



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

FIRST SECTION

CASE OF SHISHKOV v. RUSSIA

(Application no. 26746/05)

JUDGMENT

STRASBOURG

20 February 2014

FINAL

20/05/2014

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

In the case of Shishkov v. Russia,

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

Isabelle Berro-Lefèvre, President,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 26746/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Dmitriy Mikhaylovich Shishkov (“the applicant”) on 3 July 2005.

2. The applicant, who had been granted legal aid, was represented by Mr P. Finogenov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been held in appalling conditions in a temporary detention centre in 2004 and 2005, and that he had no effective remedies in this respect; that the domestic courts had refused, on spurious grounds, to examine a number of cases brought by him; and that the prison authorities had failed to dispatch his correspondence to the Court. He cited Articles 3, 6, 13 and 34 of the Convention.

4. On 7 October 2008 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and is serving a prison sentence in the Adygeya Republic, Russia.

6. It appears that the applicant was arrested on 23 or 24 March 2004. A court found him guilty of disorderly behaviour and sentenced him to administrative detention for fifteen days. According to the applicant, he was not provided with a copy of that order and therefore could not appeal against it. It appears that he served his sentence in the police station in a cell assigned to people convicted in administrative offence proceedings.

A. Conditions of detention in Mayskiy Temporary Detention Centre

1. The applicant's account

7. On 7 or 9 April 2004 the applicant was remanded in custody in relation to criminal proceedings (see paragraph 49 below). He was placed in Mayskiy Temporary Detention Centre (hereinafter "TDC") attached to Mayskiy police station in the town of Mayskiy in the Kabardino-Balkariya Republic.

8. On 16 April 2004 the applicant was transferred to a remand centre in Nalchik, but was transferred back to the TDC every month for the following periods: 27 to 30 April; 11 to 21 May; 25 to 29 June; 2 to 6 July; 9 to 23 July; 3 to 6 August; 24 to 31 August; 3 to 7 September; 14 to 21 September; and 28 September to 1 October. According to the applicant, he spent a total 112 days in the TDC in 2004. He also spent unspecified periods of time there in 2005. According to him, they amounted to some fifty days in total.

9. The TDC cells in which he was detained measured no more than 8 sq.m, and were designed to hold up to four detainees; however, at times they housed up to seven. When the cells were overcrowded, the applicant did not have his own individual bed and had to take turns sharing with his cellmates or sleeping on the floor. No bedding was provided. As the cells had no toilet, detainees had to relieve themselves in a large pot, which produced a disgusting smell in the cells. In addition, the cells were usually filled with smoke because the majority of detainees smoked. There was no functioning ventilation in the cells. The cells had no sink or washbasin, and no facilities were provided for maintaining personal hygiene or for washing clothes. The TDC had no shower facilities. On many occasions, the applicant was deprived of the opportunity to have a shower, as often his transfer to the TDC coincided with the remand centre's bath days. There was no table or seating in the cells, no artificial lighting and limited access to natural light, which meant the applicant was unable to read in his cell and to prepare for hearings.

10. The applicant spent the majority of his time in the cell, since in the TDC no facilities were available for outdoor exercise. He was fed once a day, but the quality of the food (normally a piece of bread and porridge) was

poor and the amount small. The TDC had no canteen or catering facilities. No provision was made for the supply of drinking water to detainees.

11. In April 2005 the applicant was held in a cell with a detainee who allegedly suffered from acute tuberculosis.

2. The Government's account

12. From 24 March 2004 to an unspecified date the applicant was held in Mayskiy police station, in a cell assigned to people convicted of administrative offences.

13. From 7 to 16 April 2004 he was detained in Mayskiy Temporary Detention Centre in relation to criminal proceedings and for various other periods in 2004 and 2005. The Government provided the Court with copies of registers containing a daily record of the number of detainees held in each of four cells (measuring between 5.5 and 7 sq.m each) over 161 days.

14. As can be seen from the registers, from 7 to 16 April 2004 the applicant shared a cell with two and then three detainees. Subsequently, he was detained with up to three other detainees. However, on 14 May and 16 November 2004 there were six detainees in the cell. On twenty other days in 2004 there were five in the cell.

15. The Government affirmed that the applicant would have been taken to the toilet upon request. While there had been no shower facilities, the TDC had contracted out disinfection and laundry to a private company. Each cell had been equipped with a sink, and drinking and boiled water had been provided upon request. Detainees had been provided with bedding and cutlery. They had been given three meals a day, and had been able to take daily one-hour outdoor walks, as confirmed by the relevant logbooks.

16. The Government submitted blurred photocopies of photographs taken on an unspecified date, which appear to show the interior of the TDC cells. They also submitted a copy of a contract between the TDC and a private company signed in 2004, relating to the provision of meals to detainees once a day.

17. As indicated in a report dated 27 November 2008 by the Chief Officer of Mayskiy Temporary Detention Centre, as of November 2008 there was one toilet for detainees in the facility, but none in the cells. There was an electric stove for warming up food and water. There was no medical unit, but two first aid kits. Natural ventilation in the cells complied with the relevant regulations, and each cell had artificial lighting.

18. The Government submitted written statements made in November 2008 by several officers who had served in the TDC in 2004 and 2005. They stated that they had taken detainees to the toilet and had provided them with water upon request. They had been given bedding, and had been taken for an hour's outdoor exercise on a daily basis.

19. Lastly, the Government also submitted written statements made by several detainees in relation to the conditions of their detention in the TDC in 2008.

B. The applicant's complaints to national authorities

20. The applicant lodged numerous complaints regarding, *inter alia*, the allegedly appalling conditions of his detention in the TDC and sued various public authorities.

1. Civil proceedings against a prosecutor's decision of 6 May 2005 (Case 1)

21. In March 2005 the applicant complained to the Mayskiy district prosecutor about the conditions of his detention in the TDC. In a letter of 5 April 2005 the prosecutor acknowledged that detainees had not been provided with bedding or drinking water in the cells, and that the detention centre had not been equipped with adequate catering facilities. The prosecutor stated that his office had ordered the TDC to carry out renovation works, which were imminent. As can be seen from the detention facility's stamp, the prosecutor's letter was received by the detention facility on 28 April 2006.

22. On 6 May 2005 the same prosecutor rejected a further complaint by the applicant about the conditions of his detention in the TDC during April 2005.

23. The applicant lodged a complaint with the Nalchik Town Court, citing the Code of Civil Procedure (CCP) and expressing his dissatisfaction with the prosecutor's decision of 6 May 2005. By a letter of 27 December 2005, the President of the Town Court declined jurisdiction without any further explanation. The letter was received by the detention centre on 12 January 2006. The applicant did not institute any further proceedings in relation to this letter.

2. Criminal proceedings against the prosecutor's decision of 6 May 2005 (Case 2)

24. In August 2006 the applicant sought judicial review under Article 125 of the Code of Criminal Procedure (CCrP) in respect of the decision of 6 May 2005. By a judgment of 15 September 2006 the Mayskiy District Court refused to deal with the complaint. On 12 December 2006 the Supreme Court of the Kabardino-Balkariya Republic (hereinafter "the Supreme Court") quashed the first-instance judgment and ordered an examination of the case, because the applicant had not been taken to the first-instance hearing and the District Court had not actually examined the contents of the decision of 6 May 2005. On 25 June 2007 the District Court

held that the procedure under Article 125 of the CCrP was inappropriate. On 11 September 2007 the Supreme Court quashed the first-instance judgment and ordered a re-examination of the case. The applicant did not inform the Court of the outcome of those proceedings.

3. Case against the Ministry of the Interior of the Kabardino-Balkariya Republic (Case 3)

25. In the meantime, in November 2005 the applicant sued the Ministry of the Interior of the Kabardino-Balkariya Republic, seeking a judicial declaration that its failure to provide adequate conditions of detention had been unlawful. It appears that in November or December 2005, the President of the Town Court declined jurisdiction without any further explanation. The applicant was informed accordingly soon thereafter. He did not institute any further proceedings.

4. Cases before the Moscow courts (Cases 4 and 5)

26. On 25 January 2006 the applicant brought proceedings before the Butyrskiy and Tverskoy District Courts of Moscow against the Federal Ministry of Finance, seeking compensation in respect of non-pecuniary damage on account of the conditions of his detention in the TDC. On 28 February 2006 the Butyrskiy District Court declined jurisdiction in favour of the Tverskoy District Court. On 3 April 2006 the Tverskoy District Court declined jurisdiction in favour of the Mayskiy District Court of the Kabardino-Balkariya Republic. The decisions were received by the detention centre on 13 March and 28 April 2006 respectively. The applicant did not challenge them on appeal.

5. Case against the Federal Ministry of Finance (Case 6)

27. Meanwhile, on 30 January 2006 the applicant brought civil proceedings before the Nalchik Town Court against the Federal Ministry of Finance. He claimed compensation in the amount of 200,000 Russian roubles (RUB) in respect of non-pecuniary damage on account of, *inter alia*, the unacceptable conditions of his detention in the TDC.

28. Together with his statement of claim, he enclosed an application for a court fee waiver. He stated that he was serving a prison term and therefore had no income. He also affirmed that his case related to criminal proceedings against him and thus he was entitled to a fee waiver under Article 89 of the CCP and Article 333.36 of the Tax Code.

29. Referring to the fact that he was a detainee, the applicant alleged that he could not at that stage submit evidence in support of his claim. He made a written application under Article 57 of the CCP, requesting the court to assist him in collecting evidence. He requested the court to require production of the following: official documents from his detainee file kept

in the remand centre relating to his transfer in and out of Mayskiy Temporary Detention Centre (for establishing the period of his detention in this facility), and an official statement from the TDC specifying the periods of his detention there, his cell numbers, the number of inmates held in each cell, and the names of the detainees he shared with (for establishing that the relevant regulations regarding cell space, the provision of individual beds, and other material conditions of detention had not been complied with).

30. Lastly, the applicant requested the court to order a procedural measure requesting a local judge in Mayskiy to inspect the premises of the TDC.

31. By a decision of 2 February 2006, judge G. in the Town Court refused to process the claim. He held as follows:

“The statement of claim does not comply with the requirements of Articles 131 and 132 of the Code of Civil Procedure (CCP). The claimant has not enclosed any documentary evidence confirming the circumstances he refers to in the statement. He has not submitted evidence relating to non-pecuniary damage or adverse consequences resulting from moral suffering. He has not paid a court fee.

The court dismisses the request for a fee waiver because Articles 89 of the CCP or Article 333.36 of the Tax Code do not contain any relevant grounds. In addition, the case file does not contain any evidence or grounds prescribed by law which would permit the court to order such a waiver.

Article 56 of the CCP requires a party to the proceedings to adduce evidence confirming the circumstances this party refers to, unless otherwise provided by federal law.

Article 57 of the CCP provides that the parties to the proceedings and other interested persons are to submit evidence. The court may invite them to submit further evidence. If a party has difficulties in submitting certain evidence, the court may provide assistance in collecting evidence, including by requiring its production.

However, the case file does not contain any proof that the claimant is unable to collect and adduce the evidence mentioned in his claim.”

The judge ordered the applicant to pay a fee and to adduce evidence before 14 February 2006. According to the detention facility’s stamp, the applicant received that decision on 13 February 2006. On 15 February 2006 judge G. discontinued the proceedings because the applicant had not complied with his directions. A copy of the discontinuation decision was received by the detention centre on 28 February 2006.

32. In the meantime, on 15 February 2006 (before becoming aware that the case had been discontinued) the applicant requested an extension of the time-limit for appealing against the decision of 2 February 2006 and lodged a statement of appeal. On 20 February 2006 judge G. refused to deal with the applicant’s request for an extension of the time-limit because he had not “carried out the procedural measure in respect of which an extension had been sought” and had not provided a list of “all interested persons and their

whereabouts". The applicant was requested to remedy these shortcomings before 27 February 2006. On 28 February 2006 judge G. discontinued the proceedings, on account of the applicant's failure to comply with the court's directions. According to the detention facility's stamp, the order of 20 February 2006 was not received by the detention facility until 6 March 2006. The applicant did not pursue the proceedings any further (however, see paragraph 35 below).

33. The applicant also appealed against the decision of 15 February 2006 by which judge G. had discontinued the proceedings on his claim. On 4 April 2006 judge G. extended the time-limit for appeal, noting that the applicant had not received the decision until 28 February 2006. Without holding a hearing, on 3 May 2006 the Supreme Court upheld the decision of 15 February 2006. It stated that the applicant had not proven that he had received the decision of 2 February 2006 on 13 February 2006 and thus judge G. had rightly discontinued the case.

34. The applicant received a copy of the appeal judgment on 11 May 2006.

6. New civil proceedings against the Ministry of Finance (Case 7)

35. Before proceedings in the above case ended, the applicant initiated new civil proceedings with the same claim. On 23 March 2006 judge S. in the Town Court issued a decision not to deal with the claim and advised the applicant to bring proceedings before a district court in Moscow. As can be seen from the detention centre's stamp, a copy of the judge's decision was received by the detention centre on 29 March 2006. On an unspecified date, the detention facility dispatched an appeal by the applicant against the decision of 23 March 2006.

36. On 21 April 2006 the Town Court refused to process the applicant's appeal against the decision of 23 March 2006 as being lodged out of time. The court considered that the copy of the decision had been received by the detention centre on 27 March 2006, whereas the applicant's appeal had not reached the Town Court until 14 April 2006.

37. On 25 April 2006 the applicant received a copy of the decision of 21 April 2006 and lodged an appeal with the Supreme Court. By a letter of 28 April 2006, the Supreme Court informed the applicant that he should have lodged his appeal with the registry of the Town Court. The applicant did not pursue the proceedings and brought new proceedings instead (see below).

7. Case against the Regional Treasury Department (Case 8)

38. On 1 May 2006 the applicant brought new civil proceedings against the Regional Treasury Department and the Ministry of the Interior of the Kabardino-Balkariya Republic, claiming RUB 200,000 in respect of non-

pecuniary damage. On 5 May 2006 judge G. in the Town Court refused to process the case on account of the applicant's failure to adduce evidence. It also refused to assist the applicant with collecting evidence, because there was no proof that he had encountered any difficulties in doing so. The applicant was ordered to provide a list of all interested persons and to adduce evidence before 16 May 2006. The order of 5 May 2006 read as follows:

"The statement of claim does not comply with the requirements of Articles 131 and 132 of the Code of Civil Procedure (CCP). [The applicant] has not enclosed any documentary evidence confirming the circumstances he refers to in the statement. He has not submitted evidence relating to non-pecuniary damage or adverse consequences resulting from moral suffering. He has not paid a court fee.

The court dismisses the request for a fee deferral because Articles 89 of the CCP or Article 333.36 of the Tax Code do not contain any relevant grounds. In addition, the case file does not contain any evidence or grounds prescribed by law which would permit the court to order a fee waiver.

Article 56 of the CCP requires a party to the proceedings to provide evidence confirming the circumstances this party refers to, unless otherwise provided by federal law.

Article 57 of the CCP provides that the parties to the proceedings and other interested persons are to submit evidence. The court may invite them to submit further evidence. If a party has difficulties in submitting certain evidence, the court may provide assistance in collecting evidence, including by requiring its production.

However, the case file does not contain any proof that the claimant is unable to collect and adduce the evidence mentioned in his claim.

In addition, the statement of claim does not list all interested persons. [The applicant] has not supplied enough copies of the statement for every party to the proceedings."

The order was received by the remand centre on 15 May 2006.

39. Instead of complying with the judge's directions, on the same or next day the applicant drafted a statement of appeal against the decision of 5 May 2006. On 22 May 2006 judge G. refused to process the appeal, on the grounds that it had not been dispatched from the remand centre until 17 May 2006. The applicant had therefore missed the ten-day statutory time-limit for appeal. The applicant received a copy of the judge's decision of 22 May 2006 on 1 June 2006.

40. On 6 June 2006 the applicant requested an extension of the time-limit for challenging the decision of 22 May 2006, and lodged a statement of appeal. On 30 June 2006 judge G. extended the time-limit, considering that the applicant had not received the decision of 22 May 2006 until 1 June 2006. On 26 July 2006 the Supreme Court upheld the decision of 22 May 2006.

8. Case against the Ministry of the Interior (Case 9)

41. On 29 May 2006 the applicant sued the Ministry of the Interior of the Kabardino-Balkariya Republic, seeking a judicial declaration that his conditions of detention “had been unlawful and violated his rights and freedoms”. On 2 June 2006 the Town Court ordered the applicant to supply enough copies of his statement of claim for every party to the proceedings and to pay a court fee before 9 June 2006. A copy of that decision was received by the detention facility on 15 June 2006. The applicant did not challenge it on appeal. In the meantime, on 13 June 2006 the Town Court discontinued the case.

9. Case against the Regional Treasury Department and the Ministry of the Interior (Case 10)

42. In June 2006 the applicant brought proceedings in the Town Court against the Regional Treasury Department and the Ministry of the Interior of the Kabardino-Balkariya Republic, seeking compensation in respect of non-pecuniary damage in relation to the criminal proceedings against him, a deferral of payment of the court fee, and an order for the material contained in his criminal case file to be examined.

43. On 22 June 2006 the Town Court considered that the applicant had complied with the requirements of Articles 131 and 132 of the CCP and requested production of the criminal case file against him.

44. On 17 July 2006 the proceedings were suspended because the criminal case file had been submitted to the Supreme Court of Russia for examination. On 12 December 2007 the Town Court resumed the civil proceedings and scheduled a hearing for 20 December 2007. The court issued a summons to the applicant’s known home address, taking note of the fact that he had been released in September 2007. On 27 December 2007 the court considered that the summons had been delivered. Since the applicant had not attended two hearings, and had not asked that the case be examined in his absence, the court discontinued the proceedings. The applicant did not appeal against the decision of 27 December 2007.

10. Case against the judges of the Town Court (Case 11)

45. In the meantime, the applicant sued the judges of the Town Court on account of their failure to examine the claims he had lodged in June 2006, claiming RUB 10,000 in respect of non-pecuniary damage. By an order of 15 September 2006, the Town Court refused to process the applicant’s case on account of his failure to indicate the nature of the alleged violation and to pay the applicable fee. The applicant was ordered to comply with the court’s directions by 25 September 2006. A copy of that order was received by the detention facility on 20 September 2006. According to the applicant, it was not given to him until on 28 September 2006. On 29 January 2007 the Town

Court refused to extend the time-limit for appealing against the order of 15 September 2006, because the applicant had failed to prove the date he received it.

11. Case against Mayskiy Temporary Detention Centre (Case 12)

46. In August 2006 the applicant also sued Mayskiy Temporary Detention Centre, claiming RUB 200,000 in respect of non-pecuniary damage. On 24 August 2006 the Town Court refused to process the claim, because the applicant had not paid the applicable court fee of RUB 100, and had given no reasons to justify deferring its payment. The judge stated that the applicant's reference to the fact that he was a detainee was insufficient. The Regulations for detention centres provided that each individual detainee was to be given their own account. The applicant could provide information from that account to prove that he was experiencing financial difficulties.

47. The judge also held that the applicant had not explained what "IVS" stood for (a Russian abbreviation for temporary detention centre) and whether it was an autonomous legal entity. The applicant was ordered to comply with the court's directions by 4 September 2006.

48. The applicant received a copy of that order on 30 August 2006. On 11 September 2006 he requested an extension of the time-limit for appeal. A hearing on the matter was scheduled, but adjourned on several occasions. On 15 October 2007 the Town Court held a hearing. The applicant made a written statement withdrawing his appeal against the decision of 24 August 2006.

C. Criminal proceedings against the applicant

49. In April 2004 the applicant was charged with robbery. On 9 April 2004 the Mayskiy District Court of the Kabardino-Balkariya Republic authorised his detention pending an investigation. On 30 September 2004 the District Court convicted the applicant as charged and sentenced him to four years' imprisonment. On 11 March 2005 the Supreme Court upheld the judgment. It appears that the applicant was represented by a legal aid lawyer in the above proceedings.

50. The applicant was also prosecuted in separate proceedings in relation to other charges. Those proceedings were discontinued on 31 August 2005.

51. The applicant applied for early release and the substitution of his prison sentence by a less severe punishment. On 31 May and 28 June 2006 judge K. in the Nalchik Town Court dismissed his requests. On 22 August 2006 the Supreme Court upheld the judgments.

52. In 2006 the applicant, relying on various grounds, also unsuccessfully sought the institution of criminal proceedings against the authorities and judges on account of their refusal to examine or process his complaints.

53. On 22 February 2007 the Presidium of the Supreme Court quashed the appeal decision of 11 March 2005 and ordered a fresh appeal hearing. On 24 July 2007 the Supreme Court re-examined the criminal case against the applicant on appeal and reduced his sentence.

D. Correspondence with the Court

54. On 20 July 2005 the Court received an undated letter from the applicant bearing a postmark of 3 July 2005 from remand centre no. 7/1 in the town of Nalchik. In the letter the applicant cited Articles 3, 5 and 6 of the Convention and complained that his detention had been unlawful, that he had suffered “inhuman and degrading conditions of detention in Mayskiy Temporary Detention Centre”, and the negative effects that such conditions had had on his ability to prepare his defence for the trial.

55. By a letter of 25 July 2005 the Court acknowledged receipt of the applicant’s letter, requesting that he complete and return the requisite application form. The letter read as follows:

“You should return to the Court the application form and all necessary additional documents without undue delay, within six weeks following receipt of the present letter. Otherwise, the Court may decide not to take the date of your first letter as the date of introduction of the application, which may adversely affect the Court’s decision as to compliance with the six-month rule under Article 35 § 1 of the Convention.”

1. The applicant’s account

56. According to the applicant, he received the above Court’s letter in the remand centre on 4 August 2005. On 19 August 2005 he filled in the application form and submitted it to the staff of the detention facility for dispatch. On 8 September 2005 the administration of the facility informed him that his application form and supporting documents had been dispatched to the Court; however, they were not received by the Court.

57. The applicant submitted a letter dated 28 November 2005 to the staff of the remand centre for dispatch. On 2 December 2005 this letter was returned to him without any explanation. The applicant later dispatched it from prison no. 3. The Court replied to the applicant on 19 January 2006, reminding him of the requirement to submit an application form without undue delay and that such a delay could have an adverse impact on the application of the six-month rule under Article 35 § 1 of the Convention.

58. According to the applicant, he completed a further application form and on 3 February 2006 submitted it to the prison staff for dispatch. He also submitted for dispatch letters dated 20 March and 29 May 2006. The application form and letters were not received by the Court.

59. The Court did however receive a letter from the applicant dated 7 August 2006 (sent through a third party) to which it replied, again

requesting him to fill in a further application form. The applicant complied with that request on 9 November 2006 and his application form was received by the Court soon thereafter.

60. In March 2007 the regional prosecutor's office carried out an inquiry into the applicant's complaint regarding the alleged non-dispatch of his correspondence to the Court, but it was dismissed on the basis that the applicant's letter of 29 May 2006 had been dispatched on 2 June 2006 and that in February and March 2006 he had only written to the domestic authorities.

2. The Government's account

61. The Government submitted that from April 2004 to September 2006 the applicant had been detained in remand centre no. 7/1 in the Kabardino-Balkariya Republic. As can be seen from the correspondence logbooks, he submitted three letters to the Court for dispatch, namely on 1 July 2005 (log no. 82), 8 September 2005 (log no. 108) and 2 June 2006 (log no. 51). The first letter was undated and dispatched on 3 July 2005. As to the second letter, on 8 September 2005 the applicant's sealed envelope was submitted to the relevant unit of the detention facility and was dispatched on the same day by ordinary mail through the State postal service in the town of Nalchik. Following a complaint by the applicant, an inquiry was carried out, but in contrast to the applicant's version of events, did not confirm that on 1 or 2 December 2005 the staff of the detention facility had returned to him the correspondence he had allegedly submitted for dispatch on 28 November 2005.

62. The Government also contended that on 13 February and 20 March 2006 the applicant had indeed submitted correspondence for dispatch; however, it had been addressed to the domestic authorities rather than to the Court. In a report dated 5 December 2008 the Chief Officer of remand centre no. 7/1 stated that the applicant's correspondence had been dispatched by ordinary mail, in compliance with the relevant Instruction (see paragraph 74 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure (CCP)

63. A party to the proceedings should adduce evidence confirming the circumstances on which he or she relies upon as a basis for his or her claims or objections, unless otherwise provided by federal law (Article 56 § 1). A court should determine which circumstances are relevant to the case and which party bears the burden of proving them (§ 2).

64. Parties to the proceedings and other interested persons may submit evidence to the court (Article 57 § 1). If any of the above parties encounter difficulties in submitting evidence, the court may upon the party's application assist them in collecting evidence. An application for assistance should indicate the piece of evidence to be collected, its relevance and an indication of the difficulties encountered in collecting and adducing it (§ 2). The court may issue the party with a request requiring the production of such evidence or may request it directly.

65. A statement of claim must, *inter alia*, indicate the nature of the violation of a right or claimant's interests, the circumstances underlying the claim and evidence confirming those circumstances (Article 131). It should be accompanied by a document certifying payment of the applicable court fee, and the documents confirming the circumstances underlying the claim. Furthermore, the claimant should supply enough copies of the documents for every respondent and third party (Article 132).

66. If the claimant fails to comply with the requirements of Articles 131 and 132, the court will issue a decision refusing to process the claim and set a time-limit for the claimant to remedy the shortcomings indicated in that decision (Article 136 § 1). If the claimant complies within the time-limit, the claim is deemed to have been lodged on the date it was originally lodged; otherwise, the statement of claim is returned to the claimant without any further examination and is considered to have never been lodged (§ 2).

67. In reply to a request made before the expiry of the time-limit provided for in Article 136 § 1 of the CCP, a judge may set a new date with reference to Article 111 of the CCP (decision no. 45-Γ03-28 of 14 January 2004 by the Appeal Section of the Supreme Court of Russia). When an order containing the time-limit was received after its expiry, it was open to the claimant to seek restoration of that time-limit (decision no. 30-Γ05-7 of 20 October 2005 by the Appeal Section of the Supreme Court).

B. Court fees

68. Article 333.36 § 1 of the Tax Code contains a list of claimants for whom and the type of cases in which the requirement to pay a court fee should be waived. None of the grounds cited therein relate to a claimant's indigence. By rulings of 13 June 2006 (no. 272-O) and 7 February 2008 (no. 226-O-O), the Constitutional Court declared the provision unconstitutional, in so far as it had not allowed the courts to grant a request for a full waiver of a court fee on account of a claimant's indigence.

69. Article 333.41 of the Tax Code provided, at the material time, that parties to court proceedings were entitled to apply for a deferral of payment of their court fee, or for payment in instalments.

C. Conditions of detention

70. Under section 13 of the Custody Act (Federal Law no. 103-FZ of 15 July 1995) detainees could be transferred from a remand centre to a temporary detention centre, for no more than ten days per month, for investigative measures or court proceedings.

71. Pursuant to the Regulations for temporary detention centres, adopted by the Federal Ministry of the Interior on 26 January 1996, detainees had to be given the following: 4 sq.m of cell space each (point 3.3); their own individual bed (if possible), their own bedding and tableware (point 3.1); and communal soap, toilet paper and cleaning equipment (ibid.). Each cell had to be equipped with a table, a toilet, access to tap water and a drinking water tank (point 3.2). Detainees were to be given boiled drinking water on a daily basis, upon request. Detainees were to be permitted to take a shower at least once a week and to take outdoor exercise in a designated courtyard once a day (points 6.40 and 6.43).

72. Under the Regulations for remand centres, adopted by the Federal Ministry of Justice on 12 May 2000, detainees were allowed to dispatch correspondence through the detention facility at their own expense (point 84). Correspondence, including registered letters, had to be submitted to the prison staff (points 86 and 88). The dates when the correspondence was received by the staff and dispatched were to be recorded in a correspondence logbook (point 92).

73. As follows from Instruction no. 94-dsp for special units in remand centres and prisons (adopted by the Federal Ministry of Justice on 23 June 2005 for internal use by detention facilities), detainees' correspondence should normally be dispatched by ordinary mail. By a judgment of 6 April 2010, the Supreme Court of Russia upheld this provision and confirmed that the decision not to publish the Instruction had been lawful.

D. Other relevant documents

74. The Advocates Act (Federal Law no. 63- FZ of 31 May 2002) entitles an advocate in civil or other cases to collect information from public authorities when it is necessary for the purposes of court proceedings. The public authorities are required to provide the advocate, following the procedure prescribed by law, with the requested documents or certified photocopies thereof within a month (section 6(3) of the Act).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

75. The applicant complained that the conditions of his detention in Mayskiy Temporary Detention Centre in 2004 and 2005 had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. *Exhaustion of domestic remedies*

76. The Government made a general statement that the applicant had not exhausted domestic remedies.

77. Having regard to its findings in *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 100-119, 10 January 2012), the Court considers that the Government have not demonstrated that the applicant was required to exhaust any specific remedies prior to lodging an application before the Court. Thus, the Court dismisses the Government’s argument.

2. *Six-month rule*

78. The Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

79. The Court also reiterates that where a substantial interval follows before an applicant returns the application form, it may examine the particular circumstances of the case to determine what date should be regarded as the date the application was lodged, with a view to calculating the running of the six-month period imposed by Article 35 of the Convention (see *Canseven v. Turkey*, no. 70317/01, § 22, 15 February 2007, and *Jaaska v. Estonia* (dec.), no. 5801/05, 10 June 2008). It would be contrary to the spirit and purpose of the six-month rule if, by any initial communication, an application could set into motion the proceedings under the Convention and then remain inactive for an unexplained and unlimited length of time. Applicants must therefore pursue their applications with reasonable expedition, after any initial introductory contact (*ibid.*).

80. Turning to the present case, firstly, the Court observes that the applicant’s complaint concerns the conditions of his detention in Mayskiy Temporary Detention Centre, where he was detained on numerous

occasions in 2004 and 2005, the most recent period of detention ending in April 2005.

81. Second, it is noted that the applicant's first letter to the Court was dispatched from the detention facility on 3 July 2005. Furthermore, it is common ground between the parties that his second piece of correspondence, including his completed application form and supporting documents, was dispatched on 8 September 2005, but for unknown reasons it never reached the Court (see also paragraphs 146-160 below for the Court's findings under Article 34 of the Convention). The applicant dispatched his third piece of correspondence on 9 November 2006, consisting of the completed application form and relevant documents, which were received by the Court soon thereafter.

82. For the reasons presented in the paragraphs below, there is no need to ascertain whether, having regard to the particular circumstances of the case, 3 July 2005 should still be treated as the date of introduction for the present complaint under Article 3 of the Convention.

83. Indeed, even considering that the raising of the complaint in the application form of 9 November 2006 should be the appropriate introduction date, this date remains within six months of 11 May 2006, that is to say the date on which the applicant became aware of the final judgment of 3 May 2006, in which the Supreme Court of Kabardino-Balkariya refused – unjustifiably as established by the Court – to examine his action for compensation (see paragraphs 114-133 below).

84. Having regard to the Court's conclusions about domestic remedies in *Ananyev and Others* (cited above, §§ 100-119), under the current approach recourse to civil proceedings would not, normally, be taken into consideration for the purpose of applying the six-month rule. For instance, in a recent case of *Norkin v. Russia* ((dec.), no. 21056/11, 5 February 2013) the applicant obtained a final judgment in 2010 awarding him derisory compensation in respect of unacceptable conditions of detention he had endured in a remand centre in 2007. The Court considered that by that time, its case-law on the absence of an effective remedy for complaints concerning inadequate conditions of detention had been sufficiently established (see *Mamedova v. Russia*, no. 7064/05, § 55, 1 June 2006; *Andrey Frolov v. Russia*, no. 205/02, § 39, 29 March 2007, and *Benediktov v. Russia*, no. 106/02, § 20, 10 May 2007). The Court concluded that the applicant's complaint regarding the inadequate conditions of his detention should have been lodged within six months of the day following his transfer out of the remand centre. The applicant should have been aware of the ineffectiveness of the judicial avenue he had made use of, long before he lodged his application with the Court.

85. However, in *Norkin v. Russia* the Court also mentioned that in older cases concerning conditions of detention and domestic proceedings before 2007, as in the present case, a different approach could be warranted.

Indeed, at the time there were only two examples of case-law in which the Court rejected as unsubstantiated the Russian Government's objection as to the non-exhaustion of domestic remedies in relation to conditions of detention in remand centres (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004). In several cases lodged in 2003, the Court calculated the six-month period as starting to run from the date of the final judgment in a civil action for compensation in the cases in which it found no indication that the applicant, having no access to legal advice, was aware, or should have become aware, of the futility of that action (see, among others, *Skorobogatykh v. Russia*, no. 4871/03, §§ 32-34, 22 December 2009; *Roman Karasev v. Russia*, no. 30251/03, §§ 41-42, 25 November 2010, and *Gladkiy v. Russia*, no. 3242/03, § 63, 21 December 2010).

86. In view of the above, in the particular circumstances of the present case, the Court accepts that the applicant, who did not benefit from legal assistance, could have reasonably considered in 2005 to 2006 that a civil action for damages in relation to conditions of detention in a temporary detention centre had some prospect of success. Thus, the Court does not find it appropriate to dismiss the present complaint as belated on this account.

87. Lastly, the Court reiterates that 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 hearings or other procedural acts would have no bearing 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" (see *Ananyev and Others*, cited above, § 78). It has not been argued, and the Court does not consider, that taking into account the court proceedings, it is prevented from examining the applicant's detention both in 2004 and 2005 in this regard.

3. Conclusion

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

B. Merits

89. The parties' submissions are presented in paragraphs 7-19 above.

90. The Court observes at the outset that the present complaint relates to a temporary detention centre, which, by contrast to a remand centre, is

considered under Russian law as being suitable only for relatively short periods of detention, pending investigation or trial in a criminal case (see paragraph 70 above). The applicant was in fact held in the TDC in Mayskiy on numerous occasions in 2004 and early 2005 for periods as long as up to two weeks. For the remaining time, he was held in a remand centre in Nalchik. He did not challenge the sanitary and other material conditions of detention in this remand centre.

91. Having regard to the information and documents submitted by the parties, the Court finds it established that the applicant was detained in cramped conditions in the TDC, given that detainees usually had less than 2 sq.m. of cell space each. The Government did not contest the applicant's submission that when there had been more than four detainees in the cell, he had not had his own individual bed and had to take turns sharing with his cellmates or sleeping on the floor. The Court accepts that this could be a source of tension between detainees and would have generated additional stress and frustration.

92. Furthermore, having regard to the prosecutor's letter of 5 April 2005 (see paragraph 21 above) and the absence of any specific evidence from the Government, the Court also considers that the applicant was not provided with bedding in the TDC, and had no access to drinking water or catering facilities. The Government's assertion about three meals per day is unsubstantiated. They did not account for the contradiction between their submissions and the results of the prosecutor's inquiry, in particular as regards the provision of bedding. It also appears that the sanitary facilities in the cell were unsatisfactory and were not sufficiently partitioned off for privacy. Lastly, despite referring to a logbook relating to the provision of daily outdoor walks to detainees, the Government omitted to submit any such document. Thus, the Government failed to confirm that the applicant had regular outdoor exercise and was not confined in the cell for the majority of his time in the TDC. It has not been argued that the difficulty of the applicant's situation was in any significant way attenuated for some reason, for instance on account of the time spent out of the TDC during the trial.

93. Although in the present case there is no indication that there was an intention to humiliate or debase the applicant, the Court finds that the conditions of the applicant's detention in the TDC in 2004 and 2005 were such as 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. The Court also notes that the above treatment occurred in the course of criminal proceedings against the applicant, including his trial, that is to say, when he most needed his powers of concentration and mental alertness.

94. In view of the foregoing considerations, the Court concludes that the conditions of the applicant's detention amounted to degrading treatment. There has therefore been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

95. The applicant also complained that the first-instance courts had unlawfully and disproportionately barred his access to a court in respect of his claims, in particular those relating to the conditions of his detention in the TDC.

96. The Court considers that the above complaint raises issues under Article 6 § 1 of the Convention, which in so far as relevant reads as follows:

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

A. Admissibility

97. The Government argued that the applicant had not exhausted domestic remedies because “he had failed to comply with the orders made by the domestic courts”.

98. The applicant contested this argument.

99. As with Article 3 of the Convention, the Court should first ascertain that the applicant has complied with the six-month rule. Assuming that he did not have to pursue any further proceedings or appeals, the relevant decisions in case nos. 1, 3, 4 and 5 were taken and made known to the applicant more than six months before 9 November 2006, when the present complaint was first raised in substance before the Court. Indeed, given the chronology of the relevant events and the absence of any submission to the contrary, there is no reason to consider that any earlier date should be taken as the date this part of the application was lodged. It follows that the complaints in respect of these cases were lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

100. The applicant also complained about the court decision of 15 September 2006 taken in case no. 2. However, the Court observes that it was quashed in December 2006 and the proceedings were resumed. The applicant made no specific related complaint. Nor did he inform the Court about the outcome of the proceedings. In the absence of any specific observations from the parties, the Court does not find it necessary to examine this part of the application any further.

101. As to case no. 7, it is noted that on 23 March 2006 the Nalchik Town Court issued a decision not to deal with the claim and advised the applicant to bring proceedings before a Moscow court. The applicant received the decision on 29 March 2006. The remand centre staff dispatched

his appeal on 14 April 2006. The Town Court calculated the statutory time-limit for appeal from 29 March 2006 and concluded that it had been missed. It has not been alleged, and the Court finds no indication to suggest, that the remand centre staff delayed in dispatching the appeal. The applicant provided no explanation for his failure to comply with the time-limit. It follows that the refusal to process his appeal was not disproportionate. Thus, his complaint about the first-instance decision of 23 March 2006 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

102. As to cases nos. 9-11, it has not been argued, and the Court does not consider, that they concerned a genuine dispute involving determination of the applicant's civil rights or obligations. In any event, for instance as regards case no. 11, on 15 September 2006 the Town Court refused to process the case on account of the applicant's failure to indicate the nature of the alleged violation and to pay the applicable court fee. He failed to lodge an appeal in compliance with the domestic procedural rules. It follows that the complaint in respect of case no. 11 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

103. As to case no. 12, on 24 August 2006 the Town Court refused to process it because the applicant had not paid the applicable court fee. The applicant appealed against the decision but then withdrew his appeal. In the absence of any special circumstances, the Court considers that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

104. As to the remaining cases (nos. 6 and 8), the Court considers that the question of exhaustion of domestic remedies is closely linked to the substance of the applicant's complaint. Thus, it should be joined to the merits of the complaint.

105. The Court considers, in the light of the parties' submissions, that the complaint related to cases nos. 6 and 8 raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible has been established. Thus, it should be declared admissible.

B. Merits

1. The parties' submissions

106. The Government stated that the applicant's cases had not been processed on account of his failure to comply with the procedural requirements of Articles 56, 57, 131, 132 and 136 of the Code of Civil Procedure.

107. The applicant stated that the first-instance courts had barred his claims on overly formalistic grounds and that certain procedural orders had reached him shortly before or even after the deadlines imposed for remedying the shortcomings. The appeal procedures against various procedural orders had also been excessively cumbersome; the appellate courts had not remedied any violations made by the lower courts. Instead, they had impeded the applicant's attempts to obtain an examination of his claims on their merits.

2. *The Court's assessment*

(a) **General principles**

108. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). In this way Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Cudak v. Lithuania* [GC], no. 15869/02, § 54, ECHR 2010).

109. The right of access to a court is not absolute but may be subject to limitations; these are permitted by implication since the right of access "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals" (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the domestic authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Cudak*, cited above, § 55).

110. The Court notes that while time-limits are in principle legitimate limitations on the right to a court, as they serve legitimate purposes, namely to ensure legal certainty and finality of proceedings and to protect potential defendants from stale claims, the manner in which they are applied in a particular case may give rise to a breach of Article 6 § 1 of the Convention (see *Ateş Mimarlık Mühendislik A.Ş v. Turkey*, no. 33275/05, § 38, 25 September 2012). In this regard, the domestic courts must, in applying procedural rules, avoid both excessive formalism and excessive flexibility

which would result in removing procedural requirements established by law (ibid., § 39).

111. The Court accepts that the requirement to pay court fees serves as a measure dissuading potential litigants from bringing unreasonable and unmeritorious claims. In order to guarantee a fair balance between the aforementioned aim, namely to preserve the smooth functioning of the judiciary and to safeguard the interests of the applicant in bringing a claim before a court, the domestic courts grant exemptions from court fees to those applicants who can prove their poor financial situation (see *Marina v. Latvia*, no. 46040/07, § 52, 26 October 2010).

112. Therefore, the requirement to pay court fees at the time of bringing a civil claim cannot be regarded as a restriction on the right of access to court incompatible *per se* with Article 6 § 1 of the Convention, provided that the very essence of the right of access to court is not impaired and the measures applied are proportionate to the aims pursued in the light of Article 6 (see, among other authorities, *Marina*, cited above, § 50). Such features as the applicant's ability to pay the court fees, and the stage of the proceedings reached at the time the fees are imposed, are taken into account in the assessment of whether access to the court has been impaired (see *Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, § 48, 20 December 2007). Restrictions of a purely financial nature which are completely unrelated to the prospects of success of the claim should be subject to particularly rigorous scrutiny from the point of view of the interests of justice (see *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65, 26 July 2005).

(b) Application of the principles to the present case

113. The Court cannot but note the applicant's erratic conduct, given the number of similar claims he brought almost simultaneously, albeit on varying grounds, before various domestic courts in Kabardino-Balkariya and in Moscow. However, it has not been suggested, and the Court does not consider, that the applicant's behaviour was vexatious or otherwise abusive. Having examined the domestic court decisions, the Court cannot overlook that there was an apparent disagreement between the domestic courts as to, *inter alia*, the jurisdictional issue. In such circumstances, the applicant cannot be reproached for undertaking various attempts to obtain an examination of the substance of his claims at domestic level.

(i) Case no. 6

114. In case no. 6, on 2 February 2006 the judge ordered the applicant to pay the applicable court fee and to adduce evidence before 14 February 2006. On 15 February 2006 the judge discontinued the case because the applicant had not complied with his directions in due time.

115. The applicant argued before the Court that the above requirements had been too burdensome and that he had not been afforded a reasonable time to comply with them.

116. The Court observes that the applicant's claim was temporarily left without examination because the applicant (i) had not paid the court fee and (ii) had not adduced evidence in support of his claim. The Court will examine these aspects in turn.

(a) Court fee

117. It is noted that the order of 2 February 2006 did not indicate the amount of the court fee required from the applicant. However, in the absence of any argument to the contrary, the Court assumes that he was aware of how to calculate it. The question before the Court actually relates to the fact that the applicant, a detainee seeking compensation against the State on account of non-pecuniary damage relating to the conditions of his detention, was unable to have his court fee waived in full or, at least, to have the fee issue discussed by the domestic courts in an adequate manner (see also paragraphs 120 and 137 below).

118. The Government made no specific submissions relating to the applicant's financial situation. In the circumstances of the case, the Court finds it possible to assume that the applicant did not in fact have any income or any other way to pay any court fee when lodging his claim. Nor was it argued that a partial remission or deferral of payment could have been an appropriate alternative solution for him.

119. The Court notes that in June 2006, after the proceedings in the applicant's case no. 6 had ended, the Russian Constitutional Court dealt with this issue in unrelated proceedings and declared the relevant provision of the Tax Code unconstitutional, in so far as it had not allowed the courts to grant a request for a full waiver of a court fee on account of a claimant's indigence.

120. Thus, the Court finds it established that the applicant was refused the possibility of having his court fee waived in full. The Court considers that the absence of such a possibility, and the domestic courts' failure to discuss alternative solutions, constituted a serious restriction on the applicant's right of access to a court.

121. It remains for the Court to determine whether the remaining grounds relied upon by the domestic court provided a proper reason for leaving the applicant's case without examination.

(b) Substantiation of the claim as a procedural bar to access to a court

122. The Court observes that the applicant, being aware of the requirements of Articles 131 and 132 of the CCP, made a detailed request explaining the difficulties he had encountered in submitting evidence in support of his claim and seeking the court's assistance in collecting certain

evidence. As required by the CCP, he specified which pieces of evidence he intended to adduce and for which he required the court's assistance, and sufficiently explained their relevance to his claim. The court dismissed his request, considering that he had failed to prove that he was unable to submit the evidence in support of his claim. Having reached this conclusion, the court referred to lack of evidence as grounds for not processing the case.

123. The respondent Government did not refer to any legitimate purpose which was served by the substantiation requirement. The applicant made no specific argument either. Thus, the Court will leave this matter open, while considering that the restriction in question was aimed at preventing vexatious claims. The Court will now focus on whether the refusal to process the case on account of lack of evidence was proportionate.

124. The Court observes that the applicant's case was left without examination at the pre-adversarial stage of proceedings and without receiving submissions from the parties. The domestic courts considered that the applicant had omitted to enclose any documents relating to (i) the factual circumstances of the case or (ii) non-pecuniary damage and suffering.

125. The Court considers that, given the nature of the claim and the fact that the applicant was a detainee without the benefit of legal assistance, it was possible that he encountered difficulties in collecting evidence in relation to the conditions of his detention.

126. The Government in the present case provided no specific information or made any specific submissions about the domestic law relating to access to information held by public authorities in such circumstances. For its part, the Court notes that an advocate is entitled under Russian law to seek information and documents from public authorities for the purposes of court proceedings relating to his client (see paragraph 74 above). However, it is noted that the applicant did not retain an advocate to assist him in his court proceedings. Nor does it transpire that he was entitled to any form of legal aid from the State (see *Vladimir Vasilyev v. Russia*, no. 28370/05, § 85, 10 January 2012).

127. As stated by the Court in cases regarding conditions of detention in remand centres (*Ananyev and Others*, cited above, § 122), it is mindful of the objective difficulties experienced by detainees 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 provide photographs of their cell or give precise measurements of its dimensions, temperature or the amount of natural light. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention, mentioning specific factors, such as 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. 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 (see also *Sakhvadze v. Russia*, no. 15492/09, § 87, 10 January 2012). Convention proceedings 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, for instance as to conditions of detention (see *Idalov v. Russia* [GC], no. 5826/03, § 98, 22 May 2012).

128. However, the above statements, which relate to the substantiation of complaints under Article 2 or 3 of the Convention before the Court, should not be confused with domestic procedural rules on the standard and burden of proof that may vary from one Contracting State to another, for instance as part of a filtering or screening scheme for manifestly ill-founded claims or the like.

129. Turning back to the circumstances of the present case, the Court notes that, in replying to the applicant's complaint, a prosecutor acknowledged that detainees in the TDC had not been provided with bedding or drinking water, and there had not been adequate catering facilities (see paragraph 21 above). However, it has not been suggested that it was or would be considered to be relevant and/or sufficient for the purpose of the applicant's compliance with the requirements of Article 131, 132 and 136 of the CCP. Moreover, it is unclear when the applicant received a copy of this document. As can be seen from the detention facility's stamp, the prosecutor's letter was received by the detention facility only in April 2006.

130. In fact, neither the domestic court nor the Government had regard to the nature of the claim or discussed at any length in what manner and to what extent the applicant had to substantiate his claim before obtaining an examination on the merits. In particular, it is unclear what could constitute sufficient documentary evidence of non-pecuniary damage or emotional distress suffered on account of conditions of detention.

131. Furthermore, the Court cannot but observe that the applicant was not afforded an adequate opportunity to comply with the judge's order of 2 February 2006. The Court previously considered in relation to summonses for court hearings that the formal dispatch of a notification letter without any confidence that it will reach the applicant in good time cannot be considered as proper notification (see *Kolegovy v. Russia*, no. 15226/05, § 40, 1 March 2012).

132. The Court notes that under Russian law the applicant had ten days to appeal against the procedural order, leaving the case temporarily without examination and requiring him to comply with the judge's directions. At the same time, it is noted that the period for complying with such directions was some twelve days (from 2 to 14 February 2006), which took into account

the period of postal delivery to and from the detention centre and the internal procedure for processing correspondence to and from the detainee.

133. Given that the case was discontinued on 15 February 2006, it became impracticable in the circumstances for the applicant to obtain an extension of the time-limit for complying with the judge's procedural order. Finding it difficult to comply with the directions in time, the applicant had no other reasonable choice but to challenge the directions on appeal. However, the appeal was, in practice, barred by the judge's swift decision to discontinue the entire case.

134. In view of the discontinuation decision, the applicant's appeal against the order of 2 February 2006 had little, if any, prospect of success. Moreover, the actual reasons for which it was not processed do not appear sufficiently substantiated and convincing. Furthermore, the applicant was again put at a disadvantage, since the judge's order in relation to the appeal was received after the deadline for complying with it. Lastly, it is noted that the applicant did appeal against the discontinuation decision.

135. The Court considers in view of the foregoing considerations that in the circumstances of the case it would have been too burdensome to require the applicant to further multiply appeals. In addition, the Government did not clearly identify the means of redress to which the applicant had failed to have recourse. It is not for the Court to ascertain what the particular remedies alluded to were (see *Romanova v. Russia*, no. 23215/02, § 84, 11 October 2011). Thus, the Court accepts that the applicant has exhausted domestic remedies.

(ii) *Case no. 8*

136. The Court considers that its above findings relating to the court fee and substantiation requirements are also applicable in relation to case no. 8.

137. In addition, the Court observes that along with dismissing the applicant's request for a full waiver of his court fee, on 5 May 2006 the judge dismissed his request for a deferral of payment. The judge referred to the absence of any legal basis for such a decision and did not examine the applicant's financial situation. The Court notes, however, that deferrals were possible under the Tax Code (see paragraph 69 above).

138. The Court also notes that the judge's direction to provide a list of "all interested persons" appears too imprecise. The applicant sued two public authorities and gave their details. As to the direction to supply enough copies of the statement of claim for every party to the proceedings, the Court accepts that this requirement was not particularly burdensome and could have been observed by the applicant.

139. However, the Court cannot but note that the applicant was unable to comply in time with the judge's order before 16 May 2006, since he had not received it until 15 May 2006 in view of the apparent ensuing delay in its delivery. In any event, his compliance with this requirement would not

render his statement of claim admissible, since the remaining court fee and substantiation requirements would still constitute, as established by the Court in the circumstances of the case, a disproportionate bar to his access to a court.

140. Lastly, the Court cannot but note the judge's inconsistent approach to the calculation of the ten-day time-limit for appealing against procedural orders regarding the decisions of 5 May and 22 May 2006 (see paragraphs 39-40 above). In view of the preceding considerations, the Court considers that the applicant has also complied with the requirement of exhaustion of domestic remedies in relation to case no. 8.

(iii) Conclusion regarding cases nos. 6 and 8

141. The Court does not overlook that under Russian law, after a claim is turned down on procedural grounds such as those in the present case, a claimant can still institute new proceedings with the same claim, which the applicant actually did.

142. However, in view of the findings relating to the requirements upon the applicant to pay a court fee and to substantiate his claim and the insufficient time afforded to the applicant for complying with the judges' directions, the Court considers that turning down his cases restricted his access to a court in such a way and to such an extent that the very essence of the right was impaired.

143. The Court concludes that the domestic courts' refusals to examine cases nos. 6 and 8 constituted disproportionate limitations on the applicant's right of access to a court. There has accordingly been a violation of Article 6 § 1 of the Convention in the present case.

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

144. The applicant further complained in general terms under Article 13 of the Convention that he had had no effective remedies in respect of his complaint about the conditions of his detention in Mayskiy Temporary Detention Centre.

145. Having regard to its conclusions under Article 3 of the Convention, the Court considers that the present complaint is "arguable" and declares it admissible. However, in view of its findings under Article 6 of the Convention, the Court finds it unnecessary, in the particular circumstances of the present case, to examine this matter separately.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

146. The applicant complained that the staff of the remand centre had not dispatched his correspondence to the Court, thus breaching Article 34 of the Convention, which reads as follows:

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

A. The parties’ submissions

147. The applicant alleged that in August 2005 and in February, March and May 2006 he had submitted correspondence to the Court to the staff of the detention facility, but it had not been delivered. He argued that no record had been kept of the transfer of detainees’ correspondence from the detention facility to the postal service. In addition, no record of dispatch was available, on account of the fact that the correspondence was normally dispatched by ordinary mail. The absence of any safeguards opened up the possibility for abuse on the part of the staff of detention facilities, for instance when detainees raised complaints concerning conditions of detention or unlawful actions on the part of the staff. In view of the vulnerable position of detainees, it should be incumbent on the State to dispatch their correspondence to the Court by registered mail, which allows for traceability. In breach of domestic law, detention facilities kept no record of the date the correspondence was actually dispatched, while also omitting to indicate the date when it was received from the detainee. This omission made it possible for correspondence to the Court being delayed, or even overlooked, as appeared to be the case with the letters of 19 August 2005 and 29 May 2006, neither of which reached the Court.

148. The Government submitted that three letters had been dispatched from the remand centre on 1 July, 8 September 2005 and 2 June 2006. The applicant’s allegations concerning its refusals or omissions to dispatch any correspondence to the Court were unsubstantiated.

B. The Court’s assessment

149. Article 34 of the Convention imposes an obligation on a Contracting State not to hinder the right of the individual to present and pursue a complaint effectively with the Court. While the obligation imposed is of a procedural nature distinguishable from the substantive rights set out in the Convention and Protocols, it flows from the very essence of this procedural right that it is open to individuals to complain of alleged

infringements of it in Convention proceedings (see *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002).

150. The Court reiterates that a complaint under Article 34 of the Convention does not give rise to admissibility issues under the Convention (see *Juhas Đurić v. Serbia*, no. 48155/06, § 72, 7 June 2011, with further references).

151. The Court points out that it is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 that applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy (see, among other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 158, ECHR 2012).

152. Firstly, there is no proof that the staff of the detention centre in any way delayed in dispatching the applicant’s letter in November 2005, which was received by the Court. The Court does not consider that any established delays in the processing of correspondence in the present case were such as to amount to a breach of the State’s obligation under Article 34 of the Convention (see, by way of comparison, *Valašinas v. Lithuania*, no. 44558/98, § 134, ECHR 2001-VIII, and *Sevastyanov v. Russia*, no. 37024/02, §§ 84-87, 22 April 2010).

153. As to the alleged non-delivery of correspondence, the Court observes that the applicant had no representative in the Convention proceedings in 2005 and 2006, and was required to process his mail through the detention facility. The latter was responsible for ensuring the dispatch of correspondence by ordinary mail via the State postal service (see paragraphs 72-73 above). It appears that failure to comply with the Regulations on correspondence in prisons was susceptible to amount to a breach of domestic law and could result in disciplinary detention in a punishment cell (see *Nurmagomedov v. Russia*, no. 30138/02, § 60, 7 June 2007).

154. The Court reiterates in this connection that detainees may find themselves in a vulnerable position when they are dependent, as in the present case, on the staff of the detention facility in their communication with the Court. In this connection, the confidentiality of correspondence between the Court and applicants is an important safeguard, since that correspondence may concern allegations against prison authorities or prison staff (see *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001-III). The opening and inspection of such correspondence give rise to the possibility that it will be read, and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Belyaev and Digtyar v. Ukraine*, nos. 16984/04 and 9947/05, § 62, 16 February 2012).

155. The Court notes, however, that there is no allegation that the applicant's correspondence was opened and read by the staff of the detention centre in 2005 or 2006. It is also noted that the applicant received all the Court's letters (see, by contrast, *Klyakhin v. Russia*, no. 46082/99, § 121, 30 November 2004) and that the Court received some of the applicant's correspondence during the relevant period. Furthermore, the Court attaches some weight to the fact that the applicant's concerns relating to the alleged non-dispatch of his correspondence were subject to a domestic inquiry, but which disclosed no maladministration on the part of the prison staff (see paragraph 60 above).

156. As to the applicant's arguments relating to the traceability of correspondence processed through the detention facility, the Court notes that, as confirmed in respect of his first letter to the Court and two others, the detainee's correspondence was logged. The applicant was informed of the log numbers for each piece of correspondence and was given confirmation that they had been dispatched.

157. It has not been alleged that the applicant was unable to dispatch, at his own expense, correspondence by way of registered mail or through another postal services provider. Also, by way of comparison, the Court reiterates its finding in the context of Article 6 of the Convention (see *Kolegovy*, cited above, § 40) that this provision could not be construed as conferring on litigants an automatic right to obtain a specific form of service of court documents, for instance by registered mail.

158. In the Court's view, there is insufficient proof that the staff of the detention centre hindered dispatch of the applicant's correspondence to the Court (see, by way of comparison, *Apandiyev v. Russia* (dec.), no. 18454/04, §§ 74-82, 21 January 2014). In particular, there is no evidence that in February and March 2006 the applicant submitted any letters addressed to the Court for dispatch.

159. Furthermore, it remains unclear whether the applicant's correspondence dispatched in September 2005 and June 2006 was lost in Russia or on its way to the Court. Lastly, it is noted that the Court accepted in the circumstances of the case that the applicant's major complaint under Article 3 of the Convention was lodged in time (see paragraphs 80-86 above).

160. In view of the above considerations, the Court concludes that the respondent State has complied with its obligation not to hinder the applicant's right under Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

161. Lastly, the applicant complained about the conditions of his detention in Mayskiy police station in March 2004; that his detention and the criminal proceedings against him had been unlawful; that he had been

refused early release; and that other proceedings, in which he had, *inter alia*, sought institution of criminal proceedings against various public officials, had been dismissed.

162. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. 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

164. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

165. The Government contested the claim.

166. Having regard to the nature of the violations found, the Court grants the applicant’s claim in full, plus any tax that may be chargeable.

B. Costs and expenses

167. In the absence of any claim, the Court does not need to make any award under this head.

C. Default interest

168. The Court considers it appropriate that the default interest rate 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. *Joins to the merits* the Government's argument concerning exhaustion of domestic remedies in respect of the complaint about access to a court (cases nos. 6 and 8) and *dismisses it*;
2. *Declares* the complaints concerning conditions of detention, lack of effective remedies and access to a court (cases nos. 6 and 8) admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 6 of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
6. *Holds* that the respondent State has complied with their obligation not to hinder the applicant's exercise of his right of application under Article 34 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 20 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President