001 the applicant and his lawyers studied the case file. On 31 August 2001 the Moscow Prosecutor approved the bill of indictment and the applicant was committed to stand trial before the Moscow City Court. According to the Government, the case file contained information classified as State secrets.

B. Trial and appeal proceedings

19. On 17 September 2001 the Moscow City Court, relying on Article 18 of the RSFSR Code of Criminal Procedure and without giving any reasoning, decided to hold the trial in camera. The City Court also dismissed the applicant's request for a jury trial because other defendants had objected to that request.

20. Between 17 September and 17 December 2001 no hearings were held because the presiding judge, Ms L., was involved in other unrelated proceedings.

21. On 17 December 2001 the Moscow City Court appointed a new presiding judge, Ms K., and two lay judges, Ms L. and Ms C., to sit in the applicant's case. According to the applicant, he unsuccessfully asked the City Court to hear a Mr G., who allegedly could have testified that the applicant had not been aware of the RMC's activities.

22. At the hearing on 25 December 2001 the applicant and his lawyer asked the City Court to open the trial to the public. As shown in a copy of the court hearing record, submitted by the Government, the prosecutor objected, noting that the mass media had already misrepresented the facts in the case, that separate criminal proceedings were pending against another defendant and that the case file contained classified information. The City Court dismissed the applicant's motion, holding as follows:

> "... the court does not find grounds for accepting [the motion] because the decision to hold the trial in camera does not violate the requirements of Article 18 of the RSFSR Code of Criminal Procedure and because the examination of the case in camera will guarantee security to the victims, witnesses and other parties to the proceedings, taking into account the character of the charges."

23. No hearings were held between 1 January and 25 March 2002 because the applicant's co-defendants and their lawyers were ill. The Government noted that during that period the proceedings were also stayed for seven days because the applicant's lawyer was ill.

24. On 19 April 2002 the Moscow City Court found the applicant guilty as charged and sentenced him to eleven years' imprisonment. According to the applicant, the judgment was not pronounced publicly. The Government submitted a videotape containing news reports by three major TV companies, ORT, TVTS and NTV, which had covered the story on the applicant's trial. The TV reports showed a crowded courtroom during the footage of the pronouncement of the judgment. It appears that a number of reporters and persons supporting the applicant and his co-defendants were present when the judgment was pronounced.

25. The applicant and his lawyers appealed against the conviction, arguing, in particular, that the trial had been held in camera although no evidence examined by the City Court could have been considered to contain State secrets.

26. On an unspecified date the Supreme Court of the Russian Federation scheduled an appeal hearing for 26 February 2003. The applicant alleged that he had not been allowed to have a meeting with his lawyer before the appeal hearing and that he had only been notified of that hearing twenty minutes before it had started. As shown in material submitted to the Court, on 18 February 2003 the lawyer visited the applicant and notified him that the appeal hearing had been listed for 26 February 2003. On 18 February 2003 the applicant's lawyer lodged with the Supreme Court an amendment to the statement of appeal.

27. On 26 February 2003 the Supreme Court held the appeal hearing by way of video conference. The applicant was represented by two counsels, Mr V. Chernikov and Mr G. Zhuravlyov. At the beginning of the appeal hearing the presiding judge read out a letter addressed to the Supreme Court by a co-defendant of the applicant, Mr S. The latter alleged that the applicant had threatened him and his family members and that Mr V. Chernikov had represented Mr S. at the trial and, thus, should not have acted as the applicant's counsel. The Supreme Court dismissed Mr V. Chernikov from the proceedings.

28. On the same day the Supreme Court delivered the judgment. It excluded the charge of forgery of documents because the statutory limitation period had expired, upheld the remaining conviction and reduced the applicant's sentence by six months. In response to the applicant's complaint about the trial in camera, the Supreme Court noted only that the proceedings had been held in accordance with the requirements of Article 18 of the Code of Criminal Procedure.

C. Applicant's conditions of detention

1. Conditions of detention from 22 April 1998 to 6 January 2000

29. The applicant alleged that from the day of his arrest on 22 April 1998 until his release on 6 January 2000 he had been detained in appalling conditions in the Lefortovo remand prison. On a number of occasions he was placed in a solitary confinement cell. Warders often humiliated and threatened him.

2. Conditions of detention from 19 April 2002 to 11 April 2003

30. On 19 April 2002, at about 11.30 p.m., the applicant was taken to detention facility no. IZ-77/3 (commonly known as "Krasnaya Presnya") in Moscow. He remained in that facility until 11 April 2003 when he was transferred to a correctional colony in the Ryazan Region.

(a) Number of inmates per cell

31. According to certificates issued on 1 June 2006 by the director of the facility and produced by the Government, from 19 to 23 April 2002 the applicant was kept in cell no. 11 which measured 12.8 square metres and accommodated 3 inmates. After 23 April 2002 he stayed in cells nos. 523 and 524 which measured 32.8 square metres. The cells had 24 sleeping places and housed from 16 to 21 detainees. The

Government further submitted that at all times the applicant had had an individual bunk and bedding.

32. The applicant did not dispute the cell measurements. He alleged, however, that he had shared cell no. 11 with three detainees and that bigger cells had housed 30 to 40 inmates. At some point, for two weeks the applicant shared a cell with 47 other detainees. Given the lack of beds, inmates had slept in shifts. No bedding or blankets were provided.

(b) Sanitary conditions, installations, food and medical assistance

33. The Government, relying on the information provided by the director of the facility, submitted that all cells were equipped with a lavatory pan, a tap, a sink and ventilation shaft. The lavatory pan was separated from the living area by a one-metre-high partition. Cell no. 11 had a window which measured 94 centimetres in length and 89 centimetres in width. The bigger cells had two windows with the same measurements. The windows had a casement. Inmates could request warders to open the casement to bring in fresh air. However, until the end of 2002 the windows were covered with metal shutters blocking access to natural light and air. The cells were equipped with lamps which functioned day and night. Inmates were allowed to take a shower once a week for fifteen minutes. The cells were disinfected once a week. A central-heating system was installed in the building. The Government further stated that the applicant was given food three times a day "in accordance with the established norms". Medical personnel at the facility checked the quality of the food three times a day and made entries in registration logs. The applicant had at least a one-hour walk daily.

34. According to the Government, detainees, including the applicant, were provided with medical assistance. They had regular medical check-ups, including X-ray examinations, blood tests, and so on. On his admission to the detention facility the applicant was examined by a doctor who noted that the applicant was healthy. On 18 October 2002 the applicant complained to the prison doctor of a severe skin itch. The doctor diagnosed dermatitis and prescribed treatment. On 20 January 2003 the applicant again complained of skin rash on the back, stomach and hips and was diagnosed with disseminated dermatitis and scabies. He was transferred to the venereal department of the facility hospital, where he was treated for ten days. The Government gave a detailed description of the treatment administered to the applicant, including the type of medicine, dose and frequency. They also furnished a copy of the applicant's medical record and medical certificates.

35. The applicant disagreed with the Government's description and submitted that the sanitary conditions had been unsatisfactory. The cells were infested with insects but the administration did not provide any insecticide. The windows were covered with metal blinds which blocked access to natural light and air. The applicant pointed out that the Government did not dispute that the blinds had only been removed some time at the end of 2002, that is after he had already been detained in that facility for more than seven months. It was impossible to take a shower as inmates were afforded only fifteen minutes and two to three men had to use one shower head at the same time. Inmates had to wash and dry their laundry indoors, creating excessive humidity in the cells. Inmates were also allowed to smoke in the cells. The lavatory pan was separated from the living area by a partition affording no privacy to inmates. No toiletries were provided. The food was of poor quality and in scarce supply. The applicant further argued that he had not been adequately treated after he had been discovered to be suffering from skin diseases. His skin condition deteriorated so severely that he was transferred to the prison hospital. Following several complaints to various officials, the applicant started to receive treatment. The applicant further alleged that he had not been allowed to have meetings with his wife and child.

D. Publications in the press

36. In 1998, 2000 and 2001 newspapers published a number of articles covering criminal proceedings against the applicant. He was called "a criminal" and "a terrorist" in the articles.

37. In 1998 a press office of the FSB Moscow Department held two press conferences. Another press conference was held by a higher ranking FSB official, Mr Z. At the press conferences officials described the applicant as "a criminal who had committed the offence". Mr Z. also gave an interview to a TV company. During that interview Mr Z. called the applicant "a perpetrator" and "a criminal".

II. RELEVANT DOMESTIC LAW

A. Trial in camera

38. Article 18 of the RSFSR Code of Criminal Procedure (in force until 1 July 2002, "the CCrP") provided for public hearings in all cases "unless the interests of the protection of State secrets required otherwise". A hearing in camera was also allowed on the basis of a reasoned court decision in cases concerning crimes committed by individuals under the age of 16, in cases concerning sexual criminal offences, and in other cases in order to prevent dissemination of information on the intimate spheres of lives of persons participating in such cases. Pronouncement of a judgment was to be made publicly in every case.

B. State secrets

39. The Constitution of 12 December 1993 provides:

Article 15

"3. Laws shall be officially published. Unpublished laws are not to be applied. No legal acts interfering with the rights, freedoms and obligations of a man and citizen may be applied unless they are officially published and publicly available".

Article 29

"4. Everyone has the right to freely search, obtain, impart, generate and disseminate information by all lawful means. The list of information constituting State secrets shall be laid down in a federal law."

40. On 21 July 1993 the State Secrets Act (Law no. 5485-1) was enacted. Section 5 provided as follows:

"The following information may be classified as a State secret:

(1) information in the military field...

(2) information in the field of the economy, science and engineering...

(3) information in the field of foreign policy and trade:

(4) information in the field of intelligence and counter-intelligence services and investigating activities..."

41. Section 9 described the procedure for classification of information as State secrets. Authority to classify information was delegated to the heads of State agencies. The Act did not contain a list of such officials, which was to be approved by the President. The President was also to approve a List of information classified as State secrets, which was to be officially published.

42. On 20 December 1995 the Constitutional Court examined the compatibility of the State Secrets Act with the Constitution and found as follows:

"4... The State may classify as State secrets information in the field of defence, economic and other activities, disclosure of which may undermine national defence and the security of the State. In this connection Article 29 § 4 of the Constitution provides that the list of information constituting State secrets is to be adopted in the form of a federal law. The State may also determine provisions and measures for the protection of State secrets, including by means of establishing criminal liability for its disclosure and communication to a foreign State.

....

The requirements of Article 29 § 4 of the Constitution are fulfilled by the State Secrets Act of 21 July 1993, which defines the concept of State secrets and indicates the information that may be classified as State secrets."

C. Conditions of detention

43. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

III. RELEVANT INTERNATIONAL DOCUMENTS

Conditions of detention

44. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

"b. temporary holding facilities for criminal suspects (IVS)

26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.

...

45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private "because they know that all complaints usually pass through the colony's administration".

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

45. The applicant complained that the conditions of his detention from 22 April 1998 to 6 January 2000 in the Lefortovo remand prison and from 19 April 2002 to 11 April 2003 in detention facility no. IZ-77/3 in Moscow were in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

46. The Government commented on the conditions of the applicant's detention. In particular, they submitted that the applicant had been detained in satisfactory sanitary conditions. Relying on certificates issued by the facility director, they pointed out that the applicant had not been detained in overcrowded cells. At all times he had had an individual sleeping place. The Government did not argue that they were not in possession of any documents showing the names and exact number of inmates in the cells in which the applicant had been detained. At the same time they annexed to their submissions copies of documents certifying that registration logs of the detention facility had been destroyed. The Government further noted that the applicant had been given food which had met applicable standards.

47. The applicant challenged the Government's description of his conditions of detention as factually inaccurate. He insisted that the cells had at all times been severely overcrowded.

B. The Court's assessment

1. Admissibility

48. The Court observes at the outset that the applicant complained about the conditions of his detention in two different detention facilities during two separate periods of his detention. The Court notes that a part of the applicant's complaint refers to a period of detention which ended more than six months before he lodged the application with the Court on 17 August 2003. The most recent period of detention that the Court may examine commenced on 19 April 2002 when the applicant was re-detained and placed in facility no. IZ-77/3 in Moscow. That period of detention represented a continuous situation which ended on 11 April 2003 when the applicant was transferred to a correctional colony, that is within the six months preceding the lodging of the application. The Court therefore considers that the part of the applicant's complaints concerning the conditions of his detention before 19 April 2002 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Testa v. Croatia*, no. 20877/04, § 37, 12 July 2007, and *Bragadireanu v. Romania*, no. 22088/04, § 80, 6 December 2007).

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

2. Merits

50. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in detention facility no. IZ-77/3 in Moscow. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government did not refute.

51. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The main characteristic which the parties did agree upon was the size of the cells. However, the applicant claimed that the cell population severely exceeded their design capacity. The Government argued that the applicant had been detained with two other inmates in the smaller cell and with fifteen to twenty inmates in the bigger cells.

52. The Court notes that the Government, in their plea concerning the number of detainees, cited statements by the facility's director indicating the number of the applicant's fellow inmates (see paragraph 31 above) and, without giving any explanation, furnished documents certifying the destruction of certain registration logs in the detention facility (see paragraph 48 above). In this respect, assuming that the facility's registration logs had been destroyed, the Court considers it extraordinary that in June 2006, that is more than three years after the applicant's detention in that facility had come to an end, the director was able to recollect the exact number of inmates who had been detained together with the applicant. The director's certificates are therefore of little evidential value for the Court. However, if the registration logs still exist, the Court finds it peculiar that the Government preferred to rely on the director's certificates to support their allegations concerning the conditions of the applicant's detention when it was open to them to submit copies of registration logs showing the names of inmates detained with the applicant.

53. In this connection, the Court reiterates that Convention proceedings, such as those arising from the

present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

54. Having regard to the principle cited above, together with the fact that the Government did not submit any convincing relevant information, the Court will examine the issue concerning the number of inmates in the cells in facility no. IZ-77/3 on the basis of the applicant's submissions.

55. According to the applicant, he was usually afforded approximately one square metre of personal space throughout his detention. There was a clear shortage of sleeping places and the applicant had to share a bed with other detainees, taking turns to rest. For about a year the applicant was confined to his cell day and night, save for a daily one-hour walk.

56. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

57. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court reiterates that it has recently found a violation of Article 3 on account of an applicant's detention in overcrowded conditions in the same detention facility and at the same time (see *Igor Ivanov v. Russia*, no. 34000/02, §§ 16-18 and §§ 30-41, 7 June 2007, and *Sudarkov v. Russia*, no. 3130/03, §§ 20-22 and §§ 40-51, 10 July 2008).

58. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates for almost a year was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

59. Furthermore, while in the present case it cannot be established "beyond reasonable doubt" that the ventilation, heating, lighting or sanitary conditions in the facilities were unacceptable from the standpoint of Article 3, the Court nonetheless notes that the cell windows had been covered with metal shutters blocking access to fresh air and natural light. They were removed some time towards the end of 2002, that is more than seven months after the applicant's detention in that facility had begun. In addition, the Court observes that the applicant was diagnosed with a serious skin disease in the facility and that it appears most likely that he was infected while in detention. Although this fact in itself does not imply a violation of Article 3 given, in particular, the fact that the applicant received treatment (see *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005, and *Igor Ivanov*, cited above, § 40) and that he fully recovered, the Court considers that these aspects, while not in themselves capable of justifying the notion of "degrading" treatment, are relevant in addition to the focal factor of the severe overcrowding, to show that the applicant's detention conditions went beyond the threshold tolerated by Article 3 of the Convention (see *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005).

60. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention from 19 April 2002 to 11 April 2003 in facility no. IZ-77/3 in Moscow.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

61. The applicant further complained under Article 5 §§ 1, 3 and 4 of the Convention that there had been no grounds for his arrest and subsequent detention and that no judge had remanded him in custody. Article 5, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

62. The Court observes that it is not required to decide whether or not the applicant's complaints concerning his detention disclose an appearance of a violation of Article 5 of the Convention. It reiterates that, according to Article 35 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. It observes that the applicant was released from pre-trial detention on 6 January 2000. He was only re-detained on 19 April 2002 following his conviction by the Moscow City Court. After that date his detention no longer fell within the ambit of Article 5 § 1 (c), but within the scope of Article 5 § 1 (a) of the Convention (see, for instance, *Labita v. Italy* [GC], no. 26772/95, § 147, ECHR 2000-IV, and *B. v. Austria,* judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). The applicant lodged his application with the Court on 17 August 2003, which is more than six months after his release on 6 January 2000 and subsequent conviction on 19 April 2002.

63. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

64. The applicant complained that the length of the criminal proceedings was incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Submissions by the parties

65. The Government considered that the complaint of an excessive length of proceedings was inadmissible under Article 35 § 3 of the Convention. They argued that the delays had been caused by objective reasons: the need to guarantee rights of the defence and to ensure the thorough investigation of the case, the complexity of the case, and other valid grounds. They further submitted that the applicant had failed to exhaust domestic remedies as he had not complained to any domestic authority about delays in the examination of his case.

66. The applicant contested the Government's submissions.

B. The Court's assessment

1. Admissibility

(a) Objection of failure to exhaust domestic remedies

67. The Court notes the Government's argument that the applicant failed to complain to domestic authorities about the excessive length of the criminal proceedings against him. In this connection, the Court observes that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it (see, for example, *Baburin v. Russia*, no. 55520/00, § 36, 24 March 2005). The Court also reiterates its finding made in the context of a complaint under Article 13 of the Convention that in Russia there have been no domestic remedies whereby an applicant could enforce his or her right to a "hearing within a reasonable time" (see *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007, and *Klyakhin v. Russia*, no. 46082/99, §§ 101-102, 30 November 2004). The Court sees no reason to depart from that finding in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

(b) Period to be taken into consideration

68. The Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 26 February 2003 when the Supreme Court of the Russian Federation delivered the final judgment, upholding the conviction in general. It thus lasted approximately four years and ten months.

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

2. Merits

70. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

71. The Court accepts that the proceedings at issue were complex. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings. The Court further reiterates that the fact that the applicant was held in custody throughout the substantial part of the criminal proceedings required particular diligence on the part of the investigating authorities and courts to investigate the case and administer justice expeditiously (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI).

72. As to the applicant's conduct, the Government did not indicate any instance when a delay could have been attributed to the applicant, save for a period of seven days in March 2002 when hearings were adjourned due to the applicant's lawyer's illness (see paragraph 23 above). The Government did not indicate any other period when the proceedings were stayed or any other hearing which was adjourned due to the applicant's or his representatives' conduct. Thus, the Court does not consider that the applicant contributed to the length of the proceedings.

73. As regards the conduct of the authorities, the Court is aware of substantial periods of inactivity for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. The Court observes that on 3 August 1999 a deputy prosecutor of Moscow sent the case file to the Moscow City Court for trial. However, it was not until 4 October 1999 when the City Court held the first trial hearing. Another delay of almost a year and a half was caused by the inefficiency of the investigating authorities necessitating the remittal of the case for additional investigation (see paragraphs 16-18 above). Furthermore, no hearings were fixed between 17 September and 17 December 2001 (see paragraph 20 above). The Court also does not lose sight of the fact that the appeal proceedings before the Supreme Court of the Russian Federation were pending for almost a year. The applicant submitted – and the Government did not provide any information to the contrary – that during that period the Supreme Court did not hold any hearings, save for one hearing on 26 February 2003 when it delivered the final judgment. Thus another unjustified delay is attributable to the State.

74. Having examined all the material before it and taking into account the overall length of the proceedings and what was at stake for the applicant, the Court considers that in the instant case the length of the criminal proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE TRIAL IN CAMERA

75. The applicant further complained that his case had not been heard in public contrary to Article 6 § 1, which, in its relevant part, reads as follows:

> "In the determination of .... any criminal charge against him, everyone is entitled to a ... public hearing by [a]... tribunal... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. Submissions by the parties

76. The Government submitted that on 17 September 2001, by virtue of Article 18 of the RSFSR Code of Criminal Procedure, the Moscow City Court had decided to exclude members of the public from the trial in the interests of national security because the case file contained information classified as State secrets. On 25 December 2001 the City Court confirmed its decision to hold the trial in camera, citing the need to guarantee the safety of victims and witnesses in view of the gravity of the charges against the applicant and his co-defendants. The Government pointed out that although the City Court had not directly relied on the grounds laid down in Article 6 § 1 of the Convention, the proceedings had not been public because publicity could have prejudiced the interests of justice.

77. The applicant maintained that there had been a breach of Article 6 § 1 because the proceedings had not been public. In particular, he argued that the Moscow City Court had not provided any reasons for its decision of 17 September 2001 to hold the trial in camera. Furthermore, at no point in the proceedings had the City Court cited "interests of national security" or "State secrets" as a ground for excluding the public. As regards the decision of 25 December 2001, the applicant noted that Article 18 of the CCrP had contained an exhaustive list of grounds for a decision not to hold a public hearing. The need to protect the safety of victims and witnesses had not been among them.

B. The Court's assessment

1. Admissibility

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

2. Merits

79. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 § 1. This public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. Administration of justice, including trials, derives legitimacy from being conducted in public. By rendering the administration of justice transparent, publicity contributes to fulfilling the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Gautrin and Others v. France*, judgment of 20 May 1998, *Reports of Judgments and Decisions* 1998-III, § 42, and *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, § 21). There is a high expectation of publicity in ordinary criminal proceedings, which may well concern dangerous individuals, notwithstanding the attendant security problems (see *Campbell and Fell*

v. the United Kingdom, judgment of 28 June 1984, Series A no. 80, § 87).

80. The requirement to hold a public hearing is subject to exceptions. This is apparent from the text of Article 6 § 1 itself, which contains the provision that "the press and public may be excluded from all or part of the trial in the interests of ... national security in a democratic society, ... or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". Thus, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice (see *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, § 37, ECHR 2001-III, with further references).

81. The Court's task in the present case is to establish whether the exclusion of the public from the hearings before the Moscow City Court was justified. In this connection, the Court reiterates that the Government suggested that two of the exceptions referred to in Article 6 § 1 of the Convention applied in the present case. In particular, they argued that national security concerns and the interests of victims and witnesses had justified dispensing with public hearings.

82. As regards the first ground, the Court reiterates that on 17 September and 25 December 2001 the City Court gave decisions ordering trial in camera. The first decision did not contain any reasoning (see paragraph 19 above) and the second only cited the need to protect the safety of the victims and witnesses (see paragraph 22 above). Furthermore, in its appeal decision of 26 February 2003 the Supreme Court of the Russian Federation, while dealing with the applicant's complaint about trial in camera, did not mention the national security considerations as a justification for not allowing the public to attend. The Court is, therefore, not convinced that the national security concerns served as a basis for the decision to exclude the public from the trial.

83. However, even assuming that the Moscow City Court endorsed the prosecutor's argument pertaining to the presence of classified information in the case file as raised during the hearing on 25 December 2001 (see paragraph 22 above), the Court does not concur with the Government's submission that the mere presence of such information in a case file automatically implies a need to close a trial to the public, without balancing openness with national security concerns. The Court observes that it may be important for a State to preserve its secrets, but it is of infinitely greater importance to surround justice with all the requisite safeguards, of which one of the most indispensable is publicity. Before excluding the public from criminal proceedings, courts must make specific findings that closure is necessary to protect a compelling governmental interest and limit secrecy to the extent necessary to preserve such an interest (see, *mutatis mutandis*, *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 149, 29 November 2007, and *Moser v. Austria*, no. 12643/02, §§ 96-97, 21 September 2006).

84. There is no evidence to suggest that either of the two conditions was satisfied in the present case. The Court has already found that the Moscow City Court did not elaborate on the reasons for holding the trial in camera. It did not even indicate what documents in the case file, if any, were considered to contain State secrets or how they were related to the nature and character of the charges against the applicant. The Court further observes that the City Court did not take any measures to counterbalance the detrimental effect that the decision to hold the applicant's trial in camera must have had on public confidence in the proper administration of justice for the sake of protecting the State's interest in keeping its secrets. The Government did not argue – and there is no indication to the contrary in the documents submitted by the parties – that it was not open to the City Court to hold the trial publicly subject to clearing the courtroom for a single or, if need be, a number of secret sessions to read out classified documents. The Court therefore finds it striking that in such a situation the Moscow City Court preferred to close the entire trial to the public.

85. The Court further looks at the Government's second argument to the effect that the exclusion of the public was necessary in the interests of justice, in particular, for the safety of the victims and witnesses. The Court observes that the need to protect the safety of victims and witnesses through the exclusion of the public from the trial was first mentioned by the Moscow City Court in its decision of 25 December 2001. The reasons given by the Moscow City Court for holding the hearing in camera were "to guarantee security to the victims, witnesses and other parties to the proceedings, taking into account the character of the charges". The Court considers these reasons to be regrettably laconic. It would have been preferable to have expanded this

element to explain in more detail why the City Court was worried about the vulnerability of certain victims and witnesses or whether and why it was concerned that witnesses and victims could have been deterred. It was also important to explain why the concern for the safety of victims and witnesses outweighed the importance of ensuring the publicity of the trial. Moreover, if the trial court had indeed taken into account certain information, this should have been presented to the parties, in particular the applicant, so that an open discussion of the matter could have occurred (see *Volkov v. Russia*, no. 64056/00, § 31, 4 December 2007).

86. At the same time the Court is not convinced that the Moscow City Court had in its possession specific information showing that the applicant or his co-defendants posed a serious risk of real and substantial danger to other parties to the proceedings or that their conduct could have prejudiced a fair trial. The Court notes that the Government submitted no documents to show what information had served as a basis for the City Court's decision. Furthermore, as can be seen from the court hearing record, the need to guarantee the victims' and witnesses' safety was not even mentioned by the prosecutor in his objection to the applicant's request to open the trial to the public (see paragraph 22 above). It appears that the Moscow City Court concluded that there was a risk to the victims' and witnesses' safety merely on the ground of the gravity of the charges against the defendants. In this respect, the Court notes that the gravity of the charges cannot by itself serve to justify the restriction of such a fundamental tenet of judicial proceedings as their openness to the public. This is particularly true in cases such as the present one where the legal characterisation of the facts was determined by the prosecution without judicial examination of the issue whether the evidence that had been obtained supported a reasonable suspicion that the applicant had committed the alleged offence. The Court observes that a danger which defendants may present to other parties to the proceedings cannot be gauged solely on the basis of the gravity of the charges and severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may confirm the existence of a danger justifying the denial of public access to a trial. In the present case the decisions of the domestic courts gave no reasons why they considered the risk to the victims' and witnesses' safety to be decisive. Consequently, the Court finds that dispensing with a public hearing was not justified in the circumstances of the present case.

87. The Court lastly observes –and the Government did not argue to the contrary – that the appeal hearing before the Supreme Court of the Russian Federation was also not open to the public. It therefore follows that the appeal proceedings before the Supreme Court did not remedy the lack of publicity during the trial before the Moscow City Court (see, *mutatis mutandis*, *Diennet v. France*, judgment of 26 September 1995, Series A no. 325-A, p. 15, § 34, and *Ekbatani v. Sweden*, judgment of 26 May 1988, Series A no. 134, p. 14, § 32).

88. Having regard to these considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention owing to the lack of a public hearing in the applicant's case.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. In his application form lodged with the Court on 17 August 2003 the applicant complained under Article 6 of the Convention that the Moscow City Court had not been impartial and independent and had been composed in breach of the domestic law, that the judgment of 19 April 2002 had not been pronounced publicly, that domestic authorities had considered him guilty before his conviction, that he had not been able to defend himself in person or through legal assistance of his own choosing, and that Mr G. had not been heard as a witness. In his application form lodged on 28 June 2004, the applicant further complained under Articles 6, 8 and 10 of the Convention and Article 1 of Protocol No. 1 about various violations of his rights committed by the investigating authorities and courts during the criminal proceedings against him, the extensive press campaign over his case and his inability to receive family visits during his pre-trial detention.

90. However, having regard to all the material in its possession, the Court finds that in respect of these complaints it has not disclosed any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

92. The applicant claimed 11,400 US dollars (USD) in respect of pecuniary damage, representing the total cost of his property allegedly seized by the investigating authorities during the criminal proceedings. He further claimed 306,000 euros (EUR) in respect of non-pecuniary damage.

93. The Government argued that there was no causal link between the pecuniary damage claimed and alleged violations of the Convention. They further submitted that the applicant's claim in respect of non-pecuniary damage was excessive and ill-founded.

94. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have suffered humiliation and distress because of the inhuman and degrading conditions of his detention. His suffering cannot be sufficiently compensated by a finding of a violation. In addition, he did not have a "public hearing within a reasonable time" in the determination of criminal charges against him. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

95. The applicant also claimed 7,755 Russian roubles (RUB) for the costs and expenses incurred before the Court. He submitted that this sum covered the cost of train tickets from Moscow to Vorkuta and back and the travel expenses of his lawyer, Mr G. Zhuravlyov, who had travelled to a correctional colony in Vorkuta to meet the applicant to prepare their response to the Government's memorandum. The applicant attached train tickets and copies of certificates showing the lawyer's travel allowance paid by the applicant's wife.

96. The Government noted that the Court should only award an amount which was actually incurred and was necessary and reasonable.

97. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 220 for costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant on this amount.

C. Default interest

98. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant's detention from 19 April 2002 to 11 April 2003, the excessive length of the criminal proceedings, and the lack of a public hearing, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing;

5. *Holds*

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

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable;

(ii) EUR 220 (two hundred and twenty euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant;

(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's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Christos Rozakis
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Kovler is annexed to the judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE KOVLER

I voted without hesitation for finding a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the detention facility no. IZ-77/3 known as "Krasnaya Presnya" and of Article 6 § 1 on account of the excessive length of the criminal proceedings.

My doubt concerned the violation of Article 6 § 1 on account of the lack of a public hearing. Even though I support in general the position expressed by the Court in its judgment, I regret that the Court did not take into account the possibility of a hearing *in camera* on the ground that, in view of the applicant's professional status (see paragraph 10), he could have, in public hearings, disclosed classified information concerning methods of investigative activities against organised crime, as the prosecutor pointed out (see paragraph 22). However, I find rather strange another of the prosecutor's grounds for an *in camera* hearing, namely that the mass media had already misrepresented the facts in the case.

Unlike in the case of *Volkov v. Russia* (no. 64056/00, 4 December 2007) where the Court did not find a violation of Article 6 § 1 of the Convention (the widow of one of the applicant's purported victims had requested *in camera* proceedings before the Omsk Regional Court because she feared the defendant's friends and their threats), the Moscow City Court did not enlarge upon the problem of "guarantee[ing] the security of the victims, witnesses and other parties to the proceedings" (see paragraph 22). Thus the necessity of *in camera* hearings in the present case remains unclear for me. In my humble opinion, the respondent Government could have clarified this point in their response to the Court's question "Was the exclusion of the public in the present case 'strictly necessary' for one of the purposes within the meaning of Article 6 § 1 of the Convention?".

BELASHEV v. RUSSIA JUDGMENT

BELASHEV v. RUSSIA JUDGMENT

BELASHEV v. RUSSIA JUDGMENT

BELASHEV v. RUSSIA JUDGMENT

BELASHEV v. RUSSIA JUDGMENT