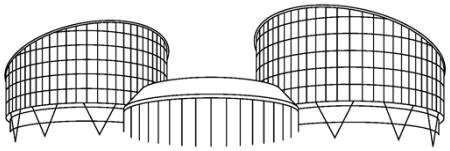

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VOLODYA AVETISYAN v. ARMENIA

(Application no. 39087/15)

JUDGMENT

Art 13 (+ Art 3) • Art 3 (substantive) • Ineffective domestic judicial remedies for complaints as to inadequate conditions of detention • Cumulative effects of detention conditions, including inadequate personal space in cells, amounting to degrading treatment

STRASBOURG

3 May 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Volodya Avetisyan v. Armenia,

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

Yonko Grozev, *President,*
Tim Eicke,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 39087/15) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Volodya Avetisyan ("the applicant"), on 31 July 2015;

the decision to give notice of the application to the Armenian Government ("the Government");

the parties' observations;

Having deliberated in private on 29 March 2022,

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

INTRODUCTION

1. The application concerns the conditions of the applicant's detention in Nubarashen Remand Prison and the alleged lack of effective remedies in that respect. It raises issues under Article 3 and Article 13 of the Convention.

THE FACTS

2. The applicant was born in 1963 and was detained in Vardashen penitentiary when he submitted his application. He was represented by Mr R. Revazyan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CONDITIONS OF THE APPLICANT'S DETENTION IN NUBARASHEN REMAND PRISON

5. The applicant was held in pre-trial detention in Nubarashen Remand Prison from 23 September 2013 to 11 March 2015. Between 23 September

2013 and 16 July 2014 he was detained in cell no. 013. From 17 July 2014 onwards he was detained in cell no. 007.

6. The applicant alleged that the cells in question measured approximately 15-20 sq. m and were overcrowded: in his submission, the number of inmates in both cells fluctuated, at various periods, between 5 and 8 persons. In his observations he submitted further details as to the size of the cells, based on the findings of a local monitoring group (see paragraph 24 below). The applicant alleged that there was no central ventilation system in the prison, and the cells were ventilated by windows and fans. In the absence of a heating system, the cells were heated by electric fires. A foul smell was constantly present throughout the prison. The applicant spent the entire period of his detention inside the cells, with the exception of a one-hour daily walk outside and his participation in investigatory measures. Some of his cellmates smoked in the cells. Lice, cockroaches and other insects were often spotted in the communal part of the cells but the prison administration did nothing to eliminate them.

7. The Government contested the measurements provided by the applicant and alleged that cells nos. 013 and 007 had measured 35 and 32 sq. m respectively during the period in question. They further alleged that the number of inmates in the cells during the periods of the applicant's detention had varied from five to eight. In support of their allegation the Government submitted the relevant prison population register, which contained information about the number of detainees present in each cell of the prison. While no complete information was provided for a thirty-six day period of the applicant's detention (either the relevant pages of the register are missing or the number of inmates is not registered, or it is unclear to which period the relevant information refers) the following information can be extracted from the said document. During the applicant's detention in cell no. 013 the number of his cellmates varied between 7 and 10 and, on several occasions, it reached up to 12 persons, with the exception of a fifty-five day period when that number fluctuated between 5 and 6. In cell no. 007 the number of the applicant's cellmates varied between 8 and 10, with the exception of a thirty-seven day period when this number fluctuated between 6 and 7 and, on one occasion, the applicant shared his cell with 5 cellmates.

II. THE APPLICANT'S COMPLAINTS ABOUT HIS DETENTION CONDITIONS

8. On 22 January 2015 the applicant lodged a complaint with the General Jurisdiction Court of Shengavit District of Yerevan ("the District Court") against the penitentiary department of the Ministry of Justice and the prison, asking the court to acknowledge and put an end to the ongoing violation of his rights under Article 3 of the Convention resulting from the conditions of

his detention, and to provide compensation in respect of non-pecuniary damage.

9. On the same date the District Court examined the applicant's application under the rules of civil procedure and declared it inadmissible, on the grounds that such a claim was not within the competence of the courts of general jurisdiction but rather fell within the competence of the Administrative Court, given its public-law nature.

10. On 9 February 2015 the applicant appealed against this decision, submitting that his application was of a criminal-law nature and thus the rules of criminal procedure were applicable to it, whereas the District Court had examined and dismissed it as a civil claim.

11. On 2 March 2015 the Civil Court of Appeal quashed the District Court's decision, reasoning that the applicant's application raised criminal-law matters which came within the scope of the courts of general jurisdiction, whereas the District Court had examined it under the rules of civil procedure.

12. On 29 April 2015 the District Court again declared the applicant's application inadmissible under the rules of civil procedure. The court reasoned that the application was not of a criminal-law nature and held that, despite the findings of the Court of Appeal, there was no procedure under the Code of Criminal Procedure whereby such an application could be entertained.

13. On 18 May 2015 the applicant, relying on Article 13 of the Convention, appealed against this decision, raising similar arguments as before. The applicant pointed out that the Court of Appeal had already found that his application raised criminal-law matters and thereby fell within the competence of the courts of general jurisdiction, but that the District Court had again examined it under the rules of civil procedure.

14. On 6 July 2015 the Civil Court of Appeal upheld the contested decision but supplemented its reasoning. It held that the applicant's application, while falling within the competence of the courts of general jurisdiction, could not be examined under the rules of civil procedure; however, the District Court had failed to substantiate its conclusions when refusing to admit the application as not subject to examination by the courts of general jurisdiction. The Court of Appeal nonetheless declared the application inadmissible since, given the form, content and subject matter of the applicant's claims, it resembled a civil claim, whereas the issues raised therein related to the execution of a sentence and were not subject to examination under the rules of civil procedure.

15. On 3 August 2015 the applicant lodged an appeal on points of law.

16. On 26 August 2015 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC PRACTICE

Decision of the Constitutional Court of 22 January 2019 on the conformity of Article 41 and the provisions included in Chapter 49 of the Code of Criminal Procedure, entitled "Enforcement of Judicial Decisions", with the Constitution, adopted on the basis of an application lodged by the Criminal Court of Appeal

17. In this decision the Constitutional Court acknowledged that there was legislative ambiguity as to which courts – the criminal courts of general jurisdiction or the Administrative Court – had jurisdiction to examine complaints lodged by convicted persons against actions (omissions) or decisions by officials of the penitentiary facility, and urged the National Assembly to resolve this ambiguity by introducing amendments along the lines suggested in its decision. Until such time as this was done, complaints concerning actions or omissions by officials of the penitentiary facility were to be examined by the Administrative Court, unless a specific case, subject area or issue concerning execution of a sentence explicitly fell within the competence of the courts of general jurisdiction examining criminal cases.

II. RELEVANT COUNCIL OF EUROPE MATERIALS

A. CPT: Report to the Armenian Government on the visit to Armenia carried out by the CPT from 10 to 21 May 2010, CPT/Inf(2011)24

18. The relevant parts of this report read as follows:

"61. ... Prison overcrowding was a common feature of all the penitentiary establishments visited, Nubarashen Prison being the most striking example. The delegation witnessed the negative impact of overcrowding on many aspects of life in prison: the inmates taking turns to sleep on available beds; cramped and unhygienic accommodation; the virtual absence of structural activities and restrictions on the provision of outdoor exercise ...

81. As regards material conditions, most of the cells were seriously overcrowded, with a significant proportion of inmates taking turns to sleep on the available beds or on the floor (e.g. 19 prisoners in a cell of 26 m² containing 12 beds).

The majority of cells (and in-cell toilets) were in a state of dilapidation ... Ventilation was poor, and running water was available for a maximum of four hours a day (two hours in the morning and two hours in the evening) ...

Further, the shower facilities were generally in a poor state of repair, and prisoners had access to them at best once a week, frequently only once every two weeks.

82. The provision of outdoor exercise at Nubarashen Prison has been an ongoing problem since the CPT's first visit in 2002. Outdoor exercise was still not organised at

week-ends, mainly due to staff shortages, and most prisoners interviewed indicated that, in practice, they were allowed outdoor exercise once to three times a week.

Apart from a few prisoners working in general services (e.g. cleaning, maintenance work, kitchen), the vast majority of inmates were locked up for 23 or even 24 hours a day in their cells, with no other activities than watching TV, playing board games or reading books."

B. CPT: Report to the Armenian Government on the visit to Armenia carried out by the CPT from 5 to 15 October 2015, CPT/Inf(2016)31

19. The relevant parts of this report read as follows:

"63. Material conditions at Nubarashen Prison had remained basically the same as those observed during the 2010 periodic visit i.e. they were unacceptable. Despite some local efforts to redecorate (mostly by inmates themselves and often using their own resources or the resources of their families), the prison was in a state of advanced dilapidation. Further, it was severely overcrowded (even taking into account the drop in population since 2010), with some inmates not having their own bed and sleeping in shifts. In a number of the standard 12-bed cells seen by the delegation there could be up to 17 prisoners, and it was not exceptional to see 14 inmates, especially in the units for remand prisoners (e.g. in cells Nos. 16, 34 and 51).

Many cells (especially on the ground level) were humid, damp, affected by mould, poorly lit and ventilated, dirty and infested with vermin. There were still serious problems with water supply (water continued to be available at most 4 hours per day). The communal bathrooms/showers were dilapidated and access to a shower offered at most once per week. Most cells had only semi-partitioned sanitary annexes. The kitchen and laundry were dilapidated too.

Further, outdoor exercise was still not available on weekends and – when offered – it reportedly did not always last one hour. The bulk of the inmates had to use the same small and inadequate yards located on the roof of the establishment.

...

65. More generally, the Committee is of the view that the structure and the present condition of Nubarashen Prison are so inadequate that they warrant a serious reflection as to the future of the establishment and the advisability of any further investment (rather than directing the available resources to ensure appropriate conditions of detention at some other location). In any case, were a decision to be taken to continue operating Nubarashen Prison on its current premises, a massive and comprehensive refurbishment would be indispensable, covering issues such as access to natural light, artificial lighting, ventilation, full partition of sanitary annexes, water supply, state of communal bathrooms/showers, repainting, disinfestation, hygiene in the cells and the kitchen."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

20. The applicant complained of the inadequate conditions of his detention in Nubarashen Remand Prison and alleged that he had had no effective remedy in respect of this complaint. He relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

"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 parties' submissions

21. The Government argued that the applicant had failed to exhaust the domestic remedies. In their submissions, he had made use of an obviously futile remedy by submitting a civil claim, whereas it should have become clear to him from the domestic judicial decisions (see paragraphs 9, 12 and 14 above) that his complaints fell to be examined through either administrative or criminal proceedings, which were the appropriate and effective domestic remedies for such complaints, as required by Article 13 of the Convention. The applicant had not, however, pursued any of those remedies. In that respect, the Government referred to several cases, all dating from 2019, in which the Administrative Court examined complaints lodged by convicted persons against decisions taken by prison authorities concerning either the imposition of a disciplinary penalty or refusal to apply an amnesty. Alternatively, the Government argued that the applicant could have applied to the Constitutional Court and obtained a decision similar to that of 22 January 2019 (see paragraph 17 above), which would have obliged the Administrative Court to examine his complaint.

22. The Government further submitted that the personal space accorded to the applicant (see paragraph 7 above) had been in line with the standards set out in the *Muršić* case-law, including the requirement of 3 sq. m of personal space per detainee in a multi-occupancy cell (they referred to *Muršić v. Croatia* ([GC], no. 7334/13, § 136, 20 October 2016). They produced a copy of the prison population register containing information about the number of detainees present in each cell of the prison and an indication that the cells had been designed for eight inmates. They further submitted that the

cells in question had since been refurbished and that the measurements provided by the applicant, referring to the monitoring group's findings (see paragraph 24 below), corresponded to the current size of the cells, which were now smaller. In this respect, they produced a statement, issued by the official of the State Penitentiary Service in 2019, indicating the former and current cell sizes. They did not comment on other aspects of the applicant's detention conditions.

23. The applicant argued that in fact he had sought to have his claim examined under the rules of criminal procedure, but that, for no good reason, it had been dismissed under the rules of civil procedure. The Administrative Court's practice referred to by the Government was quite recent, dating from 2019, and none of the cases in question was similar to his. In any event, even assuming that the Administrative Court were to examine his claim, it would not be able to provide adequate redress, namely: acknowledgement of a violation of his rights under Article 3 of the Convention; putting an end to that violation; and awarding compensation in respect of non-pecuniary damage. Moreover, he submitted that given the ongoing nature of the violation, such claims ought to be examined speedily, whereas examination of claims before the Administrative Court could take years. This was also true with regard to the Constitutional Court, to which he could apply only after having exhausted the relevant judicial remedies at three levels of jurisdiction; then, were the Constitutional Court to allow his application, he would have to lodge a request for reopening with the lower courts. By suggesting this remedy, the Government were in essence acknowledging the lack of clear rules for examination of his claims and proposing that the applicant seek legislative change.

24. With regard to the conditions of his detention and in support of his allegations regarding the size of the cells (see paragraph 6 above), the applicant referred to the findings of a local monitoring group, which had inspected the prison on an unspecified date and noted that cell no. 013 measured 21.6 sq. m, including the surface area of the sanitary facilities (3 sq. m) and cell no. 007 measured 24.6 sq. m, including the sanitary facilities (2.7 sq. m). The applicant alleged that the cells had generally housed eight inmates and, on account of overcrowding, the inmates had even had to sleep in turns. The applicant argued that his situation should be distinguished from that in the *Muršić* case since, unlike the applicant in that case, he had been confined in a pest-ridden and poorly ventilated cell (which was particularly stuffy during the summer period), and had been exposed to round-the-clock secondary smoking, except for a one-hour daily walk and without any other out-of-cell activities.

B. The Court's assessment

1. Admissibility

25. The Court takes note of the Government's objection as to non-exhaustion of domestic remedies (see paragraph 21 above). It considers that this issue is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for his complaint under Article 3 of the Convention regarding the alleged inadequate conditions of his detention. The Court therefore finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 163, 27 January 2015, and *Ter-Petrosyan v. Armenia*, no. 36469/08, § 52, 25 April 2019).

26. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. The application must therefore be declared admissible.

2. Merits

(a) Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention in conjunction with Article 3 of the Convention

27. The general principles regarding exhaustion of domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

28. The rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, the High Contracting Parties are dispensed from answering for their acts or omissions in proceedings before the Court before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that the domestic legal system provides an effective remedy which can deal with the substance of an arguable complaint under the Convention and grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 93, 10 January 2012, and *Neshkov and Others*, cited above, § 177).

29. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. With respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in these conditions and compensation for any damage sustained as a result of them. Therefore, for a person held in such conditions, a remedy capable of rapidly bringing the

ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because this person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. In other words, in this domain preventive and compensatory remedies have to be complementary to be considered effective (see ibid., §§ 180-191; *Ulemek v. Croatia*, no. 21613/16, § 71, 31 October 2019; and, most recently, *Shmelev and Others v. Russia* (dec.), nos. 41743/17 and others, §§ 85-104, 17 March 2020).

30. The Court notes at the outset that it has previously rejected objections of non-exhaustion raised by the Armenian Government in cases concerning inadequate conditions of detention (see *Kirakosyan v. Armenia*, no. 31237/03, §§ 55-58, 2 December 2008, and *Gaspari v. Armenia*, no. 44769/08, § 46, 20 September 2018). In the present case, the Government raised a new ground for its objection of non-exhaustion, based mainly on the argument that, by submitting a civil claim instead of instituting administrative or criminal proceedings, the applicant had made use of a clearly futile remedy. The Court notes, however, that although they argued that the applicant should have pursued administrative or criminal remedies, the Government failed to submit any argument or evidence regarding the effectiveness of those remedies in respect of the applicant's particular complaints.

31. First of all, it is not clear what result could have been achieved in the applicant's situation by applying to a judicial authority, whether administrative or criminal, against the penitentiary service and the prison authority, considering that the issues raised by the applicant were apparently of a structural nature (see the relevant CPT reports in paragraphs 18 and 19 above; and compare *Kirakosyan*, cited above, § 58, and *Ananyev and Others*, cited above, § 111). The Government failed to explain the scope of such potential judicial review and the kind of redress the applicant could have obtained had he pursued any of those remedies, in particular, any preventive and compensatory measures that the Administrative Court or the criminal courts of general jurisdiction could have ordered were a well-founded claim to be made before them (contrast *Domjan v. Hungary* (dec.), no. 5433/17, §§ 21-30, 14 November 2017; *Atanasov and Apostolov v. Bulgaria (*dec.), no. 65540/16 and 22368/17, §§ 48-67, 27 June 2017; *Draniceru v. the Republic of Moldova* (dec.), no. 31975/15, §§ 32-41, 12 February 2019; and *Shmelev and Others*, cited above, §§ 107-119). They neither referred to any specific domestic rules nor provided any examples of domestic judicial decisions taken in similar cases. All of the examples produced by the Government concern appeals by convicted persons against specific decisions by the prison authorities, such as the imposition of a disciplinary penalty or refusal to apply an amnesty (see paragraph 21 above), as opposed to any

complaints about inadequate detention conditions, and are thus irrelevant to this case (see *Petrescu v. Portugal*, no. 23190/17, § 82, 3 December 2019).

32. Furthermore, there appears to have been a confusion in domestic law and practice at the material time as to which procedure – administrative or criminal – was to be pursued when lodging complaints against the penitentiary authorities. There was an obvious disagreement on this matter between, on the one hand, the District Court, which insisted that the applicant's complaint fell within the jurisdiction of the Administrative Court (see paragraphs 9 and 12 above) and, on the other, the Court of Appeal, which considered that such applications raised criminal-law matters falling within the competence of the courts of general jurisdiction (see paragraphs 11 and 14 above). The Government also referred to both remedies without, however, clarifying which of the two was applicable in the applicant's case. This ambiguity was explicitly acknowledged in 2019 by the Constitutional Court, which called for legislative amendments in order to resolve the issue and, pending such changes, assigned all such cases, with some exceptions, to the Administrative Court (see paragraph 17 above). Thus, the remedies referred to by the Government, in addition, lacked the requisite clarity at the material time.

33. Lastly, the Court cannot accept the Government's argument that the applicant was supposed to apply to the Constitutional Court in order to have his claim subsequently examined by the Administrative Court. The Court has previously held that the constitutional remedy is generally not considered as a domestic remedy to be exhausted due to the specificities of the judicial role of the Armenian Constitutional Court (see *Gevorgyan and Others v. Armenia* (dec.), no. 66535/10, § 36, 14 January 2020), and it sees no reasons to depart from that conclusion in the present case. The grounds suggested by the Government are not persuasive in this respect.

34. For these reasons, the Court is not convinced that any of the judicial review proceedings indicated by the Government provided an effective domestic remedy for the applicant's complaints regarding the allegedly inadequate conditions of his detention, were available both in theory and in practice, and were capable of preventing the continuation of the alleged violation and, if necessary, providing compensation for the damage sustained, as required by Article 13 of the Convention.

35. In view of the above considerations, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies and finds that the applicant did not have at his disposal an effective domestic remedy for his grievances under Article 3, in breach of Article 13 of the Convention in conjunction with Article 3 of the Convention.

(b) Alleged violation of Article 3 of the Convention

36 The general principles governing the application of Article 3 of the Convention to conditions of detention and prison overcrowding, as well as

the well-established standard of proof in such cases have been summarised in *Muršić* (cited above, §§ 99-101 and 122-141).

37. In the present case, the applicant alleged that the conditions of his detention at Nubarashen Remand Prison between 23 September 2013 and 11 March 2015 had fallen short of the requirements of Article 3 (see paragraphs 6 and 24). The Court reiterates that once a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a *prima facie* case of ill-treatment, has been made, the burden of proof is shifted to the respondent Government who alone have access to information capable of corroborating or refuting these allegations (ibid., § 128). The Court observes that the applicant's submissions in this respect are sufficiently detailed and largely corroborated by the CPT reports concerning Nubarashen Remand Prison and relating to the period at issue (see paragraphs 18 and 19 above). The Government, for their part, while contesting the applicant's submissions regarding the size of the cells (see paragraph 22 above), failed to submit any convincing evidence in that respect, such as a floor plan of the cells in question or similar document. The prison population register produced by the Government, while indicating the daily number of inmates and noting that the cells in question were designed for eight people, contains no information about the actual size of those cells and is not sufficiently detailed to draw conclusions on that point. Nor did they submit any proof regarding the alleged refurbishment of the prison, including the alleged reduction in the size of cells nos. 007 and 013 following the period of the applicant's detention. The statement by an official of the State Penitentiary Service, concerning the current and previous measurements of the cells, was made several years after the events in question. The Court has repeatedly declined to accept the validity of similar statements on the grounds that they cannot be viewed as sufficiently reliable, given the lapse of time involved and the absence of any supporting documentary evidence (see, *mutatis mutandis*, *Dudchenko v. Russia*, no. 37717/05, § 119, 7 November 2017, with further references). The Government have thus failed to submit information capable of refuting the applicant's allegations that he was held in cells measuring 18.6 and 21.9 sq. m, not including the sanitary facilities (see paragraph 24 above, and, as regards the methodology of the calculation of minimum personal space, *Muršić*, cited above, § 114).

38. The Court observes that, according to the above-mentioned register (see paragraph 7 above), for a considerable period of the applicant's detention, namely, a little more than 1 year and 1 month, the number of inmates in cell no. 007 (which measured 21.9 sq. m) varied between 8 and 10, while in cell no. 013 (which measured 18.6 sq. m) between 7 and 10, at times even reaching up to 12 persons, which means that the applicant had a personal space of less than 3 sq. m – at worst 1.5 sq. m and at best 2.7 sq. m. Furthermore, there is no complete information in the said document about a thirty-six day period of the applicant's detention. Since the Government

failed to provide full information in that respect, the Court sees no reason to doubt the applicant's submission that the cells in question generally housed eight inmates, thereby leaving him with a personal space of less than 3 sq. m throughout those thirty-six days. Thus, a strong presumption of a violation of Article 3 arises for the above-described periods (see *Muršić*, cited above, §§ 136-37). As the Government have not shown that those were only short, occasional and minor reductions in the required personal space (ibid., §§ 151-53), this presumption has not been rebutted.

39. As regards the remaining period of ninety-two days, depending on the number of the applicant's cellmates the personal space accorded to him fluctuated between 3.1 and 3.7 sq. m, with the exception of one day when it was around 4.4 sq. m. The space factor, therefore, remains a weighty element in the Court's assessment of the adequacy of the conditions of detention during that period (ibid., § 139). Turning to the other aspects of the applicant's detention conditions, the Court notes that the Government did not contest the applicant's allegations in that respect, which, moreover, largely coincide with the description of the overall conditions in Nubarashen Remand Prison contained in the relevant CPT reports (see paragraphs 18 and 19 above). Thus, the applicant's situation was further aggravated by the fact that he was confined in a poorly ventilated cell which was infested with pests, was exposed to secondary smoking and was allowed only a one-hour outdoor walk per day (compare *Vasilescu v. Belgium*, no. 64682/12, § 104, 25 November 2014; *Sukachov v. Ukraine*, no. 14057/17, § 94, 30 January 2020; and contrast *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, § 193, 29 January 2019). Having regard to the cumulative effects of these conditions, the Court finds that they amounted to degrading treatment within the meaning of Article 3. Moreover, the fact that, for one day, the applicant had a personal space of slightly more than 4 sq. m does not detract from this finding, given the brevity of this period and the negligible improvement in question.

40 In the light of the above considerations, the Court concludes that there has been a breach of Article 3 of the Convention on account of the applicant's detention conditions in Nubarashen Remand Prison.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government argued that the amount claimed was excessive.

44. The Court finds that the suffering caused to a person detained in conditions that are so poor as to amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention cannot be made good by a mere finding of a violation; it calls for an award of compensation. The amount of time spent by the person concerned in these conditions is the most important factor for assessing the extent of this damage (see *Neshkov and Others*, cited above, § 299). By contrast, the finding of a violation may in itself constitute sufficient just satisfaction for a breach of Article 13 of the Convention flowing from the lack of effective domestic remedies in respect of such conditions (ibid.). Making its assessment on an equitable basis, and taking in particular account of the amount of time spent by the applicant in poor conditions, the Court awards him EUR 3,900, plus any tax that may be chargeable.

B. Costs and expenses

45. The applicant did not claim any costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection of non-exhaustion to the merits of the applicant's complaint under Article 13 of the Convention in conjunction with Article 3 and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

6. *Dismisses,* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Yonko Grozev President