



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

THIRD SECTION

**CASE OF TOMOV AND OTHERS v. RUSSIA**

*(Applications nos. 18255/10 and 5 others – see appended list)*

JUDGMENT

STRASBOURG

9 April 2019

**FINAL**

**09/07/2019**

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



**In the case of Tomov and Others v. Russia,**

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

Vincent A. De Gaetano, *President*,

Helen Keller,

Dmitry Dedov,

Alena Poláčková,

Georgios A. Serghides,

Jolien Schukking,

María Elósegui, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 19 March 2019,

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

**PROCEDURE**

1. The case originated in six applications (nos. 18255/10, 63058/10, 10270/11, 73227/11, 56201/13 and 41234/16) 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 seven Russian nationals whose names are given below (“the applicants”).

2. Mr E. Mezak, a human-rights defender from Syktyvkar, was granted leave to represent all of the applicants, except Mr Rakov, before the Court (Rule 36 of the Rules of Court). Mr Rakov was represented by Mr A. Shevchenko, a lawyer practising in Vladivostok. 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 later by his successor in that position, Mr M. Galperin.

3. The applicants alleged, in particular, that they had been transferred between penal facilities in inhuman and degrading conditions and that they had not had an effective domestic remedy for that grievance. Mr Rakov also complained that the civil proceedings had been conducted in his absence.

4. Between 10 May 2013 and 3 April 2017 the above-mentioned complaints were communicated to the Government, who were also requested to submit copies of certain regulations. The remainder of applications nos. 63058/10 and 73227/11 was declared inadmissible. It was decided that the proceedings in all cases would be conducted simultaneously (Rule 42 § 2 of the Rules of Court).

5. On 2 May 2014 the Government presented the Court with a unilateral declaration, acknowledging a violation of Article 3 of the Convention in

case no. 18255/10. On 18 November 2014 the Court examined the declaration and decided not to accept it.

6. In application no. 41234/16, the Court asked for the parties' views on the existence of a systemic problem or a structural deficiency of the Russian law resulting in important number of complaints such as the applicants'. The parties submitted their comments. Written submissions on that issue were also received from the Human Rights Litigation Foundation, a non-governmental organisation based in Brussels, Belgium, which the President of the Section had granted leave to intervene (Article 36 § 2 of the Convention).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. General information on prison conveyances in Russia

7. The Russian Federal Prison Service ("the FSIN") transports prisoners across its network of nearly 300 remand prisons and equivalent facilities, eight prisons for convicted offenders, and more than 800 correctional facilities and penal settlements (*колония-поселение*). Together with the Ministry of Internal Affairs, it operates a large fleet of railway carriages and prison vans manned by officers from the convoy department.

8. The general conditions of transport, as transpires from the material submitted by the parties, may be described as follows.

##### *1. Railway carriages*

9. Special railway carriages for transporting prisoners have a solid metal body mounted on the chassis of a regular passenger carriage. There are four basic models. All have five large compartments and, in addition, four (models nos. 512 and 519) or three (models nos. 824 and 4500) small compartments. The passenger capacity is set out in the "Guidance for equipping penal facilities with security and surveillance systems" (Order no. 279 issued by the Ministry of Justice on 4 September 2006, later replaced by Order no. 94 of 17 June 2013, Annex, point 6.2) and in the Conveyance Instruction (see paragraph 67 below). The measurements based on the technical specifications were given in the Supreme Court's decisions (see paragraph 69 below).

10. A large compartment is the same size as a standard Russian passenger compartment designed for four people. It is two metres deep and one and a half metres wide. The prison version of the compartment is fitted

with six and a half sleeping places. Six bunks, 60 centimetres wide by 2 metres long, are placed three on each side. A shorter seventh bunk, 50 centimetres wide and 1.6 metres long, bridges the gap between the two middle bunks. The “bridge” bunk makes it impossible to stand upright in the compartment. According to the Conveyance Instruction, a large compartment is suitable for transporting up to twelve people on long-distance journeys or up to sixteen people for short distances. Counsel for the FSIN explained in the proceedings before the Supreme Court (see paragraph 69 below) the manner in which sixteen people were accommodated in a large compartment: five prisoners seated on each of the two lower bunks, one prisoner lying on each of the two upper bunks, and four people seated on the middle bunks joined together with the bridge bunk. In 2012, the Supreme Court held that the occupancy limits established in the Conveyance Instruction for long-distance journeys were incompatible with international law (see paragraph 69 below).

11. Small compartments are two metres deep and one metre wide. They are fitted with three bunks on one side. It is permissible to use them for accommodating up to five people on a long journey or six people on a short journey.

12. Compartments have no windows or inside lighting. Any light comes through a sliding barred door leading to the corridor where guards are stationed.

13. Neither mattresses nor bedding is provided. Apart from bunk beds, compartments have no other fixtures or storage space for prisoners’ baggage.

14. A flush toilet is located at the end of the carriage. It is prohibited to use it when the train is stationary or moving within the perimeter of the sanitary protection zone surrounding a railway station.

## 2. *Prison vans*

15. Prison vans are used to transport prisoners to and from train stations and also between remand prisons, courts and police wards. They have a van chassis, on which a solid metal body is mounted. The most common brands are GAZ-3307 and 3309 vans with many variants featuring a different number of single- and multi-prisoner cells. Their measurements are set out in vehicle type approval certificates, which were examined in the domestic proceedings (see paragraph 69 below), appended to the Government’s submissions in application no. 63058/10, and also listed in point 6.2 of the appendix to the above-mentioned Order no. 94 of 17 June 2013.

16. The prisoner area of the van has security hatches in the roof but no windows. Prisoners and guards board the van through a back or side door. A central aisle opens onto a guards’ area with cushioned seats for convoy officers and a heating unit. The prisoner area is 1.55 to 1.70 metres high.

17. A single-prisoner cubicle, commonly referred to by its Russian vernacular name “*stakan*” (“a drinking glass”), is a solid metal isolation box that is 65 centimetres deep and 50 centimetres wide with one seat inside. Single-prisoner cubicles are used to transport prisoners who belong to a “special category”, such as female offenders or former police officers, and as such must be isolated from others (see point 168 of the Conveyance Instruction in paragraph 66 below). These cubicles have a solid metal body and doors with a peephole and small air holes.

18. Multi-prisoner cells are 1.15 to 1.20 metres deep. They are fitted with two benches facing each other. As per Order no. 94, the occupancy rate in multi-prisoner cells correlates to the length of the bench at a ratio of 45 centimetres per person. Nine or ten-person cells in Gaz and Zil vans are 2.25 to 2.35 metres long; eighteen-person cells in Ural and Kamaz vans are 3.70 metres long. Those cells may have either solid or barred doors.

## **B. Facts of the individual cases**

### *1. The first case of Mr Tomov (application no. 18255/10, lodged on 15 March 2010)*

19. Mr Aleksey Gennadyevich Tomov was born in 1966 and lives in the village of Vylgort in the Komi Republic.

20. From 2004 to 2009 Mr Tomov served a custodial sentence in high-security correctional facility IK-22 in Vorkuta. In August 2009, the Vorkuta Town Court amended his sentence, changing the type of facility to a penal settlement. Accordingly, the authorities decided to transfer him to the KP-52 settlement located in the village of Vetyu in the Knyazhpogostskiy district of the Komi Republic. The nearest city was Yemva, which is located some 900 kilometres away from Vorkuta.

21. The transfer to Yemva began by prison van on 19 September 2009. Mr Tomov and three other detainees were placed in a multi-prisoner cell of a Gaz-3307 van. On its way to the railway station, the van called at the Vorkuta remand prison, where more prisoners were placed on board, bringing the total number of people to ten. The journey to the station took two and a half hours.

22. The transfer continued by train, along the railway line connecting Vorkuta with Yemva via Pechora and Usinsk.

23. On the journey between Vorkuta and Usinsk Mr Tomov shared a large compartment with nine people. That part of the transfer began at 5 p.m. on 19 September and ended at 11.30 a.m. the following day. It lasted nineteen hours with a four-hour stop at Pechora.

24. After a four-hour stop at Usinsk and until their arrival at the destination in Yemva, Mr Tomov shared a small compartment with three people during the second leg of the journey, which lasted from 4.10 p.m. on

20 September until 12.45 p.m. on 21 September, for a total of twenty-one hours with another six-hour stop at Pechora.

25. Prisoners were allowed to visit the toilet two or three times a day. Using the toilet during stops was prohibited.

*2. The case of Ms Punegova (application no. 63058/10, lodged on 24 August 2011)*

26. Ms Yuliya Vadimovna Punegova was born in 1985 and lives in Syktyvkar.

27. On 25 and 27 January and 1 and 18 February 2010, in the framework of a pre-trial investigation, she was taken by prison van to the town court, a forensic facility, a remand centre and a hospital. The trips in January lasted three minutes each way, those in February thirty minutes.

28. According to Ms Punegova, in March, May, July and September 2010 she was also taken to the town court where hearings concerning the matter of her pre-trial detention were held.

29. After the opening of the trial before the Supreme Court of the Komi Republic, she was shuttled between the remand prison and the trial court on ten or twelve occasions between 15 December 2010 and 24 February 2011. The distance was sixteen kilometres and the travel time thirty-five minutes.

30. Each time, Ms Punegova was placed in a single-prisoner cubicle inside Gaz and Kavz vans. In the winter months she suffered greatly from the cold because the heating unit was located in the central aisle, while the solid metal door of her cell prevented warm air from circulating. The outside temperature varied between minus 11 and minus 28 degrees Celsius.

*3. The case of Ms Kostromina (application no. 10270/11, lodged on 14 January 2011)*

31. Ms Natalya Borisovna Kostromina was born in 1978 and lives in Syktyvkar. She states that she suffers from obesity caused by diabetes.

32. In June 2010 investigators in Komi asked the prison service to arrange for her transfer from the correctional facility in Kineshma where she was serving her sentence to a remand prison in Syktyvkar.

33. The transfer began on 25 June 2010 and ended on 18 July 2010. Ms Kostromina transited through remand prisons in Ivanovo, Yaroslavl and Sosnogorsk. She was taken in a prison van from remand centres to railway stations on seven occasions, with each trip lasting one to two hours.

34. Each time Ms Kostromina was placed in a single-prisoner cubicle in a Gaz prison van, together with another detainee, N., who was also in transit from Kineshma to Syktyvkar. Ms Kostromina's suffering was aggravated on account of her obesity and unusually hot summer temperatures.

35. In his letter of 6 June 2011 to a member of the public monitoring commission, the deputy head of the Yaroslavl prison service explained that

Ms Kostromina and Ms N. had been placed together in the single-prisoner cubicle in order to isolate them from male offenders.

*4. The case of Mr Rakov (application no. 73227/11, lodged on 11 October 2011)*

36. Mr Yevgeniy Nikolayevich Rakov was born in 1969 in Vladivostok.

37. Pursuant to an order issued by the Primorskiy Regional Court, Mr Rakov was to be transferred from the facility where he was serving his sentence to a remand prison in Vladivostok, located 200 kilometres away.

38. At about 4 p.m. on 21 February 2011 Mr Rakov, together with twelve other prisoners, was taken to the Nakhodka railway station and placed in a large compartment of a railway carriage. Prisoners were not allowed to use the toilet until approximately 8 p.m. The wait was particularly difficult for Mr Rakov, who suffered from chronic prostatitis. Upon arriving at Ussuriysk station, the railway carriage was left overnight on a siding with the prisoners locked inside the compartment without access to water or a toilet. They had to urinate into plastic bags or bottles and stash them under the lower bunk. The train arrived at Vladivostok station at about noon the following day, but the prisoners had to wait until 7.30 p.m. until vans were ready to take them to the remand prison. No water or toilet access was authorised during the wait. The transfer ended at 9 p.m. on 22 February 2011.

39. Mr Rakov complained about the conditions of his transfer to various authorities and also to a court of general jurisdiction, seeking compensation for non-pecuniary damage.

40. On 12 April 2011 the Primorskiy regional prosecutor's office replied that they had questioned the guards who had been on duty on 21 and 22 February and established that the number of prisoners in the compartment had not exceeded the norm. Hot water had been distributed between 8.10 p.m. and 8.20 p.m. on 21 February 2011. On the following day no hot water had been distributed because the prisoners had finished their dry rations the previous night. Toilet visits had been authorised from 9.10 p.m. to 10.40 p.m. on 21 February and from 10.10 a.m. to 11.00 a.m. on 22 February. The prosecutor concluded that the guards had not breached any regulations.

41. On 22 April 2011 the FSIN replied to Mr Rakov that, following verification and having interviewed twenty-three prisoners, it had been established that he had been placed together with nine prisoners in a large compartment. The nine-hour wait at Ussuriysk had been accounted for by the schedule of passenger trains. The relevant sanitary regulations forbade the use of flush toilets of the type installed in prisoner carriages while the train was stationary or was passing through large stations. The FSIN determined that the guards had acted in compliance with the regulations and

that the conditions of Mr Rakov's transportation had not amounted to torture or inhuman treatment.

42. In his statement of claim to the Sovetskiy District Court in Vladivostok, Mr Rakov designated Mr Shevchenko as his representative. The court informed him that the personal attendance of incarcerated litigants was not provided for by law and invited him to issue a power of attorney for Mr Shevchenko, which Mr Rakov did. On 30 May 2011 the District Court held a hearing, but Mr Shevchenko did not attend. Having heard oral submissions from representatives of the FSIN and the federal treasury, the court rejected Mr Rakov's claim for compensation. The judgment restated the findings of the above-mentioned inquiry by the FSIN and endorsed its conclusion to the effect that there had been no breach of Mr Rakov's rights.

43. Mr Rakov lodged an appeal. He listed Mr Shevchenko as his representative and also sought leave to appear in person. On 12 July 2011 the Primorskiy Regional Court rejected the appeal in a summary decision, without hearing Mr Rakov or his representative.

*5. The case of Mr Vasilyev (application no. 56201/13, lodged on 7 May 2013)*

44. Mr Dmitriy Lvovich Vasilyev was born in 1958 and lives in Pechora. From 2007 to 2013 he served a custodial sentence in the IK-54 correctional facility in the Sverdlovsk Region.

45. At about 11 p.m. on 10 November 2012 Mr Vasilyev and seven other detainees were loaded into a multi-prisoner cell of a Gaz van. The detainees were in the van for one hour, first in transit to the railway station and later while they waited for the train to arrive.

46. At about midnight Mr Vasilyev was transferred to a railway carriage, coupled to a passenger train bound for Yekaterinburg. During the eight-hour journey to Yekaterinburg, a two-hour wait in a siding at Yekaterinburg station and a two-hour wait for a police escort, Mr Vasilyev was kept together with between nine and thirteen other people in a large compartment.

47. In Yekaterinburg, Mr Vasilyev and thirteen other prisoners were taken to the IZ-66/1 remand prison in a multi-prisoner cell of a Kamaz van. The journey ended at 1 p.m. on 11 November 2012 having lasted a total of fourteen hours.

48. The return journey began at 5 p.m. on 24 November 2012, when Mr Vasilyev and thirteen other prisoners were taken to the railway station in a Kamaz prison van. They were held in a multi-prisoner cell during the two-hour trip. Until 4 a.m. the following day, Mr Vasilyev was transported in a large compartment of a prisoner carriage, with between nine and eleven other people.

49. At the destination, Mr Vasilyev and seven other prisoners were again loaded into a multi-prisoner cell of a Gaz van. They alighted one hour later

at the penal facility. The total duration of the journey was in excess of twelve hours.

*6. The second case of Mr Tomov and the cases of Mr Roshka and Mr Barinov (application no. 41234/16, lodged on 2 July 2016)*

50. Mr Tomov (for his personal details see paragraph 19 above), Mr Nikolay Konstantinovich Roshka, born in 1965 in Moldova, and Mr Nikita Valeryevich Barinov, born in 1990 in Syktyvkar, were in transit between the IZ-11/1 remand prison in Syktyvkar and the IK-23 high-security penal facility in the Murmansk Region. It was a journey of approximately 2,200 kilometres.

51. From 3.30 p.m. to 5 p.m. on 18 December 2015 the three applicants and five other people were placed in a multi-prisoner cell of a Kamaz prison van and taken to Syktyvkar railway station. The same eight prisoners travelled in a large compartment of a prisoner carriage to Sosnogorsk via Ukhta, arriving at 7.30 p.m. the following day.

52. After a three-night stay at the Sosnogorsk remand prison, in the morning of 22 December they were taken back to Ukhta railway station by prison van in which fourteen people shared a multi-prisoner cell. From 10 a.m. until 7.30 a.m. the following day, ten prisoners, including the applicants, travelled in a large compartment of a railway carriage from Ukhta to Vologda. That journey was followed by a transfer to the Vologda remand prison by van with nine people sharing a multi-prisoner cell. The transfer took one hour.

53. The three applicants then spent almost three weeks in the Vologda remand prison.

54. On 13 January 2016 the transfer resumed. From 3.40 p.m. to 5.40 p.m. fifteen prisoners, including the applicants, were placed in a multi-prisoner cell of a Kamaz van and taken to Vologda station.

55. From 5.40 p.m. on 13 January until 8.10 a.m. on 16 January a total of twelve people were transferred from Vologda to Olenegorsk in the Murmansk Region. They were held in a large compartment of a prisoner railway carriage. During a fifteen-hour stop in St Petersburg on 14 January, the temperature fell to minus 20 degrees Celsius, but the heating did not function because the prisoner carriage was stationary. The prisoners were allowed two toilet visits per day and given three pots of hot water per day.

56. Lastly, from 8.10 a.m. until 10.10 a.m. on 16 January, fourteen prisoners, including the applicants, were transferred to the penal facility in a multi-prisoner cell of a Kamaz van.

### C. Challenges by the applicants to the normative framework

#### 1. Challenge by Mr Rakov (case no. GKPI11-1143)

57. Mr Rakov challenged point 167 of the Conveyance Instruction (see paragraph 67 below), claiming that the excessively high normative capacity of railway carriages led to overcrowding and deprived prisoners of a proper night's rest.

58. On 13 October 2011 the Supreme Court of Russia rejected the challenge, finding that the instruction had been issued by the competent authority and did not contradict any hierarchically superior regulations. The normative capacity conformed to the technical specifications of railway carriages and to health and safety regulations. There was no indication that such conditions could be constitutive of torture or inhuman treatment which, in the Supreme Court's view, must involve deliberate infliction of pain or suffering.

59. Mr Rakov appealed, complaining in particular that the impugned document had not been published and had been classified "for service use only".

60. On 27 December 2011 the Appeals Panel of the Supreme Court rejected the appeal in a summary fashion.

#### 2. Challenge by Mr Tomov and Mr Vasilyev (case no. AKPI15-1121)

61. Relying on the Court's case-law, Mr Tomov and Mr Vasilyev challenged Order no. 279 (see paragraph 9 above), complaining that the normative occupancy rates laid down in the Order were excessively high and necessarily led to overcrowding.

62. On 16 November 2015 the Supreme Court rejected the challenge, finding as follows:

"The plaintiffs' argument that the measurements of cells in prisoner vans and railway carriages, as established in the guidance, are incompatible with the requirements of international law are unfounded because no other normative act of a higher legal order provides for different cell measurements in those conveyances.

The plaintiffs' claim that the technical specifications of the guidance are in breach of the case-law of the European Court in the cases of *Khudoyorov v. Russia*, *Guliyev v. Russia*, and *Idalov v. Russia* in the part concerning the conditions of transfer by road and by rail, is erroneous because it does not correspond to the contents [of those judgments]."

63. On 25 February 2016 the Appeals Panel of the Supreme Court rejected their appeal in a summary fashion.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Conveyance Instruction

64. The standards for transporting prisoners are set out in a document approved jointly by the Ministry of Justice and the Ministry of the Interior on 24 May 2006 (no. 199dsp/369dsp, as amended by joint order no. 236dsp/900dsp of 22 October 2008) and classified for service use only. A copy of the instruction on the performance of duties by special convoy departments of the prison service (the “Conveyance Instruction”) was submitted by the applicants’ representative (see paragraph 87 below) and verified against quotes from that document in domestic judicial decisions.

65. Section II describes the procedure for establishing regular transit routes. It provides that prisoner railway carriages are to be coupled to passenger trains or to mail-and-freight trains (point 14). Railways are identified as the preferred mode of transport; regular motorway routes may be established only if no rail links are available (point 17). Regular routes must be established with a view to minimising the number of transfers and maximising the number of prisoners who can be transported together. Should that number fall below 40% of capacity over a three-month period, the regional prison department must suggest a re-arrangement of the established routes (point 19).

66. Section XVII sets out the conditions of detention of untried prisoners and convicted offenders during transportation. Guards are required to ensure the separation of sixteen categories of detainees: women must be kept separate from men, juveniles from adults, untried prisoners from convicted offenders; foreigners, life prisoners, sick prisoners and former police officers from any other group, and so on (points 164 and 166). It is not permissible to load a railway carriage with more than six categories of detainees or use more than 70% of its carrying capacity. A prison van can accommodate as many categories as it has cells (point 168).

67. The normative carrying capacity of a railway carriage is set at twelve people in a large compartment or five people in a small compartment. If the transfer time is below four hours, it is permissible to place up to sixteen people in a large compartment or up to six in a small compartment. A prison van with a carrying capacity of up to two tons may carry up to thirteen prisoners, a van with a capacity of up to three tons may carry up to twenty-one prisoners, and a van with a capacity of up to four tons may carry up to thirty-six prisoners (point 167). Prisoners may carry baggage weighing up to fifty kilogrammes (point 174).

68. Dry rations are provided by the facility at the departure point for the entire duration of the transfer. In the event of a delay, additional dry rations are supplied by the nearest remand prison or penal colony. The procedure

for distributing hot water must be established by the director of the regional prison department (point 175).

69. On 24 January 2012 the Supreme Court of the Russian Federation granted in part a legal challenge brought by three detainees represented by Mr Mezak (case no. GKPI11-1774, judgment upheld on appeal on 17 April 2012). They alleged that the wording of the second and third paragraphs of point 167 of the Conveyance Instruction created conditions for severe overcrowding during transportation. As regards transfers by rail, the Supreme Court held:

“Accommodating six prisoners in a small compartment ... does not exceed the carrying capacity and is compatible with international and federal law.

Having regard to the size of the bunks and the width of the bridge bunk (not more than forty-seven centimetres), the court considers that placing sixteen prisoners in a large compartment that has five sleeping and eight sitting places must be excessively uncomfortable for them and is incompatible with the Standard Minimum Rules for the Treatment of Prisoners. Accordingly, paragraph 2 of point 167 of the Instruction must be declared invalid in the relevant part.”

As regards transfers by prison van, the Supreme Court found:

“... [T]he normative seating capacity, as established in paragraph 3 of point 167 of the Conveyance Instruction, is compatible with the technical specifications of [prison vans]. The regulation is not in breach of Article 3 of the European Convention ... [because] the transfer of prisoners by van in compliance with the normative seating capacity set out in paragraph 3 of point 167 of the Instruction is not, in itself, constitutive of torture, cruel or inhuman treatment.”

70. In 2018, the normative carrying capacity of a railway carriage was reduced to ten people in a large compartment and four in a small compartment (see paragraph 76 below).

## **B. Case-law of Russian courts**

71. In 2011, the applicant Mr Vasilyev and another person complained to the Syktyvkar Town Court that the conditions in which they had been transported earlier that year had been in breach of Article 3 of the Convention. On 24 February 2012 the Town Court rejected their claim at first instance, finding that the placement of up to twelve people in a large compartment of a railway carriage had been compatible with its normative occupancy rate and the Conveyance Instruction. On 13 August 2012 the Supreme Court of the Komi Republic quashed that decision, finding as follows:

“The judicial panel cannot agree with the conclusion of the first-instance court because the compatibility of the conditions of transport with normative requirements cannot in itself indicate that the conditions of transport were also compliant with Article 3 of the Convention ...

The conditions of transport in the present case may be assimilated to those in the case of *Khudoyorov [v. Russia]* ... In these circumstances, the judicial panel considers that the appeal arguments as to the cramped conditions of transport are meritorious.”

72. On 3 October 2012 the Presidium of the Supreme Court of the Komi Republic granted a cassation appeal lodged by the FSIN and reinstated the Town Court’s decision, attaching decisive weight to formal compliance with the regulations and the Supreme Court’s case-law upholding the normative framework (see paragraph 69 above).

73. In February 2013, the applicant Mr Vasilyev lodged two further claims, seeking a declaration that the conditions of his transport in November 2012 had been incompatible with Article 3 of the Convention. His claims were rejected by the Pechora Town Court on 23 and 24 September 2013, and on appeal by the Supreme Court of the Komi Republic. The courts referred to the Supreme Court’s case-law (see paragraphs 58 and 69 above) to the effect that the conditions of transport had not breached the normative requirements.

74. Similar claims lodged by Mr Al., Mr Ya. and Mr An. were rejected by the Komi courts on the same grounds (judgments of the Supreme Court of the Komi Republic of 23 January 2012, 26 November 2012 and 31 October 2013, respectively). In the case of Mr Ya. (case no. 33-5332/2012), the appellate court added:

“The claimant’s transportation in the prison van and railway carriage [carried out] in compliance with the requirements of the [Conveyance] Instruction and in the absence of evidence of actual bodily injury is not, in itself, indicative of degrading or inhuman treatment. If anything, the conditions of transport are the same for all convicted offenders and are acceptable in the prevailing social and economic situation in the country ... Social isolation of convicted offenders implies restrictions on [their] rights and freedoms and involves an element of suffering which is a condition precedent for attaining the objectives of criminal punishment: the restoration of social justice and the rehabilitation of the offender.”

### **C. High Commissioner for Human Rights (Ombudsman)**

75. Section 2.3 on “Rights of detainees” in the 2015 report by Russia’s High Commissioner for Human Rights noted a lack of progress in the matter of public control over conditions of transport:

“Research into the efficiency of operations of the Public Monitoring Commissions revealed that certain locations are inaccessible to public control or human rights monitoring: vehicles and specials cars for transporting convicted offenders and remand prisoners ... Regrettably, the Ministry of Justice did not heed the High Commissioner’s proposals for the organisation of public monitoring of observance of the rights of persons being escorted to courts, investigative authorities or to penal facilities. Moreover, no consideration has been given to proposals to amend legal regulations issued by the Prosecutor General’s Office regarding public monitoring of holding cells in the courts and of prisoner transport.”

#### **D. Ministry of Justice's annual monitoring report**

76. The 2017 report on the monitoring of legal developments in the Russian Federation (*Доклад о результатах мониторинга правоприменения в Российской Федерации*) described measures taken for the execution of the Court's judgments concerning conditions of transport ("the *Guliyev* group of cases", point 3 of appendix 5):

- a joint order of the Ministry of Justice and Ministry of the Interior (no. 26dsp/85dsp) of 9 February 2018 had amended the Conveyance Instruction, reducing the normative carrying capacity of large compartments to ten people, and of small compartments to four people;

- the conditions of transport of pregnant women and women with infants had been improved;

- the Ministry of the Interior had updated the technical specifications of prison vans and was prepared to work towards a further increase of personal space per detainee and the introduction of double-decker prisoner railway carriages;

- further improvements to transportation routes and to interaction between State authorities in charge of transferring detainees, as well as a gradual replacement of the rolling stock, were envisaged in accordance with the "Conceptual framework for the development of penal facilities in the period up to 2020" (Government Resolution no. 1772-r of 14 October 2010);

- a review of the recommendations contained in a CPT factsheet published in 2018 was planned.

### **III. RELEVANT COUNCIL OF EUROPE MATERIALS**

#### **A. Committee of Ministers**

77. The Committee of Ministers of the Council of Europe is supervising the execution of judgments in the case of *Guliyev v. Russia* (no. 24650/02, 19 June 2008) and forty-five repetitive cases, in which the Court found a violation of Article 3 of the Convention on account of the inhuman and degrading conditions in which the applicants had been transported.

78. Communication from the Russian Federation concerning the case of *Guliyev v. Russia* (DH-DD(2011)843) which the Russian Government submitted for consideration at the Committee of Ministers' 1128th meeting on 29 November 2011, indicated that copies of the translated judgment had been made available to officers of the Ministry of the Interior and the FSIN who had been directed to ensure that the conditions of transport be compliant with international and domestic law and that measures be taken in respect of well-founded complaints about conditions of transport. Further copies of the Court's judgment had been provided to regional supervising

prosecutors and presidents of regional courts. The Russian authorities concluded that there was no need to prepare a specific action plan.

## **B. Committee for the Prevention of Torture (CPT)**

79. In June 2018, the CPT issued a factsheet presenting its main standards in respect of the transport of detainees ([CPT/Inf\(2018\)24](#); footnotes with references to CPT country visit reports have been omitted):

### **1. Material conditions**

“When vehicles are equipped with secure compartments, individual cubicles measuring less than 0.6 m<sup>2</sup> should not be used for transporting a person, no matter how short the duration. Individual cubicles measuring some 0.6 m<sup>2</sup> can be considered as acceptable for short journeys/distances; however, cubicles used for longer journeys/distances should be much larger.

Compartments or cubicles intended to transport more than one detainee for short journeys/distances should offer no less than 0.4 m<sup>2</sup> of space per person, and preferably more. As regards longer journeys/distances, compartments should offer at least 0.6 m<sup>2</sup> of personal space.

Compartments or cubicles used for transporting detainees should be of a reasonable height.

All transport vehicles should be clean, sufficiently lit and ventilated, and heated appropriately.

Transport vehicles should be equipped with suitable means of rest (such as appropriate benches or seats).

For overnight transport by train, compartments should be equipped with beds or sleeping platforms and inmates should be provided with mattresses and sheets/blankets during the journey.

The necessary arrangements should be made to provide detainees with drinking water as required and, for long journeys/distances, with food at appropriate intervals.

In the context of long journeys, arrangements should be made to allow detainees to have access to sanitary facilities or to satisfy the needs of nature in conditions offering sufficient privacy, hygiene and dignity. When travelling by road, this implies the organisation of regular stops.”

### **2. Safety measures**

“Detained persons should be transported in vehicles suitably designed for that purpose, taking due account of all relevant safety requirements in order to protect detainees.

The number of detainees transported should not exceed the capacity of the vehicles used for that purpose.

Detainees should not have to stand up during a journey due to a lack of seating space ...

All vehicles which are used for the transportation of detained persons should be equipped with appropriate safety devices (such as safety belts).”

80. As regards the conditions for transporting detainees by rail, the CPT examined conditions similar to those obtaining in the instant case during a visit to Ukraine and found that “the manner in which prisoners [were] transported ... [was] unacceptable, having regard *inter alia* to the material conditions and possible duration of travel”. It recommended, as an immediate measure, that the national authorities take steps, in particular, to reduce significantly the maximum number of prisoners per compartment in railway carriages: 3.5 sq. m compartments should never contain more than six persons, and 2 sq. m compartments never more than three persons (Ukraine: Visit 2000, CPT/Inf (2002) 23). By contrast, it found the conditions satisfactory during a contemporaneous visit to Switzerland, where most prisoners were accommodated in single bar-fronted compartments. Compartments had a surface area of 0.9 by 1.5 metres and a height of 1.95 metres, and were fitted with one padded bench (Switzerland: Visit 2001, CPT/Inf (2002) 4).

#### IV. RELEVANT INTERNATIONAL MATERIAL

81. The United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Nelson Mandela Rules”) provide, in particular, as follows:

##### **Removal of prisoners**

“45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

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

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.”

82. *Prisoner transportation in Russia: Travelling into the unknown*, a report released by Amnesty International on 25 October 2017, documented the conditions in which prisoners in Russia are transported to correctional facilities. The relevant parts of the report read:

“The problems of prisoner transportation in Russia are ... exacerbated by both history and geography. From the Soviet GULAG the Russian Federal Penitentiary Service (FSIN) has inherited a network of penal colonies many of which are located in sparsely populated parts of the country such as the Far North and Far East due to their origins as labour camps for the extraction of raw materials ... The size of the country combined with the location of the penal colonies means that prisoners must be transported over great distances to reach the colonies where they are to serve their sentences. They will also need to be transported between colonies, to hospitals for treatment and to and from courts for hearings ...

FSIN treats all information about prisoner transportation and their whereabouts with the utmost secrecy. Neither the prisoner, nor their families or lawyers are informed

about the end destination before the transfer begins ... Lack of information about their whereabouts increases their vulnerability because prison monitoring bodies and lawyers will not be able to locate the prisoners in order to visit them while they are travelling.

During transportation, prisoners are placed in overcrowded train carriages and trucks in conditions that often amount to cruel, inhuman or degrading treatment ... During transportation, prisoners have limited access to toilets, and during lengthy waits on sidings, no access at all ...

The disorientating effect of being transported to an unknown destination via an unknown route is compounded by the sensory deprivation of the journey: the ‘Stolypin’ carriages on the trains do not have windows, neither do the prison vans, and prisoners are not allowed to have their watches with them ...”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

83. Having regard to the similarity of the applicants’ grievances, the Court is of the view that the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

### II. COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

84. The preliminary issue the Court needs to deal with before embarking on the examination of the admissibility and merits of the applicants’ complaint is whether or not the Government have complied with their procedural obligation under Article 38 of the Convention to submit the evidence that the Court had requested from them. Article 38 reads as follows:

“The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.”

85. When giving notice of the first application at the origin of the instant case (no. 18255/10), the Court put a number of questions to the parties and requested the Government to produce a copy of the Conveyance Instruction, of technical standards and specifications of prison vans and railway carriages, and of judgments and decisions of Russian courts concerning the transfer of prisoners. In reply, the Government submitted a unilateral declaration. They did not reply to the Court’s request for written evidence.

86. Upon rejecting the Government’s declaration (see paragraph 5 above), the Court fixed a new time-limit for the submission of the requested material. By a letter of 17 December 2014, the Government replied that the Court had erred in rejecting the declaration. They did not comment on the

request for documentation. On 26 January 2015 the Court asked the parties to comment on whether the Government's refusal to produce evidence disclosed a breach of Article 38 of the Convention.

87. On 16 February 2015 the Government replied that they did not see any need to submit the requested documents because they had acknowledged a violation of Article 3 and submitted a declaration. In the meantime, the applicants' representative offered to submit some of the requested material. The Court accepted his offer. On 19 February 2015 he submitted a copy of the Conveyance Instruction and technical standards. The received material was sent to the Government, who were given an additional time-limit to submit comments on it. In a letter of 16 June 2015, the Government refused to make any comments.

88. The Court will examine the matter in the light of the general principles concerning compliance with Article 38 of the Convention as they have been summarised in *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, §§ 202-06, ECHR 2013).

89. Being master of its own procedure and of its own rules, the Court has complete freedom in deciding what kind of evidence the parties are required to produce for due examination of a case. It is sufficient that the Court regards the evidence contained in the requested material as necessary for that purpose (*ibid.*, § 208). The question of whether certain documents or evidence should or should not be submitted to the Court is not a matter that can be decided by the respondent Government, who are obliged, as a party to the proceedings, to comply with the Court's requests for evidence (see *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, § 171, 1 July 2010).

90. The Court cannot accept the Government's argument that their obligation to produce the requested material was extinguished once they had submitted a unilateral declaration acknowledging a violation of the Convention. The obligation to furnish the evidence requested by the Court is binding on the respondent Government from the moment such a request has been formulated, whether it be on initial notification of an application to the Government or at a subsequent stage in the proceedings (see *Janowiec and Others*, cited above, § 203). In the present case, the Court rejected the Government's declaration and reiterated its request for documentation, fixing a new time-limit. The Government, however, did not produce the requested material or furnish any explanation for their failure to do so. Moreover, they refused to verify the copies of the requested material which had been submitted by the applicants' representative.

91. Accordingly, the Court considers that the respondent State has failed to comply with its obligations under Article 38 of the Convention on account of its refusal to submit the requested material in case no. 18255/10.

### III. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

92. The applicants complained that they had been transported in conditions which amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, which reads as follows:

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

93. The applicants Mr Rakov, Mr Tomov in the second case, Mr Roshka and Mr Barinov also complained that they had not had an effective domestic remedy for their complaint about the conditions of transport. Article 13 of the Convention reads as follows:

“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.”

#### **A. The Government’s request that three applications be struck out of the list of cases on the basis of unilateral declarations**

94. In addition to the declaration in case no. 18255/10 which the Court had not accepted (see paragraph 5 above), on 28 July 2016 and 21 July 2017 the Government submitted unilateral declarations in respect of the applications lodged by Mr Vasilyev (no. 56201/13), Ms Kostromina (no. 10270/11), and by Mr Tomov, Mr Roshka, and Mr Barinov (no. 41234/16). They acknowledged a violation of Article 3 of the Convention in connection with the conditions in which those applicants had been transported, and also a violation of Article 13 in respect of Mr Tomov, Mr Roshka and Mr Barinov on account of the absence of effective domestic remedies. The Government offered to pay sums of between 500 euros (EUR) and EUR 1,500 to each applicant and invited the Court to strike their cases out of its list in accordance with Article 37 § 1 (c) of the Convention.

95. The applicants concerned rejected the declarations. They submitted that the Government’s offer was insufficient and out of proportion with their suffering, and that the Russian authorities had not tackled the general problem of conditions of transport.

96. The Court reiterates that an applicant’s consent to the terms of a declaration is not required in order to strike out an application under Article 37 § 1 (c) of the Convention, for such a decision may be taken even if the applicant wishes the examination of the case to be continued. The elements on the basis of which the Court determines whether or not the declaration offers a sufficient basis for finding that respect for human rights does not require it to continue examination of the case are well-established in its case-law. They include in particular the nature of the complaints made, the acknowledgment of a violation of the Convention and the undertaking to

pay adequate compensation for such violation, the existence of clear and extensive case-law in similar cases, the nature and scope of any measures taken by the respondent Government in the course of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at hand (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-76, ECHR 2003-VI; *Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, § 130, 1 July 2014; and *Jeronovičs v. Latvia* [GC], no. 44898/10, §§ 64-71, ECHR 2016).

97. The Court is satisfied that the Government have offered to resolve, in a non-contentious manner, the issues underlying the applications concerned. They acknowledged that the facts, as alleged by the applicants, had given rise to violations of Articles 3 and 13 of the Convention. These issues are also the subject of well-established case-law of the Court, which found a violation of Article 3 of the Convention in a large number of similar Russian cases, starting with *Khudoyorov v. Russia* (no. 6847/02, §§ 112-20, ECHR 2005-X (extracts)) and *Guliyev v. Russia* (no. 24650/02, §§ 58-70, 19 June 2008), and also found a violation of Article 13 (see *M.S. v. Russia*, no. 8589/08, §§ 80-86, 10 July 2014).

98. The applicants did not accept the Government's settlement offer on account of an insufficient amount of compensation and the alleged lack of effort to address the underlying general problem. Focusing on the second limb of their objection, the Court reiterates that, notwithstanding the parties' intention to settle the case or the existence of any other ground for striking the case out of the list, it may consider it necessary to continue the examination of the case if it raises questions of a general character affecting the observance of the Convention (see *Gerasimov and Others*, cited above, § 135). Such questions of a general character would arise, for example, where there is a need to induce the respondent State to resolve a structural deficiency affecting other persons in the same position. The Court has thus been frequently led, under Articles 37 § 1 *in fine*, to verify that the general problem raised by the case had been or was being remedied (*ibid.*)

99. Considering the present matter in the light of the above principles, and having regard to its duty under Article 19 of the Convention to ensure the observance of the engagements undertaken by the High Contracting Parties, the Court discerns the existence of reasons requiring it to continue the examination of these applications. Although it has already adjudicated similar issues in many previous cases and clarified the nature of the Russian authorities' obligations under the Convention, it continues to receive significant numbers of meritorious applications of this kind (see paragraph 177 below). Those applications should normally have been resolved at national level but they were not because of deficient domestic remedies. This situation is at odds with the principle of subsidiarity, thus

fundamentally undermining respect for human rights as defined in the Convention (see *Gerasimov and Others*, cited above, § 137).

100. Taking into account that large groups of people are still deprived of an effective domestic remedy and thus compelled to seek redress in the Court for repetitive violations of their Convention rights, the Court raised a question of principle as to the existence of a systemic problem and put an emphasis on Article 13, which gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal systems (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). However, the Government's declarations by which they sought to settle these cases did not contain any undertaking to address the crucial Convention issue under the Convention which continues to affect hundreds of prisoners in Russia. The Court also notes in this connection the Government's submission to the Committee of Ministers under Article 46 of the Convention that no action plan was required to tackle the large-scale problem of the conditions of prisoners' transfer (see paragraph 78 *in fine* above). Acceptance of the Government's request to strike the present applications out of the Court's list would leave the current situation unchanged, without any guarantee that a genuine solution would be found in the near future (compare *Gerasimov and Others*, cited above, § 138). Nor would it advance the fulfilment of the Court's task under Article 19, that is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" (*ibid.*).

101. In view of the above, the Court considers that the terms of the Government's declarations do not provide a sufficient basis for concluding that respect for human rights does not require it to continue its examination of the applications concerned. Their request to strike the applications out of the list must therefore be rejected.

## **B. Admissibility**

### *1. Whether Ms Punegova's complaint under Article 3 is partly belated*

102. The Government submitted that the application by Ms Punegova was belated in the part relating to the conditions of her transfers in January and February 2010. In the subsequent ten-month period until December 2010 she had not been transported anywhere; that fact should be taken to interrupt the "continuous situation".

103. Ms Punegova replied that in the period between March and September 2010 she had been taken to detention hearings before the town court, even though she was unable to recall the exact dates.

104. The Court reiterates that in cases concerning the conditions of an applicant's transport between a remand prison and a courthouse, even

though the applicant was transported on separate days rather than continually, the absence of any marked change in the conditions of transport to which he or she had been routinely subjected creates a “continuing situation” which brings the entire period complained of within the Court’s competence (see *Tychko v. Russia*, no. 56097/07, § 49, 11 June 2015, and *Nedayborshch v. Russia*, no. 42255/04, § 24, 1 July 2010).

105. The Court considers implausible the Government’s allegation that during the ten-month period from February to December 2010, Ms Punegova was not once taken out of the remand centre. Russian law requires that a preventive custodial measure should be reviewed and extended at regular intervals. Detention hearings are normally conducted in the presence of the detainee. In the absence of any documents showing exceptional grounds for dispensing with Ms Punegova’s participation in the detention hearings during the ten-month period, the Court lends credence to her submission that she had been transferred by prison van to the town court at regular intervals. The Court is also satisfied that the conditions of transfer have remained relevantly similar during the entire period: she was invariably placed in a single-person cell of the prison van because the Conveyance Instruction required that female prisoners be separated from male prisoners during transfers (see paragraph 66 above).

106. It follows that the Court is competent to examine the entire period which Ms Punegova has complained about. She lodged her application on 24 August 2011, that is to say, within six months of the end of that period. Accordingly, the complaint under Article 3 cannot be rejected as belated.

*2. Whether Mr Rakov’s complaints under Articles 3 and 13 are admissible*

107. The Government submitted that Mr Rakov’s complaints under Articles 3 and 13 were belated as he had lodged them more than six months after the last day of his transfer. In the light of the Court’s findings in *Guliyev* (cited above), he should have known that there existed no effective domestic remedies capable of restarting the six-month time-limit.

108. Mr Rakov submitted that the authorities’ reaction to his complaints had demonstrated that there were no effective remedies in the Russian legal system for his grievance.

109. The Court reiterates that the six-month period normally runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available, the period runs from the date of the acts or measures complained of. Under current Russian law, neither a complaint to a supervising prosecutor nor a civil action seeking compensation for inadequate conditions of detention or transport are considered effective remedies (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 102-04 and 113-18, 10 January 2012, and *Guliyev*, cited above, §§ 54-56). In the absence of an effective

remedy, a complaint of inadequate conditions of detention or transport should be introduced within six months of the last day of the applicants' detention or transport (see *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013; *Markov and Belentsov v. Russia* (dec.), nos. 47696/09 and 79806/12, 10 December 2013; and *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, § 54, 16 February 2016).

110. Mr Rakov's transfer had ended on 22 February 2011 but he introduced the complaints relating to the conditions of transfer on 11 October 2011, that is to say, more than six months later. It follows that the complaint under Article 3 is belated under Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4. As the Court is not competent to examine the issues under Article 3, it is unable to establish whether Mr Rakov had an "arguable claim" of a violation of that provision, which element is required in order for Article 13 to come into play. Accordingly, the complaint under Article 13 is incompatible *ratione materiae* and must likewise be rejected pursuant to Article 35 § 4.

### 3. Conclusion

111. With the exception of Mr Rakov's complaints under Article 3 and 13 which have been declared inadmissible, the Court considers that the other complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention; nor are they inadmissible on any other grounds. They must therefore be declared admissible.

## C. Merits

### 1. Submissions by the parties

112. In respect of application no. 41234/16 lodged by Mr Tomov, Mr Roshka and Mr Barinov, the Government acknowledged that the conditions of their transfer had fallen short of the requirements of Article 3 of the Convention and that they had not had effective domestic remedies as required under Article 13 of the Convention. The Government did not make submissions on the merits of the other applications.

113. The applicants submitted that they had been victims of treatment prohibited by Article 3 of the Convention and had lacked an effective domestic remedy as required under Article 13. They pointed out that after the Supreme Court had upheld the normative framework as being compatible with the Convention (see paragraph 69 above), their subsequent applications for a judicial review had been bound to fail (see paragraphs 72 and 73 above).

## 2. Compliance with Article 3 of the Convention

### (a) General principles

114. The general principles relating to the absolute prohibition on inhuman and degrading treatment in the context of deprivation of liberty are well-established in the Court's case-law. The States have an obligation to ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not rule out a finding of a violation of Article 3 of the Convention, since it is incumbent on the respondent Government to organise its penal system in such a way as to ensure respect for the dignity of detainees, regardless of any financial or logistical difficulties (see *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, 20 October 2016; *Idalov v. Russia* [GC], no. 5826/03, §§ 91-93, 22 May 2012; and *Ananyev and Others*, cited above, §§ 139-42).

115. The assessment of whether or not the conditions in which an applicant had been placed reached the threshold of severity required for Article 3 to apply depends on the cumulative effect of all the circumstances of the case, including the length of time spent in those conditions. The assessment takes account of specific allegations made by the applicant which must be supported by appropriate evidence. The principles governing the evidentiary standards and the distribution of burden of proof in such cases, which emphasise in particular the respondent Government's role in producing such documentary evidence as is in their possession, are set out in *Ananyev and Others* (cited above, §§ 121-25).

116. With regard to the standards developed by national authorities or international organisations, such as the Committee for the Prevention of Torture ("the CPT"), the Court reiterates that, although capable of informing its analysis of an alleged violation, they cannot constitute a decisive element for its assessment under Article 3 of the Convention. That is so because the Court is called upon to adjudicate individual cases on the basis of their specific facts, whereas the CPT and national authorities develop standards of general application that seek to forestall similar violations. Nevertheless, the Court will give careful scrutiny to cases where it appears that the actual conditions fell short of the relevant standards developed by the CPT (see *Muršić*, cited above, §§ 111-13).

**(b) Case-law relevant to the assessment of conditions of transport**

117. The Court has established a long line of case-law concerned with the conditions in which applicants were transferred in prison vans between remand centres and courthouses. Starting with the case of *Khudoyorov* (cited above, §§ 117-19), it has found a violation of Article 3 in many cases in which the applicants were transported in extremely cramped conditions. The applicants had at their disposal less than 0.5 square metres of floor space, with some of them having as little as 0.25 square metres (see, among others, *Yakovenko v. Ukraine*, no. 15825/06, §§ 107-09, 25 October 2007; *Vlasov v. Russia*, no. 78146/01, §§ 92-99, 12 June 2008; *Starokadomskiy v. Russia*, no. 42239/02, §§ 55-60, 31 July 2008; *Idalov*, cited above, § 103; *Retunsciaia v. Romania*, no. 25251/04, § 78, 8 January 2013; *M.S. v. Russia*, cited above, § 76; *Korkin v. Russia*, no. 48416/09, § 73, 12 November 2015; and *Radzhab Magomedov v. Russia*, no. 20933/08, § 61, 20 December 2016).

118. The Court also noted that the height of the prisoner cells – 1.6 metres – was insufficient for a man of normal stature to enter or stand up without stooping, which required detainees to remain in a seated position at all times inside the van (see *Idalov*, cited above, § 103, and *Trepashkin v. Russia (no. 2)*, no. 14248/05, § 133, 16 December 2010). In addition to limited floor space, prison vans were occasionally occupied by a total number of detainees exceeding their carrying capacity, which further aggravated the applicants' situation (see *Vlasov*, § 93; *Starokadomskiy*, § 96; and *Retunsciaia*, § 78, all cited above). Insufficient ventilation on hot days and a lack of heating when the van was stationary with the engine turned off, were also noted as aggravating factors (see *Vlasov*, § 94, and *Yakovenko*, § 109, both cited above).

119. Account was taken of the frequency and number of trips in those conditions, as well as of their duration. The Court found a violation of Article 3 in cases where applicants had endured dozens or even hundreds of such trips. By contrast, the Court found that the minimum threshold of severity had not been attained in cases where the applicant's exposure to such conditions had been limited in time (see *Seleznev v. Russia*, no. 15591/03, § 59, 26 June 2008, where the applicant had had just two thirty-minute transfers in an overcrowded prison van, and *Jatsõšõn v. Estonia*, no. 27603/15, § 45, 30 October 2018, where the applicant had refused to continue the trip after an initial twenty-minute stay in the van).

120. As regards safety devices that reduce the risk of injury in a moving vehicle, the Court has found that the absence of seat belts cannot, on its own, lead to a violation of Article 3 (see *Voicu v. Romania*, no. 22015/10, § 63, 10 June 2014, and *Jatsõšõn*, cited above, §§ 42-43). It noted, however, that the lack of a seat belt or handles might give rise to an issue under Article 3 under certain circumstances and in combination with other factors (see *Engel v. Hungary*, no. 46857/06, § 28, 20 May 2010, where the

applicant was a paraplegic and his wheelchair had been left unsecured in a moving vehicle, and *Tarariyeva v. Russia*, no. 4353/03, §§ 112-17, ECHR 2006-XV (extracts), where a post-operative patient had been transported on a stretcher in an unadapted prison van).

121. There have been fewer cases concerning conditions of transfer by rail. Those complaints were chiefly lodged by convicted prisoners who had been transported long distances to the place where they were to serve their custodial sentence (see *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, 7 March 2017, on the allocation of prisoners to remote facilities in Russia). The total duration of transfers was between twelve hours and several days. The very cramped conditions, in which more than ten people had been placed in a three-square-metre compartment, were the decisive element for the Court's finding of a violation of Article 3 (see *Yakovenko*, cited above, §§ 110-13; *Sudarkov v. Russia*, no. 3130/03, §§ 63-69, 10 July 2008; *M.S. v. Russia*, cited above, § 79; and *Dudchenko v. Russia*, no. 37717/05, § 131, 7 November 2017).

122. In one case, the applicant had travelled alone in a smaller, two-square-metre compartment for sixty-five hours. However, in accordance with the regulations governing the transport of detainees, guards had checked up on him and forced him to change position every two hours. The Court considered that the resulting deprivation of sleep had constituted a heavy physical and psychological burden on the applicant (see *Guliyev*, cited above, §§ 61-65).

### (c) Summary of the approach to be taken

123. In the interests of legal certainty and also for the uniform and foreseeable application of the general principles, the Court considers it necessary, as did recently the Grand Chamber in the *Muršić* case (cited above, §§ 136-41), to provide a summary of the approach to be taken in cases in which a violation of Article 3 on account of inhuman and degrading conditions of transfer is alleged.

124. The Court reiterates that assessment of whether there has been a violation of Article 3 cannot be reduced to a purely numerical calculation of the space available to a detainee during the transfer. Only a comprehensive approach to the particular circumstances of the case can provide an accurate picture of the reality for the person being transported (see *Muršić*, § 123, and *Jatsōšōn*, § 41, both cited above).

125. Nevertheless, the Court considers that a strong presumption of a violation arises when detainees are transported in conveyances offering less than 0.5 square metres of space per person (see the case-law cited in paragraph 117 above). Whether such cramped conditions result from an excessive number of detainees being transported together or from the restrictive design of compartments is immaterial for the Court's analysis, which is focused on the objective conditions of transfer as they were and

their effect on the applicants, rather than on their causes. The low height of the ceiling, especially of single-prisoner cubicles, which forces prisoners to stoop, may exacerbate physical suffering and fatigue. Inadequate protection from outside temperatures, when prisoner cells are not sufficiently heated or ventilated, will constitute an aggravating factor (see the case-law cited in paragraph 118 above).

126. The strong presumption of a violation of Article 3 is capable of being rebutted only in the case of a short or occasional transfer (see the case-law cited in paragraph 119 above). By contrast, the pernicious effects of overcrowding must be taken to increase with longer duration and greater frequency of transfers, making the applicant's case of a violation stronger (see *Idalov*, § 103 *in fine*, and *Starokadomskiy*, § 57, both cited above).

127. As regards longer journeys, such as those involving overnight travel by rail, the Court's approach will be similar to that applicable to detention in stationary facilities for a period of a comparable duration (see *Fedotov v. Russia*, no. 5140/02, §§ 66-70, 25 October 2005; *Sizarev v. Ukraine*, no. 17116/04, §§ 101-07, 17 January 2013; *Nemtsov v. Russia*, no. 1774/11, §§ 117-21, 31 July 2014; and *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, §§ 249-50, 27 January 2015). Even though a restricted floor space can be tolerated because of multi-tier bunk beds, it would be incompatible with Article 3 if prisoners forfeited a night's sleep on account of an insufficient number of sleeping places or otherwise inadequate sleeping arrangements (see *Ananyev and Others*, cited above, § 148, subparagraph (a); *Sudarkov*, cited above, § 68, and the case-law cited in paragraphs 121 and 122 above). Factors such as a failure to arrange an individual sleeping place for each detainee or to secure an adequate supply of drinking water and food or access to the toilet seriously aggravate the situation of prisoners during transfers and are indicative of a violation of Article 3.

128. Lastly, the Court would emphasise the importance of the CPT's role in monitoring conditions of transfer and of the standards which it has developed for that purpose (see paragraph 79 above). When deciding cases concerning conditions of transfer, the Court will remain attentive to those standards and to the Contracting States' compliance with them (see *Muršić*, cited above, § 141).

**(d) Application in the present cases**

129. The Court will next assess, in the light of the above-mentioned general principles and requirements, whether or not the facts of the present cases disclose a violation of Article 3 in respect of the individual applicants.

*(i) Mr Tomov, Mr Vasilyev, Mr Roshka and Mr Barinov*

130. The applicants Mr Tomov, Mr Vasilyev, Mr Roshka and Mr Barinov complained about the conditions in which they had been

transported over long distances in different types of conveyances, including prison vans and railway carriages. As various sections of the journey formed part of a single transfer which was to last until they had reached the destination, the Court will make a global and cumulative assessment of those conditions.

131. The applicants underwent the longest section of the journey in a prisoner railway carriage. On his first journey, Mr Tomov spent one night in a large compartment with nine people and the second night in a small compartment with three people (see paragraphs 23 and 24 above). Mr Vasilyev shared a large compartment with up to thirteen men on the way to Yekaterinbug and with up to eleven men on the way back (see paragraphs 46 and 48 above). A particularly long transfer, which Mr Tomov underwent together with Mr Roshka and Mr Barinov, involved three journeys in a large compartment of a prisoner carriage with five, seven and nine other prisoners respectively (see paragraphs 51, 52 and 55 above). The last part of their journey was the longest, as they had to spend three nights on the train.

132. The number of prisoners per compartment was generally compatible with the requirements of the Conveyance Instruction, which allowed up to twelve prisoners to be placed in a large compartment on trips lasting in excess of four hours (see paragraph 67 above). There is no indication that train compartments had been filled beyond their normative capacity, with the exception of Mr Vasilyev's compartment on the way to Yekaterinburg, which had accommodated thirteen people. However, formal compliance with domestic regulations is not decisive for the Court's assessment of an alleged violation of Article 3. What is important is that each journey involved at least one overnight ride, whereas only six sleeping places were available in the large compartments and three in the small ones (see paragraphs 10 and 11 above). Prisoners outnumbered the available sleeping places sometimes by a factor of two, and the sixty-centimetre bunks were too narrow to accommodate more than one person under normal conditions. The "bridge" half-bunk did not help in the matter of insufficient sleeping places as it was too short for the average person. Being positioned, as it was, at chest level, it impeded movement in an already overcrowded compartment and prevented passengers from standing upright.

133. The Court finds that the applicants Mr Tomov, Mr Vasilyev, Mr Roshka and Mr Barinov were deprived of a night's rest on one or more consecutive nights because of insufficient sleeping places. This is in itself indicative of inhuman and degrading treatment that violates Article 3 (see paragraph 127 above), but the Court cannot overlook several additional factors that must have aggravated their plight.

134. First, the heating circuit of the prisoner carriage did not function while the train was stationary. As a consequence, Mr Tomov, Mr Roshka and Mr Barinov spent at least fifteen hours locked inside an unheated compartment at sub-zero outside temperatures (see paragraph 55 above).

135. Secondly, with regard to the material conditions of transfer of those three applicants, two toilet visits and three pots of water per day for the entire duration of a sixty-two-hour journey cannot be considered an adequate arrangement (see paragraph 127 above).

136. Thirdly, all four applicants were transported to and from the train station in multi-prisoner cells of a standard prison van. On each occasion the travel time was between one and two and a half hours and each prisoner had less than 0.5 square metres of floor space at his disposal. Considered in isolation, such conditions would probably not have reached the threshold of severity required under Article 3 because of their relatively short duration and the fact that they were a one-off event. In the present case, however, they immediately preceded or followed a train journey in conditions which the Court has found above to constitute inhuman and degrading treatment. Assessing the cumulative effect of the conditions of transport from the start to the end point, the Court finds that Article 3 was breached in respect of Mr Tomov, Mr Vasilyev, Mr Roshka and Mr Barinov.

*(ii) Ms Punegova and Ms Kostromina*

137. The female applicants Ms Punegova and Ms Kostromina appear to have endured particularly harsh conditions of transport. The applicable regulations required that certain categories of vulnerable detainees, including women, be transferred separately from other prisoners (see paragraph 66 above). That requirement pursued the legitimate aims of preventing security incidents, inter-prisoner violence and sexual harassment. However, owing to the gender imbalance among the general prison population in which men significantly outnumber women, multi-prisoner cells are routinely allocated to male prisoners, while female prisoners are relegated to cramped metal cubicles for the duration of transfers. As a consequence, Ms Kostromina and Ms Punegova were placed each time in a single-prisoner “*stakan*” cubicle measuring 0.325 square metres (see paragraph 17 above).

138. Ms Kostromina had to travel in one such cubicle no fewer than seven times over a three-week period (see paragraph 34 above). The fact that she routinely spent up to two hours in such a confined space is sufficient on its own to justify the finding of a violation of Article 3, but the Court cannot overlook the factors that must have increased her suffering beyond the threshold of what can be tolerated in civilised society. Afflicted with diabetes, she had a corpulent body. Her condition called for a generous allocation of seating space and good access to ventilation, so as to make her conditions of transfer more bearable. However, the authorities in charge of the transfer did not consider her special needs. To make matters worse, they put another woman together with her for the duration of each journey. The Court concedes that in doing so, they were following to the letter the regulations requiring separation of the sexes, and that is what the officials

relied on to justify their conduct (see paragraph 35 above). The Court cannot accept it, however, as justification for putting Ms Kostromina in a situation of extreme physical hardship. It finds that the approach adopted by the convoy officers disclosed a disregard for the well-being of transported prisoners that was incompatible with respect for human dignity.

139. Ms Punegova, too, was transported in a single-prisoner cubicle. The duration of her transfers however was much shorter in the initial period, sometimes as short as three minutes (see paragraph 27 above). She did not provide any information about the distance travelled or the duration of transfers in the subsequent months (see paragraph 28 above). The transfers in that period also appear to have been infrequent, occurring as they did at two-monthly intervals. The Court finds that the short and occasional nature of transfers rebuts the presumption of a violation of Article 3 which arises on account of restricted personal space.

140. After Ms Punegova's trial had begun, the frequency of her transfers and their duration increased. She underwent at least ten transfers over a two-month period, spending each time a total of one hour and ten minutes in a single-prisoner cell on the way to and from the court hearings. One specific feature of the cell design stands out. The cell was assembled from metal sheets that formed a fully enclosed cubicle with air holes in the door (see paragraph 17 above). This design guaranteed complete isolation of the prisoner from the non-secure area of the van. However, it also had the effect of thermally insulating the cell, blocking the flow of heat from the heater located in the central aisle into the cubicle. There was no heating inside the cell and, as the rear panel was attached directly to the outer panel of the van, the cold was transferred from the outside. The Court holds that the conditions of Ms Punegova's transport during the trial, which were marked by a shortage of space and exposure to low temperatures, were in breach of Article 3.

#### **(e) Conclusion**

141. The Court notes that all the applicants were transported most of the time in conditions that appeared to be compatible with the requirements of the domestic regulations. It has not been claimed that any officials sought to cause them hardship or suffering. However, even in the absence of an intention to humiliate or debase the applicants, the actual conditions of transfer that obtained in the present case had the effect of subjecting them to distress of an intensity exceeding the unavoidable level of suffering inherent in detention. Those conditions undermined their human dignity, and that treatment must be characterised as "inhuman and degrading".

142. There has accordingly been a violation of Article 3 of the Convention in respect of all the applicants, except as regards the transfers of Ms Punegova in the pre-trial period.

3. *Availability of effective domestic remedies as required by Article 13 of the Convention*

143. The Court will next examine whether the applicants in case no. 41234/16 – Mr Tomov, Mr Roshka and Mr Barinov – had at their disposal effective domestic remedies in respect of their complaints of inhuman and degrading conditions of transport.

144. The complaints of inhuman or degrading conditions of detention and those concerning conditions of transport are relevantly similar as regards the types of remedies that are in theory available for such grievances in the Russian legal system. The Court's findings regarding the effectiveness of the domestic remedies in conditions-of-detention cases are accordingly applicable in the present case with certain qualifications relating to the short duration of transfers. They will be discussed in more detail below.

145. The Court has on many occasions examined the effectiveness of the domestic remedies suggested by the Russian Government in similar cases and found them to be lacking in many regards. It has held, in particular, that the Government were unable to show what redress could have been afforded to the applicant by a prosecutor, a court, or any other State agency, bearing in mind that the problems complained of were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Ananyev and Others*, cited above, §§ 100-19, as regards conditions of detention in remand prisons; *Butko v. Russia*, no. 32036/10, §§ 42-47, 12 November 2015, in respect of conditions of detention in correctional facilities; and *M.S. v. Russia*, cited above, § 82, as regards conditions of transport).

146. The right of remand prisoners and convicted offenders to submit complaints of inadequate conditions of detention or transport to various domestic authorities is established in the Pre-trial Detention Act and the Code on the Execution of Sentences (see *Ananyev and Others*, § 28, and *Butko*, § 17, both cited above). The Court reiterates that in order to secure genuinely effective redress for the alleged violation of Convention rights, the legal framework for handling such complaints must satisfy the requirements of Article 13 of the Convention and the proceedings must be capable of offering adequate relief to the aggrieved individual.

147. As regards complaints which detainees can address to commanders of the escorting unit, the Court has observed that hierarchical superiors do not have a sufficiently independent standpoint to consider complaints that call into question the way in which they discharge their duty to maintain the appropriate conditions of detention or transport (see *Ananyev and Others*, cited above, § 101, and *Dirdizov v. Russia*, no. 41461/10, § 75, 27 November 2012, see also the FSIN's reply to Mr Rakov's complaint in paragraph 41 above).

148. A complaint can also be sent to the federal or regional ombudsperson's office or to a public monitoring commission. The Court, however, is not convinced that those bodies could provide adequate redress. Neither the ombudsperson's office nor monitoring commissions are vested with the authority to issue legally binding decisions. Their task is to collect information and to highlight general issues concerning human-rights compliance in places of detention (see *M.S. v. Russia*, § 84, and *Ananyev and Others*, §§ 105-06, both cited above). Moreover, as the Ombudsman observed in his annual report, public monitoring commissions did not have the mandate to control the conditions obtaining in conveyances in which detainees were transported (see paragraph 75 above).

149. The Court has previously found that prosecutors supervising remand prisons play an important role in securing appropriate conditions of detention (see *Ananyev and Others*, § 104, and *Dirdizov*, § 76, both cited above). Railways fall under the jurisdiction of transport prosecutors who are tasked with supervising the application of laws and ensuring respect for human rights and freedoms. However, as the Court has observed, infringement reports or orders issued by a prosecutor are primarily matters between the supervising authority and the supervised body and are not geared towards providing preventive or compensatory redress to the aggrieved individual. There is no legal requirement compelling the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings. The complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint (*ibid.*). Furthermore, it does not appear that prisoners in transit have a way of reaching out to a transport prosecutor to secure his or her expeditious intervention if the conditions of transport fall foul of legal requirements or amount to inhuman or degrading treatment. In case of Mr Rakov, the prosecutor's reply came almost two months after the events (see paragraph 40 above).

150. Lastly, turning to the effectiveness of judicial remedies, the Court observes that, however diligently the proceedings before courts are conducted, they would normally conclude too late to be able to put an end to a situation involving an ongoing violation. Unlike the conditions in a remand prison or penal facility which the prisoner endures for months or years, transfers take a much shorter time, in the range of days or weeks. Nevertheless, the fact that the courts can take cognisance of the merits of the complaint even after the end of a transfer, establish the facts and make redress tailored to the nature of the violation makes the judicial remedy *prima facie* accessible and capable, at least in theory, of affording appropriate compensatory redress.

151. However, in order to be effective, a remedy must be available not only in theory but also in practice and offer reasonable prospects of success.

As the Court has found before, two aspects of proceedings before the Russian courts are particularly problematic (see *Ananyev and Others*, cited above, §§ 113-15).

152. Firstly, the provisions of the Civil Code on tort liability impose special rules on compensation for damage caused by State authorities and officials. They require the claimant to show that the damage was caused through an unlawful action or omission on the part of the specific State authority or official. This requirement establishes an unattainable burden of proof in cases, such as the present one, in which every individual aspect of the conditions complied with domestic regulations, yet their cumulative effect was such as to constitute inhuman treatment in breach of Article 3 of the Convention (see paragraph 141 above). It was therefore materially impossible to hold any individual authority or official responsible for such conditions, let alone to demonstrate any wrongful conduct on their part.

153. Secondly, the Court has criticised the Russian courts' approach as unduly formalistic, based as it is on the requirement of formal unlawfulness of the authorities' actions. The judicial decisions that the applicants made available in the present case highlight the shortcomings of that formalistic approach (see paragraphs 71 to 74 above). In the case of the applicant Mr Vasilyev, the Supreme Court of the Komi Republic overruled the first-instance court's finding of formal compatibility with the regulations and carried out a cumulative assessment of the conditions of transport, applying the criteria which the Court had developed in its case-law. That judgment, however, did not withstand a review before the Presidium of the same court, which reverted to the established standard of formal compliance with the applicable regulations. The subsequent decisions in Mr Vasilyev's cases and many others followed that line of reasoning. It is a matter of particular concern that the Supreme Court described actual bodily injury as a required element of inhuman and degrading treatment and also appeared to suggest that suffering caused by the conditions of transport was conducive to the rehabilitation of offenders (see paragraph 74 above).

154. A third element undermining the effectiveness of judicial remedies which is specific to the present case is the accessibility of the regulatory framework establishing normative conditions of transport. The Conveyance Instruction, which is the main document laying down the basic requirements for transport arrangements, has been classified "for service use only" and as such was not accessible to prisoners claiming a breach of their rights. The courts hearing Mr Rakov's claim did not address that aspect of his submissions on appeal (see paragraphs 59 and 64 above).

155. In the light of the above considerations, the Court is not satisfied that the framework of judicial proceedings in its present state allows claimants an adequate opportunity to prove their allegations of inhuman or degrading conditions of transport, to prevent repetition of similar violations or to recover damages in that connection. The Court is not prepared,

therefore, to change its position, as expressed in previous cases, namely that judicial proceedings in connection with inhuman or degrading conditions of transport do not satisfy the criteria of an effective remedy that offers a reasonable prospect of success.

156. There has therefore been a violation of Article 13 of the Convention, read in conjunction of Article 3, in respect of the applicants Mr Tomov, Mr Roshka and Mr Barinov.

#### IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF Mr RAKOV

157. The applicant Mr Rakov complained that his right to a fair hearing had been breached because he had not had an opportunity to present his claim for compensation to the courts (see paragraphs 42 and 43 above). The relevant part of Article 6 § 1 reads as follows:

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

158. The Government submitted that there had been no violation of Article 6 § 1 because Mr Rakov and his representative had been informed about the hearing date before the District Court. Mr Rakov had been afforded sufficient time to enter into a legal-services contract with his representative and to authorise him to act on his behalf.

##### **A. Admissibility**

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

##### **B. Merits**

160. The Court has found a violation of Article 6 § 1 of the Convention in many similar cases in which incarcerated applicants were not afforded an opportunity to attend hearings in the civil proceedings to which they were parties. In the leading case of *Yevdokimov and Others*, cited above, § 52, the Court held that the Russian courts had routinely failed, firstly, to carry out a proper assessment of the nature of the civil claims with a view to deciding whether the applicants' presence was necessary, and secondly, to consider appropriate procedural arrangements enabling the applicants to be heard, thereby depriving them of the opportunity to present their cases effectively.

161. The applicant Mr Rakov complained that his claim for compensation had been adjudicated in his absence and the absence of his chosen representative by both the first-instance and appellate courts. The

Court reiterates that the Russian Code of Civil Procedure, as worded at the material time, provided for oral hearings before courts of appeal, and that the scope of review by appellate courts was not limited to matters of law but also extended to factual issues. The appellate courts were empowered to carry out a full review of the case and to consider additional evidence and arguments which had not been examined in the first-instance proceedings. Given the broad scope of review of the appellate court, the fair trial guarantees enshrined in Article 6 of the Convention, including in particular the right to make oral submissions to the court, were as important in the appellate proceedings as they were in the first-instance courts (see *Gankin and Others v. Russia*, nos. 2430/06 and 3 others, § 40, 31 May 2016, and *Barkov and Others v. Russia*, no. 38054/05 and 8 others, 19 July 2016).

162. In the instant case the courts, whether at first instance or on appeal, did not verify whether the nature of the claim called for Mr Rakov's personal testimony and whether his attendance was essential to ensure the overall fairness of the proceedings. They did not ascertain the reasons for the absence of Mr Rakov's representative or consider alternative procedural arrangements enabling Mr Rakov to be heard in his absence, such as a video link or an off-site hearing. As a result, the courts took submissions from one side of the dispute, with the FSIN and the federal treasury acting as co-defendants, while Mr Rakov was denied an effective opportunity to present his position, in breach of the principle of a fair trial.

163. There has therefore been a violation of Article 6 § 1 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. 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

165. The applicants claimed amounts ranging from 5,000 to 30,000 euros (EUR) in respect of non-pecuniary damage.

166. The Government submitted that the sum of EUR 2,000 or a similar amount at the Court's discretion would be sufficient just satisfaction.

167. Having regard to the particular circumstances of each applicant, the Court awards EUR 5,000 each to Mr Tomov (in respect of two cases) and to Ms Kostromina, EUR 3,500 each to Mr Roshka and Mr Barinov, and EUR 1,500 each to Ms Punegova and Mr Vasilyev, in respect of non-pecuniary damage, plus any tax that may be chargeable. It also

considers that the finding of a violation will be sufficient just satisfaction in the case of Mr Rakov.

### **B. Costs and expenses**

168. Mr Tomov claimed a total of EUR 15,445 for the work of Mr Mezak in two cases, billed at an hourly rate of EUR 350. He asked the award to be paid directly into his representative's bank account.

169. The Government submitted that the claims were excessive and unreasonable.

170. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000 covering costs under all heads, plus any tax that may be chargeable to the applicants. The award is to be paid into Mr Mezak's bank account.

### **C. Default interest**

171. 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.

## **VI. APPLICATION OF ARTICLE 46 OF THE CONVENTION**

172. The relevant parts of Article 46 of the Convention read:

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

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

...

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. ...”

173. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, general measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible its effects. However, with a view to helping the respondent State to fulfil that obligation, the Court may seek to indicate the type of general measures that

might be taken in order to put an end to the situation it has found to exist (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 158-59, ECHR 2014; *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 254-55, ECHR 2012; *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 148, 17 September 2009; and *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V).

#### **A. Whether there exists a structural problem calling for the adoption of general measures**

##### *1. Arguments by the parties*

174. The Government pointed out that many similar applications concerning inhuman and degrading conditions of transport were being processed in an expedited procedure introduced by Protocol no. 14 to the Convention. The Russian authorities, under the supervision of the Committee of Ministers, were taking measures to improve the conditions of transport of remand prisoners and convicted offenders. A new model of prisoner railway carriage, no. 61-4495, had been developed and launched in 2015. It was equipped with air conditioning, chemical toilets, and enhanced lighting and video-surveillance systems. In 2016, the Ministry of the Interior received a first shipment of twenty-six such railway carriages and put them into operation. The FSIN had prepared a set of amendments to the Conveyance Instruction reducing the normative capacity of large compartments to ten people and that of small compartments to four people.

175. The applicants submitted that inhuman and degrading conditions of transport were a structural problem that inexorably followed from adherence to the obsolete norms set out in the Conveyance Instruction. A manifestly excessive permissible number of prisoners per compartment (point 167), when applied in conjunction with the requirements to maximise the number of prisoners loaded onto conveyances (point 19) and to hold separately up to sixteen groups of prisoners (point 166) caused some cells to be overcrowded while others stayed nearly vacant. The Conveyance Instruction made no provision for distributing bed linen or hot water, or for securing adequate access to a toilet. Prisoners were not allowed access to the toilet in old-style Soviet prisoner carriages while they were stationary because human waste was discharged directly onto the railway tracks. The replacement of twenty-six carriages in 2016 to which the Government had referred was part of an ongoing renewal of rolling stock, but new carriages had been built to the same obsolete standards as the old ones. As regards prison vans, the domestic standards defining space allocation in single and multi-prisoner cells were likewise exceedingly restrictive, providing no more than 0.3 square metres per person. The applicants concluded that the structural problem would persist until the domestic standards had been reviewed.

176. The third-party intervener, the Human Rights Litigation Foundation, submitted that the issue of prisoners' transfer constituted a persistent and recurrent problem stemming from a widespread practice and legislative deficiencies. The practice was multifaceted, comprising the following elements: inadequately equipped prison vans; unsafe and uncomfortable conditions of transport; non-compliance with domestic regulations, for example non-enforcement of the smoking ban and failure to provide food or water; and excessively long journeys. A number of provisions of the Conveyance Instruction, such as the excessively high occupancy limits, negatively affected the conditions of prisoners' transfers and failed to adequately protect their rights in line with international standards. It was therefore necessary to adopt a judgment based on an integrated approach combining changes to the legal framework, practices and attitudes.

## 2. *The Court's assessment*

177. Since its first judgment concerning the inhuman and degrading conditions of prisoner transportation in Russia (see *Khudoyorov*, cited above), the Court has found a violation of Article 3 on account of similar conditions of detention in more than fifty 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 (see *M.S. v. Russia*, cited above). According to the Court's case management database, more than 680 prima facie meritorious applications against Russia are now pending before the Court which feature, as their primary or secondary grievance, a complaint of inadequate conditions of transport. Of those, 540 applications were lodged in 2018. The above numbers, taken on their own, are indicative of the existence of a recurrent structural problem (see *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, § 98, 10 March 2015, and *Ananyev and Others*, cited above, § 184).

178. The violations of Article 3 found in the previous judgments, as well as those found in the present case, originated in geographically diverse regions of the Russian Federation. Nevertheless, the set of facts underlying those violations was substantially similar: prisoners suffered inhuman and degrading treatment on account of an acute lack of personal space during transportation, inadequate sleeping arrangements, dysfunctional heating, and restricted access to sanitary facilities. As the Court observed with concern, the violations found were neither prompted by an isolated incident, nor attributable to a particular turn of events in those cases, but stemmed chiefly from an unwavering application of the domestic normative framework (see paragraph 141 above). Given the vastness of the Russian prison network in which prisoners are frequently transported over long distances (see paragraphs 7 and 82 above), the problem has thus affected,

and has remained capable of affecting, a large number of individuals throughout Russia (compare *Ananyev and Others*, cited above, § 185).

179. Since the adoption of the *Guliyev* judgment in 2008, the problem of inhuman conditions of transport has been a separate issue on the agenda of the Committee of Ministers of the Council of Europe in accordance with Article 46 of the Convention. Over the past few years that group of cases has risen in number from twenty-seven to forty-five. However, progress in the execution proceedings has been modest. In their communication in respect of the *Guliyev* case, from 2011, the Russian Government reported that they had circulated copies of the judgment to domestic authorities, but denied that a specific action plan was necessary (see paragraph 78 above).

180. The Russian authorities have not reneged on their commitment to eradicate inhuman and degrading conditions of transport. They have acknowledged a violation of Article 3 of the Convention and offered monetary compensation in many individual cases (see, as recent examples, the case of Mr Skazkin in *Mikhaylov and Others v. Russia* (dec.), no. 28258/17 and 9 others, 13 September 2018, or the cases of Mr Orlovskiy and Mr Fedorov in *Kazarin and Others v. Russia* (dec.), no. 17250/17 and 9 others, 13 September 2018). At domestic level, the Ministry of Justice has worked, together with the Ministry of the Interior, to review regulatory provisions that were at the root of overcrowding in prisoner conveyances, to improve the conditions of transport of particularly vulnerable categories of prisoners and to align the conditions of transport with international standards (see paragraph 76 above).

181. Notwithstanding a trend towards an improvement in the conditions of transport and an overall reduction of the prisoner population in Russia, the urgency of the problem identified in the present case has not abated. The Court's findings and the continuing flow of new similar applications illustrate the gravity of the situation, especially as regards female prisoners such as Ms Kostromina, and highlight the absence of effective domestic remedies. It is a matter of grave concern for the Court that no domestic remedies have been made available more than six years after the *Ananyev and Others* judgment in which it required that such remedies be introduced in respect of a relevantly similar issue of inhuman and degrading conditions of detention.

182. Taking into account the recurrent and persistent nature of the problem, the large number of people it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at domestic level, the Court considers that repeating its findings in similar individual cases would not be the best way to achieve the Convention's purpose. It thus feels compelled to address the underlying structural problems in greater depth, to examine the source of those problems and to provide further assistance to the respondent State in finding appropriate solutions and to the Committee of Ministers in supervising the execution of

the judgments (see Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem, and the Declarations adopted by the High Contracting Parties at the Interlaken and Izmir conferences).

### **B. Origin of the problem and general measures required to address it**

183. The Court recognises that the recurrent violations of Article 3 resulting from inadequate conditions of transport are an issue of considerable magnitude and complexity. It is a multifaceted problem owing its existence to a large number of negative factors, such as the geographical remoteness of many penal facilities which had been built far from major cities under the former regime, the long distances involved, the ageing rolling stock, exceedingly restrictive regulations and standards, and a lack of transparency during prisoner transportation. This situation requires comprehensive general measures at national level, which must take into consideration a large number of individuals who are currently affected by it. With a view to assisting the respondent State to fulfil its obligations under Article 46, the Court will seek to outline measures that might be instrumental in resolving the structural problem in compliance with the Convention, as it has done in a number of cases concerning the similarly complex issue of inhuman conditions of detention (see *Varga and Others*, cited above, § 102; *Orchowski v. Poland*, no. 17885/04, § 154, 22 October 2009; *Norbert Sikorski v. Poland*, no. 17599/05, § 161, 22 October 2009; *Ananyev and Others*, cited above, §§ 197-203 and 214-231; *Torreggiani and Others*, nos. 43517/09 and 6 others, §§ 91-99, 8 January 2013).

#### *1. Avenues for improving conditions of transport*

##### **(a) Reducing allocation to remote facilities**

184. The Court notes that, following conviction, a significant number of prisoners are sent to serve their sentences thousands of kilometres away from their hometowns or places where their family lives. Owing to historical and geographical factors, penal facilities are unevenly distributed throughout the Russian territory and most of them are far removed from the densely populated areas. Thus, the Moscow capital region has six penal facilities for a combined population of 22,000,000, while the Komi Republic has twice as many for a population of 900,000. Article 73 of the Code on the Execution of Sentences establishes a general rule on geographical distribution of prisoners, according to which prisoners should be allocated to penal facilities where they had lived or where they had been convicted, save in “exceptional cases” (see *Polyakova and Others*, cited above, § 94). The spirit and the objective of Article 73 was to preserve

prisoners' social and family ties (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 850, 25 July 2013).

185. In practice, however, the FSIN may override the requirements of the general distribution rule in Article 73 and allocate prisoners to a remote facility, without giving the reasons for such decisions (see *Polyakova and Others*, cited above, § 94). The case of Mr Tomov, Mr Roshka and Mr Barinov, who were sent to serve their sentence in a penal facility some 2,200 kilometres away from Syktyvkar, is an illustration of this practice. Allocation to a remote facility results in longer and more arduous journeys for prisoners in transit, which may take up to a month from the starting point to the destination, as was the case for Mr Tomov and others.

186. The Court considers that the Russian authorities should heed its findings in the *Polyakova and Others* case with a view to giving full effect to the general distribution rule in Article 73 of the Code on the Execution of Sentences and circumscribing the FSIN's extensive discretion in the matter of allocation of prisoners. The emphasis should be on placing prisoners as close to their home as possible so as to save them from the hardships of a long railway journey, to reduce the number of prisoners travelling by rail to faraway destinations, and also to avoid the burden of long and expensive journeys which visiting family members would have to bear.

**(b) Review of the normative framework and adaptation of vehicles**

187. The Court notes the efforts that have been made so far by the Russian authorities with a view to improving the conditions of prisoner transportation (see paragraph 76 above). A thorough review of the existing regulatory framework will continue in parallel with the refitting of prison conveyances currently in operation or their replacement with newer models. They should be adapted to comply with the Court's findings in the present case and, where possible, follow the general recommendations formulated by the Committee for the Prevention of Torture and international human-rights standards (see paragraphs 79 and 81 above).

188. As the Court has found (see paragraph 141 above), the regulatory framework in its present state is unable to prevent the kind of treatment proscribed under Article 3. The seating arrangements for prison vans and railway carriages used for short-distance train journeys need to be reviewed with a view to guaranteeing sufficient space per person and a more even distribution of prisoners in compartments. Unless mandated by compelling security considerations, the use of single-prisoner *stakan*-type cubicles should be avoided. Elements that impede prisoners from standing up, such as bridge bunks in large compartments of prisoner railway carriages, will need to be uninstalled. On longer rail journeys, special care should be taken to ensure decent sleeping arrangements for prisoners. Each of them should have his or her own sleeping place, and adequate access to sanitary facilities, drinking water and food should be secured.

189. Protection of vulnerable individuals should be based on their individual characteristics rather than on a formal group classification. It is indispensable to have a provision allowing the competent authorities to assess the cumulative effect of specific conditions of transport on prisoners with special needs. The conditions of transport are to be individualised and tailored to the needs of prisoners who cannot be transported in ordinary conditions on account of a mental condition or physical characteristics, such as obesity. Without a provision for individualised assessment, situations such as that of Ms Kostromina are bound to recur.

## *2. Making available effective remedies*

190. The Court further reiterates that some applicants in the present case were victims of a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy for raising arguable claims of inhuman and degrading conditions of transport. The Court has also noted the structural nature of this problem in the Russian legal system, finding that it does not currently allow the aggrieved individual either to prevent similar violations from recurring or to obtain adequate compensation for the violation that has already occurred.

191. In view of the time that has elapsed since its first judgments highlighting that problem, the Court considers that the Russian Federation's obligations under the Convention compel it to set up the effective domestic remedies required by Article 13 without further delay. The need for such remedies is all the more pressing as large numbers of people affected by violations of a fundamental Convention right have no other choice but to seek relief through time-consuming international litigation before the Court. This situation is at odds with the principle of subsidiarity, which is prominent in the Convention system (see *Ananyev and Others*, cited above, § 211). For the respondent Government to comply with its obligations flowing from, clear and specific changes are required in the domestic legal system that would allow all people in the applicants' position to complain about alleged violations of Article 3 resulting from inhuman or degrading conditions of transport and to obtain adequate and sufficient redress for such violations at domestic level.

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 (see *Orchowski*, cited above, § 154). To be efficient, the system must ensure a prompt and diligent handling of prisoners' complaints, secure their effective participation in the examination of grievances, and provide a wide range of legal tools for the purpose of eradicating the identified breach of Convention requirements. 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

(see *Neshkov and Others*, cited above, § 191, and section 70 of the 2006 European Prison Rules, quoted in *Butko*, cited above, § 21).

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 (see *Ananyev and Others*, cited above, §§ 215-16).

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 (*ibid.*, § 216). 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 (see, for examples of implemented preventive remedies in conditions-of-detention cases, *Stella and Others v. Italy* (dec.), no. 49169/09, §§ 46-55, 16 September 2014, and *Domján v. Hungary* (dec.), no. 5433/17, §§ 21-23, 14 November 2017).

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 (see, for a restatement of the relevant provisions, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 289-97, 7 February 2017). 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 (see *Ananyev and Others*, cited above, § 219).

196. 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). The introduction of an effective compensatory remedy would be particularly important in view of the subsidiarity principle, so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that require the finding of basic facts or the calculation of monetary

compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Ananyev and Others*, cited above, § 221).

197. 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 see, in particular, on the award that can be considered acceptable, *Domján*, cited above, §§ 27-28). In the particular context of the present case, the Court reiterates that domestic courts should be able to appreciate that, even in a situation where every individual aspect of the conditions of transport complied with the domestic regulations, their cumulative effect could have been such as to constitute inhuman or degrading treatment.

### 3. *Time-limit for making effective domestic remedies available*

198. The Court has identified a structural problem in the present case, referring notably to the large number of people affected and the urgent need to grant them speedy and appropriate redress at domestic level. It is therefore convinced that the purpose of the present judgment can only be achieved if the required changes take effect in the Russian legal system without undue delay. The Court reiterates that it called on the Russian authorities to make available domestic remedies in respect of a relevantly similar complaint more than six years ago, in 2012 (see *Ananyev and Others*, cited above, §§ 232-34). Having regard to the amount of time that has since elapsed and the apparent lack of progress in that matter, the Court considers that the required remedies must be made available not later than eighteen months after this judgment becomes final (see *Neshkov and Others*, cited above, § 290, and *Torreggiani and Others*, cited above, § 99).

## **C. Processing of similar pending cases**

199. Rule 61 § 6 of the Rules of Court provides for the possibility of adjourning the examination of all similar applications pending the implementation of remedial measures by the respondent State. If, however, the respondent State fails to adopt such measures and continues to violate the Convention, the Court will have no choice but to resume examination of

all similar applications pending before it and to take them to judgment so as to ensure effective observance of the Convention.

200. The Court considers it appropriate to adjourn adjudication of applications in which a complaint of inadequate conditions of transport is the main one, pending the implementation of the present judgment by the Russian Federation, for a period of eighteen months from the date on which the judgment becomes final. This decision is without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that the respondent State failed to comply with their obligations under Article 38 of the Convention in application no. 18255/10;
3. *Declares* that Mr Rakov's complaints under Articles 3 and 13 of the Convention inadmissible and the remainder of the applications admissible;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of transport in respect of all applicants, except Ms Punegova in the pre-trial period;
5. *Holds* that there has been a violation of Article 13 of the Convention, taken in conjunction with Article 3, in respect of Mr Tomov, Mr Roshka and Mr Barinov;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of Mr Rakov;
7. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 5,000 (five thousand euros) each to Mr Tomov and Ms Kostromina, EUR 3,500 (three thousand five hundred euros)

each to Mr Roshka and Mr Barinov, and EUR 1,500 (one thousand five hundred euros) each to Ms Punegova and Mr Vasilyev, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, payable into Mr Mezak's bank account;

(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;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction;
9. *Holds* that the respondent State in cooperation with the Committee of Ministers is to make available, within eighteen months of the date on which this judgment becomes final in accordance with Article 44 § 2 of the Convention, a combination of effective domestic remedies in respect of complaints about conditions of transport that have both preventive and compensatory effects, to comply fully with the requirements set out in this judgment;
10. *Holds* that, pending the implementation of the domestic remedies, the Court will adjourn, for a maximum period of eighteen months from the date on which the judgment becomes final, the proceedings in all applications in which a complaint of inadequate conditions of transport is the main one, without prejudice to the Court's power at any time to declare inadmissible any such case or to strike it out of its list following 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.

Done in English, and notified in writing on 9 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Vincent A. De Gaetano  
President

**APPENDIX****List of applications**

1. 18255/10 Tomov v. Russia
2. 63058/10 Punegova v. Russia
3. 10270/11 Kostromina v. Russia
4. 73227/11 Rakov v. Russia
5. 56201/13 Vasilyev v. Russia
6. 41234/16 Tomov and Others v. Russia