THIRD SECTION

DECISION

Application no. 41743/17
Yevgeniy Mikhaylovich SHMELEV against Russia
and 16 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 17 March 2020 as a Chamber composed of:

 Paul Lemmens, *President,* Georgios A. Serghides, Helen Keller, Dmitry Dedov, María Elósegui, Gilberto Felici, Erik Wennerström, *judges*
and Milan Blaško, *Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having deliberated, decides as follows:

1. THE FACTS

1.  A list of applicants is set out in the Appendix. All applicants were detained in various Russian detention facilities, before or after their conviction in criminal proceedings.

2.  Their complaints about breaches of Articles 3 and 13 by the material conditions of detention were communicated to the Government, who have in 2018 and 2019 submitted their observations. In some cases the Government have not disputed the violations alleged; in some cases they have submitted unilateral declarations (UDs), offering to acknowledge the violations and to pay to the applicants sums of money. The detention of some of the applicants’ was already over at the time of exchange of observations, for others it continued at that time.

3.  On 10 January 2020 the Government submitted additional information about the new Compensation Act and asked to treat it as a new remedy in respect of conditions of detention complaints under Articles 3 and 13. The applicants were asked to submit their comments in reply.

4.  The applicants’ individual circumstances and the Government replies are detailed in Appendix below.

* + 1. Applicants detained in pre-trial detention facilities

5.  Seven applicants in applications nos. 66806/17, 75804/17, 77181/17, 77265/17, 19294/18, 31682/18 and 32545/18 were detained in pre-trial detention centres (SIZO) in various regions of Russia. They complained about insufficient personal space and other elements of the conditions of their detention that, in their view, breached the requirements of Article 3 of the Convention. The applicants in applications nos. 77181/17, 77265/17, 19294/18, 31682/18 and 32545/18 also complained under Article 13 of the Convention about the absence of an effective domestic remedy in relation to their complaints about poor conditions of detention.

6.  For the applicants in applications nos. 66806/17, 19294/18, 31682/18 and 32545/18 the detention had ended at the time of the exchange of observations. The Government either did not dispute that the conditions of their detention had amounted to inhuman and degrading treatment, or, as in application no. 66806/17, argued that there was evidence to the contrary (see Appendix I below).

* + 1. Applicants detained after conviction in correctional colonies

7.  Ten applicants in applications nos. 41743/17, 60185/17, 74497/17, 1249/18, 9152/18, 14988/18, 17991/18, 19837/18, 21542/18 and 29155/18 have been detained in correctional colonies in various regions of Russia, following their convictions for criminal offences. They complained about insufficient personal space and other elements of the conditions of their detention. In addition, the applicants in applications nos. 41743/17, 60185/17, 74497/17, 1249/18, 17991/18, 21542/18 and 29155/18 argued that they did not have an effective domestic remedy, as required by Article 13 of the Convention, in relation to their complaints about poor conditions of detention.

8.  For the applicants in cases nos. 41743/17, 60185/17, 14988/18, 17991/18 and 21542/18 the detention had ended at the time of the exchange of observations. The Government did not dispute that the applicants in applications nos.  74497/17, 9152/18, 17991/18, 21542/18 and 29155/18 have been, at least for some periods of time, detained in conditions that amounted to inhuman and degrading treatment.

* + 1. Relevant domestic law and practice
			1. Material conditions of pre-trial detention

9.  The Federal Law “On the Detention of Suspects and Persons Accused of Criminal Offences” no. 103-FZ dated 15 July 1995 (*Федеральный закон от 15 июля 1995 N 103-ФЗ «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»*, “the Pre-trial Detention Act”), as currently in force, sets out in Section 23 that detainees should have conditions of detention that are compatible with the requirements of hygienic, sanitary and fire safety. Each detainee is entitled to an individual sleeping place, as well as bedding, cutlery and hygienic products as appropriate. All cells should be equipped with ventilation. The norm for one detainee is set at four square metres of floor space.

* + - 1. Material conditions of post-conviction detention

10.  Article 99 of the Code on the Execution of Criminal Sentences of 8 January 1997 (No. 1-FZ, *Уголовно-Исполнительный Кодекс*), as currently in force, provides that the personal space allocated to each individual in a dormitory for male prisoners should be no less than two square metres; in prisons: no less than two and a half square metres; in colonies for women: no less than three square metres; in educational colonies for minors: no less than three and a half square metres; in health facilities of the penitentiary system: no less than three square metres; and in rehabilitation centres of the penitentiary system, no less than five square metres.

11.  Under Article 99 § 2, inmates are to be provided with individual sleeping places, bedding, toiletries and seasonal clothes.

12.  The model daily schedule for detainees in correctional colonies was summarised in the judgment *Sergey Babushkin* *v. Russia*, no. 5993/08, § 22, 28 November 2013.

* + - 1. Latest developments in the national legislation and practice

13.  On 31 October 2019 and on 10 January 2020 the Russian Government addressed letters to the Court with information on developments in the national legislation and practice, enumerating measures aimed to alleviate the inadequate conditions of detention and new domestic remedies in this respect.

14.  They stressed, in particular, that significant progress had been achieved by the national authorities in addressing the issues raised in the judgments *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, and *Sergey Babushkin*, cited above. The pertinent developments included the new Code of Administrative Procedure, changes to the Criminal Code and relevant practice of the Supreme Court of Russia. The Government also informed the Court about adoption, on 27 December 2019, of the Compensation Act (see below) that established the right to compensation for violations of the conditions of detention.

* + - * 1. The Code of Administrative Procedure

15.  On 15 September 2015 the Code of Administrative Procedure (“the CAP”) entered into force.

16.  Article 6 sets out the general principles of administrative justice. These include, among others, independence of judges, equality of all before the law and the court; reasonable time for court proceedings and the execution of judgments; public and open trial; equality of arms for the parties, with an active role of the court.

17.  Chapter 5 sets rules for representation of applicants. Under Article 55 §§ 1 and 3, representatives in administrative proceedings may be advocates and “other people” with full legal capacity, a law degree and a power of attorney to pursue the case.

18.  The burden of proof of lawfulness of a decision rests with the respondent administration. Authorities must prove the facts they refer to in support of their counter-arguments (Article 62 § 2).

19.  Article 85 (as amended in July 2019) provides for a possibility of application of preliminary measures where there exists danger of harm being caused to the interests of the claimant.

20.  Articles 103 and 104 require that court fees are paid, unless there are valid reasons to reduce, defer or dispense with the court fee. Under the currently applicable provisions of the Federal Budget Code, the court fee for claims about unlawful action or failure to act by State officials constitutes 300 Russian roubles (RUB); and the competent court may reduce, defer or dispense with the court fee, depending on the person’s financial situation (Articles 333.19(7) and 333.20(2) of the Federal Budget Code).

21.  Article 188 provides that the court may order immediate execution of its decision if any delay could lead to significant harm of the protected public or private interests.

22.  Chapter 22 of the CAP governs proceedings concerning challenging of a decision or act (failure to act) by any State or municipal authority or official if the applicant considers that it has violated her/his rights and freedoms.

23.  Article 218 § 1 provides that a person may lodge a complaint before a court concerning a decision or act (omission) by any State or municipal authority or official if s/he considers that it has violated her/his rights and freedoms. The complaint may concern any decision, act or omission which has violated that person’s rights or freedoms, has impeded the exercise of rights or freedoms, or has imposed a duty or liability on him. The claimant should indicate the decision or act (omission) that is being challenged, the administrative body responsible for it, the rights concerned, the legal acts to which such acts are in contravention, and any other relevant information such as previous attempts of challenging the acts and the competent authorities’ responses (Article 220 § 2).

24.  As a rule, complaints should be lodged with the court within three months from the date on which the person has become aware of the violations of his/her rights. This term can be extended for valid reasons by a competent court (Article 219). Such complaints are to be examined within a month of receipt, or within two months by the Supreme Court, if not otherwise provided for certain categories of cases (Article 226 § 1).

25.  The court may request evidence at the request of parties or of its own initiative (Article 226 § 12).

26.  The court may summon representatives of the respondent authorities to appear at the hearing. If they fail to appear, a court fine may be applied (Article 226 § 7).

27.  In examining an administrative claim challenging the decisions, actions or omissions of the authorities, the court verifies the lawfulness of the contested decisions, actions or omissions in the part specified in the administrative claim. The court is not bound by the grounds and arguments contained in the administrative claim and establishes the relevant circumstances in full (Article 226 § 8). The court has to establish whether the rights of the claimant have been violated, whether the time-limits have been respected, and whether the requirements of the normative regulations have been complied with in so far as the authority’s competence, decision making procedure, and grounds for the decision are concerned. The court also verifies whether the content of the contested decision or nature of the disputed action is in accordance with the relevant normative regulations (Article 226 § 9). The claimant has to prove that his or her rights have been violated and that the claim was lodged in good time. The burden of proof is on the authorities as concerns their competence to issue the contested decision or take the disputed action, respect for domestic procedure, the grounds for the decision and compliance with domestic law (Article 226 § 11).

28.  If an administrative claim is allowed, the court specifies the actions to be taken and sets a time-limit (Article 227 § 3).

29.  The court may reject the complaint if it finds that the act or decision being challenged has been taken by a competent authority or official, is lawful and does not breach the citizen’s rights (Article 227 § 2 of the CAP).

30.  A party to the proceedings may lodge an appeal with a higher court (Article 228 of the CAP). The appeal decision comes into force on the day of its delivery (Articles 186 and 227 § 5 of the CAP).

31.  The CAP requires that the judicial decision be dispatched on the day of its entry into force (Article 227 § 7). The court and the complainant must be notified of the enforcement of the decision no later than one month after its receipt (Article 227 § 9 of the CAP).

32.  Article 353 § 1 (3.1) provides that the court forwards a writ of execution in respect of a court decision awarding compensation for a violation of the right to fair trial within a reasonable time and enforcement of a judicial decision within a reasonable time, together with a copy of the relevant court decision, to the authority in charge of execution of the decision awarding compensation. The court forwards the writ within one day of the date of the judgment and irrespective of whether a claimant has made a request to that effect. The writ must contain the bank details of the claimant.

* + - * 1. The Criminal Code

33.  On 3 July 2018 Article 72(3) of the Criminal Code was changed by Federal Law no. 186-FZ. The change introduced an arrangement based on coefficients whereby time spent in pre-trial detention could be counted more favourably for the time spent serving a sentence of deprivation of liberty. In particular, Article 72(3.1) establishes a coefficient of one to one-and-a-half days if the person was sentenced to serve the sentence of detention on common grounds (*исправительная колония общего режима*) and one to two in case the person was sentenced to deprivation of liberty in a supervised settlement colony (*колония-поселение*). No coefficient applies to persons sentenced to serve the deprivation of liberty on conditions of strict or special regimes (*колонии строгого или особого режима*).

34.  Article 72(3.2) and (3.3) further details the situations when no higher coefficient would apply, such as sentencing for certain serious crimes and the time served in disciplinary and punishment cells.

35.  Article 72(3.4) provides that days spent under house arrest should count with a coefficient of two to one for the days spent in pre-trial or post-conviction detention.

* + - * 1. The Code of Criminal Procedure

36.  In 2018 and 2019 a number of changes were introduced to Articles 108 and 109 of the Code of Criminal Procedure of the Russian Federation (“the CCrP”) that regulate pre-trial detention and extension of terms of such detention.

37.  Thus, under the amended Article 109 (8) the request to extend pre-trial detention should contain information on investigative and other procedural actions that have been carried out during the period when this preventive measure has already been applied, as well as the grounds and motives for each further extension of the term of detention. The time period indicated in the request must be evaluated by the judge with regard to the specific investigative and other procedural actions. If the request invokes as grounds for extension the investigative measures that have already served as such grounds in the past, then the request to extend detention should indicate why these actions have not been carried out within the previous time limits. The court can extend detention for a period shorter than specified in the request, if it considers it would be sufficient to carry out the amount of investigative and other procedural actions specified.

38.  If the request to extend the period of detention is rejected, the judge may, on his/her own initiative and subject to certain conditions, choose another preventive measure for the accused in the form of a ban on certain actions, bail or house arrest (Article 108 § 7.1).

39.  Article 108 § 1.1 was amended so that detention cannot be applied to certain categories of those accused of committing crimes in the area of entrepreneurial activity (individual entrepreneurs and members of the governing body of a commercial organisation).

* + - * 1. Rulings and clarifications by the Supreme Court

Ruling no. 36 of 27 September 2016

40.  On 27 September 2016 the Plenary of the Supreme Court of the Russian Federation issued a ruling with clarifications concerning procedural questions of application of the CAP. It detailed the questions of territorial competence of the courts, calculation of terms for lodging complaints and appeals, rules on representation, collective complaints, keeping of trial records, etc. Under Article 85 of the CAP, the Supreme Court reminded that a court may adopt preliminary measures, for example by obliging the State body concerned to undertake certain actions or to refrain from such actions (see paragraph 19 above).

Ruling no. 47 of December 2018

41.  Ruling no. 47 of December 2018 by the Plenary Supreme Court clarified certain issues arising from the application of the CAP to cases concerning breaches of conditions of detention.

42. The Ruling explained that any measures restricting the persons’ liberty would be covered by the term “detention”, including administrative detention, escorting to a police station, detention at court premises pending hearings, transfer between places of detention, etc. Any detention in stationary places or in transport should comply with the requirements of the Russian legislation and Russia’s international obligations. In considering such complaints the courts should take into account the documents produced by the competent international organisation, including the United Nations and the Council of Europe (point 1 of the Ruling).

43.  The rights and obligations of detained persons are governed by the national legislation and Russia’s international obligations, examples of which are detailed in point 2. The rights include, among others, the right to personal security and health care; to legal assistance; to apply to State authorities and public monitoring bodies; to access to justice; to seek and obtain information directly affecting the realisation of one’s rights; to decent conditions of detention, including proper living and sanitary conditions, decent food and outdoor exercise; to recreational and educational activities. Any detention, including detention during transport, should be compatible with human dignity and applicable legal requirements, and should exclude unlawful physical or psychological ill-treatment; any breach of such requirements could amount to violation of conditions of detention and constitute prescribed treatment (point 3).

44.  Breach of conditions of detention constitutes a valid cause for seeking judicial protection by the detainees. Detainees may complain about acts or omissions by State officials if such acts or omissions result, or may result, in breach of standards of conditions of detention (point 4).

45.  The Ruling clarified a number of procedural questions, for example, relating to the territorial competence of the courts, the right to have legal counsel or representative, collective complaints from detainees (point 6). The Ruling enumerated officials who could lodge an administrative complaint in the detainees’ interests, including the prosecutors and ombudspersons (point 7).

46.  The court may dispense with the court fee altogether if it finds that reducing or deferring it would not be sufficient to ensure unhindered access of the detainee to the court, for example where the detained person does not have any source of income and does not have any funds (see paragraph 20 above) (point 8).

47.  The courts should take all necessary steps in order to ensure effective participation of the detained person in the proceedings, and to explain the right to be represented (see paragraph 17 above). Any notifications or procedural steps should take into account the specific situation of detainees (point 9). The courts should ensure a real possibility for the detained persons to have confidential and sufficient consultations with their lawyers and representatives (point 16). The proceedings may take part, in full or in part, through video-link. The competent court may request another court situated at the detainee’s place of detention to obtain the latter’s personal statements or to perform other procedural steps (point 10).

48.  The Supreme Court explained in point 11 that the application of preliminary measures in these proceedings could cover situations when the life or health of the detained person could be in real danger (see paragraph 19 above). In such cases, preliminary measures could include, for example, transfer to another premises or medical examination. In such instances, the administrative complaint should be examined urgently.

49.  As to the time-frame, the Supreme Court explained in point 12 that detention could be a lasting situation. Claims could be lodged during the entire duration of detention, and then within three months after it has ended (see paragraph 24 above).

50.  Points 13 and 24 address issues of burden of proof and obtaining evidence (see paragraphs 18 and 27 above). The detainee should provide a detailed description of the situation that infringes his or her rights, and supply any available evidence, such as descriptions of the conditions of detention, medical certificates, copies of complaints to State authorities and their responses, or indicate other detainees who could corroborate his statements. The Ruling states: “Given the objective difficulties faced by detainees in collecting evidence related to breaches of conditions of detention, the court should assist the claimant in the effective realisation of his rights, ... including by identifying and obtaining evidence on its own motion”. As examples of such steps, the Ruling suggests obliging the respondent authority to obtain video or photo footage of the premises, to indicate the exact size of the premises, to submit detailed information about the temperature or luminosity; or to appoint an expert examination. Once the court concludes that the conditions of detention are unsatisfactory, it may in the subsequent proceedings consider such finding as an established fact. When ordering any such steps, the courts should set a reasonable time limit and, where appropriate, bear in mind the budgetary constraints; on the other hand, they should bear in mind the need to take urgent measures where there is a threat to detainee’s life or health.

51.  The Ruling specifies what could constitute breach of requirements in respect of conditions of detention. This would include overcrowding, impediments to free movement between objects in the living quarters, lack of individual sleeping place, insufficiency of natural or electric light for normal reading activity, absence of or insufficient ventilation, limited access to outdoor exercise, number of sanitary and toilet facilities below the regular levels, lack of privacy in such facilities in excess of the normal security requirements, breach of the regulated levels of noise, quality of food and water. At the same time, the courts should take into account alleviating factors, for example if the required minimal levels of personal space are not complied with only marginally, and the detainees have access to other facilities, for example for sports, recreational and professional activities. Special attention should be given to the needs of vulnerable categories of detainees, including pregnant women and nursing mothers, persons with disabilities and minors (points 14 and 15).

52.  The Ruling lays down considerable detail for the adjudication of claims raising issues of medical assistance, conditions of transportation of detainees, determining the place of serving of sentence that should take into account the protection of family ties, use of special equipment and physical force by the penitentiary staff. In the latter respect, the Ruling articulates that no circumstances, including orders given by the hierarchical superiors, or the gravity of the offences committed, could justify unlawful acts towards the detained persons, or the impunity for the perpetrators (points 17-20). The court should formally alert the investigative bodies if it uncovers elements of a crime in the officials’ actions (point 21).

53.  The courts are instructed to verify all aspects of the conditions of detention, going beyond the limits of the claim if necessary. Any motion to withdraw a claim by detainee should be subjected to careful examination, and be dismissed if it had not been produced in compliance with the legislation, or would not be in the public interest (point 22). The person’s release or transfer to another facility does not justify the claim’s dismissal or termination. The courts should fully examine whether the detainee’s rights have been respected during the period under review, and whether any negative consequences of the violations have been addressed (point 23).

54.  If the administrative claim is granted (see paragraph 28 above), costs and expenses born by the claimant, including the court fee, should be recovered from the respondent. Within one month after the court’s decision coming into force, the respondent will inform the court about the measures taken to implement it. If no information is forthcoming within a month or if the decision should be implemented within shorter time-period, the court will issue a writ of execution under the Federal Law on Enforcement Proceedings (no. 229-FZ of 2 October 2007). The court may also find that the situation calls for immediate execution of its decision, if any delay may cause irreparable harm to public or private interests (see paragraph 21 above). Finally, the court may find it necessary to order that its decision about violations of conditions of detention should be published in a particular media outlet (points 25-27).

Clarifications by the Presidium of the Supreme Court

55.  On 31 July 2019 the Presidium of the Supreme Court issued answers to the questions posed by the courts on application of the amended Section 72 of the Criminal Code (see paragraph 33 above). In particular, the Supreme Court clarified the calculation of terms of pre-trial detention (to be counted from the moment of actual apprehension) and post-conviction detention; stressed that the persons concerned should be immediately released as soon as the court finds that the new calculation of terms has resulted in full serving of the sentence; that the new coefficients should apply to the sentences rendered prior to the entry into force of the coefficients in question; and clarified other practical questions.

56.  According to the information provided by the Russian Government in their letter of 31 October 2019, the application of the coefficients provided for by the Federal Law no. 186-FZ (see paragraph 33 above) has affected more than 110,000 convicted prisoners. Its effect was comparable to a large-scale amnesty: already by April 2019, 10,402 persons had been released from serving sentences, and sentence terms had been reduced for an additional 85,916 convicts. The law had further effects on persons sentenced to non-custodial punishments.

Thematic overviews

57.  The Supreme Court regularly produces thematic overviews in Russian of the relevant international practice and standards. Since January 2015 the secretariat of the Supreme Court published thematic overviews of the applicable standards in relation to inhuman and degrading treatment. They remind the courts to take them into account in individual cases, including in granting non-pecuniary awards. The two latest updates were produced in December 2018 and December 2019. These documents run to over 300 and 500 pages, respectively, and include references to hundreds of the Court’s judgments and decisions, CPT reports and other examples of international practice. Separate sections contain quotations from the Court’s just satisfaction awards in relevant cases against Russia; the review of December 2019 allocates about 180 pages to translation of hundreds of awards made by the Court, with a detailed description of every aspect of the case that has been taken into account in the grouped judgments. The review also includes examples for particular types of complaints where no violation has been established, or where the complaints have been found inadmissible by a collegial formation.

58.  In particular, the overviews cover the following subject matters:

- conditions of detention, including special sub-sections on overcrowding, individual sleeping place, access to sufficient light and ventilation, hygienic facilities, food quality, access to recreational activities; solitary confinement; vulnerable prisoners; as well as examples of hundreds of awards made by the Court in such cases;

- questions of medical assistance to persons in detention, including separate sub-sections concerning the most common diseases such as HIV and tuberculosis, psychiatric care; prevention of suicides and self-harm; requirements of confidentiality, qualification and independence of medical personnel; consent to medical assistance;

- conditions of transportation of detainees, complete with many examples of awards made by the Court in such cases;

- allegations of ill-treatment of detainees, including sub-sections on the use of force and special equipment by the officials; procedural and positive obligations to prevent ill- treatment and to investigate credible allegations of ill-treatment;

- specific issues arising in the context of detention in psychiatric care;

- distribution of the burden of proof in cases concerning ill-treatment.

* + - * 1. The Compensation Act

59.  The Federal Law no. 494–FZ on amendments to some legislative acts of the Russian Federation (hereinafter, the Compensation Act) was adopted on 27 December 2019 and entered into force 30 days later, on 27 January 2020. It introduced changes to three legislative acts: to the Pre-trial Detention Act (see paragraph 9 above)*,* to the Code on Execution of Punishments (no. 1-FZ of 8 January 1997, *Уголовно-исполнительный кодекс РФ*), and to the CAP (see paragraph 15 above).

60.  The changes afford to detainees a right to monetary compensation for breach of their conditions of detention, as regulated by the Russian legislation and Russia’s international agreements. The compensation can be obtained under the CAP, and the award is not conditioned on the finding of guilt of state authorities or civil servants.

61.  The CAP was modified by adding a separate provision of the right to obtain compensation for improper conditions of detention and its procedural guarantees. Most importantly, new Article 227-1 was added which reads:

“**Article 227-1. Special aspects of lodging and processing claims for compensation for violations of conditions of detention in pre-trial or correctional facilities**

1.  Any person who believes that the conditions of his detention in pre-trial or in correctional facilities have been breached, can lodge a claim for compensation, at the same time as challenging the action (omission) of the State authorities, their officials and civil servants, in the order stipulated by this chapter [of the CAP], claiming compensation for the breach of conditions of detention in pre-trial or in correctional facilities, as regulated by the legislation of the Russian Federation and the international agreements of the Russian Federation.

2.  An administrative claim lodged under part one of the present Article should contain information as required by Article 220 of the present Code, a claim for compensation for breach of conditions of detention in a pre-trial or correctional facility, and the claimant’s bank account details, where the award should be transferred.

3.  The claim for compensation for breach of conditions of detention in pre-trial or correctional facility will be considered by the court at the same time as the challenge to a decision or action (omission) by a state authority, its officials and civil servants, under the rules set by the present chapter, and with due respect to the special rules set up by the present Article.

4.  In the court proceedings... the interests of the Russian Federation will be represented by the federal treasurer [responsible for the State authority concerned].

5.  When considering the claim for compensation,... the court should establish whether there occurred a breach of the conditions of detention, as regulated by the legislation of the Russian Federation and the international agreements of the Russian Federation, as well as the nature and length of such breach, its context and consequences.

6.  If the claim contains a request to compensate damage to the person’s property and (or) health caused by the breach of conditions of detention, the court should take a decision to process such claim under the rules applicable to civil proceedings in line with Article 16.2 of the present Code.

7.  A court’s decision in an administrative claim challenging decisions, actions (omissions) by a State body, organisation, public official and about granting of compensation for violations of the conditions of detention, should comply with the requirements of Article 227 of the present Code, and also should contain:

1. in the reasoning:

a) information about the conditions of detention in pre-trial or correctional facility, about the nature and length of the breach, its context and consequences;

b) justification of the compensation award and indication of the body which had allowed the breach of the conditions of detention to occur;

c) the reasons for which the compensation is awarded or refused;

1. in the operative provisions:

a) where no compensation is awarded this should be expressly stated;

b) where compensation is awarded, this should be clearly indicated, as well as the amount of such compensation; there should be also indicated the authority acting as the federal treasurer under the budgetary legislation of the Russian Federation and representing the interests of the Russian Federation in the proceedings.

8.  Copies of the court’s decision should be forwarded within three days of its adoption to the administrative claimant, administrative respondent, to the authority charged with execution of judicial decisions awarding compensations, and to other interested persons.

9.  Court’s decision to award compensation for breach of conditions of detention in pre-trial or correctional facility should be immediately enforced under the rules provided for by the budgetary legislation on the Russian Federation.”

62. The Compensation Act complements Article 353 § 1 (3.1) of the CAP (see paragraph 32 above) so that writs of execution are automatically issued by the courts in cases where they award compensation for breach of conditions of detention.

63.  Article 5 of the Compensation Act contains transitional provisions, under which the Act would enter into force 30 days after its official publication date of 27 December 2019. Within 180 days after its entry into force all persons who, on the date of entry into force of the Compensation Act, have a complaint pending with the European Court about the conditions of their detention or whose complaint has been declared inadmissible due to non-exhaustion of domestic remedies in view of the Act’s adoption, can claim compensation under the Act. Information about the complaints lodged with the European Court, including the date of lodging and application number, should be included in the claim.

64.  The draft Compensation Act lodged with the Parliament by the Government of the Russian Federation was accompanied by an explanatory notice. The notice directly referred to the European Court’s practice and the need to implement the pilot judgment *Ananyev and Others* (cited above) as its rationale. The financial explanations contained the following passages:

 “...the European Court has awarded to the applicants in some cases between two and three thousand euros, while in other cases the awards constituted around 20-70,000 euros, depending on the circumstances of the case (...). The awards made by the European Court are determined by length of the applicant’s detention in pre-trial and correctional facilities, or of their transportation (if the conditions did not correspond to international standards), and the evaluation of such conditions and the harm caused to the applicants. ...

It should also be taken into account that the Russian authorities have, in the past years, undertaken a number of measures to improve the conditions of detention in the penitentiary system, and these efforts are ongoing within the framework of the Federal programme “Development of the penitentiary system (2018-2026)”, as approved by Government Decree no. 420 of 6 April 2018.

In view of the above, it appears reasonable to assume an average amount of EUR 3,000 per applicant as a starting point in domestic compensation awards to set up an effective domestic remedy (in view of the recommendations of the European Court).

...statistical information about court cases to compensate damages and moral harm has been provided by the Judicial Department of the Supreme Court of the Russian Federation.

Thus, in 2015 the Russian courts have adjudicated 5,805 claims lodged by detainees and seeking to obtain compensation of the harm caused and moral damages for improper conditions of detention. In 2016 and 2017 the number of such claims lowered to 5,620 and 4,653, accordingly.

At the same time, the European Court had about 450 pending non-communicated cases of this type, which in case of adoption of the law on effective domestic remedies could be returned to the national level and become the subject of adjudication by the domestic courts.

In this manner, the yearly amount of funds to be allocated by the federal budget should be calculated as follows:

EUR 3,000\* x 5,500 cases = EUR 16,500,000 (~RUB 1,270,500,000)

\*Depending on the nature and length of the violation, other circumstances of the violation and its consequences.

Where:

EUR 3,000 (at the exchange rate of RUB 77 to EUR 1) – is the average amount of compensation award for breach of conditions of detention in pre-trial or correctional facilities, proposed by the Russian authorities and accorded with the European Court’s practice;

5,500 – is the number of possible claims of compensation for breach of conditions of detention in pre-trial or correctional facilities.

Furthermore, enforcement of execution writs to recover costs and expenses will require further RUB 18,909,000 (5,500 cases x RUB 3,438 (average amount of costs and expenses recovered)).”

* + 1. Relevant Committee of Ministers documents

65.  At its 1288th meeting, held on 6-7 June 2017, the Committee of Ministers of the Council of Europe examined the action plans presented by the Russian authorities in the context of execution of judgments *Ananyev and Others* and *Kalashnikov v. Russian Federation* and adopted decision CM/Del/Dec(2017)1288/H46-24. It contained the following appraisal of the general measures:

“4.  welcomed the detailed information provided by the authorities on the significant progress made in overcoming poor conditions of detention in establishments under the authority of the Federal Penitentiary Service, notably that contained in the updated action plans of 17 and 26 April 2017;

5.  welcomed in this context the information on the efforts undertaken within the framework of the Federal Target Programme “Development of the Correctional System” to improve detention conditions by reconstruction and renovation of detention facilities, including medical wards and facilities;

6.  noted with interest the reinforcement of inspection and review mechanisms to ensure that detention conditions comply with Convention requirements;

7.  welcomed, similarly, the further measures adopted to address the problem of overcrowding in facilities for detention on remand by ensuring that criminal investigations are conducted expeditiously and that less recourse is made to pre-trial detention, notably through increased use of alternatives thereto;

8.  as regards the effectiveness of domestic remedies, noted with interest the information provided that since September 2015 the new Code of Administrative Procedure has provided for a new preventive remedy allowing courts to order specific remedial actions in cases relating to poor detention conditions, but also that a number of issues regarding its application remain to be clarified;

9.  invited, accordingly, the authorities to provide further information on the application of the new remedy, notably as regards the mechanisms introduced to ensure that court fees and/or other costs do not impede the accessibility of the new remedy; the scope of admissible complaints; the burden of proof; the scope and nature of the remedial measures which can be ordered; and the consequences of non-compliance with orders made;

10.  noted also with interest, as regards compensatory remedies, the emerging practice of the Russian courts to grant monetary compensation in cases relating to poor conditions of detention and also the legislative work underway to include in the Code of Administrative Procedure a possibility to obtain such compensation, notably in conjunction with applications for specific remedial actions;

11.  invited the authorities to explore other possible compensatory measures, such as systems for the reduction of sentences (see for example the case of *Torreggiani and Others v. Italy*, Final Resolution CM/ResDH(2016)28);

12.  expressed satisfaction that the authorities have undertaken significant efforts to ensure the swift resolution of similar cases pending before the Court, in line with the indication made by the Court in its pilot judgment in the *Ananyev and Others* case;

13.  encouraged the authorities to continue their efforts to complete the execution process in this group of cases and to keep the Committee regularly informed of progress made, notably through impact assessments of the measures adopted, including statistical data, and noted, in this context, the interest which would attach to the publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in particular the more recent ones.”

66.  On 29 April 2019 the Russian Government submitted the latest Action plan for the execution of the pilot judgment *Ananyev and Others* (document DH-DD(2019)473)*,* covering a range ofgeneral measures to address the inadequate conditions of detention and the lack of effective domestic remedies (see paragraph 72 below).

67.  Notes on the agenda for the 1348th meeting, 4-6 June 2019 (DH) (CM/Notes/1348/H46-23) summarised the information provided by the Russian authorities:

“*Material conditions of detention*

Numerous important measures have been adopted to improve the material conditions of detention in the Russian Federation in the execution of the present group of cases (see notably Interim Resolutions ResDH(2003)123, CM/ResDH(2010)35 and the *Ananyev* judgment itself). The most recent measures reported can be summarized as follows.

On 6 April 2018, the Government adopted a Federal Target Program “Penal System Development 2018-2026”, under which it is planned to spend around 54.9 billion roubles (approx. 763 million euros). It covers both pre-trial and post-conviction detention facilities, run by the Federal Penitentiary Service (FSIN). Its aim is to bring conditions of detention into line with domestic and international standards.

Included in the programme are the refurbishment and construction of 366 buildings and the purchase of 16,300 units of equipment, which will create around 16,800 working places for the convicts.

The following has already been accomplished in 2018:

- 135 buildings were (re)constructed,

- 183 pre-trial facilities refurbished,

- 3 post-conviction correctional centres (for compulsory labour), as well as 27 sites functioning as such correctional centres, have been created, introducing some 1,700 places.

...

*Reducing recourse to detention on remand*

To reduce the number of persons deprived of their liberty in the course of investigation (before conviction), the following recent measures have been adopted.

As from December 2018, the amended Article 109 of the Code of Criminal Procedure requires investigators to provide more details about the reasons for which they request the courts to extend pre-trial detention, notably when it is necessary for the accused to study the case-file after maximum period of such a measure has ceased. It also requires the judges to provide a date until which the detention is prolonged, which cannot be extended beyond 3 months each time.

A new alternative measure of restraint has been introduced – prohibition of certain actions – along with a mechanism of control over its implementation. Since it became available on 29 April 2018, the courts have applied it in respect of some 1,000 people.

...

It has to be underlined here that the capacity of the Russian remand centres, if taken as a whole, is 129,400, which significantly exceeds the number of remand prisoners. A number of measures are adopted aimed at transferring of the prisoners from the overcrowded to the less populated nearby detention facilities, if possible. As a result, in 2018 the remand centres in seven regions were no longer overpopulated. In four more problematic regions, including Moscow, the population of the remand facilities significantly decreased. The ongoing positive trend can also be demonstrated by the following statistics:

- fewer requests for initial placement on remand are filed by the investigators (135,000 in 2016; 126,000 in 2017; 114,000 in 2018);

- fewer such requests are granted by the courts: 122,000 in 2016; 113,000 in 2017; 102,000 in 2018);

- similarly, fewer requests for extension of detention on remand are granted (in 2016 – 228,000 requests of which 223,000 granted; in 2018 – 217,000 requests of which 210,000 granted);

- the overall population of the remand centres decreased from 117,500 in 2016 to 99,800 on 1 January 2019.

...

*Reducing recourse to custodial sentences (§§ 32.4-32.5 of the Action Plan)*

To reduce [the] number of persons deprived of their liberty after conviction, the following recent measures have been adopted.

On 1 January 2017 a new criminal punishment – community work (*принудительные работы*) – was introduced into the Criminal Code (Article 53.1). It is a punishment which is implemented through placement in “correctional centres for community work”. Under domestic law it is not considered as a deprivation of liberty (Criminal Code, Chapter 9, Articles 43-59). In 2017 and 2018, the courts applied this new punishment in some 3,000 cases.

...

Overall, the number of prisoners serving a sentence decreased in 2018 by 7% compared to 2017, and by 17.2% compared to 2013, which is 34.4 and 96.5 thousand of persons respectively.

*Remedies*

*Judicial remedies*

...

In addition, as the action plan indicates, courts are already granting compensation for poor conditions of detention on the basis of the CAP procedure (provided such claims are lodged within 3 months of the end of the detention period concerned): in 2018, domestic courts examined 4,000 claims for compensation for pecuniary and non-pecuniary damage incurred by poor conditions of detention, of which they granted around 2,800 (approximately 70%). About 83.8 million roubles (approximately 1.15 million euros) were paid out as compensation for poor conditions of detention (approximately 410 euros per claim).

Access to the judicial remedies is ensured as court fees, which are already negligible, are determined based on the plaintiff’s financial situation, can be paid with a delay or in instalments, or can be waived by a court completely. The authorities provided numerous examples demonstrating privileges related to payment of the court fees.”

68.  At the same 1348th meeting held on 4-6 June 2019, 19 the Committee of Ministers examined the information submitted by the Russian Government and adopted decision CM/Del/Dec(2019)1348/H46-23. It contained the following passages:

“*As regards general measures*

6.  as to the material conditions of detention, welcomed the important progress achieved and invited the authorities to provide information on further steps in this direction, including the relevant statistics, and noted again the interest which would attach to the publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in respect of the Russian Federation;

7.  noted the measures taken to improve the conditions of detention of disabled persons, but invited the authorities to provide further information on the measures adopted and their impact, taking into account the comment submitted to the present meeting by an NGO;

8.  welcomed the measures adopted to reduce overcrowding, notably through reducing recourse to pre-trial detention and to custodial sentences, and the reduction by over 30 per cent in the numbers of both remand and convicted prisoners;

9.  noted however with concern that the European Court continues to deliver judgments finding overcrowding in a number of detention facilities and invited the authorities to provide information on the measure taken to address this problem;

10.  as to the judicial remedies, welcomed the information provided on the functioning of the preventive remedy, including the clarifications provided by the Supreme Court’s 2018 Plenum ruling on the issues of distribution of the burden of proof, the power of the courts to assist prisoners in collecting evidence under the procedure laid down in the Code of Administrative Proceedings (CAP) and reduction of court fees; at the same time, invited the authorities to provide further information about the functioning of the remedy, notably as regards the number of complaints lodged with the courts and measures taken to enforce court decisions;

11.  welcomed the preparation and submission to the State Duma of the draft law aimed at the creation of an effective compensatory remedy capable of filling certain gaps in the existing legislation, such as the simultaneous examination of claims for preventive measures and for compensation, and called upon the authorities to adopt this law as soon as possible; in this context, invited the authorities to further clarify the standards of compensation set by the draft law;

12.  also in this context, noted with interest the existing court practice of awarding compensation for poor conditions of detention;

13.  invited the authorities to clarify in what manner prisoners are made aware of their rights under the CAP procedure; invited them also to clarify the practical modalities of lodging complaints, including the role of the prison administrations, access to legal representation, and the accessibility and safeguarding of evidence in prisons; further welcomed the efforts, in particular by the Supreme Court, to raise courts’ awareness of standards for the effective examination of proceedings filed under this procedure taking into account the requirements of Article 6 of the Convention;

14.  welcomed the information about the prosecutorial, departmental and public monitoring of conditions of detention and invited the authorities to provide further information concerning the work of the public monitoring commissions, in particular as regards the representativity of their members, the right to confidential discussions with detainees and the results of visits.”

1. COMPLAINTS

The applicants complained under Article 3 of the Convention about poor conditions of their detention. Some applicants also complained under Article 13 of the Convention about the absence of an effective domestic remedy in respect of inadequate detention conditions (see Appendixes I and II below).

1. THE LAW
	1. joinder of the applications

69.  Having regard to the similar subject matter of applications nos. 66806/17, 17991/18, 19294/18, 21542/18, 31682/18 and 32545/18 and its conclusions as to their admissibility, the Court finds it appropriate to examine them jointly.

* 1. alleged violation of articleS 3 and 13 of the convention by conditions of detention in pre-trial facilities

70.  The applicants in seven applications listed in Appendix I below submitted that the conditions of their pre-trial detention had been in breach of Article 3 of the Convention; some of them contended that they had had no effective remedies against these violations, as provided by Article 13. In particular, these applicants complained that they had been detained in overcrowded cells, as well as about other aspects of their detention (see Appendix I below). Articles 3 and 13 read:

**Article 3**

**Prohibition of torture**

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

**Article 13**

**Right to an effective remedy**

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

* + 1. Pilot judgment procedure and subsequent developments at the Court

71.  The Court has addressed poor conditions of detention in Russia’s pre-trail facilities in a long series of judgments, starting with the case of *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002‑VI.

72.  In the case of *Ananyev and Others* (cited above), the Court applied the pilot judgment procedure. It found, under Article 46 of the Convention, that there existed a structural problem of overcrowding in pre-trial remand centres (ibid., §§ 188-189) and outlined the origins of the problem and the general measures to prevent and alleviate overcrowding (ibid., §§ 204-209). It recommended the setting-up of effective national remedies, both preventive and compensatory (ibid., §§ 210-231). The Court decided that “having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance and urgency of complaints about inhuman and degrading treatment, [it] does not consider it appropriate to adjourn the examination of similar cases”. At the same time, it encouraged the Government to provide redress to the hundreds of applicants whose similar complaints had already been lodged with the Court at the time of adoption of the judgment in question (ibid., §§ 235-239).

73.  According to the Court’s case management database, on the date of the adoption of *Ananyev and Others* judgment (cited above), approximately 250 prima facie meritorious applications against Russia were awaiting their first examination by the Court that featured, as their primary grievance, a complaint about inadequate conditions of detention. The Court interpreted those numbers, taken on their own, as indicative of the existence of a recurrent structural problem (ibid., § 184).

74.  After the adoption of *Ananyev and Others* judgment (cited above), the Court has registered more than 1,700 applications against Russia containing a prima facie meritorious complaint about poor conditions of detention in pre-trial detention facilities. Those applications were lodged by applicants from various regions of the Russian Federation, although two largest groups of complaints concerned the facilities of St Petersburg (over 400 cases) and Moscow (over 100 cases).

75.  After the *Ananyev and Others* judgment, the Court has found a violation of Article 3 on account of inhuman and degrading conditions of detention in Russian pre-trial detention facilities in more than 100 cases. A number of those judgments also concluded that there had been a violation of Article 13 on account of the absence of any effective domestic remedies for the applicants’ complaints about the conditions of their detention. Over 500 cases raising a similar complaint about inadequate conditions of detention in pre-trial detention facilities have been since struck by the Court from its list of cases on the basis of the Government’s unilateral declarations or friendly settlement agreements reached by the parties.

76.  More than 1,450 similar applications against Russia were waiting for their examination by the Court in March 2020.

77.  On 10 January 2020 the Russian Government informed the Court about the adoption of the new Compensation Act and asked that it be considered as an effective domestic remedy in respect of all cases where the applicants claimed violations of Articles 3 and 13 by poor conditions of detention; including those whose complaints had been already lodged with the Court.

78.  The applicants in applications nos. 66806/17, 19294/18, 31682/18 and 32545/18 whose pre-trial detention was over by the time of exchange of observations between the parties were invited by the Court to comment on this plea of inadmissibility. The applicants’ responses questioned the effectiveness and availability of the remedies invoked by the Government.

* + 1. Overview of the Court’s case-law

79.  In the present decision the Court will examine the legislative and judicial developments that occurred since the adoption of the *Ananyev and Others* judgment. In particular, the Court will examine whether there now exist domestic remedies of compensatory and preventive nature that could afford effective redress to the victims of the violations originating in overcrowding and other breaches of conditions of pre-trial detention. It will also examine whether the applicants in the present case are obliged to exhaust such remedies. In doing so, the Court will have regard to the principles developed and applied in respect of the countries that have faced a systemic problem of poor conditions of detention.

* + - 1. Material conditions of detention

80.  The Court has regarded extreme lack of space in prison cells as an aspect that weighs heavily to be taken into account for the purpose of establishing whether the impugned detention conditions were “degrading” within the meaning of Article 3. Thus, the Court viewed situations where the applicants had disposed of less than three square metres of personal space for a considerable period of time as prima facie raising issues under the Convention. See, for example, *Łatak v. Poland* ((dec.), no.  52070/08, 12 October 2010), in which the Court evaluated the response to the pilot judgments in the cases of *Orchowski v. Poland,* no. 17885/04, and *Norbert Sikorski v. Poland*, no. 17599/05, both of 22 October 2009, concerning the systemic problem of overcrowding in Polish prisons and remand centres. In *Łatak* the Court noted the legislative changes by which any reduction of the cell space per person below three square metres (but not below two) could be applied for a specified and limited period by the prison governor in certain “exceptional or special circumstances” and set up legal means for contesting the application of such measure (ibid., §§ 42-45, 80).

81.  More generally, it ruled in *Muršić v. Croatia* [GC], no. 7334/13, §§ 136-141, 12 March 2015, with further references:

**“**136.  In the light of the considerations set out above, the Court confirms the standard predominant in its case-law of 3 sq. m of floor surface per detainee in multi-occupancy accommodation as the relevant minimum standard under Article 3 of the Convention.

137.  When the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space ...

138.  The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

(1)  the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor...:

(2)  such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities...;

(3)  the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention ...

139.  In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court’s assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements...

140.  The Court also stresses that in cases where a detainee disposed of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention referred to above ... remain relevant for the Court’s assessment of adequacy of an applicant’s conditions of detention under Article 3 of the Convention...

141.  Lastly, the Court would emphasise the importance of the CPT’s preventive role in monitoring conditions of detention and of the standards which it develops in that connection. The Court reiterates that when deciding cases concerning conditions of detention it remains attentive to those standards and to the Contracting States’ observance of them...”

* + - 1. Standard of proof applied by the Court in conditions of detention cases

82.  The parties often dispute the material conditions of the applicants’ detention. A relevant summary of the Court’s practice in the context of overcrowding in the Russian detention facilities has been made in the *Ananyev and Others* judgment (cited above, with further references):

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

123.  The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant’s complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations...

124.  In previous conditions-of-detention cases, the extent of factual disclosure by the Russian Government was rather limited and the supporting evidence they produced habitually consisted in a series of certificates issued by the director of the impugned detention facility after they had been given notice of the complaint. The Court repeatedly pointed out that such certificates lacked references to the original prison documentation and were apparently based on personal recollections rather than on any objective data and, for that reason, were of little evidentiary value...

125.  The Court emphasised that in every case the Government had to account properly for the failure to submit the original records, in particular those concerning the number of inmates detained together with the applicant. The Government frequently advanced the explanation that the complaint had been communicated to them after a considerable lapse of time and that by then the original prison documentation had been destroyed upon the expiry of the time-limit for its safe-keeping. In this connection the Court noted that the destruction of the relevant documents did not absolve the Government from the obligation to support their factual submissions with appropriate evidence. Moreover, it often found that the Russian authorities did not appear to have acted with due care and diligence in handling the prison records because some of them had actually been destroyed after the Government had been put on notice that the Court was dealing with the case... In other cases the Government did submit extracts from the original prison records but they were too disparate and spaced out in time to present a credible refutation of the applicant’s claim of severe overcrowding at the material time...

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

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

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

129.  Read together, the prison population register and cell records are capable of presenting both a general situation in the entire prison during the relevant period of time and the specific situation in the applicant’s cell. They enable the Court to see whether or not and how severely the overcrowding problem affected the detention facility and, if inmates were unevenly distributed among the cells, whether or not the applicant’s cell was filled beyond design capacity. They also allow the Court to verify that the inmates whose statements may have been produced by an applicant in support of his or her allegations had actually shared the cell with the applicant during the specified period.

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

83.  While performing a global assessment of all the available evidence presented by the parties, the Court also took into account the general or structural overpopulation problem in the Russian penitentiary establishments, thus lending credit to the applicant’s submissions (see *Aleksandr Leonidovich Ivanov v. Russia*, no. 33929/03, § 34, 23 September 2010), as well as its findings in the previous cases regarding the conditions of detention in the same facilities where the applicants were detained at the relevant period.

84.  In assessing the overall conditions of detention in a given country, the Court has also systematically relied on the reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) (see, for example, *Neshkov and Others v. Bulgaria,* nos. 36925/10 and 5 others, §§ 71-73, 27 January 2015; and *Shishanov v. the Republic of Moldova*, no. 11353/06, §§ 57-60, 15 September 2015), as well as other publically available evidence, such as reports and overviews prepared by ombudspersons, experts and non-governmental organisations (see, for example, *Neshkov and Others*, cited above, §§ 76-91; and *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, 10 March 2015, §§ 31-33).

* + - 1. Effective remedies in conditions of detention cases: general principles and comparative overview

85.  The relevant principles on effective remedies in the context of conditions of detention have been outlined in the judgment of *Neshkov and Others* (cited above, with further references), the relevant part of which reads as follows:

“181.  The scope of the obligation under Article 13 depends on the nature of the aggrieved person’s complaint under the Convention. With respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in these conditions and compensation for any damage sustained as a result of them. Therefore, for a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because this person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. In other words, in this domain preventive and compensatory remedies have to be complementary to be considered effective ...

187.  Thus, for a domestic remedy in respect of conditions of detention to be effective, the authority or court in charge of the case must deal with it in accordance with the relevant principles laid down in the Court’s case-law under Article 3 of the Convention... Since what matters is the reality of the situation rather than appearances, a mere reference to this Article in the domestic decisions is not sufficient; the case must have in fact been examined consistently with the standards flowing from the Court’s case‑law.

188.  If the domestic authority or court dealing with the case finds, whether in substance or expressly, that there has been a breach of Article 3 of the Convention in relation to the conditions in which the person concerned has been or is being held, it must grant appropriate relief.

189.  In the context of preventive remedies, this relief may, depending on the nature of the underlying problem, consist either in measures that only affect the inmate concerned or – for instance where overcrowding is concerned – wider measures that are capable of resolving situations of massive and concurrent violations of prisoners’ rights resulting from the inadequate conditions in a given correctional facility...

190.  In the context of compensatory remedies, monetary compensation should be accessible to any current or former inmate who has been held in inhuman or degrading conditions and has made an application to this effect. A finding that the conditions fell short of the requirements of Article 3 of the Convention gives rise to a strong presumption that they have caused non-pecuniary damage to the aggrieved person. The domestic rules and practice governing the operation of the remedy must reflect the existence of this presumption rather than make the award of compensation conditional on the claimant’s ability to prove, through extrinsic evidence, the existence of non-pecuniary damage in the form of emotional distress...

191.  Lastly, prisoners must be able to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so...”

86.  The Court has examined the systems of remedies in different countries in its pilot and leading judgments concerning inadequate conditions of detention (see, in particular,*Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, 8 January 2013; *Neshkov and Others*, *Varga and Others* and *Shishanov*, all cited above; and *Rezmiveș and Others v. Romania*, nos. 61467/12 and 3 others, 25 April 2017). The Court has constantly reaffirmed its case‑law according to which the preventive and compensatory remedies in this context have to be complementary.

87.  The Court has also examined the correlation between preventive and compensatory remedies and its repercussions on the admissibility of individual complaints brought before the Court. Thus, applicants who are still in detention under the circumstances of which they complain, are normally obliged to exhaust the available and effective preventive remedy before bringing their complaints before the Court (see, for instance, *Stella and Others v. Italy* (dec.), 49169/09 et al., § 67, 16 September 2014). However, in cases where unsatisfactory conditions of detention have already ended, the use of a compensatory remedy, such as civil action for damages, is normally an effective remedy for the purposes of Article 35 of the Convention. Accordingly, the Court has held that where an applicant had already been released when he or she lodged his application with it, a remedy of a purely compensatory nature could in principle have been effective and could have provided him or her with fair redress for the alleged breach of Article 3 (see *Bizjak v. Slovenia* (dec.), no. 25516/12, § 28, 8 July 2014)*.*

88.  Finally, the Court has recalled on several occasions that the manner in which the national courts deal with such cases, the extent to which the national authorities comply with the measures ordered, and the promptness with which any awards of compensation they make in such proceedings are paid by the authorities, may of course affect the Court’s conclusion on that point (see *Stella and Others*, cited above, §§ 55 and 63; and *Atanasov and Apostolov v. Bulgaria* (dec.), nos. 65540/16 and 22368/17, §§ 57 and 66, 27 June 2017).

* + - 1. Compensatory remedies

89.  In all cases where a violation of Article 3 has already occurred, the Court considers that the wrong caused to the individual is susceptible of being redressed by means of a compensatory remedy (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 138, 20 September 2018; and more recently, *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, § 196, 9 April 2019). The introduction of an effective compensatory remedy is particularly important in view of the subsidiarity principle, so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Ananyev and Others*, cited above, § 221).

90.  The Court has accepted financial compensation and, in some cases, the possibility of a reduction in sentence as adequate forms of compensatory redress (see*Stella and Others*, cited above, §§ 56-63;and*Draniceru v. the Republic of Moldova* ((dec.), no. 31975/15, §§ 35-40, 12 February 2019). In so far as the reduction of sentence is concerned, the Court has found that a reduction of one day of sentence for each ten days spent in conditions of detention incompatible with the Convention constituted an adequate redress for poor conditions of detention. Moreover, such a measure undoubtedly contributed to resolve the problem of overcrowding by accelerating liberation of detained persons (see *Stella and Others*, cited above, § 60). The Court came to the same conclusion in *Draniceru*, cited above, § 38, where the applied coefficient was more favourable than in Italy, and constituted two days of reduction of sentence for each day spent in poor conditions of pre-trial detention. In both cases the financial aspect of redress would come into play only if the persons concerned could not, for some reason, benefit from the reduction of sentence with the applicable coefficients.

91.  As to the amounts of financial awards, the Court has held on a number of occasions that, in accordance with the principle of subsidiarity, a wider margin of appreciation should be left to the domestic authorities in respect of the implementation of a pilot judgment and in assessing the amount of compensation to be paid. Such an assessment should be carried out in a manner consistent with their own legal system and traditions and take into account the standard of living in the country concerned, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 80, ECHR 2006-V; *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 141, ECHR 2014; *Bizjak*, cited above, § 39; *Anastasov and Others v. Slovenia* (dec.), no. 65020/13, § 71, 18 October 2016; and *Hodžić v. Slovenia* (dec.), no. 3461/08, § 13, 4 April 2017).

92.  More specifically, the Court has outlined its practice as follows in *Domján v. Hungary* ((dec.), no. 5433/17, § 28, 14 November 2017, with further references):

“The Court further reiterates that, within the context of prison overcrowding ... it held that compensation awarded by a national court and representing approximately 30% of the award made by the Court... did not appear to be unreasonable or disproportionate. The Court took a similar stance in Stella and Others v. Italy ((dec.)...), where the level of compensation available domestically was EUR 8 per day of detention in conditions incompatible with Article 3 of the Convention. Having regard to economic realities, as suggested by the Government ..., the Court reaches the same conclusion as concerns an award comprised of between EUR 4 and EUR 5.3 per day of unsuitable conditions of detention in the Hungarian context. Furthermore, the Court emphasises in this connection that the object of the present decision is the potential compatibility of the domestic ad hoc compensation scheme, and not the question whether, in view of the sums awarded at the domestic level, the applicant has lost his victim status. This second type of assessment can be made, in every individual case, only after the relevant national remedy has been tried...”

93.  In *Atanasov and Apostolov*, cited above, the Court examined the effectiveness of the compensatory remedy introduced by the Bulgarian authorities in response to the pilot judgment in *Neshkov and Others*. This compensatory scheme did not lay down a scale for the sums to be awarded by way of non-pecuniary damages for poor conditions of detention. Instead, such awards would “have to be determined under the general rule under Bulgarian tort law – in equity, and their quantum will be a question of case-law and practice”. The Court found that it could not be assumed “that the Bulgarian courts will not give proper effect to the new statutory provisions, or fail to develop a coherent body of case-law in their application. They should, however, be careful to apply them in conformity with the Convention and the Court’s case-law” (ibid., §§ 55-56).

94.  As another example, the Moldovan legislation did not set a minimum award, but only a maximum (EUR 5.10 per day of improper conditions). In the *Draniceru*, cited above, the Court recalled that the level of compensation awarded at the national level was an important factor to appreciate the effectiveness of a remedy. It found no reasons to conclude that the Moldovan courts would not “give full effect to the new domestic provisions or that they would fail to establish a coherent and uniform jurisprudence in this respect. They should nevertheless pay attention so that the application of the new provisions would be compatible with the requirements of the Convention and the Court’s jurisprudence” (ibid., § 40).

95.  On the contrary, the Court refused to accept that the applicants have been provided with sufficient redress where the domestic awards had been “incommensurably small” and did not “even approach the awards usually made by the Court in comparable circumstances” (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, § 99, 8 December 2015). Where the awards of damages made by the domestic courts are unreasonable in comparison with the awards made by this Court in comparable cases, such damages would not be sufficient to remove the applicants’ victim status under Article 3 (see *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, §§ 199-200, 29 January 2019).

96.  Finally, the Court has found that the efforts made by the domestic authorities “to alleviate the problem of overcrowding... should be taken into account in determining the amount of any just satisfaction” (see *Muršić* [GC] *,* cited above,§ 181, with further references).

* + - 1. Preventive remedies

97.  As regards preventive remedies, in the above cited *Muršić* judgment [GC] the Court found, in § 71 (with further references):

“71. As regards the remedies concerning prison conditions in Croatia, the Court has held that a complaint lodged with the competent judicial authority or the prison administration is an effective remedy, since it can lead to an applicant’s removal from inadequate prison conditions. Moreover, in the event of an unfavourable outcome, the applicant can pursue his complaints before the Constitutional Court..., which also has the competence to order his release or removal from inadequate prison conditions...”

98.  In the case of *Stella and Others* (cited above, §§ 46-55), evaluating the measures adopted by the Italian authorities in response to the *Torreggiani and Others* pilot judgment, the Court accepted that a complaint to the judge responsible for the execution of sentences – competent to issue binding decisions concerning conditions of imprisonment – satisfied the requirements of its case-law. Similarly, in the case of *Domján* (cited above, §§ 21-23), in response to the *Varga and Others* pilot judgment, a complaint to the governor of a penal institution – who had the right to order relocation within the institution or transfer to another institution – which was subject to a further judicial review was found to be compatible with the requirements of the Court’s case-law. In the same context, a complaint to the investigating judge, who could order improvement of the inadequate conditions of detention, was found to constitute an effective remedy in Moldova (see *Draniceru*, cited above, §§ 32-34).

99.  In *Atanasov and Apostolov*, cited above, the Court found that the Bulgarian legislation introducing a preventive remedy had complied with the requisite standards of an effective remedy (see §§ 48-56). The Court noted that the remedy was meant to address directly the types of issues raised by the conditions of detention complaints coming before it; that the proceedings were heard by an administrative court, providing guarantees of independence and impartiality, as well as a panoply of procedural safeguards available in adversarial judicial proceedings; the remedy was simple to use and did not place an undue evidential burden on the inmate; on the contrary, the court was to establish the facts of its own motion by resorting to all possible sources of information; and the burden of proof was on the defendant authority to legitimise its actions or omissions. The speediness of the remedy also played a role in the analysis; as well as the possibility of ordering injunctions to the prison authorities to take, within a certain time, specific steps to prevent or end the breach of conditions of detention. The Court also noted a general improvement in the overcrowding situation in the Bulgarian facilities and noted the specific legislative provisions guaranteeing four square metres of space per detainee as the minimal sanitary requirement. Having thus examined the characteristics of the preventive remedy and the general context in which it was expected to operate, the Court concluded that it offered a reasonable prospect of redress (ibid., § 56).

100.  Complaints to prosecutors have generally been found not to constitute an effective preventive remedy (see *Neshkov and Others*, § 212, and *Ananyev and Others*, § 216; as well as *Tomov and Others*, § 194, all cited above). Only where overcrowding or other deficiencies in detention conditions did not disclose a systemic problem, lodging a complaint with the competent prosecutor could represent an effective preventive mechanism. In *Žirovnický v. the Czech Republic* ((dec.), nos. 60439/12 and 73999/12, §§ 100-106, 15 November 2016) the Court took notice that the regional prosecutors had been specifically entrusted with supervising over the compliance of the conditions of detention with the legislative norms; they could, among other things, carry out prison visits and have confidential meetings with the detainees; the detained persons had the right to apply to the prosecutors directly and to ask for such meeting; and under the domestic law and instructions of the Prosecutor General the prosecutors were obliged to examine such complaints and requests. Should the need arise, the prosecutors could issue orders that would be binding on the penitentiary services and should be immediately put into place. Furthermore, their reactions could be challenged before the Constitutional Court which would have the final say on the existence of the alleged violation of the prisoners’ rights, on the need for interim measures or on ordering the competent authorities to put an end to the violations in question (ibid.).

101.  On the contrary, where there was no indication that the penitentiary authorities would consider overcrowding or insalubrious prison conditions as a valid reason for transfer, or that the courts would order removal of an inmate from inhuman or degrading conditions of detention, such remedy could not be seen as offering sufficient prospects of a successful outcome. In such a context, the Court also took into account whether the problem was wide-spread, to the effect that any improvement of the personal situation for a detainee staying in an already overcrowded facility could only be improved at the expense and to the detriment of other detainees. The Court also remarked that the prison authorities would not be in a position to grant a large number of simultaneous requests where the prison overcrowding was of structural nature and in the absence of proper reforms to tackle it (see *Mironovas and Others*, §§ 103 and 104; see also, *a contrario*, *Žirovnický*,§ 104, both cited above).

102.  In respect of Russia, in the recent judgment addressing the systemic problem of inhuman treatment during prisoners’ transportation, *Tomov and Others*, cited above, § 192 (with further references), the Court said:

“192. An important safeguard for the prevention of violations resulting from inadequate conditions of detention is an efficient system for detainees’ complaints to the domestic authorities... To be efficient, the system must ensure a prompt and diligent handling of prisoners’ complaints, secure their effective participation in the examination of grievances, and provide a wide range of legal tools for the purpose of eradicating the identified breach of Convention requirements. Lastly, prisoners must be able to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so...

193. Lodging a complaint with a supervising authority is usually a more reactive and speedy way of dealing with grievances than litigation. The authority in question should have the mandate to monitor the violations of prisoners’ rights, be independent, and have the power to investigate the complaints with the participation of the complainant and the right to render binding and enforceable decisions...

194. In *Ananyev and Others*, the Court emphasised the important part that supervising prosecutors play and outlined the manner in which the procedure before them needed to be modified in order to comply with the above-mentioned requirements... Those findings are applicable to complaints about conditions of transport, too. Public monitoring commissions may also be given a more prominent role in upholding the rights of prisoners in transit. To be truly effective, however, they will need an extended mandate and the power to render binding decisions. It is a matter for the Russian authorities to decide what kind of reform could be envisaged...

195. A prisoner may also complain to a court of general jurisdiction about an infringement of his or her rights or liberties under the provisions of the Code of Administrative Procedure, which replaced Chapter 25 of the Code of Civil Procedure as from 15 September 2015... However, the reservations which the Court has expressed in relation to judicial proceedings in general also apply to the proceedings under the Code of Administrative Procedure. In particular, it is not certain that the new type of proceedings has equipped the Russian courts with appropriate legal tools allowing them to consider the problem transcending an individual complaint and effectively deal with situations of concurrent violations of prisoners’ rights resulting from the application of an exceedingly restrictive regulatory framework...”

103.  Furthermore, the Court is particularly vigilant to the effectiveness of a preventive remedy where the problem of prison overcrowding is of a systemic nature and thus to the danger of rendering its effect futile (see *Ananyev and Others*, § 111; *Neshkov and Others*, § 210; and *Nikitin and Others*, § 126, all cited above, with further references).

104.  In general, for a preventive remedy with respect to conditions of detention before an administrative authority to be effective, this authority must (a) be independent of the authorities in charge of the penitentiary system, (b) secure the inmates’ effective participation in the examination of their grievances, (c) ensure the speedy and diligent handling of the inmates’ complaints, (d) have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints, and (e) be capable of rendering binding and enforceable decisions (see *Ananyev and Others*, cited above, §§ 214-16 and 219). Any such remedy must also be capable of providing relief in reasonably short time-limits (see *Neshkov and Others*, cited above, § 183, and further references therein).

* + 1. Application in the present case
			1. Domestic developments since the adoption of the Ananyev and Others pilot judgment

105.  The Court reiterates the guidance it provided to the Government in *Ananyev and Others* as regards the features that a compensatory remedy must possess in order to be considered effective. In particular, monetary compensation should be accessible to any current or former inmate who has suffered inhuman or degrading treatment and has made an application to this effect. A finding that the conditions fell short of the requirements of Article 3 of the Convention will give rise to a strong presumption that they have caused non-pecuniary damage to the aggrieved person, and the level of compensation awarded for non-pecuniary damage must not be unreasonable in comparison with the awards made by the Court in similar cases (ibid., §§ 228-30; and on the awards that can be considered acceptable, *Domján*, cited above, §§ 27-28).

106.  The Court next recalls that although the availability of effective domestic remedies is normally assessed by reference to the date of lodging of the application, this rule is subject to exceptions if this is justified by the circumstances of the case (see *Müdür Turgut and Others* (dec.), § 46, no. 4860/09, 26 March 2013); in particular, when the remedy at issue has been put in place in response to a pilot judgment of the Court (see *Atanasov and Apostolov*, cited above, § 45, with further references). Where such new remedies have just become available, their assessment must necessarily be based solely on the statutory provisions which govern them rather than their operation in practice (ibid., § 47; *Domján,* §§ 31-34,and *Draniceru*, § 26, both cited above). It therefore finds that it can assess the effectiveness of the legal provisions as set by the Compensation Act after its entry into force, and decide accordingly whether the applicants are obliged to exhaust them.

* + - * 1. The Compensation Act

107.  The new Compensation Act entered into force on 27 January 2020. It provides that any detainee who alleges that his or her conditions of detention are in breach of the national legislation or the international agreements of the Russian Federation can apply to a court. The novelty of the Act is that the detainee can claim, at the same time, a finding of a violation in question, and financial compensation for such breach. The proceedings are conducted under the CAP. The Supreme Court has issued a number of clarifications and directions about the use of the CAP, in particular in the context of adjudication of detainees’ complaints (see paragraphs 41 *et seq*. above).

108.  As to the scope of the Compensation Act, the courts can consider complaints that raise various problems of detention, including overcrowding and other aspects. The courts can consider claims and award compensation without the prerequisite of establishing any officials’ guilt or unlawful conduct (see paragraphs 27 and 44 above; see also detailed explanations in Ruling no. 47 of the Plenary of the Supreme Court as to what could amount to a breach of conditions of detention, paragraph 51 above). The relevant Russian legislation establishes four square metres as the minimal sanitary norm per detainee in pre-trial detention and requires that each detainee is equipped with an individual sleeping place (see paragraph 9 above), which is compatible with the relevant minimum standard under Article 3 of the Convention, as interpreted by the Court.

109.  The lodging of a claim is directly accessible to a detainee. Two formal requirements are attached: it should adhere to the general procedural rules and be accompanied by a court fee; and should be lodged while the detention in question is ongoing, or within three months of its termination (see paragraphs 20, 23 and 24 above). Persons whose complaints were pending before the present Court on the date when the Compensation Act entered into force, or whose complaints were dismissed for reasons of non-exhaustion, have 180 days to lodge their complaints, whenever the detention complained of has ended (see paragraph 63 above). The administrative court will have to resolve the question whether there has been a breach of conditions of detention and, in case of a positive answer, simultaneously to rule on the claim for compensation. Any decisions and judgments adopted are susceptible to the normal chain of judicial appeals (see paragraph 30 above).

110.  In so far as the question of court fee is concerned, the Court notes that the fee required for the lodging of such complaints is nominal, and the courts are instructed to defer, reduce or dispense with it altogether if it could seriously affect the detainee’s access to court (see paragraphs 20 and 46 above).

111.  The Court is thus satisfied that the procedural requirements of access to the compensatory scheme are simple and accessible, and do not place an excessive burden on the claimant, neither in the procedure applicable nor in the requirement related to costs of the proceedings (see, for similar reasoning, *Atanasov and Apostolov*, cited above, § 60).

112.  The examination of the complaints is equipped with a number of procedural guarantees. The complaints are examined by a court of law, in adversarial and open proceedings; the claimant has the right to be assisted by an advocate or another representative of his choice; his or her rights of effective participation must be fully ensured. The court is equipped with the possibility to apply preliminary measures, an important tool which can be applied to order a detainee’s transfer to another premises or medical examination, for example, where there is a threat to person’s life and health (see paragraphs 16, 17, 19 and 48 above). Furthermore, the courts are reminded of the need to treat any motion for withdrawal of complaint by detainee with caution. Such motion may be dismissed if the court has reasons to believe that it has been obtained illegally, or would not be in the public interest (see paragraph 53 above).

113.  The adjudication of administrative complaints is based on shifting the burden of proof of the contrary to the administration. The courts are instructed to bear in mind the difficulties faced by detainees in collecting evidence, and are encouraged to play an active role in identification and obtaining of evidence. Thus, the Plenary of the Supreme Court underlines that they can order the prison administration to produce specific evidence relevant to the allegations of overcrowding or other material conditions of detention, such as the size of the premises in question, its photo or video footage, precise measurements of temperature or luminosity, or any other relevant expert report (see paragraphs 18, 47 and 50 above).

114.  The CAP sets strict time limits for the consideration of complaints. A complaint should be considered within a month. Moreover, if there are special circumstances calling for urgency, the courts are instructed to process such claims immediately (see paragraphs 24 and 49 above). The writ of execution should be automatically forwarded to the respondent authority within one day of the judgment’s delivery and irrespective of whether the claimant has made a request to that effect (see paragraphs 32 and 62 above).

115.  Having regard to the above, the Court is satisfied that the procedure is equipped with the requisite procedural guarantees, such as independence and impartiality, the right to legal assistance and other safeguards associated with adversarial judicial proceedings. There are safety measures to take into account the special situation of detainees. There is no reason to assume that the claims would not be processed within a reasonable time, or that the compensation would not be paid promptly.

116.  The Compensation Act does not specify the amount of award that can be granted by courts in case a violation of the detention conditions is found. The Act correlates the awards with the particularities of the violations found, such as their nature, length, consequences and damage, if any, to the claimant’s health (see paragraph 61 above). At the same time, the explanatory notice accompanying the Compensation Act assumes an average award of EUR 3,000, in order to calculate the financial implications of the law in question and for budgetary purposes (see paragraph 64 above). The Court also notes that in December 2018 and December 2019 the Supreme Court published extensive overviews of judgments rendered against Russia by this Court and finding violations of various aspects of the conditions of detention. These overviews contain hundreds of recent awards in cases raising various issues related to conditions of detention, summarised and circulated for the attention of the domestic judges (see paragraph 57 above).

117.  Having regard to the above, the Court is satisfied that the domestic authorities and competent courts have been sufficiently apprised of the criteria that need to be taken into account when making a compensation award and of the Court’s own practice. It discerns no immediate danger that the domestic courts would award compensations that would be “incommensurably small” or would not “even approach the awards usually made by the Court in comparable circumstances” (see paragraphs 91-95 above for the relevant case-law principles).

118.  In any event, the Court emphasises that the object of the present decision is the potential effectiveness of the domestic remedy under the Compensation Act, and not the question of whether, in view of the sums awarded at the domestic level, the applicants have lost victim status. This second type of assessment can be made, in every individual case, only after the relevant national remedy has been tried (see, *mutatis mutandis*, *Bizjak* § 43, and *Draniceru*, § 40, both cited above; and *Shtolts and Others v. Russia* (dec.), nos. 77056/14, 17236/15 and 14023/16, § 110, 30 January 2018).

119.  In such circumstances, the Court considers that the new Compensation Act presents, in principle, an adequate and effective avenue of obtaining compensatory redress, and offers reasonable prospects of success to the applicants. Accordingly, whenever a complaint is made about past breaches of Article 3 by inadequate conditions of pre-trial detention, applicants are expected to exhaust it before lodging their complaints with the Court.

120.  The Court is prepared to change its approach as to the effectiveness of the remedy in question, should the practice of the domestic courts show, in the long run, that complaints are being refused on formalistic grounds, that compensation proceedings are excessively long, that compensation awards are insufficient or are not paid promptly, or that domestic case-law is not in compliance with the requirements of the Convention and the Court’s case-law (see, *mutatis mutandis*, *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, §§ 179 et seq., 7 July 2015; *Stella and Others*, § 63; *Atanasov and Apostolov,* § 66; and *Shtolts and Others*, §§ 112-113, decisions cited above). Any such future review will involve determining whether the national authorities have applied the Compensation Act in a manner that is in conformity with the pilot judgment and the Convention standards in general.

* + - * 1. Application to the situation where the pre-trial detention is over

121.  In the case at hand, the applicants alleged that the conditions of their pre-trial detention had fallen below the national standards and constituted inhuman and degrading treatment contrary to the Convention. The pre-trial detention is over for applicants in applications nos. 66806/17, 19294/18, 31682/18 and 32545/18 listed in the Appendix I (see paragraph 6 above). The Government either did not dispute that the conditions of their detention had amounted to inhuman and degrading treatment, or argued that there was evidence to the contrary (see Appendix I below for details of the Government submissions in each case). At the same time, they contended that the Compensation Act constituted an effective domestic remedy to be exhausted, while the applicants concerned disagreed with this or made no comments in this respect (see paragraphs 77-78 above).

122.  The Court reiterates that, where the detention is over, a compensatory remedy can suffice to provide the applicants with fair redress for the alleged breach of Article 3 (see case-law cited above in paragraph 87). Accordingly, it is sufficient to examine whether the applicants concerned can be required to exhaust the compensatory remedy.

123.  As mentioned above, the Court may examine the effectiveness of a newly introduced domestic remedy even if it was not available at the time of lodging of applications, where such remedy is introduced at a later stage in response to the Court’s finding of a systemic problem (see paragraph 106 above and the case-law cited therein).

124.  The Court has concluded that the Compensation Act presents, in principle, an adequate and effective avenue for compensatory redress in cases raising issues of improper conditions of pre-trial detention. It has found that it is directly accessible to the persons concerned, is furnished with the requisite procedural guarantees associated with judicial adversarial proceedings, that there are no reasons to expect that such claims would not be processed within a reasonable time, or that the compensation would not be paid promptly. It also concluded that the system offers reasonable prospects of success to the applicants in terms of the compensation awards.

125.  The Compensation Act is equipped with transitional provisions, so that any person whose complaint about inadequate conditions of detention was pending with this Court at the time of the Act’s entry into force can apply within 180 days after that date (see paragraph 63 above). The same would apply to those whose complaints would be declared inadmissible by this Court in view of the Act coming into force.

126.  The Court accepts that the domestic courts have not yet been able to establish any practice under the Compensation Act. However, the Court has already found that doubts about the prospects of a remedy, which appears to offer a reasonable possibility of redress, are not a sufficient reason to eschew it (see *Shtolts and Others*, cited above, § 111).

127.  Accordingly, even though the domestic remedy was not available to the applicants at the time when they applied to the Court, the situation justifies a departure from the general rule on exhaustion and requires the applicants in question to seek compensation under the Compensation Act.

128.  The Court accepts that the outcome of the applicants’ claims under the new provisions cannot at present be ascertained. However, as the Court has already noted on similar occasions, it would remain open for the applicants to lodge fresh complaints should their claims to the domestic courts prove unsuccessful, for one reason or another. The Court’s ultimate supervisory jurisdiction remains in respect of any complaints lodged by the applicants who, in conformity with the principle of subsidiarity, have exhausted available avenues of redress (see *Domján,* § 37; and *Shtolts and Others*, §§ 112-113, both decisions cited above). The Court will remain free to assess the compliance of application of the domestic practice with the pilot judgment and the Convention standards in general, including in respect of the standard of evidence employed by the domestic courts (see the summary of the relevant case-law in paragraph 82 above).

129.  Finally, the Court does not lose sight of a number of positive developments related to the situation with pre-trial detention in Russia that will be analysed below.

130.  In view of the above, the Court concludes that the applications nos. 66806/17, 19294/18, 31682/18 and 32545/18 are inadmissible for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

131.  For the reasons outlined above, the Court will apply this approach to all similar applications, that is where the applicants complain about a breach of Articles 3 and 13 in respect of past pre-trial detention.

* + - * 1. Other remedies and the situation where pre-trial detention is pending

132.  Besides the Compensation Act examined in details above, a number of other developments have occurred in the domestic legislation and practice since the *Ananyev and Others* pilot judgment. These developments might have a direct bearing on the question of effectiveness of domestic remedies for situations of alleged breach of the conditions of pre-trial detention, as well as addressing the root cause of the problems.

133.  Changes to the Criminal Code have introduced a coefficient so that any time spent in pre-trial detention is taken into account to reduce the time spent in correctional detention, if the accused had been sentenced to a punishment of deprivation of liberty or to certain other non-custodial sentences. This measure has been adopted in the aftermath of the *Ananyev and Others* judgment, and was intended to reflect the wide-spread phenomenon of poor conditions of detention in remand centres. The conditions of application and coefficients vary, but the most wide-spread situations result in the reduction of sentence of detention on common grounds by one and a half days for each day spent in pre-trial detention, and by two days in case of serving the sentence in a supervised settlement colony (see paragraph 33 above). These measures apply retroactively. These measures have had significant effect: by October 2019, over 110,000 convicted prisoners had their sentences reduced or have already been released (see paragraphs 55 and 56 above).

134.  The Court has already found that similar measures not only constitute an adequate form of redress for the persons affected by poor conditions of detention, but also contribute to alleviate the problem of overcrowding by accelerating prisoners’ release (see paragraph 90 above and the cases cited therein). Specific features of the Russian legislation are that, unlike other countries, these reductions apply automatically to all those concerned, without the need to prove that the conditions of pre-trial detention had been below the requisite standards; and that the application of the reduction does not preclude the possibility to seek monetary compensation for the same periods.

135.  Next, the Court takes into account the evaluation by the Committee of Ministers of the Council of Europe, inter alia, of the measures to address the root causes of overcrowding in the remand detention centres, improvement of material conditions therein, reduced recourse to detention on remand, and the overall reduction in the population of remand centres between 2016 and 2019 from 117,500 to 99,800 (see paragraphs 66-68 above). The Russian authorities are implementing a programme of works in detention facilities, refurbishing many of them and putting into operation new ones. At the same time, the Committee of Ministers at its latest examination invited the authorities to “provide further information about the functioning of the remedy [under the CAP], notably as regards the number of complaints lodged with the courts and measures taken to enforce court decisions”. Thus, the effectiveness and the exact effects of these measures on the overcrowding in pre-trial detention centres have not yet been assessed.

136.  The Court has not yet evaluated whether the provisions of the CAP, as seen in the light of the rulings and clarifications of the Supreme Court, could serve an effective remedy that would satisfy the requirements of a preventive remedy as outlined in the Court’s practice (see also the caution recently expressed in this regard in the *Tomov* judgment concerning conditions of prisoners’ transportation, cited in paragraph 102 above).

137.  In view of the guidance given by the Court in the *Ananyev and Others* judgment, the changes in the legislation and practice and the evaluation of these measures by the Committee of Ministers, the effectiveness of the existing preventive mechanisms in respect of pending pre-trial detention remains to be evaluated. Such remedies can take a variety of forms, in line with the principle of subsidiarity (see summary of the Court’s case-law in paragraphs 97-103 above). They should however comply with the minimal procedural requirements as outlined in the Court’s case-law, and should be capable of ordering improvement of the inadequate conditions of detention or the person’s removal from such conditions.

138.  The Court has also accepted that the effectiveness of preventive remedies would greatly depend on whether the situation of prison overcrowding and otherwise poor conditions of detention is due to a structural problem, or whether the mechanisms in question are called to correct the departure from the applicable standards in isolated incidents (see paragraphs 100-101 above).

139.  The Court finds that today it does not have sufficient material at its disposal to assess the effectiveness of any such remedy, and in particular of the judicial remedy under the CAP, where the applicants’ pre-trial detention is pending (applications nos. 75804/17, 77181/17 and 77265/17). It will therefore invite the parties to submit further observations in order to clarify the effectiveness of the preventive remedies in respect of the pending pre-trial detention in conditions incompatible with Article 3 of the Convention.

* + - 1. Conclusions
				1. Complaints declared inadmissible for non-exhaustion

140.  The Court finds that in so far as the applicants in applications nos. 66806/17, 19294/18, 31682/18 and 32545/18 have lodged prima facie well-founded complaints about breach of their rights by improper conditions of past pre-trial detention, the Compensation Act affords them an opportunity to obtain compensatory redress. Accordingly, the applicants should exhaust this remedy before their complaints can be examined by the Court. Their complaints under Articles 3 and 13 should be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

141.  For the reasons outlined above, the Court will apply this approach to all similar applications, that is where the applicants complain about a breach of Articles 3 and 13 in respect of past pre-trial detention.

* + - * 1. Complaints where notice is given to the respondent Government

142.  The Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaints lodged by the applicants whose pre-trial detention is pending. It is therefore necessary, in accordance with Rule 54 § 2 (c) of the Rules of Court, to invite the parties to submit further written observations in applications nos. 75804/17, 77181/17 and 77265/17.

* 1. alleged violations of articles 3 and 13 of the convention by conditions of detention in correctional facilIties

143.  Ten applicants in applications nos. 41743/17, 60185/17, 74497/17, 1249/18, 9152/18, 14988/18, 17991/18, 19837/18, 21542/18 and 29155/18 submitted that the conditions of their detention in correctional facilities have fallen below the standards compatible with Article 3 of the Convention. Some of them contended that they had no effective remedies against these violations, in breach of Article 13. In particular, the applicants complained that they had been detained in premises that were overcrowded, as well as about other aspects of their conditions of detention. For some of the applicants the detention had ended by the time of exchange of observations between the parties (see Appendix II below).

* + 1. The Court’s practice in cases concerning conditions of correctional detention in Russia

144.  Initially, the Court found no violations in cases lodged against Russia raising issues of the conditions of detention for reasons of overcrowding only in correctional facilities. For example, in *Nurmagomedov v. Russia* (dec.), no. [30138/02](http://hudoc.echr.coe.int/eng#{"appno":["30138/02"]}), 16 September 2004, the Court dismissed the applicant’s complaint about the conditions of detention in post‑conviction facility (colony) as manifestly-ill founded, having noted that while the domestic standard for male convicts in Russian correctional colony was set at two square metres of personal space,

“...this figure must be viewed in the context of the wide freedom of movement enjoyed by the applicant from the wake-up in the morning to the lock-in at night, when he can move about a substantial part of the correctional colony, including the dormitory, an open courtyard, and sanitation areas. It is not alleged that his dormitory room lacks natural lighting or fresh air. As regards allocation of space, the Court concludes that the freedom of movement allowed and unobstructed access to natural light and air compensate for the relatively small dimensions of the applicant’s room and the scarce space allocation per convict...”

145.  In 2013 the Court examined the issue in more details in *Sergey Babushkin* (cited above) and found a breach of the applicant’s rights guaranteed under Article 3 by overcrowding, having reasoned as follows:

“52. ... the Court takes cognisance of the admission made by the Government that ... the applicant had at his disposal in the dormitory no more than 1.55 square metres of personal space.

53. The Court does not lose sight that, as submitted by the Government and not contested by the applicant, during the day the applicant was not confined to an overcrowded dormitory. He had an opportunity for at least two hours’ daily outdoor exercise. It was also open to him to work in a sewing shop or stay at the unit premises while other detainees were at work.

54. Nevertheless, the Court considers that the conditions of the applicant’s detention in correctional facility no. IK-2 have fallen short of the standards set forth in Article 3 of the Convention. In this regard the Court puts a special emphasis on the fact that the applicant has been serving a long term of imprisonment. His placement in a cramped dormitory with approximately a hundred inmates, if only at night, was not temporary. He has been held in such conditions, lacking any privacy, for thirteen years. In the Court’s opinion, this fact alone raises an issue under Article 3 of the Convention.”

146.  In *Muršić* (cited above, § 115) the Court observed that no distinction could be discerned in its case-law with regard to the application of the minimum standard of 3 sq. m of floor surface to a detainee in multi-occupancy accommodation in the context of serving and remand prisoners. This position was further developed in similar judgments against Russia, notably *Mozharov and Others v. Russia*, nos. 16401/12 and 9 others, §§ 8, 9 and 14, 21 March 2017, where the Court reiterated that “extreme lack of space in a prison cell or overcrowding weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were ‘degrading’ from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings”. In the same judgment the Court awarded various sums to the applicants as non-pecuniary damages for the violations found, with regard *inter alia* to “the long delay for some of the applicants in filing the application”.

147.  Following the adoption of the judgment in the case of *Sergey Babushkin* (cited above), the Court has experienced a surge in the number of applications against Russia where applicants complained about poor detention conditions in post-conviction detention facilities. Between January 2013 and February 2020, over 4,300 potentially meritorious cases have been lodged by inmates who argued that the conditions of their detention in correctional facilities amounted to inhuman and degrading treatment. These cases were geographically wide-spread and covered many regions of the Russian Federation. Particularly large numbers of applications were lodged by inmates detained in facilities in the Nizhniy Novgorod Region (over 850 cases); in the Komi Republic (more than 300 cases); and in the Kostroma Region (more than 250 cases).

148.  By March 2020 the Court adopted more than 450 judgments against Russia finding a violation of Article 3 in view of poor conditions of detention in post-conviction facilities. In addition, it has struck out of its list of cases more than 270 individual applications on the basis of a friendly settlement agreement or the Government’s unilateral declaration. The Court’s case management database showed that in February 2020 about 3,600 cases concerning detention conditions in Russian post-conviction facilities were pending with it, awaiting initial or final examination.

149.  On 10 January 2020 the Russian Government asked the Court to consider the Compensation Act as an effective domestic remedy in respect of all cases where the applicants claimed violations of Articles 3 and 13 by poor conditions of detention; including those whose complaints had been already lodged with the Court.

150.  The applicants in applications nos. 17991/18 and 21542/18 were invited by the Court to comment on the Government plea of inadmissibility. The applicants’ responses questioned the effectiveness and availability of the remedies invoked by the Government.

* + 1. The Court’s assessment

151.  As a starting point, the Court notes that the applicable provisions of the Russian legislation set different standards of personal space for pre-trial detention (four square metres per detained person, see paragraph 9 above) and correctional detention for male convicts in colonies or prisons (accordingly, two and two-and-a-half square metres, see paragraphs 10-11 above). At the same time, as reiterated by the Court, “when the personal space available to a detainee falls below three square metres of floor surface... the lack of personal space in considered so severe that the strong presumption of a violation of Article 3 arises” (see *Muršić,* cited above*,* § 137, see paragraph 80 above).

152.  Thus, for a considerable number of detainees in correctional facilities poor conditions of detention are predetermined by the standards set up by the domestic legislation. In order to assess the effectiveness of remedies, the Court will need to distinguish between cases where the applicants’ conditions of detention had fallen below the national standards and those cases where the minimal available space was in line with the national standards but would still raise a prima facie issue under Article 3.

* + - 1. Complaints about conditions of detention falling below the national standard

153.  The Government did not dispute the allegations made by the applicants in cases nos. 17991/18 and 21542/18 that they had been detained in overcrowded conditions, disposing of less than the statutory norm of two square metres per person. Their detention in such conditions was over at the time of the exchange of observations (see Appendix II).

154.  Having regard to its above considerations about the effectiveness of the Compensation Act in situations where the detention was over, and the fact that there is no dispute between the parties about breach of the minimal national standards of detention, the Court concludes that these two applicants find themselves in a situation similar to that of persons whose past pre-trial detention had been in breach of the applicable national standards (see paragraphs 119, 124, 130 and 140 above). For the reasons outlined above, for them, as well as for other persons in similar situation, the new Compensatory Act presents, in principle, an adequate and effective avenue of obtaining compensatory redress, and offers reasonable prospects of success.

155.  In view of the above, applications nos. 17991/18 and 21542/18 raising complaints under Articles 3 and 13 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

156.  For the same reasons as outlined above, actual or potential applicants finding themselves in a similar situation – i.e. where the complaint concerns past correctional detention in conditions in breach of the applicable domestic standards – are also expected to first make use of the compensatory remedy introduced in January 2020.

157.  As stated above, the effectiveness of the remedy in question can be reassessed, should the national authorities apply the Compensation Act in a manner that is not in conformity with the Convention standards in general and the Court’s relevant case-law (see paragraph 120 above).

* + - 1. Cases complying with the national standard but falling below minimal Article 3 standards

158.  The applicants in applications nos. 41743/17, 60185/17 and 14988/18 were detained in the past in conditions whereby each of the applicants had disposed of less than three square metres of personal space. The applicants in applications nos. 74497/17, 1249/18, 9152/18, 19837/18 and 29155/18 were still detained in such conditions at the time of the exchange of observations.

159.  The Government do not dispute that each of them have been, or remain detained for relatively long periods of time in conditions whereby they had no more than two square metres of floor space. The Government referred to the provisions of the national legislation (see paragraphs 10-11 above) and argued that such situation has not disclosed any breach of the applicants’ rights. At the same time, as explained above, the Court’s consistent practice has been to regard three square metres of floor surface per person as the relevant minimum standard under Article 3 of the Convention. Even prior to the adoption of the above-mentioned judgment in *Muršić* (cited above), the Court was prepared to accept any reduction below three square metres of space per person only exceptionally, and within strictly defined limits (see paragraphs 80-81 above).

160.  The Court does not lose sight of the fact that the new Compensation Act directly refers to the standards of conditions of detention “as regulated by the legislation of the Russian Federation and the international agreements of the Russian Federation” (see paragraph 61 above). It also notes that the Supreme Court referred to “Russia’s international obligations” as a relevant standard in assessing the compliance with the conditions of detention, as well as the need to take into account documents produced by the competent international organisations, such as the Council of Europe (see paragraphs 42-43 above).

161.  The Court has also taken notice of other general measures realised by the Russian authorities to tackle this problem, including improvement of the material conditions of detention and the overall reduction of the number of both remand and convicted prisoners, as well as the Committee of Ministers’ positive evaluation of such measures (see paragraphs 66-68 above). Such developments might have a direct bearing on the question of effectiveness of domestic remedies in situations of alleged breach of the conditions of detention, as well as of addressing the root cause of the problem.

162.  The Court has found above that in order to evaluate the effectiveness of the preventive measures in the context of pre-trial detention, it would need to see whether they complied with the minimal procedural requirements as outlined in the Court’s case-law, and whether they were capable of ordering improvement of the inadequate conditions of detention or the person’s removal from such conditions. This evaluation should be done in view of the measures taken by the Russian authorities to address the root causes of the violations and to improve the general situation (see paragraphs 137-138 above). Likewise, the Court finds that it does not have sufficient material at its disposal to assess the effectiveness of any such remedy in the case of correctional detention, and in particular of the judicial remedy under the CAP. It will therefore invite the parties to submit further observations, in accordance with Rule 54 § 2 (c) of the Rules of Court, with the aim to clarify the effectiveness of any preventive remedies in respect of the pending correctional detention in conditions incompatible with Article 3 of the Convention.

* + - 1. Conclusions
				1. Complaints declared inadmissible for non-exhaustion

163.  The Court finds that in so far as the applicants in applications nos. 17991/18 and 21542/18 have lodged prima facie well-founded complaints about breach of their rights by improper conditions of past correctional detention that were in breach of the domestic standards, the Compensation Act affords them an opportunity to obtain compensatory redress domestically. Accordingly, the applicants should exhaust this remedy before their complaints can be examined by the Court. Their complaints under Articles 3 and 13 should be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

164.  For the reasons outlined above, the Court will apply this approach to all similar applications, that is where the applicants complain about a breach of Articles 3 and 13 in respect of past correctional detention in breach of the domestic standards.

* + - * 1. Complaints where notice is given to the Government

165.  The Russian legislation sets the minimal requirement of two (or two-and-a-half) square metres of floor space per male detainee in certain types of correctional colonies. The Government argue that several applicants have disposed of this statutory minimum of personal space and that no violation of their rights has occurred. However, as noted above, such conditions, on their own, can amount to overcrowding incompatible with the minimum standard under the Convention.

166.  Furthermore, the Court cannot determine the admissibility of the complaints lodged by the applicants whose correctional detention is pending, since the effectiveness of any preventive remedies needs to be assessed.

167.  Accordingly, the Court considers that it cannot, on the basis of the case files, determine the admissibility of these complaints. It is therefore necessary, in accordance with Rule 54 § 2 (c) of the Rules of Court, to invite the parties to submit further written observations in applications nos. 41743/17, 60185/17, 74497/17, 1249/18, 9152/18, 14988/18, 19837/18 and 29155/18.

* 1. Other similar complaints

168.  Pending its examination of the questions as outlined above, and the adoption by the domestic authorities, subject to supervision by the Committee of Ministers, of the necessary measures at national level, it will not deal with any applications of which the Government have not yet been given notice where the sole or main complaint concerns overcrowding and other aspects of poor material detention conditions in pre-trial and post-conviction detention facilities in Russia. It points out that it may nevertheless decide at any moment to declare any such case inadmissible or to strike it out, for example in the event of a friendly settlement between the parties or the resolution of the matter by other means, in accordance with Articles 37 or 39 of the Convention. However, the Court may continue its examination of applications of which notice has already been given to the respondent Government (see, *mutatis mutandis*, *Torreggiani and Others*, § 101; and *Tomov and Others*, § 200, both judgments cited above).

For these reasons, the Court, unanimously,

*Decides* to join applications nos. 66806/17, 17991/18, 19294/18, 21542/18, 31682/18 and 32545/18 and *declares* them inadmissible;

*Decides* to adjournthe examination of applications nos. 41743/17, 60185/17, 74497/17, 75804/17, 77181/17, 77265/17, 1249/18, 9152/18, 14988/18, 19837/18 and 29155/18.

Done in English and notified in writing on 9 April 2020.

 Milan Blaško Paul Lemmens
 Registrar President

APPENDIX I
Pre-trial facilities: list of applicants and individual circumstances

| **No.** | **Application no.****Date of introduction** | **Applicant’s name Year of birth** | **Representative’s name and location** | **Date of communication/Articles**  | **Date of the Government observations** | **Detention facility, region** | **Period of detention.****Over/ Pending** | **Size of personal space (sq. m)** | **Description of the detention conditions according to the applicant** | **Description of the detention conditions according to the Government** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. | 66806/1722/08/2017 | Gennadiy Vladimirovich SOKOLOV1982 |  | 23/11/2017Article 3 | 20/03/2018 | IZ-16/5 Tatarstan republic | 15/02/2017 to17/09/20177 month(s) and 3 day(s)Over | 2.2 | Overcrowding, poor quality of food, lack or insufficient quantity of food, mouldy or dirty cell, infestation of cell with insects/rodents, lack of fresh air, bad odour in the cell, sharing cells with inmates infected with contagious disease | Relying on a certificate issued by the head of the detention facility and extracts from prison population logs, the Government stated that the applicant had no less than 4 sq. m of personal space at all times. He also was always given bedding, cutlery and had an individual sleeping place.  |
| 2. | 75804/1714/10/2017 | Yevgeniy Viktorovich DROZDOV1989 |  | 07/12/2017Article 3 | 03/04/2018 | IZ-1 Primorye Region | 18/01/2015pendingMore than4 year(s) and10 month(s) and2 day(s) | 1.2 | Overcrowding, insufficient number of sleeping places, inadequate temperature, lack of privacy for toilet, no or restricted access to running water, lack of or insufficient natural light, lack of or insufficient electric light, infestation of cell with insects/rodents, no or restricted access to shower, poor quality of food, lack or insufficient quantity of food, lack of fresh airThe applicant also disputed the arguments made by the Government in their observations. In particular, he pointed out that even those rare extracts from the prison population logs showed that there were more inmates in the cells than the cell’s announced capacity. On the basis of the documents submitted by the Government the applicant compiled a list of dates on which he had been detained in overcrowded cells.  | The Government submitted that at all times the applicant had a minimum of 4 sq. m of personal space, his own sleeping place, necessary bedding and cutlery. Relying on certificates issued by the prison authorities, the Government further noted that the remaining conditions of the applicant’s detention were in full compliance with the established standards.  |
| 1. 3.
 | 77181/1707/11/2017 | Aleksandr Gennadyevich ILYIN1995 |  | 12/04/2018Articles 3 and 13 | 14/09/2018 | IZ-47/1St Petersburg | 22/03/2017pendingMore than2 year(s),8 month(s), and7 day(s) | 2 | Overcrowding, lack or inadequate furniture, mouldy or dirty cell, lack of fresh air, lack of or insufficient electric light, lack of or poor quality of bedding and bed linen, inadequate temperature, no or restricted access to warm water, no or restricted access to running water, no or restricted access to potable water, lack of privacy for toilet, infestation of cell with insects/rodents, constant electric light, lack of or restricted access to leisure or educational activities, poor quality of food, lack or insufficient quantity of food, no or restricted access to shower | The Government argued that the applicant had been detained in several cells, measuring between 8 and 19.4 sq. m which housed between 4 and 8 inmates. For instance, cells with 8 sq. m of surface were equipped with 4 bunds, while bigger cells of 15.5 sq. m had 3 sleeping places. At all times the applicant had a sleeping place, bedding and linen. There was an artificial ventilation system in the cells. The Government supported their claims with copies of prison population registers. |
| 1. 4.
 | 77265/1713/12/2017 | Aleksandr Aleksandrovich VASILYEV1989 |  | 12/04/2018Articles 3 and 13 | 14/09/2018 | IZ-47/1St Petersburg | 11/05/2017pendingMore than2 year(s) and6 month(s) and18 day(s) | 2 – 3.5 | Inadequate temperature, infestation of cell with insects/rodents, lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient natural light, lack of or poor quality of bedding and bed linen, lack of privacy for toilet, lack of requisite medical assistance, moldy or dirty cell, overcrowding, passive smoking, poor quality of potable water, no or restricted access to running water, no or restricted access to shower, no or restricted access to potable water, no or restricted access to warm water, poor quality of food | The Government submitted that the applicant had been detained in a number of cells, the majority of which measured 8 sq. m and were equipped with 4 bunks. At all times the applicant had a sleeping place, bedding and linen. There was an artificial ventilation system in the cells. The Government supported their claims with copies of prison population registers. |
| 5. | 19294/1817/08/2017 | Igor VasilyevichChaban1962 |  | 30/08/2018Articles 3 and 13 | 09/01/2019 | SIZO-1 Rostov Region | 11/03/ 2014 to 28/02/20172 years11 months and 18 daysOver | < 3  | Severe overcrowding; absence of individual sleeping place; lack of artificial ventilation; passive smoking; dirty and infested cells; lack of potable water in the cell at night; unpleasant odour due to the poorly functioning toilet flushing system; lack of privacy to use toilet; lack of bedding; scarce food of poor quality; shower once in ten days for no more than 20 minutes with 5 shower heads shared by 11 to 16 inmates.The applicant rejected the UD | The Government submitted a UD. They acknowledged that Mr Chaban’s conditions of detention in SIZO-1 Rostov Region from 11 March 2014 to 28 February 2017 did not comply with the requirements of Article 3 of the Convention and that he did not have an effective remedy to complain about the inadequate detention conditions in violation of Article 13 of the Convention. |
| 6. | 31682/1828/05/2018 | Ivan Vitalyevich Knyazevich1986 |  | 25/10/2018Articles 3 and 13 | 18/02/2019 | SIZO-1St Petersburg | 15/02/2014 to 30/11/20173 years9 months and16 days.Over | < 3 | Cells of 7 sq. m shared by three inmates; bunk bed too small for the applicant; poor heating and insufficient light; passive smoking; bedding and linen provided once in four years; no privacy for toilet; toilet less than a meter away from the dining table; poor quality food; restricted access to shower; a 45-minute walk in the recreation yard of 10 sq. m once a day; the recreation yard not offering any protection from bad weather. | The Government did not dispute the conditions of detention as outlined by the applicant.  |
| 7. | 32545/1822/06/2018 | Aleksandr Sergeyevich Pashentsev1976 | Inessa Igorevna FrolovaSt Petersburg | 25/10/2018Articles 3 and 13 | 18/02/2018 | SIZO-1St Petersburg | 15/05/2014 to 25/12/20173 years7 months and 11 days.Over | 2 | Severe overcrowding; no privacy for toilet; poor sanitary conditions; inadequate temperature; passive smoking | The Government did not dispute the conditions of detention as outlined by the applicant.  |

APPENDIX II
Post-conviction facilities: list of applicants and individual circumstances

| **No.** | **Application no.****Date of introduction** | **Applicant’s name****Year of birth** | **Representative’s name and location** | **Date of Communication****/Articles** | **Date of the Government observations** | **Name of detention facility** | **Period of detention.****Over / Pending** | **Size of personal space (sq. m)** | **Description of the detention conditions according to the applicant** | **Description of the detention conditions according to the Government** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. | 41743/1717/05/2017 | Yevgeniy Mikhaylovich Shmelev1983 | Viktoriya Pavlovna ProkofyevaSt Petersburg | 07/12/2017Articles 3 and 13 | 03/04/2018 | IK-6 Chuvashiya Republic | 19/04/ 2010 to 17/11/ 20166 years6 months and30 days.Over | < 2 | 1,200 prisoners were detained in brigades (“*отряд*”) of about 100 inmates; living quarters in sections of 60 sq. m housing 40 to 50 inmates.Overcrowding, no artificial ventilation, stuffy living quarters; passive smoking; insufficient hygienic facilities: a lavatory room with four lavatory pans and five sinks for 200 persons; no warm water; poor quality of cold water; showers facilities insufficient; food of poor quality.The applicant submitted colour photos and written statements by other inmates. Photos showed a large room with two long rows of two-tier bunks separated from each other by a narrow passageway, leaving practically no space to move. Several photos showed a lavatory room with five sinks and two lavatory pans. Metal pans installed on a high pedestal and separated from each other by two low portions served as lavatory pans. A unit with a lavatory pan had no doors.  | The Government argued that the applicant had had 2 sq. m of personal space, in full compliance with the requirements of Article 99 of the Russian Code of Execution of Criminal Sentences. The remaining material conditions (lighting, heating, ventilation, sanitation and technical facilities, food) were in compliance with the requirements of the relevant domestic law and Article 3 of the Convention. The Government relied on a certificate issued by the colony director and listing brigades where the applicant had been detained on various dates. The certificates did not describe the material conditions of the applicant’s detention.The Government also provided two prosecutor’s decisions of 19 February 2015 and 27 January 2016 noting certain deficiencies related to provision of clothes to inmates, as well as poor conditions in the punishment wards of the colony.  |
| 2. | 60185/1730/07/2017 | Aleksandr Andreyevich Gromov1979 | Viktoriya Pavlovna ProkofyevaSt Petersburg | 05/10/2017Articles 3 and 13 | 22/01/2018 | IK-3St Petersburg and Leningrad Region | 20/02/2015 to 14/02/20171 year11 months and 26 days.Over | 2 | 1,600 inmates served sentence in the colony with maximum capacity of 1,505 persons. The applicant shared a room of 30 sq. m with 19 other inmates. The room had rows of two-tier bunks, no artificial ventilation and proper heating. Other complaints: passive smoking; insufficient hygiene facilities: 5 lavatory pans for 150 persons; short time attributed for the morning and evening hygiene; no hot water; poor quality cold water; insufficient shower facilities and time; food of poor quality.The applicant attached written statements by five inmates who had been detained in IK-3 St Petersburg between 2014 and 2018. | The Government argued that each inmate had no less than 2 sq. m, and was provided with an individual sleeping place, bedding and cutlery. All legal requirements applicable to the post-conviction detention facilities were respected. They enclosed two prosecutor’s reports issued on 21 December 2016 and 31 January 2017. The report of 21 December 2016 mentioned that at least for one night in November 2016 three inmates did not have an individual sleeping place. The report of 31 January 2017 criticised the administration for having allowed inmates to organise a sport room with sport equipment in violation of the domestic legal requirements; noted poor condition of walls and ceiling in the sleeping premises of two brigades and referred to the fact that the number of inmates in brigades by two to four times exceeded the maximum number established by the domestic legal norms. |
| 3. | 74497/17 20/12/2017 | Oleg Yuryevich Bocharov1981 |  | 12/04/2018Articles 3 and 13 | 14/09/2018 | IK-49 Komi Republic | 18/08/2016 and pendingMore than2 years and7 months | > 2 | The applicant is assigned to a brigade with no less than100 persons. The brigade occupies a dormitory building with living surface of 185.4 sq. m. Two-tier bunks as well as other furniture takes up almost entire space in the sleeping area, restricting movement. Other conditions: poor sanitary equipment, no heating in lavatory; no drinking water supply; poor quality tap water.  | The Government did not dispute the conditions of detention as outlined by the applicant.  |
| 4. | 1249/1810/11/2017 | Igor Vladimirovich Tyurbeyev1975 |  | 22/03/2018Articles 3 and 13 | 23/07/2018 | IK-5 Mordoviya Republic | 30/07/2013 and pendingMore than 6 years and 7 months |  2 | The applicant shares sleeping premises of 80 sq m. with 69 other inmates. Forty two-tier bunk beds are installed in the room, restricting movement. Other complaints: poor access to natural light, poor quality of electric light; no artificial ventilation system; mouldy and leaking walls and ceiling; rooms are infested with mice and insects; insufficient sanitary facilities; no lavatory room in the dormitory, insufficient lavatory pans, lack of privacy in toilets, toilets dirty; insufficient shower facilities and time; poor quality bedding; food insufficient and of poor quality.The applicant submitted eight colour photos of the dormitory, sleeping premises and a washing room. One photo shows a fragment of a particularly dilapidated premises, with plaster detached from the wall. Two photos demonstrate rows of metal bunk beds with thin mattresses and a mouldy wall. The washing room photos show mouldy and dirty walls and floors, rusted sinks and broken taps.  | The Government submitted that the applicant is in a dormitory which has 167.08 sq. m of living space and is equipped by 83 beds. He therefore benefits from the legally established norm of 2 sq. m of personal space. They submitted three prosecutor’s reports of 30 October 2017, 30 January and 19 February 2018.The prosecutor concluded that housing and sanitary conditions were “in general satisfactory”. The food norms were complied with. The schedule of the bathing days and change of linen was not violated. There was a sufficient number of washing basins and shower heads. |
| 5. | 9152/1829/03/2018 | Vladimir Vladimirovich Yefimenko1966 |  | 05/07/2018Article 3 | 31/10/2018 | IK-11 Nizhniy Novgorod Region | 25/08/2014 and pendingMore than4 years and6 months | >2 | The applicant shares sleeping premises of 91.8 sq. m with 49 inmates. Other complaints: insufficient hygienic and toilet facilities; walking yard of 70 sq. m is often used by 360 inmates at the same time; poor quality food without fresh fruits, vegetables or meat.  | Without making any comments, the Government submitted copies of certificates issued by the colony director in August 2018 and colour photos of the colony premises. The maximum capacity of the colony was 1319 persons. The colony mostly accommodated former employees of the law enforcement and judiciary. Before February 2018 the limit of the maximum capacity of the facility had been exceeded and thus the requirement of 2 sq. m of personal space was not observed.The applicant serves his sentence in a brigade of 82 inmates who share living premises of 165.7 sq. m. His dormitory section measures 43.9 sq. m and accommodates 22 inmates. Measures undertaken by the colony administration, including transfer to another colony, request to stop assigning inmates to the colony, etc., decreased the number of inmates. Dormitories are lit with natural and electric light.  There is artificial ventilation and a central heating system. Each dormitory has lavatory rooms. Lavatory pans are installed in metal cabins for privacy. Inmates bathe twice a week. There are 16 shower heads in the bathing room used at the same time by up to 30 inmates. Inmates of two brigades share a walking yard of 120 sq. m., which can be used any time of the day without limitation. They also have access to a prison sport centre and another part of the yard with sport equipment, according to a schedule.Almost 400 inmates work in the colony in sewing, woodworking and metalworking manufactures, as well as a bakery and a packing shop.The photos submitted by the Government depicted the territory adjacent to the dormitory, including a football field, a walking yard, area with sport equipment; an outside yard with checkboards, a bakery, manufacture facilities. They also showed several rooms with benches and a TV on a wall. There were no photos of sleeping premises or hygiene facilities. |
| 6. | 14988/1813/03/2018 | Dmitriy AnatolyevichUsoltsev1975 |  | 07/06/2018Article 3 | 04/10/2018 | IK-13 Sverdlovsk Region | 21/01/ 2017 to 26/09/ 2017Over | 2 | The applicant shared a section of 8 sq. m with 7 other inmates. It was hot in summer and cold in winter. Inmates were not given proper clothes. Food was scarce and included no meat, fresh vegetables and fruits. | Relying on the prosecutors’ reports and certificates issued by the colony director, the Government denied that there had been overcrowding in the colony. The applicant always had no less than 2 sq. m of personal space, an individual sleeping place, bedding and cutlery. He had been first assigned to brigade no. 7 and then to brigade no. 2. 95 inmates from brigade no. 7 lived in the premises of 238.2 sq. m (equipped with 119 berths). 85 detainees from brigade no. 2 shared 183.75 sq. m. with 91 sleeping place.The remaining conditions in the colony complied with the legal requirements. Brigade no. 7 used a lavatory room with 14 sinks, 9 lavatory pans and 3 urinals. Lavatory pans were separated by partitions. Brigade no. 2 had a lavatory room with 13 sinks, 7 lavatory pans and 2 urinals.Sleeping premises had large numbers of windows that could be opened for ventilation. The centralised heating system functioned properly, and dormitories were heated from 15 September to 15 May each year. Temperature did not fall below 18 degrees Celsius. Sanitary conditions in the dormitories were satisfactory. There were neither rodents nor insects in the sleeping premises. Inmates could take a shower twice a week for no less than 15 minutes. Fresh set of linen was given after the shower. |
| 7. | 17991/1829/03/2018 | Vitaliy Sergeyevich Trukhmanov1988 |  | 05/07/2018Articles 3 and 13 | 31/10/2018 | IK-11 Nizhniy Novgorod Region | 21/11/2016 to 05/03/2018Over | < 2 | The applicant complained of the following: overcrowding, insufficient number of toilets and wash basins, lack of fresh air, lack of or insufficient electric light, presence of insects/rodents, inadequate clothing and hygienic allowance, poor quality of food, no or restricted access to shower, lack of or inadequate hygienic facilities, passive smoking, insufficient space in the exercise yard. | The Government did not dispute the applicant’s description. They were not ready to submit a unilateral declaration in the applicant’s case given that his detention was not yet over. The applicant insisted that his detention in that colony had been over on 5 March 2018 as he was transferred to pre-trial detention facility in connection with another criminal case.  |
| 8. | 19837/1809/04/2018 | Soslan AlanovichSabanov1978 |  | 05/07/2018Article 3 | 31/10/2018 | IK-11 Nizhniy Novgorod Region | 14/08 2017 to present | 2  | The applicant is assigned to brigade where the number of inmates was between 110 and 130 persons. The brigade shares four living sections, the applicant is in a room of 90 sq. m housing 56 inmates.Other complaints: insufficient hygiene, shower and lavatory facilities; lack of time and privacy for hygiene procedures and toilet; lack of artificial ventilation system; rooms are stuffy and dirty; food is of poor quality, without fresh fruits and vegetables; showers twice a week. | The Government did not submit any comments. They forwarded certificates from the colony director that noted that the brigade of 113 inmates shared living premises of 225.1 sq. m.; the applicant lived in section no. 2 of 63.2 sq. m accommodating 31 inmate. Each inmate had an individual sleeping place. The section has large windows that can be opened. There is an artificial ventilation system. The remaining submissions were identical to those made in the case of Mr Yefimenko (see no. 9152/18 above). |
| 9. | 21542/1821/04/2018 | Valeriy Vladimirovich Nogomanov1977 | Viktoriya Pavlovna ProkofyevaSt Petersburg | 27/09/2018Articles 3 and 13 | 25/01/2019 | IK-6 Chuvashia Republic | 16/04/2004 to 30/01/2018Over | < 2 | The applicant alleged that the colony had been severely overcrowded, having accommodated around 1,800 inmates, in excess of its maximum capacity. The applicant shared a section of 60 sq. m with 40 to 50 inmates. Inmates did not have sufficient sleeping places, and used wooden planks as beds.Other complaints: grossly insufficient sanitary equipment, no or restricted access to running water, passive smoking, lack of fresh air, poor quality of potable water, no or restricted access to shower and hot water, inadequate temperature, sharing cells with inmates infected with contagious disease.  | The Government did not dispute the applicant’s submissions. They asked the Court to contact the applicant given that they had doubts as to the authenticity of the signature on the application form and the authority form to represent the applicant. Ms Prokofyeva responded by providing a copy of the applicant’s passport and an authority form, certified by a notary, and empowering her to represent the applicant in the proceedings before the Court.  |
| 10. | 29155/1803/06/2018 | Vladimir Vasilyevich Izvekov1975 |  | 27/09/2018Articles 3 and 13 | 25/01/2019 | IK-2 Zabaykalskiy Region | 27/04 2016 to present | >2 | The applicant was assigned to a brigade of 120 inmates, sharing living premises of 189.1 sq. m. A large part of the premises is taken by two-tier bunk beds, chairs, and bedside tables, restricting movement. The major part of the day inmates spend inside. Other complaints: insufficient heating; rooms infested with insects; grossly insufficient sanitary and toilet facilities. | The Government did not challenge the conditions of detention as described by the applicant. |