THIRD SECTION

**CASE OF ZATYNAYKO v. RUSSIA**

*(Applications nos. 1935/07 and 41798/07)*

JUDGMENT

STRASBOURG

25 June 2019

*This judgment is final but it may be subject to editorial revision.*

In the case of Zatynayko v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 4 June 2019,

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

PROCEDURE

1.  The case originated in two applications (nos. 1935/07 and 41798/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Vladimir Anatolyevich Zatynayko and Mr Andrey Anatolyevich Zatynayko (“the applicants”), on 30 May 2007 and 31 July 2007, respectively.

2.  The applicants, who had been granted legal aid, were represented by Ms O. Preobrazhenskaya, a lawyer admitted to practice in Moscow. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  On 18 November 2011 the Government were given notice of the first applicant’s complaints under Article 5 § 1 (unlawful detention between December 2005 and May 2007) and Article 6 (unlawful composition of the trial panel, partiality of the tribunal, removal of his counsel and denial of access to the case file).

4.  On 5 May and 8 December 2011 the Government were given notice of the second applicant’s complaints under Article 3 (inhuman treatment in connection with his application before the Court), Article 5 § 1 (unlawful detention between 13 September 2002 and 17 January 2003), Article 5 § 4 (lack of an effective procedure to challenge the lawfulness of the decision of 13 September 2002), Article 6 (composition of the trial panel, partiality of the tribunal, length of the criminal proceedings), Article 8 §§ 1 and 2 (interference with the right to respect for correspondence), and Article 34 (hindrance with the right of application).

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicants, two brothers, were born in 1970 and 1975 and are currently serving prison sentences in Sol-Iletsk, Orenburg Region.

A.  Criminal proceedings against the applicants

1.  First round of proceedings

6.  On 5 December 2001 the Volgograd Regional Court found the applicants guilty of several murders.

7.  On 23 July 2002 the Supreme Court of Russia quashed that judgment on appeal and remitted the case for fresh consideration.

2.  Second round of proceedings

8.  In September 2002 the criminal case was resubmitted to the Volgograd Regional Court for trial by a professional judge assisted by two lay judges.

9.  On 13 September 2002 the Regional Court extended the applicants’ pre-trial detention, indicating that the measure of restraint should remain unchanged.

10.  According to the second applicant, on 23 September 2002 he lodged two appeals against the extension order of 13 September 2002. The first one, recorded under reference number 35/13/2-218-z, was sent to the Supreme Court of the Russian Federation and the second one, recorded under reference number 35/13/2-217-z, was sent to the Volgograd Regional Court.

11.  On 5 December 2002 the composition of the court was changed and the case was referred to a trial judge and two new lay judges, Mr D. and Ms Mot.

12.  On 17 January 2003 the Regional Court found the applicants guilty of several counts of murder and sentenced them to life imprisonment.

13.  On an unspecified date the second applicant lodged an appeal against the judgment of 17 January 2003.

14.  On 8 July 2003 the Supreme Court of the Russian Federation upheld the applicants’ conviction on appeal. According to the second applicant, on that date he also learnt that his appeal of 23 September 2002 had not been included in the case file and that it would not be considered.

15.  On 21 December 2005 the Presidium of the Supreme Court quashed the judgment of 8 July 2003 by way of a supervisory review and remitted the case to the appellate court for fresh consideration.

3.  Third round of proceedings

16.  By a letter of April 2007 the Deputy President of the Volgograd Regional Court informed Judge V. of the Supreme Court that Mr D. had acted as a lay judge in five criminal trials on 6, 13 and 21 February, 18 March and 11 September 2002, and that Ms Mot. had been a lay judge in three criminal trials on 8 October, 21 November and 30 December 2002.

17.  On 22 May 2007 the Supreme Court upheld, in substance, the applicants’ conviction on appeal. The appellate court held, *inter alia*, that the participation of the lay judges in more than one criminal trial per year could not undermine the “legitimacy” of the tribunal in the applicants’ case.

B.  The second applicant’s attempt to challenge his detention

18.  On 28 August 2007 the second applicant requested that the time-limit for lodging an appeal against the decision of 13 September 2002 be restored due to the disappearance of the hard copy of his original complaint.

19.  On 21 September 2007 the trial court refused the second applicant’s request, noting that it was no longer possible to establish whether he had lodged the appeal in question in due time or at all.

20.  On 7 May 2008 the Supreme Court upheld the refusal, adding that the second applicant’s complaint of unlawful detention after 13 September 2002 was ill-founded.

С.  Alleged censorship of the second applicant’s letters by the administration of the correctional colony and interference with his right of individual petition

21.  According to the second applicant, on 26 March 2009 he sent an application to the Court via the administration of the correctional colony. The application was not received by the Court.

22.  On 11 December 2009 the Registry of the Court received the initial letter sent by the second applicant through the administration of the correctional colony on 19 November 2009.

23.  On 14 August 2010 the second applicant received a parcel from his representative. It had been opened by the administration of the correctional colony for the purpose of censoring. The parcel contained documents from the Court, sheets of blank paper and two crossword puzzles. The second applicant received the documents and blank paper. The crossword puzzles were transferred for censorship. One day later the second applicant received the crossword puzzles.

24.  Between July and September 2011 the Court received letters from, and sent letters to, the second applicant’s representative.

25.  On 8 December 2011 the second applicant’s complaints were forwarded to the Government for further observations. By that time, the second applicant had sent sixteen letters to the Registry of the Court through his relatives, his representative and the administration of the correctional colony.

26.  Between 31 July 2007, the date on which the application with the Court was lodged, and 8 December 2011, the date on which the complaints were forwarded to the Government, the Registry of the Court sent nineteen letters to the second applicant either acknowledging receipt of letters or requesting documents.

D.  The second applicant’s alleged ill-treatment in the correctional colony

1.  Alleged ill-treatment of May 2006 and December 2007

27.  On 15 May 2006 and 27 December 2007, while undergoing a personal inspection, the applicant had altercations with the guards.

28.  On 15 May 2006 the deputy head of the administration decided to terminate an inquiry into a complaint of ill-treatment lodged by the second applicant. The decision stated as follows:

“At 6.40 a.m. on 15 May 2006 [the second applicant], while being inspected by the guards of the correctional colony, resisted, pushed back one of the guards, Mr Mar., and tried to kick him. [The second applicant] was urged to stop his resistance; however he continued. Therefore [a rubber truncheon] was used. Eyewitnesses, prison guards Mr Mar. and Mr S., confirmed the above-mentioned facts. According to forensic medical examinations conducted on the same day, the [second applicant] had bruises measuring 8 by 2.7 cm and 10 by 2.7 cm on his hips. The experts concluded that the applicant did not need any medical treatment.

In view of the circumstances of the case and [applicable laws], the measures [of restraint] taken against [the applicant] were lawful”.

29.  On 27 December 2007 a forensic medical examination concluded that the first applicant had sustained bruises measuring between 3 by 10 cm and 3 by 15 cm on his hips.

30.  On 28 December 2007 the deputy head of the administration decided to terminate yet another inquiry into the second applicant’s alleged ill‑treatment of 27 December 2007. He dismissed the applicant’s allegations, reiterating verbatim the text of the decision of 15 May 2006.

31.  On 27 January 2008 the regional assistant prosecutor, repeating virtually the same facts and findings as those in the decision of 28 December 2007, acknowledged the lawfulness of the measures taken by the guards of the correctional facility on 27 December 2007.

32.  On 16 November 2010 the second applicant sought to institute criminal proceedings in respect of his alleged ill-treatment on 15 May 2006 and 27 December 2007.

33.  On 17 November 2010, after a pre-investigation inquiry, an investigator of the regional investigative committee, I., refused to institute criminal proceedings due to the absence of *corpus delicti*. In his decision the investigator relied on the statements made by the second applicant and several guards of the correctional colony. He referred to the facts established by the decisions of 15 May 2006 and 28 December 2007 (see paragraphs 28 and 30 above). The investigator’s decision further reads as follows:

“The authorities conducting the preliminary inquiry are sceptical about [the second applicant’s] allegations, since he tries to conceal his discontent with the regime of the correctional colony and complains about the measures taken by the administration of the colony as being unlawful.

According to the statements of Mr. Kan., an employee of correctional colony IK-6, [the second applicant] is a liar and has a tendency to commit crime. Special measures have been taken against him due to his failure to comply with the regime of the correctional colony. All measures taken were lawful.

... Other employees of the correctional colony stated that no unjustified or unlawful measures had been taken in respect of [the second applicant].”

34.  On 17 December 2010 the head of the investigative committee quashed that decision and remitted all the material for fresh consideration.

35.  On 27 December 2010 the investigator again dismissed the second applicant’s complaint due to the absence of *corpus delicti*.

36.  On 14 June 2011 the regional prosecutor quashed the decision of 27 December 2010 and remitted the material for fresh consideration. The parties did not inform the Court about the outcome of the proceedings.

2.  Alleged ill-treatment in August and September 2009 and May 2010

37.  According to the second applicant, on 10 August 2009 and in September 2009 he was blindfolded, suspended by his arms and subjected to electric shocks by the guards of the correctional colony. He was unable to identify them. It appears that the second applicant did not bring any proceedings in respect of those events.

38.  According to the second applicant, on 12 May 2010 he was called to the office of the head of the correctional colony and after being threatened to withdraw his application to the Court, he was beaten up by several guards.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

A.  Lay judges

39.  The Federal Law on Lay Judges of the Federal Courts of General Jurisdiction (“the Lay Judges Act”) came into effect on 10 January 2000. Under section 1(2) of the Act, lay judges are persons authorised to sit in civil and criminal cases as non-professional judges.

40.  Under section 9, lay judges may be called to serve in a district court for a period of fourteen days, or for as long as the proceedings in a particular case last. Lay judges may not be called more than once a year.

B.  Correspondence

41.  Under Article 91 § 3 of the Code on the Execution of Sentences of 8 January 1997 (*Уголовно-исполнительный кодекс*) a prisoner’s correspondence with his lawyer or representative may be censored in certain cases following a reasoned decision of the director or deputy director of the prison administration.

THE LAW

I.  JOINDER OF THE APPLICATIONS

42.  Given their similar factual and legal background, the Court decides that the applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II.  ALLEGED VIOLATION OF ARTICLE 3 ON ACCOUNT OF THE SECOND APPLICANT’S ALLEGED ILL-TREATMENT

43.  The second applicant complained under Article 3 of the Convention that the prison guards had regularly beaten him up. Article 3 reads as follows:

Article 3

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

A.  Admissibility

44.  The Court notes that the second applicant’s complaint of ill‑treatment is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  Submissions by the parties

45.  The Government submitted that the second applicant had never been subjected to torture, or any degrading or inhuman treatment. They further argued that the inquiry carried out into the alleged ill-treatment had not been deficient but had been effective.

46.  The applicant maintained his complaints. He considered that he had been subjected to ill-treatment with a view to coercing him to withdraw his application before the Court.

2.  The Court’s assessment

(a)  General principles

47.  The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim’s behaviour (see *Kudła v. Poland*[GC], no. 30210/96, § 90, ECHR 2000‑XI).

48.  In order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, and *Lyapin v. Russia*, no. 46956/09, §§ 109-15, 24 July 2014).

49.  The Court has stated on many occasions that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000‑IV; and *Lyapin*, cited above, §§ 125-27).

(b)  Application of the above principles in the present case

(i)  Alleged ill-treatment of May 2006 and December 2007

50.  As regards the injuries the second applicant sustained on 15 May 2006 and 27 December 2007 (see paragraphs 27 to 29 above) the Court notes that the medical evidence submitted by the parties conclusively demonstrates that the applicant sustained bruises measuring between 20‑27 sq cm and 30-45 sq cm on his hips. Furthermore, there is no dispute between the parties that at the material time the second applicant was being held in custody. It thus follows that the State is under an obligation to provide a satisfactory and convincing explanation for any injuries he sustained.

51.  The Court further observes that the parties disagreed as to the cause of the injuries. The second applicant asserted that he had been beaten up by the guards of the correctional colony, whereas the Government suggested that the applicant had never been subjected to torture or to any degrading or inhuman treatment.

52.  The Court is not convinced by the Government’s explanation in respect of the injuries sustained by the second applicant. There is nothing in the Government’s submissions that could provide an evidentiary basis for their conjecture and rebut the presumption of their responsibility for the injuries inflicted on the applicant while he was in the care of the State. Accordingly, the responsibility for the applicant’s injuries lay with the domestic authorities.

53.  The Court considers that even though the expert concluded that “the applicant did not need any medical treatment”, that fact alone cannot rule out a finding that the ill-treatment was severe enough to be considered inhuman or degrading. The Court considers that the degree of bruising found by the doctor who examined the second applicant indicates that the latter’s injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3 (compare *Assenov and Others*, cited above, § 95).

54.  Having regard to the above, the Court concludes that on 15 May 2006 and 27 December 2007 the second applicant was subjected to ill‑treatment for which responsibility lay with the domestic authorities and which amounted to inhuman treatment contrary to Article 3 of the Convention. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

(ii)  Alleged ill-treatment of August and September 2009 and May 2010

55.  As for the second applicant’s allegations of ill‑treatment in 2009 and 2010, the Court firstly observes that he has not produced any conclusive evidence in support of his allegations that on 10 August 2009 and in September 2009 he was blindfolded, suspended by his arms (see paragraph 37 above) and subjected to electric shocks by correctional colony guards, or that on 12 May 2010 several guards beat him up in the office of the head of the correctional colony (see paragraph 38 above).

56.  The Court recognises that it may prove difficult for prisoners to obtain evidence of ill-treatment by prison officers. It observes, however, that the second applicant has not suggested, for example, that he was ever refused permission to see a doctor with regard to any injury allegedly sustained on the aforementioned dates. It is true that in 2010 he sought to institute criminal proceedings against officers of the correctional colony. That claim, however, concerned ill-treatment that had allegedly occurred in 2006 and 2007 (see paragraph 32 above). He has not explained why he did not complain of his ill-treatment of 2009 and 2010 at that time.

57.  In these circumstances, the Court considers that the material it has before it regarding the second applicant’s allegation that he was subjected to physical ill-treatment in the correctional colony does not constitute sufficient evidence to support a conclusion to that effect.

58.  Regard being had to the above, the Court is unable to conclude that the evidence submitted constitutes a sufficient evidentiary basis to enable it to find *prima facie* that the second applicant was subjected to the alleged ill‑treatment in 2009-10. It therefore concludes that there has been no violation of Article 3 of the Convention in that respect.

(c)  Adequacy of the investigation

59.  The Court observes that on 16 November 2010 the second applicant sought to institute criminal proceedings in respect of alleged ill-treatment to which he had been subjected on 15 May 2006 and 27 December 2007. The existence of the injuries in question was confirmed by the second applicant’s forensic examination carried out on the day of the alleged ill‑treatment (see paragraph 27 above). His claim was therefore shown to be credible, and the domestic authorities were placed under an obligation to conduct an effective inquiry satisfying the requirements of Article 3 of the Convention.

60.  The Court notes that the second applicant’s allegations of ill‑treatment were examined by the head of the correctional facility administration. His findings were subsequently endorsed first by the assistant prosecutor of Orenburg Region and later by the investigator, I. (see paragraphs 28 and 33 above). Therefore, the issue in the present case is not so much whether there was some form of inquiry in general, but whether it was conducted diligently, whether the authorities were determined to investigate fully the applicant’s allegations and, accordingly, whether the inquiry could be considered to have been “effective” within the meaning of Article 3 of the Convention.

61.  Turning to the question of the effectiveness of the authorities’ response to the second applicant’s allegations of ill-treatment, the Court notes that the circumstances of the alleged ill-treatment were initially examined by the head of the correctional colony administration, who relied solely on the statements of the guards. Although he referred to the forensic medical examination, no conclusion on that particular evidence was drawn. The decision was upheld by the assistant prosecutor, who repeated the findings of the head of the correctional facility (see paragraph 28 above). Lastly, investigator I. of the regional investigative committee, who eventually decided not to institute criminal proceedings, questioned both the second applicant and the guards of the correctional facility. It is noteworthy that I.’s decision refusing to institute criminal proceedings contained generalised conclusions and lacked any reasoning. More importantly, no explanation was provided as to why the guards’ statements were considered more credible than the applicant’s account of the events (see paragraph 33 above). It therefore appears that the investigating authority, without any justification, gave preference to the evidence provided by the guards and employees of the correctional colony.

62.  Even though I.’s decision was quashed by the head of the investigative committee and subsequently by the regional prosecutor (see paragraphs 34 and 36), the outcome of the proceedings remains unclear to the Court, given that the parties did not submit any arguments or evidence in this regard.

63.  The Court reiterates that it has already found a violation in a similar case (see *Lyapin*, cited above, §§ 128-40) and sees no grounds to hold otherwise in the present case. It concludes, therefore, that the refusal to open a criminal case in respect of the second applicant’s credible allegations that he had sustained injuries as a result of ill-treatment on 15 May 2006 and 27 December 2007 amounted to a failure to carry out an effective inquiry into the applicant’s allegations of ill-treatment as required by Article 3 of the Convention.

64.  In view of the foregoing, the Court concludes that there has been a violation of Article 3 of the Convention under its procedural limb.

III.  ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION ON ACCOUNT OF THE SECOND APPLICANT’S DETENTION

65.  The second applicant complained that the Regional Court’s decision ordering his detention between 13 September 2002 and 17 January 2003 had no valid grounds and that he had not had at his disposal an effective procedure by which to challenge the lawfulness of his detention during that period. He referred to Article 5 of the Convention, which reads, insofar as relevant, as follows:

Article 5

“1.  Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c)  the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

4.  Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful ...”

66.  The Government contested those arguments.

67.  The second applicant maintained his claims. He submitted that the first-instance court had extended his detention without giving any reasons or setting any time-limits for the extension, and that the domestic courts had failed to examine his appeal against the extension order.

Admissibility

68.  As regards the second applicant’s complaint lodged under Article 5 § 1 of the Convention, the Court notes that his pre-trial detention ended on 17 January 2003, whereas he lodged his application with the Court in 2007, that is more than six months after the alleged violation had taken place.

69.  The above considerations also apply to the second applicant’s complaint lodged under Article 5 § 4 of the Convention. Even assuming that his appeals against the detention order of 13 September 2002 were never dispatched by the remand prison administration, he did not dispute the fact that he had become aware of that on 8 July 2003 (see paragraph 14 above). However, he did not apply for reinstatement of the time-limit for lodging an appeal against the detention order until 2007. In this connection, the Court cannot agree with the second applicant that the decision delivered on 7 May 2008 by the Supreme Court of Russia restarted the running of the six-month time-limit, since the procedure for reinstatement of a procedural time‑limit was not construed for addressing the specific issue of the lawfulness of detention. It cannot therefore be applied to the issue of the lawfulness of the second applicant’s pre-trial detention back in 2002. From the moment the Supreme Court upheld the applicants’ conviction on appeal (8 July 2003), it should have been obvious to him that an appeal against the detention order of 13 September 2002 had no prospect of success. Moreover, he failed to provide any explanation as to why he had remained passive between 2003 and 2007, without taking any reasonable steps to apply for reinstatement of the time-limit.

70.  It follows that these complaints must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV.  ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT’S DETENTION

71.  The first applicant complained that between December 2005 and May 2007 he had remained in detention without a court decision having been rendered. He referred to Article 5 § 1 of the Convention, which reads, insofar as relevant, as follows:

Article 5

“1.  Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a)  the lawful detention of a person after conviction by a competent court.”

A.  Admissibility

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

B.  Merits

73.  The Government conceded that between December 2005 and May 2007 the first applicant had remained in detention without a court decision. They further accepted that it amounted to a violation of Article 5 of the Convention.

74.  The first applicant maintained his complaint.

75.  The Court reiterates the general principle set out in its case-law that the main issue to be determined in the present case is whether the disputed detention was “lawful”, including whether it complied with “a procedure prescribed by law”. The Convention here essentially refers to national law and the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Benham v. the United Kingdom*, 10 June 1996, § 40, *Reports* 1996‑III).

76.  It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham*, cited above, § 41).

77.  Turning to the circumstances of the present case, the Court observes that on 21 December 2005 the Presidium of the Supreme Court quashed the judgment of 8 July 2003 by way of a supervisory review and ordered a fresh appeal hearing. The Presidium did not give a ruling on the first applicant’s detention.

78.  The Court further notes that pending the second set of appeal proceedings (between December 2005 and May 2007), the first applicant’s detention was covered by the trial judgment of 8 July 2003. It must be determined whether his detention between December 2005 and May 2007 following his conviction was in compliance with Article 5, without prejudging the merits of the complaint under Article 6 referring to the same trial judgment.

79.  The Court observes that the first applicant’s detention was enforced pursuant to the trial judgment of 8 July 2003. The substantive correctness of that judgment generally falls outside the Court’s power of review, as follows from the case-law cited above. However, this case is different from cases where the impugned decisions were taken by judicial authorities following procedures prescribed by law. As established earlier (see paragraph 16 above), the trial panel in the instant case, consisting of a professional judge and two lay judges, on the contrary, exercised its authority in manifest breach of the procedural guarantees provided for by the Convention. Therefore, the detention between December 2005 and May 2007, as covered by the trial judgment of 8 July 2003, cannot be considered “lawful” within the meaning of Article 5 of the Convention.

80.  Having regard to the above findings and the fact that the Government have acknowledged the unlawfulness of the first applicant’s detention, the Court concludes that there has been a violation of Article 5 § 1 of the Convention.

V.  ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF BOTH APPLICANTS

81.  The applicants complained under Article 6 § 1 of the Convention of the unfairness of the criminal proceedings against them, in particular on account of the unlawful composition of the trial court due to different breaches of the procedure on the selection of lay judges provided for by the Lay Judges Act. The relevant parts of Article 6 § 1 read as follows:

Article 6

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law.”

A.  Admissibility

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

B.  Merits

83.  The applicants submitted that the lay judges Mr D. and Ms Mot. had been engaged in other trials in 2002, whereas under section 9 of the Lay Judges Act, lay judges may not be called more than once a year. They considered therefore that Mr D. and Ms Mot. had lacked legal standing to sit on the panel.

84.  The Government contested that argument. In particular, they submitted that the composition of the trial court and selection of lay judges had been in accordance with the Lay Judges Act.

85.  The Court reiterates that it has found a violation of Article 6 § 1 of the Convention in a number of Russian cases where the composition of the trial courts was in violation of the Lay Judges Act (see *Posokhov* *v. Russia*,no. 63486/00, §§ 40-44, ECHR 2003-IV; *Fedotova v. Russia*, no. 73225/05, §§ 38-44, 13 April 2006; *Shabanov and Tren v. Russia*, no. 5433/02, §§ 28‑32, 14 December 2006 and *Yegorychev v. Russia*, no. 8026/04, §§66‑67, 17 May 2016).

86.  Turning to the facts of the present case, the Court observes that the trial hearing of 5 December 2002 was held by a professional judge and two lay judges, Mr D. and Ms Mot. Before delivering the judgment of 17 January 2003, Mr D. had participated as a lay judge in five previous trials and Ms Mot. had participated as a lay judge in three previous trials in respect of other persons, in contravention of the applicable domestic rules (see paragraph 16 above).

87.  Having regard to the above considerations, the Court concludes that the Regional Court that issued the judgment of 17 January 2003 could not be regarded as a “tribunal established by law” (see *Laryagin and Aristov v. Russia*, nos. 38697/02 and 14711/03, §§ 36-37, 8 January 2009).

88.  There has therefore been a violation of Article 6 § 1 of the Convention on account of the unlawful composition of the trial court.

89.  Regard being had to the Court’s findings in paragraphs 85 to 88 above, the Court considers it unnecessary to examine the remainder of the applicants’ grievances about the alleged unfairness of the criminal proceedings against them.

VI.  ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION ON ACCOUNT OF THE HINDRANCE WITH THE SECOND APPLICANT’S CORRESPONDENCE

90.  The second applicant complained under Articles 8 and 34 of the Convention that the administration of the correctional colony where he was serving a prison sentence had not dispatched a number of his letters to the Court between 2009 and 2013, and had opened his correspondence with his representative.

Article 8

“1.  Everyone has the right to respect for ... his correspondence.

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others.”

Article 34

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

Admissibility

1.  Article 8

91.  The Government did not dispute the fact that the parcel received from the second applicant’s representative on 14 August 2010 had been opened by the correctional colony administration. However, they submitted that it had been in accordance with the law and had not hindered the applicant’s right of application.

92.  The applicant claimed that his correspondence with the Court and with his representative had been regularly subjected to censorship and that by opening his parcel on 14 August 2010, the correctional colony administration had infringed his right under Article 8 of the Convention.

93.  The Court first notes that the censorship of his correspondence, of which the second applicant complains, concerns the parcel received from his representative. There is no dispute between the parties that on 14 August 2010 the correspondence was opened and censored.

94.  The Court reiterates that an interference will contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in the second paragraph of that provision and is “necessary in a democratic society” in order to achieve them (see *Puzinas v. Lithuania (no. 2)*, no. 63767/00, § 31, 9 January 2007).

95.  The Court is satisfied that the domestic law at issue (Article 91 § 3 of the Code on the Execution of Sentences) in the present case was drafted with sufficient clarity and precision, and was furthermore accessible and amenable to appeal. The interference was thus compatible with the “lawfulness” requirement in the second paragraph of Article 8. It is further observed that the interference pursued the legitimate aim of preventing disorder and crime.

96.  As to the necessity of the interference, the Court considers that the ordinary and reasonable requirements of imprisonment may justify a system of internal inquiry into prisoners’ complaints about their treatment and conditions of detention (see *Silver and Others v. the United Kingdom*, Commission Report of 1 October 1980, § 301). With that aim in mind, some measure of control over prisoners’ correspondence, such as sporadic screening (other than letters involving domestic or Convention judicial business), may be called for and may not of itself be incompatible with the Convention (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 98, Series A no. 61, and, conversely*, Jankauskas v. Lithuania*, no. 59304/00, §§ 21-22, 24 February 2005). Such considerations do not imply, however, that correspondence may be either blocked for raising complaints about prison matters or delayed until such complaints have first been examined by the prison administration.

97.  Turning to the present case, the Court notes, first, that the second applicant has failed to present any argument calling into question the proportionality of the measure imposed. Secondly, he has not shown that his possible fear of censorship was a valid excuse for circumventing an apparently legitimate prison rule regarding the channels of complaint. Thirdly, the interference was of a minor nature. In the specific circumstances of the present case, the Court considers that the authorities did not overstep their margin of appreciation in the present case.

98.  The Court therefore considers this part of the application manifestly ill-founded. It concludes that it must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

2.  Article 34

99.  The Government submitted that the second applicant had at all times been able freely to exercise his right of individual petition, as provided for in Article 34 of the Convention. All of his letters had been dispatched to the Court.

100.  The second applicant contested the Government’s argument and submitted that the checking of his correspondence by the administration of the correctional colony had not allowed him to present his case before the Court.

101.  The Court observes that between 31 July 2007, that is the date on which the application was lodged with the Court, and 8 December 2011, when the Government were given notice of the complaint, the Registry of the Court received sixteen letters from the second applicant. In the same period the Registry sent nineteen letters to him, either acknowledging receipt of his letters or requesting documents. During that period the applicant changed his representative twice, which is why he did not receive the Registry’s letter of 21 July 2011, which had been sent to his former representative, asking him to submit observations. Having received the letters of 12 August and 13 September 2011 from the applicant’s new representative, the Court extended the time-limit for the submissions. Throughout his correspondence with the Court, the applicant informed the Court only once – that is, on 19 October 2009 – that he had sent a letter via the administration of the correctional colony which had not been received by the Court. Subsequently, on 11 December 2009 the Registry of the Court received the initial letter sent by the administration of the correctional colony on 19 November 2009.

102.  Having regard to the above circumstances, the Court notes that the fact that the first letter sent by the second applicant to the Court was not delivered is insufficient for the Court to conclude that there has been any unjustified interference by the State authorities with the applicant’s exercise of the right of petition in the proceedings before the Court in relation to the present application (see *Fedotova*, cited above, §§ 48-51, and *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002). The applicant was able to send all documents and observations requested by the Registry of the Court.

103.  It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION IN RESPECT OF BOTH APPLICANTS

104.  Lastly, the applicants complained, under Articles 3 and 5 of the Convention, of poor conditions of detention and unlawful pre-trial detention between 1998 and 2003.

105.  In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that they are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VIII.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

106.  Article 41 of the Convention provides:

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

A.  Damage

107.  The applicants did not submit any claims in respect of pecuniary damage.

108.  The first applicant claimed 51,000 euros (EUR) and the second applicant claimed EUR 90,000 in respect of non-pecuniary damage.

109.  The Government considered the applicants’ claims to be excessive and unreasonable.

110.  The Court considers that the applicants must have sustained distress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards EUR 9,800 to each applicant in respect of non-pecuniary damage, plus any tax that may be chargeable.

B.  Costs and expenses

111.  The first and second applicants claimed EUR 2,450 and EUR 4,950 respectively for the costs and expenses incurred before the Court.

112.  The Government submitted that the applicants had not actually incurred the costs and expenses claimed and that nothing should be awarded to them under this head.

113.  The Court notes that each applicant was granted legal aid of EUR 850. It further notes that it does not follow from the documents submitted to the Court that the costs and expenses, as submitted by the applicants’ representative, have been necessarily incurred. Moreover, the applicants were represented on a *pro bono* basis (see *Dudgeon v. the United Kingdom (Article 50),* 24 February 1983, §§ 20 and 22, Series A no. 59, and *Voskuil v. the Netherlands*, no. 64752/01, § 92, 22 November 2007)). Regard being had to the documents in its possession and to its case‑law, the Court makes no award under this head.

C.  Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Decides* to join the applications;

2.  *Declares* the complaints under Articles 3 of the Convention on account of the second applicant’s ill-treatment and the alleged ineffectiveness of the ensuing inquiry, the complaints under Article 5 of the Convention in respect of the first applicant and the complaints under Article 6 of the Convention in respect of both applicants admissible and the remainder of the applications inadmissible;

3.  *Holds* that there has been both a substantive and a procedural violation of Article 3 of the Convention on account of the second applicant’s ill‑treatment of 15 May 2006 and 27 December 2007;

4.  *Holds* that there has been no violation of Article 3 of the Convention on account of the second applicant’s allegations of ill‑treatment sustained in 2009 and 2010;

5.  *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the first applicant’s detention between December 2005 and May 2007;

6.  *Holds* that there has been a violation of Article 6 of the Convention in respect of both applicants on account of the unlawful composition of the trial court;

7.  *Holds* that there is no need to examine the remainder of the applicants’ complaints under Article 6 of the Convention;

8.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months, EUR 9,800 (nine thousand eight hundred euros) each in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

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

9.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 25 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Alena Poláčková
 Registrar President