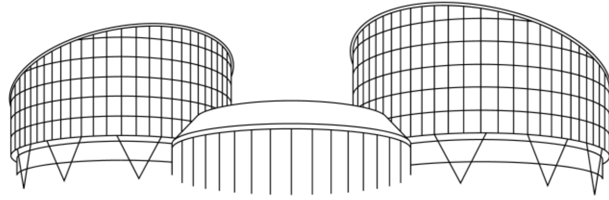

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ARTYOMOV v. RUSSIA

(Application no. 14146/02)

JUDGMENT

STRASBOURG

27 May 2010

FINAL

04/10/2010

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

In the case of Artyomov v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 14146/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Gennadyevish Artyomov ("the applicant"), on 6 February 2002.

2. The applicant, who was granted legal aid, was represented by Ms O. Preobrazhenskaya and Ms O. Mikhaylova, lawyers with the International Protection Centre in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in appalling conditions in detention facility no. IZ-39/1 in Kaliningrad, that he had been severely beaten up in a correctional colony on three occasions, that there had been no effective investigation of his complaints of ill-treatment and that he had not been afforded an effective opportunity to argue his civil claims before domestic courts.

4. On 13 October 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). On 20 May 2009 the Court put additional questions to the parties.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and lived until his arrest in the town of Gvardeysk, Kaliningrad Region.

A. Convictions

7. On 8 September 1999 the Gvardeyskiy District Court of the Kaliningrad Region found the applicant guilty of aggravated blackmail and sentenced him to five years' imprisonment.

8. In separate proceedings, on 16 November 2000 the Supreme Court of the Russian Federation, in the final instance, convicted the applicant of disruption of order in a detention facility and sentenced him to ten years' imprisonment.

B. Detention in facility no. IZ-39/1 in Kaliningrad

1. Detention from 16 August 1998 to 14 April 1999

(a) Conditions of detention

9. From 16 August 1998 to 14 April 1999 the applicant was detained in Kaliningrad no. IZ-39/1 detention facility. According to the applicant, that detention facility was built in 1929 and no construction works to the cells have been carried out since.

10. According to certificates issued on 20 December 2005 by the director of the facility and produced by the Government, the applicant was kept in twenty-two different cells which measured 7.8, 14 and 31.1 square metres. The Government submitted that the information on the exact number of inmates detained together with the applicant was not available. They noted that the cells could have occasionally been overcrowded, but at all times the applicant had had an individual bunk and bedding. Relying on the information provided by the director of the facility, the Government further argued that the sanitary conditions in the cells were satisfactory.

11. The applicant did not dispute the cell measurements. However, he alleged that the cells which measured 14 square metres had had ten sleeping places and usually had housed from 24 to 30 inmates. The smaller cells had either six or eight sleeping places and accommodated from 14 to 22 detainees. Given the lack of beds, inmates had slept in shifts. The applicant further submitted that the sanitary conditions had been appalling.

(b) Proceedings for compensation for damage

12. On 12 June 2002 the applicant lodged an action against facility no. IZ-39/1 and the Ministry of Finance, seeking compensation for damage. He described the conditions of his detention in minute detail and claimed that his detention had amounted to torture. He also sought leave to appear before the court.

13. On 17 June 2002 the Tsentralniy District Court of the Kaliningrad Region refused leave to appear because the domestic law did not require the applicant's presence. A month later the applicant again unsuccessfully sought leave to appear and asked to be assisted by legal aid counsel, arguing that he had no means to pay for legal assistance.

14. On 15 July 2002 the Tsentralniy District Court dismissed the action because the applicant had failed to prove that the facility administration had been liable for damage allegedly caused to him and he had not produced evidence showing that his rights had been violated. That judgment was quashed by the Kaliningrad Regional Court on 13 November 2002. The case was remitted for fresh examination.

15. On 21 January 2003 the applicant received a letter from a judge of the Tsentralniy District Court informing him that he could not be granted leave to appear as the law did not allow a transfer of detainees from facilities where they are serving their sentence to enable them to take part in civil proceedings. The judge noted that the District Court had no right to bring the applicant to the hearing, as his regime of detention would be violated. The judge further informed the applicant that he could appoint a representative or authorise the District Court to examine the action in his absence.

16. On 28 February 2003 the Tsentralniy District Court, in the applicant's absence, dismissed the action. The relevant part of the judgment read as follows:

> "[The applicant] was not brought to the hearing because the law on civil procedure does not prescribe the transport of prisoners who serve sentence in detention facilities to court hearings to allow them to take part in examination of civil cases. [The applicant] did not want to make use of his right to issue a power of authority to a representative to ensure his participation in the examination of the case; he was duly informed about the date and time of the hearing.
>
> ...
>
> As it follows from information presented on 27 February 2003 by the administration of detention facility no. IZ-39/1, cell no. 4/19 [where the applicant was detained] measures 14 square metres; it is impossible to establish how many inmates were detained in the cell as such data were not recorded. Mr S. [who was detained together with the applicant] indicates in his claim that the cells in which he had been detained had been overcrowded. As it follows from [the applicant's] detention record he was detained in 22 different cells during his detention.

The above-mentioned circumstances attest to the fact that there is no objective, true and sufficient evidence corroborating [the applicant's] statement that two square metres [of personal space] were afforded to each three inmates. Moreover, funds were not provided from the federal budget for the construction of the second building of the detention facility between 1998 and 2000.

According to certificate no. 1397 issued on 2 July 2002 by the Department for Execution of Sentences, due to lack of funds reconstruction and major repair works were not carried out in the detention facility in 1998 and 1999.

By virtue of Article 1069 of the Civil Code of the Russian Federation, damage caused to an individual by unlawful actions (omissions) of State authorities, municipal authorities or their officials is to be compensated and is compensated at the expense of the Treasury of the Russian Federation, treasuries of the constitutive entities of the Russian Federation or treasuries of the municipal authorities respectively.

Taking into account the above-mentioned circumstances, the court concludes that having regard to the lack of funds in the federal budget for the reconstruction and major repair works of the detention facility and to the fact that [the applicant's] arrest was authorised by a prosecutor, the actions of the administration of detention facility no. IZ-39/1 pertaining to [the applicant's] placement and detention in the facility had a lawful character and complied with requirements of the law; thus, the respondents do not bear responsibility under Article 1069 of the Civil Code of the Russian Federation.

...

By virtue of Article 151 of the Civil Code of the Russian Federation, if an individual sustained non-pecuniary damage (physical and moral sufferings) as a result of actions which violated his personal non-pecuniary rights or which encroached on his other non-pecuniary interests or in other cases which are prescribed by law, a court may order that the adversary should compensate non-pecuniary damage.

As it was indicated above, the respondents are not those who caused damage due to the overcrowding in the detention facility cells; lack of repair works; [the applicant] contracting a skin rash; the deterioration of [the applicant's] eyesight; as to [the applicant's] allegations of insufficient food, lighting and provision of essentials, they were refuted by the case file materials; accordingly, the court dismisses [the applicant's] action.”

17. The applicant lodged an appeal statement, complaining, *inter alia*, that he had not been afforded an opportunity to attend the hearings before the District Court and thus he had been unable to argue his case effectively. The applicant sought leave to appear before the appeal court.

18. On 4 June 2003 the Kaliningrad Regional Court upheld the judgment of 28 February 2003, endorsing the reasons given by the District Court. The relevant part of the judgment read as follows:

“As to [the applicant's] claims of overcrowding in the cells in which he was detained and inability to shower at least once a week, as prescribed by the Rules on Internal Order, those allegations were confirmed; at the same time, those violations of the detention rules did not have a gross and malicious character amounting, as [the applicant] claimed, to torture. For instance, [the applicant] could shower every ten

days in view of the throughput capacity of the bathhouse; that fact cannot be considered a serious violation of [the applicant's] rights.

As it follows from a certificate submitted by the facility administration to the court, during the period indicated by [the applicant] from 1,600 to 1,800 persons were detained in the facility, while the maximum permitted number of inmates was 1,015. In such circumstances, the cells in fact occasionally accommodated more inmates than was permitted, however the [permitted] number was not exceeded threefold as [the applicant] claimed. At the same time the [District] Court rightfully considered that there was no guilt on the part of the detention facility in such circumstances, as the facility did not have the right not to admit the detainees when the maximum capacity of the facility had been exceeded. The [District] Court lawfully found that there were no grounds for accepting [the applicant's] action for compensation for non-pecuniary damage as the responsibility under Article 1069 of the Civil Code of the Russian Federation only arises on the condition of guilt on the part of the State authorities, which is absent in the present case.

...

The court cannot accept [the applicant's] argument that his right to defence was violated. Norms of the Code of Civil Procedure (in force at the material time) do not require transport of detainees to courts which examine civil cases. The [District] Court informed [the applicant] of his right to participate in a court hearing through his representative, however, [the applicant] did not want to make use of that right. His requests for appointment of legal aid counsel also could not be granted by the [District] Court because there is no norm in the Code of Civil Procedure which requires Bar Associations to represent interests of such persons in civil cases. At the same time, nothing precluded [the applicant] from asking a Bar Association to represent him."

The applicant was not brought to the appeal hearing.

2. *Detention from 19 April to 26 September 2000*

(a) Conditions of detention

19. On 19 April 2000 the applicant was transferred from a colony where he was serving his sentence pursuant to the judgment of 8 September 1999 to facility no. IZ-39/1 to take part in the trial on the charge of disruption of order in the colony. He remained in facility no. IZ-39/1 until 26 September 2000.

20. According to the applicant, he was detained in a number of cells. He provided description of the two cells: cell no. 79 which measured 17 square metres, had 10 sleeping places and accommodated 18 to 24 inmates, and cell no. 29, which measured 10 square metres, had six sleeping places and accommodated 15 inmates. The inmates took turns to sleep. The applicant argued that the sanitary conditions in the cells had been unsatisfactory. The ventilation system did not function, making the heat in summer unbearable. The cells were permanently lit by 40-watt bulbs. The toilet was not separated by a partition from the living area. At no time did the applicant

have complete privacy. Anything he happened to be doing – using the toilet, sleeping – was subject to observations by the guard. He could shower twice a month. Of the ten shower heads only five worked and a large group of inmates had to fight for a place to shower within the afforded fifteen minutes. The cells were dirty, damp and full of insects.

21. The Government, relying on certificates issued by the director of the detention facility on 15 July 2009, argued that the applicant had been detained in eight different cells, of which six cells measured between 7.7 and 7.9 square metres and had two sleeping places and the remaining two cells measured 13.4 and 16.7 square metres and were fit to accommodate three inmates. The Government submitted that the number of inmates in the cells had always corresponded to the number of bunks. As follows from a certificate issued by the facility director, the information on the exact number of inmates detained together with the applicant was unavailable as the registration logs had been destroyed.

22. The Government further submitted that each cell had a glazed window 1.2 metre high and 0.9 metre wide, which was covered by thick bars with so-called "eyelashes", that is, slanted plates approximately two centimetres apart welded to a metal screen, which gave no access to natural air or light. In compliance with the recommendations of the Russian Ministry of Justice issued on 25 November 2002, the latter construction was removed from the windows before March 2003. According to the Government the sanitary conditions were satisfactory. The cells were ventilated and had a central heating system, water supply, sewerage, natural and electric lighting and sanitary equipment. The applicant had free access to drinking water. The toilet was separated by a one-metre-high partition from the living area of the cell. The electric lighting was constantly on for surveillance and safety reasons. At night lower-voltage bulbs were used. The cells were disinfected at least once a month. The applicant was afforded an opportunity to shower every ten days for no less than fifteen minutes. He was provided with an individual bed, mattress, pillow and bed linen.

(b) Proceedings for compensation for damage

23. On 9 June 2003 the applicant sued facility no. IZ-39/1 and the Kaliningrad Regional Department of the Federal Treasury for compensation for damage. In his statement of claim he gave a detailed account of the conditions of his detention from 19 April to 26 September 2000.

24. On 23 June 2003 the Tsentralniy District Court stayed the adjudication of the action and asked the applicant to indicate possible evidence showing that the alleged violations had in fact occurred. On 6 August 2003 the Kaliningrad Regional Court upheld that decision. There is no indication that the applicant sought resumption of the proceedings.

3. Detention from 19 December 2003 to 12 January 2004

(a) Conditions of detention

25. On 19 December 2003 the applicant was taken from the colony to facility no. IZ-39/1 to attend an appeal hearing pertaining to one of his actions. He was sent back to the colony on 12 January 2004.

26. The Government, relying on a certificate issued on 20 December 2005 by the director of facility no. IZ-39/1, submitted that during that period the applicant had been detained in two different cells, each measuring 7.8 square metres. The Government further noted that the sanitary norm of personal space per inmate had not always been complied with, but the applicant had had an individual sleeping place at all times. According to the Government, the applicant was detained with three other detainees in the first cell. They were unable to indicate the exact number of inmates in the second cell. However, as it follows from the above-mentioned director's certificate, the facility did not have any information on the number of inmates in either of the cells in which the applicant had been detained.

27. Citing the information provided by the director of the facility, the Government further submitted that the cells received natural light and ventilation through a large window, which was double-glazed and measured 1.2 square metres. The windows had a casement. Inmates could request warders to open the casement to bring in fresh air. The windows were covered with latticed partitions to ensure "sound and visual insulation". The cells had ventilation shafts. The cells were equipped with lamps which functioned day and night. Each cell was equipped with a lavatory pan, a sink and a tap for running water. The pan was separated from the living area by a one-metre-high partition. Inmates were allowed to take a shower once in ten days. Each inmate was afforded at least fifteen minutes to take a shower. The cells were disinfected. The Government, relying on the information provided by the director of the facility, further stated that the applicant was given food "in accordance with the established norms". According to the Government, detainees, including the applicant, were provided with medical assistance. They had regular medical check-ups, including X-ray examinations, blood tests, and so on. The applicant did not ask for particular medical services. The Government furnished a copy of the applicant's medical record and medical certificates.

28. The applicant did not contest the cell measurements. However, he insisted that the cells had been severely overcrowded and he had had less than two square metres of living surface. Inmates had to take turns to sleep. The applicant further submitted that the sanitary conditions had been appalling. The cells were infested with insects but the administration did not provide any insecticide. The windows were covered with metal blinds

which blocked access to natural light and air. It was impossible to take a shower as inmates were afforded only fifteen minutes and two to three men had to use one shower head at the same time. That situation was further aggravated by the fact that inmates could only take a shower once in ten days. Inmates had to wash and dry their laundry indoors, creating excessive humidity in the cells. Inmates were also allowed to smoke in the cells. The lavatory pan was not separated from the living area by any partition. Thus, inmates were afforded no privacy. No toiletries were provided. The food was of poor quality and in scarce supply. The applicant further argued that medical assistance had been unavailable.

(b) Proceedings for compensation

29. The applicant complained to various authorities, including the Secretariat of the President of the Russian Federation, the State Duma, the Governor of the Kalinigrad Region, various prosecutors and the USA Embassy in the Russian Federation, about the conditions of his detention. The complaints were to no avail.

30. On 16 January 2004 the applicant lodged an action against facility no. IZ-39/1, seeking compensation for damage caused as a result of his detention in appalling conditions from 19 December 2003 to 12 January 2004. He also sought leave to appear before the court.

31. On 24 March 2004 the Tsentralniy District Court dismissed the action, relying on the same grounds as were cited in the judgment of 28 February 2003. In particular, the District Court noted that Article 1069 of the Russian Civil Code renders authorities amenable to responsibility for causing damage to individuals only if there has been fault in their actions or omissions. As there was no fault on the part of the domestic authorities for "mental and emotional sufferings or other damage" caused to the applicant, his action could not be accepted.

32. The applicant lodged an appeal statement, complaining, among other things, that the District Court had not granted him leave to appear. The applicant asked to be brought to the appeal hearing.

33. On 12 May 2004 the Kaliningrad Regional Court, in the applicant's absence, upheld the judgment, endorsing the reasons given by the District Court. As to the applicant's complaints that he could not attend the hearings before the District Court, the Regional Court noted that the applicant was serving his sentence in a correctional colony and thus it had been impossible to transport him to the hearings. The Regional Court pointed out that the applicant was aware of his procedural rights as a claimant.

C. Ill-treatment in colony no. OM-216/13

1. Events on 23 October 2001

34. At the material time the applicant was serving a prison sentence in correctional colony no. OM-216/13 in the village of Slavyanonvka, Bagrationovskiy District, Kaliningrad Region (also known as facility no. OM-216/13, hereinafter "the colony").

35. In October 2001 a group of officers of a special-purpose unit of the Kaliningrad Regional Directorate for Execution of Sentences (*отдел специального назначения Управления Исполнения Наказаний Минюста России по Калининградской области)* arrived at the colony for the purpose of "performing searches in the living quarters of the colony".

36. The applicant submitted that on 23 October 2001, at approximately 10.00 a.m., several officers had entered cell no. 22 where he had been detained. The officers wore balaclava masks. Without warning or any apparent reason they started hitting the applicant and his nine inmates with rubber truncheons and fists. The applicant fell to the floor but was forced to stand up. The officers, hitting and kicking the inmates, forced them to leave the cell.

37. The inmates were lined up in a corridor with their faces to the wall and were ordered to spread their legs, put their hands against the wall and to remain spread-eagled for ten minutes. The beatings continued. Subsequently the applicant and his inmates were taken to the entrance door where they saw two rows of officers wearing balaclava masks. The applicant was told to run between these rows to a car. While he was running, he received several blows to his back and his head with rubber truncheons. On the way back the applicant and other inmates again had to pass between the rows of masked officers, who subjected them to the beatings with rubber truncheons.

38. The applicant and the inmates were lined up with their hands against the wall and their legs wide apart. After three to four minutes of maintaining that position the applicant started feeling dizzy and his legs and arms swelled up. An officer hit the applicant with his fist on the left side of the back. Then several wardens in balaclava masks approached the inmates and started beating them up. The applicant was hit several times on the head, back and legs. He had been pushed strongly against the wall and his forehead was cut and bleeding. The beatings continued for another ten minutes.

39. During the following three days the applicant unsuccessfully requested the colony director to be examined by a doctor. On 26 October 2001 the applicant was visited by a colony doctor, who refused to record his injuries but ordered him to be confined to bed. According to the applicant,

that fact was recorded in register no. 29 of the penal ward (*журнал учета № 29 ПКТ-ШИЗО).*

40. The Government disputed the applicant's description of events. They relied on a handwritten report by the head of the special-purpose unit, Mr M., who stated that no force or special measures had been used on 23 October 2001.

41. The Government submitted that on 23 October 2001 inmates in cell no. 22 had broken the sewage system and had begun "demanding to be detained in satisfactory conditions". The officers of the special-purpose unit and the colony administration ordered the detainees to leave cell no. 22 and to move to cell no. 3. After the inmates had been body searched, they complied with the order. The unit officers searched the cell and found several forbidden objects, such as a metal pipe and a shaver. The Government noted that the colony doctor present during the search had recorded that the inmates had not had any complaints. The Government did not produce a copy of the relevant part of register no. 29 of the penal ward alleging its destruction in April 2005.

2. Events on 7 November 2001

42. In his numerous letters to the Court and complaints to domestic authorities, the applicant provided accounts of events which had occurred on 7 November 2001. Inconsistencies abounded in those various accounts, but, in general, the applicant's version was as follows. He alleged that on 7 November 2001 he had complained to an officer on duty, Mr L., that the injuries sustained by him on 23 October 2001 had not still been properly recorded. Mr L. quickly looked through written complaints given to him by the applicant and started insulting and threatening the applicant. Following a quick argument, Mr L. took the applicant to his office and hit him several times in the hip area. The applicant fell down and the officer hit him twice in the face with his fist. Before placing the applicant back in his cell, the officer again hit him several times on the side of the back and pushed him into the cell. The latter episode was witnessed by six inmates detained together with the applicant in the cell and two warders.

43. The Government, relying on a report written by the officer on duty, Mr L., on 7 November 2001, submitted that the applicant had disobeyed a lawful order by the duty officer and force had been used to suppress the disobedience. The report read as follows:

> "[I] report that on 7 November 2001, at 8.50 a.m., during a check-up and examination of cells in the penal ward [I] made a remark to an inmate, [the applicant], as he was dressed improperly ([he] was standing in his underwear). [He] started explaining that he had washed his trousers. He was told to put on clean trousers. In response he began talking in a loud voice. Subsequently he was informed that he would be reported to [the facility administration]. In response he said: "Write twenty of those. ...[obscene language]"). [The applicant] was instructed to go to the duty room for a discussion concerning his dishonourable behaviour. When accompanied to

> the duty room, he tried to offer resistance. Having pushed me, [he] tried to run to his cell. Subsequently [I] used physical force, put [the applicant] on the floor using a fight method, and [I] gripped his arm, using a fight method.”

44. The applicant was examined by a doctor on the same day. The doctor recorded an abrasion on the side of the applicant's back. The applicant alleged that the doctor had refused to record other injuries. On the following day the applicant applied to the head of the colony seeking a thorough medical examination and asking for his injuries to be properly recorded. According to the applicant, that complaint brought no response.

3. Events of 21 January 2002

45. According to the Government, on 18 January 2002 approximately 260 inmates, including the applicant, went on hunger strike. Approximately forty inmates performed acts of self-mutilation. Three days later a group of officers of a special-purpose unit of the Kaliningrad Regional Directorate for Execution of Sentences arrived at the colony to give assistance in “performing searches in the living quarters of the colony” as the hunger strike and self-mutilations continued.

46. The Government further submitted that on 21 January 2002, at about 4.30 p.m., a group of officers had entered cell no. 3, where the applicant had been detained, with the intention of searching it. The applicant refused to leave the cell, used offensive language, insulted warders and pulled their clothes. Following the applicant's refusal to stop his unlawful behaviour, an officer was forced to “use a rubber truncheon” against him. The applicant was taken out of the cell and body searched. A razor from a disposable shaver was seized. Relying on a certificate issued by the head of the colony medical division, the Government noted that the applicant had not applied for medical assistance between 21 January and 20 March 2002.

47. The applicant disputed the Government's version of events, arguing that after he had made known to the colony administration his intention to go on hunger strike, on 21 January 2002 a group of officers wearing balaclava masks had stormed into his cell and had taken inmates, apart from him, into a corridor. Then they hit him twice in the chest and head. The officers accompanied the beating with questions about the applicant's refusal to eat. Afraid for his life, the applicant promised to renounce his intention to take part in the collective hunger strike. He was taken to a corridor where some forty officers in balaclava masks stood. They intimidated and beat the applicant and his inmates. The applicant unsuccessfully asked the colony administration to record injuries sustained as a result of the beating.

4. Requests for institution of criminal proceedings

48. The applicant submitted several detailed complaints to the Kaliningrad Regional Prosecutor about the events of 23 October and 7 November 2001 and 21 January 2002. He referred to Article 3 of the Convention, urging the prosecutor to institute criminal proceedings against the officers involved in the beatings, and identified witnesses who could have corroborated his complaints. It appears that a number of inmates lodged similar complaints of ill-treatment before the Kaliningrad Regional Prosecutor.

49. On 20 March 2002 the Kalinigrad Regional Prosecutor refused to institute criminal proceedings upon the applicant's and his inmates' complaints, finding no prima facie case of ill-treatment. That decision was based exclusively on statements by warders and officers of the special-purpose unit.

50. On 21 October 2002 the Tsentralniy District Court of Kaliningrad upheld the prosecutor's decision. That decision was quashed on appeal on 24 December 2002 by the Kaliningrad Regional Court on the ground that the applicant had not been allowed to attend the hearing before the District Court or to present his version of events.

51. On 17 March 2003 the Tsentralniy District Court again upheld the prosecutor's decision of 20 March 2002. The District Court's decision was quashed on appeal on 27 May 2003 because the District Court had not examined the complaints pertaining to the events on 7 November 2001.

52. On 25 June 2003 the Tsentralniy District Court quashed the prosecutor's decision and remitted the case for a fresh inquiry. The District Court reasoned that the prosecutor had not addressed the applicant's complaints of ill-treatment which had allegedly occurred on 7 November 2001.

53. Two weeks later, on 9 July 2003, the Kalinigrad Regional Prosecutor dismissed the applicant's ill-treatment complaints, refusing to institute criminal proceedings. The decision, based on the statements by the colony administration, warders and officers of the special-purpose unit, indicated that on 23 October 2001 no force had been applied to the applicant and his inmates because there had been no need to use force and that the applicant had not complained to a doctor about his state of health.

In respect of the events on 7 November 2001 the prosecutor found that the use of force had been necessary because the applicant had disobeyed lawful orders of the officer on duty and had tried to run in the corridor. The applicant had been examined by a prison doctor, who had not recorded any injuries, save for an abrasion on his back which could have been sustained for some other reasons.

As to the events on 21 January 2002, the prosecutor established that the applicant had refused to leave his cell, had sworn obscenely, had threatened wardens and pulled their clothing. The applicant had been hit with a rubber

truncheon to stop his unlawful behaviour. The prosecutor concluded that the use of force had been lawful.

54. The applicant appealed against the prosecutor's decision to the Tsentralniy District Court. He furnished a list of inmates who could have corroborated his description of events, asked for them to be heard and also sought leave to appear before the court.

55. On 23 September 2003 the Tsentralniy District Court dismissed the complaint. The relevant part of the decision read as follows:

> "[The applicant] was duly informed about the place and time of the hearing; it was explained to him that it was impossible to transport him to the hearing; his absence could not preclude the examination of the complaints by the court.
>
> Having examined the case file materials, the decision of 9 July 2003, materials pertaining to [the applicant's] complaints to supervisory review instances, similar complaints by inmates, Mr B., Mr G., Mr M., and by a lawyer, Mr Me., and having heard the prosecutor who had insisted that the decision of 9 July 2003 and the prosecutor's actions were lawful and well-founded, the court finds as follows.
>
> ... The [prosecutor] carried out an inquiry into the three episodes [on 23 October and 7 November 2001 and 21 January 2002] and the court considers it lawful that while examining [the applicant's] new complaints, which did not contain any new information or facts pertaining to those episodes, [the prosecutor] used the findings of the previous inquiry.
>
> ... Thus, while carrying out an inquiry a prosecutor has the right to assess the necessity (or its absence) to question an applicant or witnesses, or to take other investigative measures.
>
> The Kaliningrad Regional Prosecutor, Mr Ko., examined [the applicant's] request of 14 July 2003 concerning the necessity to interrogate inmates of detention facility no. OM-216/13, and informed [the applicant] about it.
>
> The court did not establish, and [the applicant] did not present any evidence concerning a violation of his constitutional rights and freedoms or his right of access to a court by the contested decision of 9 July 2003 by which the institution of criminal proceedings had been refused or by other actions (omissions) of the prosecutor.
>
> Having regard to the above-mentioned circumstances, the court dismisses [the applicant's] complaint...
>
> The court does not grant [the applicant's] request for witnesses to be heard, because Article 125 of the Code of Criminal Procedure indicates the exhaustive list of persons who can take part in an examination of a complaint against a prosecutor's decision not to institute criminal proceedings or against other decisions and actions of a prosecutor. Those whose appearance before the court [the applicant] sought are not included in that list; a number of [witnesses] are inmates serving sentences in detention facilities and therefore they may not be transported to the courthouse to take part in the proceedings. [The applicant] was informed that it was impossible for witnesses to be heard."

56. The applicant appealed, complaining, *inter alia*, that neither the prosecutor nor the District Court had heard him or other detainees who could have confirmed his statements, that they had not taken medical evidence and had limited their inquiry to statements by the colony officers.

57. On 18 November 2003 the Kaliningrad Regional Court upheld the decision of 23 September 2003, endorsing the reasons given by the District Court. The Regional Court noted that the applicant's presence at the hearings before the courts had not been necessary and that the District Court had rightfully refused to hear witnesses.

58. On 13 February 2006 the Presidium of the Kaliningrad Regional Court, by way of a supervisory review, quashed the decisions of 23 September and 18 November 2003, noting a violation of the applicant's right to take part in the hearings before the courts.

59. On 29 March 2006 the Tsentralniy District Court quashed the prosecutor's decision of 9 July 2003 and ordered a fresh inquiry into the applicant's ill-treatment complaints. The relevant part of the decision read as follows:

> "... during an inquiry into a complaint concerning a criminal offence committed, a prosecutor must thoroughly and objectively investigate all circumstances pertaining to the facts indicated in that complaint; this means that he must question all interested parties, in [the applicant's] case [he] must order an independent medical examination of the detainee, following which and having analysed all established circumstances and having performed an evaluation, [he] should issue one of the decisions indicated in Article 145 of the Code of Criminal Procedure of the Russian Federation.
>
> As it appears from the investigation file presented by the prosecutor and from the materials of the supervisory review, the inquiry into [the applicant's] complaints was not performed consistently, it was chaotic, [the applicant] himself and the eyewitnesses, indicated by [the applicant] in his complaints, were not questioned; [the prosecutor] received merely formal explanations from the officers; it is clear from those explanations that the prosecutor himself did not interrogate those officers; an independent medical examination of [the applicant] for a purpose of establishing injuries was not performed.
>
> In such circumstances, [the court] considers that the prosecutor's inquiry into [the applicant's] complaint was performed formally and subjectively, and that the contested decision by which the institution of criminal proceedings was refused is unsubstantiated.
>
> However, it is necessary to take into account that more than four years have passed since the events complained of by [the applicant] and it will be difficult to remedy the insufficiency of the prosecutor's inquiry into the complaints about the crime."

The applicant attended the hearing.

60. It appears that the investigation is now pending.

5. Proceedings for compensation for damage

61. On 21 February 2002 the applicant and another inmate, Mr B., lodged actions against colony no. OM-216/13 and the Kaliningrad Regional Department of the Federal Treasury, seeking compensation for damage caused by beatings on 23 October and 7 November 2001 and 21 January 2002.

62. In May and June 2002 the applicant submitted several motions to the court, seeking leave to appear, asking to summon witnesses on his behalf and to obtain certain medical documents from the respondents.

63. On 26 April 2004 the Bagrationovskiy District Court, Kaliningrad Region, held a hearing in colony no. OM-216/13. The District Court heard the applicant, his co-plaintiff, the representative of the colony, and a number of witnesses. Both the applicant and his co-plaintiff insisted that the beatings had taken place. The representative of the colony confirmed that on 23 October 2001 physical force and rubber truncheons had been used against the applicant. However, he stressed that the use of the force and special means had been lawful. The head of the medical department of the colony and a prison doctor did not remember examining the applicant after the beatings. Having heard the parties and witnesses, the District Court dismissed the actions, holding, in so far as relevant, as follows:

> "At the plaintiffs' request the court heard, as witnesses, inmates who are serving sentences in that colony. Thus, witness T. confirmed that [the applicant] had been beaten by officers of the special-purpose unit on his way to the penal ward and in the walking area, while witnesses Kh. and Ga. (warders in the colony) did not confirm that allegation in the court hearing.
>
> An extract from [the applicant's] medical record confirms that on 26 October 2001 [the applicant] consulted a prison doctor, and an extract from register no. 29 of the penal ward corroborates the fact that the prison doctor, Mr G., had ordered that [the applicant] should be confined to bed until 29 October 2001.
>
> A witness, [the prison doctor], Mr G. stated in the court hearing that there is no information in the [applicant's] medical record pertaining to his applying for medical assistance on 23 October 2001. On 26 October 2001 he ordered [the applicant] to be confined to bed at the latter's request, as [the applicant] claimed that he was tired. [Mr G.] never refused to examine inmates, and in January 2002 he was on leave.
>
> Witnesses Mr Gr., Mr K., Mr Gu. and Mr Ta. testified that in the morning of 7 November 2001 there had been a loud argument between [the applicant], who was not dressed properly, and the officer on duty, Mr L., [and] stated that [the applicant] had been taken out of the cell and that Mr L. had twice hit [the applicant] with his fist on the back when the latter was brought back to the cell.
>
> As it follows from the statements by Mr L., [the applicant] responded rudely to Mr L.'s remark about his clothes; he was taken to the duty room to provide an explanation about the incident. However, [the applicant] pushed Mr L. aside and began running to his cell, screaming that he had been beaten up. Due to such disobedience, physical force in the form of a fight method was applied to [the applicant]. The testimony of

this witness is confirmed by his report to the director of colony no. 216/13 made on 7 November 2001.

An act was drawn up on 7 November 2001 as a confirmation of a use of force against [the applicant], on the same day a medical assistant, Ms Lo., recorded an abrasion on the left side of the small of [the applicant's] back.

[The applicant] applied to a Justice of the Peace of the 1st Court Circuit with a complaint, seeking institution of criminal proceedings against Mr L., the warder in colony no. 216/13, alleging that he had committed libel by writing that report.

The above-mentioned Justice of the Peace, in his decision of 20 October 2003, acquitted Mr L. of the charge of libel brought against him by [the applicant]... Thus, the court, in the course of the examination of the case, established that there had existed circumstances caused by [the applicant's] behaviour which had prompted the use of force against [the applicant], and that Mr L.'s report had described the events of 7 November 2001 correctly. The decision of 20 October 2003 was upheld on appeal by the decision of the appellate court on 11 February 2004 and became final on 13 April 2004.

An extract from [the applicant's] medical record certifies that he did not apply for medical assistance between 26 October and 4 December 2001.

On 21 January 2002, on an order of the head of the Kaliningrad Regional Department for Execution of Sentences, officers of the special-purpose unit arrived to colony no. OM-216/13 to give assistance to the colony administration in searching the living quarters and cells, having regard to an ongoing collective hunger strike and self-mutilations. At the same time a number of forbidden objects were seized from the penal ward, where [the applicant and his co-plaintiff] were detained.

A rubber truncheon was used against [the applicant] who tried to resist an officer from the special-purpose unit, which is confirmed by the report and act of application of a rubber truncheon issued on 21 January 2002.

As it follows from [the applicant's] medical record, medical assistance was not provided to him between 17 January and 11 March 2002.

The Kaliningrad Regional Prosecutor's Office carried out an inquiry pertaining to the three episodes of beatings of which [the applicant] complained; as a result of the inquiry the prosecutor issued a decision on 9 July 2003 refusing to institute criminal proceedings as there was no criminal conduct in the actions.

[The applicant] appealed against that decision in compliance with Article 125 of the Code of Criminal Procedure. The Tsentralniy District Court of Kaliningrad, by its decision of 23 September 2003, dismissed [the applicant's] complaint, finding that the disputed decision of the prosecutor was lawful and well-founded. The court decision became final on 18 November 2003.

...

The Court does not have any grounds to doubt the above-mentioned court decisions. [The court] did not establish any instances of unlawful use of physical force against

> the plaintiffs in the course of the present proceedings, which allows the court to conclude that [the applicant's]... claim is unsubstantiated."

64. The applicant appealed, also requesting the appeal court to ensure his presence at the hearing.

65. On 13 October 2004 the Kaliningrad Regional Court upheld the judgment of 26 April 2004, endorsing the reasons given by the District Court. Neither the applicant nor the representative of the respondents was present.

D. Detention in colony no. OM-216/9 together with HIV-positive detainees

66. On 19 May 1999 six HIV-positive detainees arrived at the colony, where they stayed until 26 May 1999. The Government, relying on the information provided by the colony director, submitted that the HIV-positive detainees had been accommodated in a separate colony unit. The colony administration assigned a day when only those detainees could take showers and allocated separate medical equipment to them. Bedding provided for those detainees was changed and washed separately from that of the rest of the detainees. The tableware given to the HIV-positive detainees was also washed and disinfected separately. The colony administration, assisted by medical specialists, organised a meeting with the detainees and lectured them on AIDS and on how the virus could be transmitted. They also warned the HIV-positive detainees that knowingly transmitting HIV was a criminal offence. The Government submitted that the colony administration had taken every necessary precaution to prevent the spread of the disease in the colony. In particular, they prevented the use of drugs, sexual contact between inmates and tattooing. They also provided contraceptives to inmates who were allowed to have long-term meetings with relatives. The Government stressed that as a result of those actions no detainee had contracted HIV.

1. Criminal proceedings against the colony administration

67. In 2000 and 2003 the applicant unsuccessfully sought institution of criminal proceedings against the colony administration because the HIV-positive detainees had been admitted to the colony.

68. On 20 March 2003 the Kaliningrad Regional Prosecutor sent a letter to the applicant informing him that his request had already been dismissed in 2000.

69. The applicant complained to a court that the prosecutor had failed to discharge his duties by refusing to reconsider his request.

70. On 29 July 2003 the Kaliningrad Regional Court, in the final instance, dismissed the complaint and discontinued the proceedings because

an appeal should have been lodged against the decision of 2000 rather than against the letter of 20 March 2003.

2. Tort proceedings

71. On 1 March 2002 the applicant lodged an action against the Kaliningrad Regional Prosecutor and the Kaliningrad Regional Department for Execution of Sentences, seeking compensation for non-pecuniary damage. He claimed that he had feared for his life because the HIV-positive detainees had stayed in the colony. He also sought leave to appear.

72. On 20 March 2002 the Tsentralniy District Court informed the applicant that the hearing had been listed for 5 April 2002. The District Court also noted that the law did not provide a detainee with the right to attend a hearing in a civil case and that the applicant could appoint a representative or allow the District Court to adjudicate the action in his absence.

73. On 5 April 2002 the District Court dismissed the action, holding that the colony administration had taken the necessary steps to prevent the risk of HIV contagion and that no-one in the colony had contracted HIV. The administration provided the HIV-positive detainees with separate kitchenware. The detainees took showers separately and medical assistance was provided to them in a separate facility and with separate equipment. The colony administration organised meetings with detainees and lectured them on how AIDS could be transmitted. At the same time the District Court noted that the applicant could not contract HIV by taking showers or eating in the same premises as the HIV-positive detainees.

74. On 24 July 2002 the Kaliningrad Regional Court upheld the judgment. The applicant was not present.

E. Proceedings against the police department and colony

75. On 26 February and 6 March 2002 the applicant lodged two tort actions against the Gvardeyskiy District police department and colony no. OM-216/13. In the first action the applicant claimed that in August 1998 police officers of the Gvardeyskiy District police department had seized his personal belongings and had not returned them to him. He further argued that he had been placed in the facility of that police department, where he had been detained in poor conditions and had only been provided with food once a day. In the second action he complained that the administration of colony no. OM-216/13 had not arranged screenings of films, as provided for by the domestic law.

76. On 13 May 2002 the Gvardeyskiy District Court dismissed the first action, finding that the applicant's allegations of insufficient food were false, and that his personal belongings had been seized lawfully.

77. On 7 August 2002 the Bagrationovskiy District Court dismissed the second action, holding that the domestic law did not provide detainees, including the applicant, with the right to see films.

78. On 21 August and 4 December 2002 the Kaliningrad Regional Court upheld the judgments of 13 May and 7 August 2002 respectively. The applicant was not brought to either the first-instance or the appeal hearings despite his requests.

F. Proceedings concerning refusal to provide medical data

79. On 31 January 2003 the applicant asked the colony administration to provide him with his medical records. On 5 March 2003 the administration provided him with general information about the state of his health and refused to give him the full record.

80. On 14 March 2003 the applicant unsuccessfully asked a prosecutor to institute criminal proceedings against the administration. On 23 September 2003 the Kaliningrad Regional Court, acting on an appeal by the applicant against the prosecutor's decision, discontinued the proceedings.

G. Request for institution of criminal proceedings against a judge

81. On 17 February and 25 April 2003 the applicant unsuccessfully asked various prosecutors to institute criminal proceedings against a judge who had determined one of his claims. Subsequently, the applicant complained to a court that the prosecutors had failed to discharge their duties. On 29 June and 29 July 2004 the Kaliningrad Regional Court, in the final instance, disallowed the complaints and discontinued the proceedings.

H. Proceedings concerning a transfer to another colony

82. On 1 February 2004 the applicant asked for a transfer to another colony. On 17 August 2004 the Kaliningrad Regional Court, in the final instance, granted the request and held that the applicant should stay in a lower security colony.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

83. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food

sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

B. Use of force and special measures in detention facilities

Penitentiary Institutions Act (no. 5473-I of 21 July 1993)

84. When using physical force, special means or weapons, the penitentiary officers must:

(1) state their intention to use them and afford the detainee(s) sufficient time to comply with their demands unless a delay would imperil life or limb of the officers or detainees;

(2) ensure the least possible harm to detainees and provide medical assistance;

(3) report every incident involving the use of physical force, special means or weapons to their immediate superiors (section 28).

85. Rubber truncheons may be used for

(1) putting an end to assaults on officers, detainees or civilians;

(2) repressing mass disorders or group violations of public order by detainees, as well as for apprehension (*задержание*) of offenders who persistently disobey or resist the officers (section 30).

C. Investigation of criminal offences

86. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, “the CCrP”) established that a criminal investigation could be initiated by an investigator on a complaint by an individual or on the investigative authorities' own initiative, where there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for overall supervision of the investigation (Articles 210 and 211). He could order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate or continue a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be notified to the interested party. The decision was amenable to appeal to a higher prosecutor or to a court of general jurisdiction (Articles 113 and 209).

87. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (“the new CCP”). Article 125 of the

new CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

D. Civil law remedies against illegal acts by public officials

88. Article 1064 § 1 of the Civil Code of the Russian Federation provides that the damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. Pursuant to Article 1069, a State agency or a State official shall be liable to a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated at the expense of the federal or regional treasury. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespective of any award for pecuniary damage.

E. Detention of persons with HIV

89. Limitation of a citizen's rights and freedoms because of his or her HIV status may be authorised only by federal law (section 5 of the Law on Prevention of Propagation of HIV infection, 38-FZ of 30 March 1995). Detainees are subject to a compulsory medical examination (section 9 of the Law). A person who has tested HIV-positive must be informed thereof, be informed of the need to take precautions for preventing transmission of HIV and warned that contamination of others or exposing others to a risk of contamination is a criminal offence (section 13 of the Law; Article 122 of the Criminal Code).

90. According to the Rules on Compulsory Testing of Prisoners for HIV infection (adopted by the Russian Government on 28 February 1996), the prison administration must take measures preventing transmission of HIV; medical and other staff must not disclose information relating to a detainee's HIV status (Rules 11 and 13).

91. Section 101 § 2 of the Penitentiary Code provided that medical penitentiary establishments should be organised for treatment and detention of drug addicts, alcoholics, HIV and tuberculosis infected prisoners. Federal Law No. 25-FZ of 9 March 2001 repealed that provision in so far as it related to HIV-positive prisoners.

F. Provisions on attendance at hearings

92. The Code of Civil Procedure of the Russian Federation provides that individuals may appear before a court in person or act through a representative (Article 48 § 1). A court may appoint an advocate to represent a defendant whose place of residence is not known (Article 50).

The Advocates Act (Law no. 63-FZ of 31 May 2002) provides that free legal assistance may be provided to indigent plaintiffs in civil disputes concerning alimony or pension payments or claims for health damage (section 26 § 1).

93. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to a temporary detention facility if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77.1). The Code does not mention the possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or defendant.

94. On several occasions the Constitutional Court has examined complaints by convicted persons whose requests for leave to appear in civil proceedings had been refused by courts. It has consistently declared the complaints inadmissible, finding that the contested provisions of the Code of Civil Procedure and the Penitentiary Code did not, as such, restrict the convicted person's access to court. It has emphasised, nonetheless, that the convicted person should be able to make submissions to the civil court, either through a representative or in any other way provided by law. If necessary, the hearing may be held at the location where the convicted person is serving the sentence or the court hearing the case may instruct the court having territorial jurisdiction over the correctional colony to obtain the applicant's submissions or carry out any other procedural steps (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004, and no. 94-O of 21 February 2008).

III. RELEVANT INTERNATIONAL DOCUMENTS

A. General conditions of detention

95. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

> "b. temporary holding facilities for criminal suspects (IVS)
>
> 26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.

...

45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private "because they know that all complaints usually pass through the colony's administration".

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

B. Detention of persons with HIV

96. The relevant extracts from the 11th General Report [CPT/Inf (2001) 16] prepared by the European Committee for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment (CPT) concerning transmissible diseases read as follows:

> "31. The spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/AIDS has become a major public health concern in a number of European countries....
>
> ...[T]he act of depriving a person of his liberty always entails a duty of care...
>
> The use of up-to date methods for screening, the regular supply of medication...constitute essential elements of an effective strategy...to provide appropriate care to the prisoners concerned.
>
> ...[T]he prisoners concerned should not be segregated from the rest of the prison population unless this is strictly necessary on medical or other grounds. In this connection, the CPT wishes to stress in particular that there is no medical justification for the segregation of prisoners solely on the grounds that they are HIV-positive.
>
> ...[I]t is incumbent on national authorities to ensure that there is a full educational programme about transmissible diseases for both prisoners and prison staff. Such a programme should address methods of transmission and means of protection as well as the application of adequate preventive measures. More particularly, the risks of HIV or hepatitis B/C infection through sexual contacts and intravenous drug use should be highlighted and the role of body fluids as the carriers of HIV and hepatitis viruses explained..."

97. The relevant parts of the Appendix to Recommendation no. R (98) 7 of the Committee of Ministers to Member States concerning the ethical and organisational aspects of health care in prison read as follows:

> "13. Medical confidentiality should be guaranteed and respected...
>
> 38. The isolation of a patient with an infectious condition is only justified if such a measure would also be taken outside the prison environment for the same medical reasons.
>
> 39. No form of segregation should be envisaged in respect of persons who are HIV antibody positive, subject to the provisions contained in paragraph 40.
>
> 40. Those who become seriously ill with Aids-related illnesses should be treated within the prison health care department, without necessarily resorting to total isolation. Patients, who need to be protected from the infectious illnesses transmitted by other patients, should be isolated only if such a measure is necessary for their own sake to prevent them acquiring intercurrent infections..."

98. The relevant part of the Appendix to Recommendation no. R (93) 6 of the Committee of Ministers to Member States concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison reads as follows:

> "9. As segregation, isolation and restrictions on occupation, sport and recreation are not considered necessary for seropositive people in the community, the same attitude must be adopted towards seropositive prisoners."

99. Detention of HIV-positive persons was also examined in the following Recommendations of the Committee of Ministers to Member States: no. R (89) 14 on the ethical issues of HIV infection in the health care and social settings; and no. R (98) 7 concerning the ethical and organisational aspects of health care in prison.

100. Similar recommendations were made by the 1993 World Health Organisation in the Guidelines on HIV infection and AIDS in prisons:

> "27. Since segregation, isolation and restrictions on occupational activities, sports and recreation are not considered useful or relevant in the case of HIV-infected people in the community, the same attitude should be adopted towards HIV-infected prisoners. Decisions on isolation for health conditions should be taken by medical staff only, and on the same grounds as for the general public, in accordance with public health standards and regulations. Prisoners' rights should not be restricted further than is absolutely necessary on medical grounds, and as provided for by public health standards and regulations...
>
> 28. Isolation for limited periods may be required on medical grounds for HIV-infected prisoners suffering from pulmonary tuberculosis in an infectious stage. Protective isolation may also be required for prisoners with immunodepression related to AIDS, but should be carried out only with a prisoner's informed consent. Decisions on the need to isolate or segregate prisoners (including those infected with HIV) should only be taken on medical grounds and only by health personnel, and should not be influenced by the prison administration....
>
> 32. Information regarding HIV status may only be disclosed to prison managers if the health personnel consider...that this is warranted to ensure the safety and well-being of prisoners and staff..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION FROM 16 AUGUST 1998 TO 14 APRIL 1999 AND FROM 19 APRIL TO 26 SEPTEMBER 2000

101. The applicant complained that the conditions of his detention from 16 August 1998 to 14 April 1999 and from 19 April to 26 September 2000 in detention facility no. IZ-39/1 in Kaliningrad were in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

102. The Government commented on the conditions of the applicant's detention. In particular, they submitted that the applicant had been detained in satisfactory sanitary conditions. Relying on certificates issued by the facility director, they pointed out that the applicant had occasionally been detained in overcrowded cells during the first period. However, at all times he had had an individual sleeping place. The Government stressed that overcrowding in detention facilities was objectively justifiable. In particular, it was caused by the high crime rate, insufficient financial resources and the limited capacity of detention facilities. During the second period of the applicant's detention the number of inmates in the cells had always corresponded to the number of sleeping places.

103. The Government pointed out that the applicant had had effective domestic remedies at his disposal of which he had effectively made use. For instance, he had lodged an action against the administration of the detention facility seeking compensation for damage allegedly caused to him as a result of his detention. The domestic courts had thoroughly examined his complaints and had taken lawful decisions.

104. The applicant challenged the Government's description of the conditions of his detention as factually inaccurate. He insisted that the cells had at all times been severely overcrowded. He further submitted that he had lodged tort actions against the detention facility; however, he had had no hopes that such an action could be effective as he had always known about the ineffectiveness of the domestic remedies.

B. The Court's assessment

105. The Court observes from the outset that the applicant complained about the conditions of his detention during the two separate periods. The first period ended on 14 April 1999 and the second one came to an end on 26 September 2000, which is more than two and a half years and more than a year, respectively, before he lodged his application with the Court on 6 February 2002. However, in 2002 and 2003 the applicant lodged actions against the detention facility and domestic financial authorities seeking compensation for damage allegedly caused to him during his detention. The two actions resulted in the final decisions of the Kaliningrad Regional Court issued on 4 June and 6 August 2003, respectively, by which the applicant's actions were either dismissed or adjourned.

106. The Court considers it appropriate first to determine whether the applicant has complied with the admissibility requirements defined in Article 35 § 1 of the Convention, which stipulates:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

The Court reiterates the applicant's argument about the non-existence of domestic remedies for his complaints about the conditions of his detention (see paragraph 104 above). Taking into account that argument and having regard to the fact that both periods of the applicant's detention ended more than six months before the application was lodged with the Court, the issue arises whether the applicant complied with the six-month requirement imposed by Article 35 of the Convention.

107. The Court notes in the first place that the purpose of the six months' rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore it ought to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 156, ECHR 2009-...). The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32-33, *Reports of Judgments and Decisions* 1997-V). Finally, the rule should ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205, and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

108. Normally, the six-month period 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 to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot be interpreted however in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take the start of the six month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Varnava,* cited above, § 157).

109. Turning to the facts of the present case, the Court thus has to ascertain whether there existed an effective remedy before the Russian courts in respect of the detention conditions, in particular whether a complaint concerning general conditions of detention could be the subject of an action for damages capable of providing redress under the Russian law of

tort. The Court observes that it may only deal with the merits of the present complaint:

(a) if such an action is considered a remedy within the meaning of Article 35 § 1 of the Convention, in which case the six-month period provided for in that Article should be calculated from the date of the final decisions by the Kaliningrad Regional Court; or

(b) if such a judicial avenue is not considered to provide the applicant with adequate and sufficient redress, when the Court finds that the applicant, unaware of circumstances which rendered the remedy ineffective, still complied with the six-month rule for the purpose of Article 35 § 1 of the Convention by availing himself of that apparently existing remedy.

1. Whether an action for damages can be considered an effective remedy

110. As to the effectiveness of the remedy, the Court reiterates that in other relevant cases regarding the conditions of detention it has found that the Russian Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see, for example, *Buzychkin v. Russia*, no. 68337/01, § 49, 14 October 2008, *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004, and *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). At the same time, the Court observes that it has jurisdiction in every case to assess in the light of the particular facts whether any given remedy appears to offer the possibility of effective and sufficient redress within the meaning of the generally recognised rules of international law concerning the exhaustion of domestic remedies (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Thus, without prejudice to its findings in earlier similar cases, the Court may examine whether in the particular circumstances of the present case an action for damages could have been regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention.

111. In the light of the information before it, the Court observes that Article 1069 of the Russian Civil Code provides for compensation for any unlawful act or omission by State authorities (see paragraph 88 above) which could in principle provide a remedy in respect of the applicant's allegations of appalling conditions of his detention. However, in the instant case, having established, among other things, that the applicant had been detained in overcrowded cells, the domestic courts dismissed his action and refused compensation on the sole ground that the domestic authorities, in particular, the facility administration, had not been liable for damage arising out of the conditions of his detention (see paragraphs 16 and 18 above). The

courts' finding was apparently based on the underlying proposition that the authorities were only accountable for damage caused by culpable conduct or omission. In the particular case, they considered that the lack of financial resources excluded the liability of the domestic authorities for unsatisfactory conditions of the applicant's detention, which were amply proven. They did not consider that it was not open to the State authorities to cite lack of funds or limited capacity of the detention facility as an excuse for not honouring their obligation to ensure satisfactory conditions of detention.

112. Bearing in mind the Government's argument that the problem of overcrowding in Russian detention facilities is derived from, *inter alia*, the lack of financial resources (see paragraph 102 above) which rendered the overcrowding a structural problem, and having regard to the subject matter of the applicant's claim, the approach adopted by the Russian courts is unacceptable. It allows a large number of cases, such as the applicant's, where the unsatisfactory conditions of detention result from lack of funds or limited capacity of detention facilities, to be dismissed. Thus, as a result of that stance of the courts, the remedy under the Russian Civil Code offers no prospect of success and could be considered theoretical and illusory rather than adequate and effective in the sense of Article 35 § 1 of the Convention. The Court is not satisfied that in the present state of the Russian law of tort claimants could reasonably expect to recover damages on proof of their allegations unless there were to be a change or at least a material development in the existing interpretation of the domestic legal provisions on tort by the Russian courts (see *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009).

2. Date from which the six-month period starts to run

113. Having found that the tort action brought by the applicant under Article 1069 of the Russian Civil Code is not a remedy within the meaning of Article 35 § 1 of the Convention and cannot be taken into account for the purpose of the six-month rule, the Court has now to decide when the applicant first became or ought to have become aware that the action for damages was not an effective remedy, that is when the six-month period started to run.

114. The Court reiterates that the applicant alleged appalling conditions of his detention during two periods, the most recent of which ended on 26 September 2000. On 6 February 2002, that is more than sixteen months later, he introduced his application to the Court. In June 2002 the applicant lodged his first action with the Tsentralniy District Court seeking compensation for damage arising out of the conditions of his detention during the first period from 16 August 1998 to 14 April 1999. In June 2003 he brought another action complaining about the conditions of detention during the second period, which had ended on 26 September 2000.

115. It is apparent that since August 1998, when the applicant found himself for the first time in the allegedly unsatisfactory conditions of detention, at least in theory an action lay under the Russian Civil Code for compensation for damages for pain and suffering experienced by him during his detention. However, it was not until June 2002 that he made use of that judicial avenue for the first time. The Court is also mindful of the fact that the second action was only brought a year later. The lapse of time in this case is striking. As stated above, the six-month rule enshrines the basic principle that complaints of breaches of Convention rights be brought with the expedition necessary to ensure effective and fair examination of the case. There are no exceptions and no possibility of waiver. The Court has held on a number of occasions that applicants must act with reasonable expedition in bringing their cases before it for examination and have sufficient explanation, consonant with the purpose of Article 35 § 1 of the Convention and the effective implementation of the Convention guarantees, for long periods of delay.

116. In the circumstances of the present case the Court sees no reason which could have forced the applicant to choose to wait for so long before applying to a domestic court, save for his own belief that such an action would be meaningless. It appears that he only decided to sue the detention facility after he had received the first letter from the Court by which he had been notified of the admissibility criteria as set out in Articles 34 and 35 of the Convention and informed that the six-month period for the purpose of Article 35 § 1 runs from the date of the final decision by a domestic authority. The Court also does not lose sight of the applicant's assertion that he had been aware all along that there were no effective domestic remedies for his complaints about the conditions of his detention.

117. In view of these various elements, the Court is accordingly driven to the conclusion that the present complaint has been introduced at least sixteen months out of time. An examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period. The applicant had been aware of the ineffectiveness of the judicial avenue he had made use of, long before he lodged his application with the Court. The intervening events, in particular the final disposal of the tort actions, cannot be relied on in the circumstances of this case as starting a fresh time-limit for complaints against Russia, the essence of which had been already known to the applicant in September 2000 at the latest. The complaints to the Court should therefore have been introduced no later than 14 October 1999, in respect of the first period of detention, and no later than 26 March 2001 in respect of the second period of detention (see *Laçin v. Turkey*, no. 23654/94, Commission decision of 5 May 1995, and *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

118. It follows that this complaint is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION IN RELATION TO CONDITIONS OF THE APPLICANT'S DETENTION FROM 19 DECEMBER 2003 TO 12 JANUARY 2004

119. The applicant complained that his detention from 19 December 2003 to 12 January 2004 in appalling conditions had been in breach of Article 3 of the Convention. Without relying on any Convention provision he further complained that he had not had at his disposal an effective remedy to obtain an improvement in the conditions of his detention. The Court considers that the applicant's complaints fall to be examined under Articles 3 and 13 of the Convention. Article 3 is cited above. Article 13 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. Submissions by the parties

120. The Government pointed out that the fact that the applicant had occasionally been detained in overcrowded cells could not serve as the basis for finding a violation of Article 3 of the Convention because the remaining aspects of the detention conditions (availability of an individual sleeping place, bedding, compliance with sanitary norms, etc.) had been satisfactory. The Government further noted that the problem of overcrowding exists in the detention facilities of many member States of the Council of Europe. The Government submitted that the applicant had actively used available domestic remedies, in particular by lodging a number of tort actions against the administration of the detention facility.

121. The applicant insisted that the detention in overcrowded cells had been unbearable. It was further exacerbated by unsatisfactory sanitary conditions, inability to take a shower regularly, insufficient lighting, etc. He stressed that he had raised an issue of the appalling conditions of detention before various domestic and foreign authorities. The complaints were to no avail.

B. The Court's assessment

1. Admissibility

122. The Court notes that the applicant's complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 3 of the Convention

123. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-39/1 in Kaliningrad. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government did not refute.

124. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The main characteristic which the parties did agree upon was the size of the two cells in which the applicant had been detained. The applicant claimed that the cell population severely exceeded their design capacity. The Government accepted that the cells had occasionally been overpopulated. They noted that the applicant had been detained with three other inmates in the first cell and did not provide any information on the number of inmates in another cell.

125. The Court notes that the Government, in their plea concerning the number of detainees, relied on the statements by the facility's director. Despite the fact that the director alleged that it was impossible to provide any information on the number of the applicant's fellow inmates (see paragraph 26 above), the Government, without giving any explanation, submitted that the applicant had been detained with three other detainees in one of the cells. In this respect, the Court observes that the Government did not refer to any source of information on the basis of which that assertion could be verified. It was open to the Government to submit copies of registration logs showing names of inmates detained with the applicant. However, no such documents were presented. The Court is, therefore, not convinced by the Government's submission.

126. In this connection, the Court reiterates that Convention proceedings, such as those arising from the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-

foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

127. Having regard to the principle cited above, together with the fact that the Government did not submit any convincing relevant information and did not, in principle, dispute that the applicant had been detained in the overcrowded cells, and taking into account the domestic courts' findings pertaining to the applicant's tort action (see paragraphs 31 and 33 above), the Court will examine the issue concerning the number of inmates in the cells in facility no. IZ-39/1 on the basis of the applicant's submissions.

128. According to the applicant, he was usually afforded less than two square metres of personal space throughout his detention. There was a clear shortage of sleeping places and the applicant had to share a bed with other detainees, taking turns to rest. The applicant was confined to his cell day and night.

129. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

130. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit*, cited above, § 39 et seq.; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court reiterates that it has recently found a violation of Article 3 on account of an applicant's detention in overcrowded conditions in the same detention facility (see *Mayzit*, cited above, §§ 34-43).

131. The Court notes that the applicant's situation created by the insufficient personal space was further exacerbated by the fact that he was not allowed to shower more than once in ten days during the entire period of his detention. Furthermore, the cells in which the applicant was held had no window in the proper sense of this word. They were covered, as the Government put it, with latticed partitions to ensure "sound and visual isolation". This arrangement cut off fresh air and also significantly reduced the amount of daylight that could penetrate into the cells.

132. The Court observes that in the present case there is no indication that there was a positive intention to humiliate or debase the applicant. However, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates in these unsatisfactory conditions was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in

detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

133. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention from 19 December 2003 to 12 January 2004 in facility no. IZ-39/1 in Kaliningrad.

(b) Article 13 of the Convention

134. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

135. Turning to the facts of the present case, the Court notes that the Government put special emphasis on the fact that the applicant had been able to lodge a tort action against the detention facility. According to the Government, the domestic courts had thoroughly examined the applicant's complaints. In this connection, the Court reiterates that it has already examined and dismissed that argument, finding that a tort action as the one brought by the applicant under Article 1069 of the Russian Civil Code could not be considered an adequate and effective remedy (see paragraph 112 above). The Court sees no reason to depart from that finding.

136. The Court further reiterates that in a number of cases against Russia it has already found a violation of Article 13 on account of the absence of an effective remedy in respect of inhuman and degrading conditions of detention, concluding (see, for example, *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007):

> "[T]he Government did not demonstrate what redress could have been afforded to the applicant by a prosecutor, a court or other State agencies, taking into account that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not only concern the applicant's personal situation (compare *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and, most recently, *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006). The Government have failed to submit evidence as to the existence of any domestic remedy by which the applicant could have complained about the general conditions of his detention, in particular with regard to the structural problem of overcrowding in Russian detention facilities, or that the remedies available to him were effective, that is to say that they could have

prevented violations from occurring or continuing, or that they could have afforded the applicant appropriate redress (see, to the same effect, *Melnik v. Ukraine*, no. 72286/01, §§ 70-71, 28 March 2006; *Dvoynykh v. Ukraine*, no. 72277/01, § 72, 12 October 2006; and *Ostrovar v. Moldova*, no. 35207/03, § 112, 13 September 2005).”

137. These findings apply *a fortiori* to the present case, in which the Government did not point to any domestic remedy by which the applicant could have obtained redress for the inhuman and degrading conditions of his detention or put forward any argument as to its efficiency.

138. There has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant to complain about the conditions of his detention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE EVENTS ON 23 OCTOBER AND 7 NOVEMBER 2001 AND 21 JANUARY 2002

139. The applicant complained that on 23 October and 7 November 2001 and 21 January 2002 he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of those events, amounting to a breach of Article 13. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3.

A. Submissions by the parties

140. The Government argued that the applicant had not been subjected to torture or to inhuman or degrading treatment on either occasion. They submitted that no force had been used against the applicant or any other inmate on 23 October 2001 as it had not been necessary. The lawful use of force on 7 November 2001 and 21 January 2002 had been a response to the applicant's unlawful actions. In the situation of the applicant's refusal to comply with lawful orders of the facility administration, the warders had no choice but to resort to the use of force. The Kaliningrad Regional prosecutor's office carried out a thorough investigation of his complaints and found them to be unsubstantiated. Subsequently, on a number of occasions the domestic courts thoroughly studied the prosecutor's findings and found them lawful and well-founded.

141. The applicant maintained his complaints. He also stressed that he had repeatedly asked to be examined by a prison doctor after each instance of the beatings. However, his requests were either completely disregarded or prison doctors recorded injuries selectively. The applicant insisted that the prosecutor's office had not been interested in investigating his complaints. For instance, on 9 July 2003 the prosecutor refused to institute criminal

proceedings against the warders and officers, basing its decision on his own previous findings. The applicant noted that it took the investigating authorities more than a year to conduct some kind of inquiry into his complaints of ill-treatment. He further submitted that on 29 March 2006 the District Court had accepted that the prosecutor's inquiry into his ill-treatment complaints had been ineffective. It was reopened and the investigation is now pending. At the same time, the applicant noted that it would be virtually impossible to establish the truth and punish the perpetrators, as more than five years had passed since the events in question.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

i. As to the scope of Article 3

143. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

144. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are

compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudla v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

145. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

ii. As to the establishment of facts

146. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

147. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, p. 24, § 32).

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

i. Events on 23 October 2001

148. It is not in dispute between the parties that in October 2001 a group of officers of the special purpose unit of the Kaliningrad Regional Directorate for Execution of Sentences carried out certain operations in the correctional colony where the applicant was detained. Those operations included, in particular, searches of all premises within the colony and body searches of the detainees. All officers wore balaclava masks and carried rubber truncheons.

149. The applicant argued that the operation had been accompanied by repeated and severe beatings as a consequence of which a number of inmates, including him, sustained multiple injuries. He gave a detailed account of the events which had allegedly occurred on 23 October 2001, describing the chain of events, indicating the time, location and duration of the beatings, and showing methods used by the special-purpose unit officers. The Government disputed the applicant's description, insisting that the use of force had not been necessary as inmates had fully complied with orders and had not demonstrated any resistance.

150. The Court notes that the applicant did not submit any medical evidence showing that he had sustained injuries save for a medical certificate issued on 7 November 2001. According to that certificate, the applicant had an abrasion on the side of his back (see paragraph 44 above). The Court reiterates the applicant's explanation that he was not examined by a prison doctor immediately after the alleged beatings, despite his numerous requests to that effect. He also pointed out that during the examination on 7 November 2001, that is two weeks after the alleged beatings, the prison doctor had refused to record all injuries. In response to the applicant's allegations, the Government submitted that a doctor had been present at the scene when the officers had carried out their operations and that he had not recorded any complaints (see paragraph 41 above).

151. The Court is not convinced by the Government's submissions. From materials available to the Court it appears that the applicant was one of a number of detainees who complained about having been beaten on 23 October 2001 (see paragraph 55 above). The Court has already held in a number of cases that in such circumstances the State authorities were under an obligation to conduct a medical examination of the applicant as well as of other detainees held in the premises concerned (see *Mironov v. Russia*, no. 22625/02, § 57, 8 November 2007, with further references). Although the effectiveness of the investigation into the applicant's ill-treatment complaints will be examined below, the Court would already stress at this juncture that it is struck by the fact that, despite the seriousness of the applicant's allegations, no medical examination was performed in the present case. The examination on 7 November 2001 does not suffice to

discharge this obligation because of the time that elapsed between the events complained of and the date when it was conducted. The Court is also mindful of the District Court's decision of 29 March 2006 by which an investigation into the applicant's ill-treatment complaints was reopened. In that decision the District Court noted that an independent medical examination was indispensible for an investigation into the allegations of ill-treatment (see paragraph 59 above).

152. Furthermore, the Court does not attach any evidentiary weight to the fact that the applicant allegedly did not make any complaints to the prison doctor who had witnessed the operation. It is not surprising that the applicant did not raise his grievances to the prison doctor while still in the presence of the alleged offenders. The Court cannot rule out the possibility that the applicant felt intimidated by the persons he had accused of having ill-treated him (see *Colibaba v. Moldova*, no. 29089/06, § 49, 23 October 2007 and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)). The Court also notes that the Government did not dispute that after the special-purpose unit's operation the applicant had made a number of requests to be examined by a prison doctor.

153. The Court further notes that although medical evidence plays a decisive role in establishing the facts for the purpose of the Convention proceedings, the absence of such evidence cannot immediately lead to the conclusion that the allegations of ill-treatment are false or cannot be proven. Were it otherwise, the authorities would be able to avoid responsibility for ill-treatment by not conducting medical examinations and not recording the use of physical force or special means (see, *mutatis mutandis, Dedovskiy and Others v. Russia*, no. 7178/03, § 77, 15 May 2008).

154. In assessing the applicant's allegations of ill-treatment, the Court has regard to other evidence in the case file. The Court notes that on 26 October 2001 the prison doctor had ordered the applicant's confinement to bed for three days, making an entry to that effect in register no. 29 of the penal ward (see paragraph 39 above). This fact was not disputed by the Government. It was also confirmed by the finding of the Bagrationovskiy District Court in the proceedings pertaining to the applicant's civil suit (see paragraph 63 above). The Court does not lose sight of the fact that at the hearing before the District Court the prison doctor insisted that the confinement was ordered because the applicant was tired. However, the Court finds this explanation to be superficial and concocted. Furthermore, at the hearing on 26 April 2004 before the Bagrationovskiy District Court a representative of the correctional colony stated that on 23 October 2001 physical force had been used on the applicant and that he had been hit with a rubber truncheon (see paragraph 63 above). The fact of the beating was also confirmed in open court by the applicant's fellow inmate, Mr T. The Court therefore finds it established "beyond reasonable doubt" that the

applicant was hit at least once with a rubber truncheon by the officers of the special-purpose unit.

155. The Court further notes that in order to be able to assess the merits of the applicant's ill-treatment complaint and in view of the nature of the allegations, it asked the Government to submit a copy of the complete investigation file relating to the proceedings against the officers of the special-purpose unit. The Government, without giving any reasons, failed to provide the Court with the materials sought, limiting themselves to submitting copies of certain reports and decisions of domestic authorities which were already in the Court's possession. In these circumstances, the Court is prepared to draw inferences from the Government's conduct, as well as from the failure of the domestic authorities to carry out a medical examination of the applicant in the aftermath of the events on 23 October 2001. Having said that and taking into account the evidence examined in the preceding paragraph together with the consistency of the allegations of ill-treatment which the applicant maintained whenever he was able to make statements freely before various investigating authorities or domestic courts, the Court finds it established to the standard of proof required in the Convention proceedings that on 23 October 2001 the applicant was subjected to the treatment of which he complained and for which the Government bore responsibility (see *Selmouni v. France* [GC], no. 25803/94, § 88, ECHR 1999-V; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004; and *Mikheyev v. Russia*, no. 77617/01, §§ 104-105, 26 January 2006). The Court shall therefore proceed to an examination of the severity of the treatment to which the applicant was subjected, on the basis of his submissions and the existing elements in the file.

156. The Court reiterates that it has found it established that the applicant was beaten up by the officers of the special-purpose unit and that as a result of those beatings he was confined to bed for at least three days. The Court does not discern any circumstance which might have necessitated the use of violence against the applicant. In this connection, the Court reiterates the Government's argument that the use of force was not necessary as the detainees, including the applicant, fully complied with orders. It thus appears that the use of force was intentional, retaliatory in nature and aimed at debasing the applicant and forcing him into submission. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering.

157. In these circumstances, the Court finds that the State is responsible under Article 3 on account of torture to which the applicant was subjected by officers of the special-purpose unit in the correctional colony on 23 October 2001 and there has thus been a violation of that provision.

ii. Events on 7 November 2001

158. The Court observes, and the parties did not dispute this fact, that on 7 November 2001 the applicant had an argument with a warder, Mr L. It was likewise uncontested that the warder L. used physical force against the applicant.

159. The Court observes that the exact circumstances and the intensity of the use of force against the applicant were disputed by the parties. The Government alleged that the force had been used lawfully in response to the unruly conduct of the applicant. The force did not exceed what was reasonable and necessary in the circumstances of the case. As it follows from the report written by the warder L., when the applicant had tried to run in the corridor, he had gripped his arm and "using a fight method" had put the applicant on the floor (see paragraph 43 above). The applicant did not dispute that he had run in the corridor and had disobeyed the order. However, he submitted that officer L. had repeatedly hit and kicked him in the hips and face. The applicant relied on the statements by his inmates that officer L. had hit him twice with his fist on the back before pushing him into the cell.

160. The Court first notes that the applicant was examined by a prison doctor immediately after the events on 7 November 2001. As it follows from a medical certificate, drawn up by the doctor, the applicant had an abrasion on the side of his back (see paragraph 44 above). However, given the Court's findings in respect of the applicant's allegations of ill-treatment which had occurred on 23 October 2001 (see paragraph 156 above), it is not possible for the Court to conclude beyond reasonable doubt that the injury described by the prison doctor was caused by the warder L. on 7 November 2001.

161. In any event, in the Court's view, the abrasion found on the applicant's body appears to disprove the applicant's version of events. It is consistent with a minor physical confrontation which might have occurred between the applicant and the warder. The Court also cannot overlook the inconsistencies in the applicant's versions of events as recounted before the domestic authorities and to the Court. Furthermore, the Court finds it peculiar that none of the applicant's fellow inmates testified to seeing marks on the applicant's face, although the latter insisted that the warder had hit him with the fist in the face a number of times. The Court therefore concludes that nothing shows that the warder had used excessive force when in the course of his duties he had been confronted with the alleged disorderly behaviour of the applicant. The Court is not persuaded that the force used had such an impact on the applicant's physical or mental well-being as to give rise to an issue under Article 3 of the Convention.

162. Under these circumstances, the Court cannot consider it established beyond reasonable doubt that on 7 November 2001 the applicant was subjected to treatment contrary to Article 3 or that the authorities had

recourse to physical force which had not been rendered strictly necessary by the applicant's own behaviour.

163. It follows that there has been no violation of Article 3 of the Convention on that account.

iii. Events on 21 January 2002

164. The Court observes that on 21 January 2002 officers from the special-purpose unit arrived at the colony, this time to render assistance in the situation of the collective hunger strike and self-mutilation by inmates. The parties advanced arguments similar to those which they had used to describe the events of 23 October 2001. However, the Government admitted that a rubber truncheon had been used against the applicant on 21 January 2002.

165. The Court does not have to deal with the particular discrepancies arising in the parties' versions of events, as the focal points for its analysis of the events on 21 January 2002 remain the same as those pertaining to the events on 23 October 2001. In particular, the Court once again notes the indiscriminate nature of the special purpose unit's operations which targeted the entire colony population rather than specific detainees and the authorities' failure to conduct a medical examination to ascertain whether the applicant sustained any injuries as a result of the operations in the colony, which is particularly striking in the situation where the domestic authorities as well as the Government confirmed that the applicant had been beaten.

166. The Court further observes that the applicant provided a graphic and detailed description of the ill-treatment to which he had allegedly been subjected, indicating its place, time and duration, and identified the colony officials and inmates who had been present. If the Government considered these allegations untrue, it was open to them to refute them by way of, for instance, witness testimony or other evidence. The Government was also invited by the Court to produce the investigation file pertaining to the applicant's complaints about the events on 21 January 2002. However, without any explanation, they did not produce the file, merely acknowledging that the officer had been forced "to use a rubber truncheon" against the applicant in response to his disobedience. The Court will therefore again draw inferences from the Government's conduct. Bearing in mind other relevant factors discussed above, it finds it established that the applicant sustained the treatment of which he complained. Against this background, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive (see *Zelilof v. Greece*, no. 17060/03, § 47, 24 May 2007).

167. It is clear that the acts of violence against the applicant were committed by the officers in the performance of their duties. The Court

notes the Government's argument that the force was used lawfully in response to the unruly conduct of detainees, including the applicant.

168. The Court is mindful of the potential for violence that exists in penitentiary institutions and of the fact that disobedience by detainees may quickly degenerate into a riot (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). The Court accepts that the use of force may be necessary on occasion to ensure prison security, to maintain order or to prevent crime in penitentiary facilities. Nevertheless, as noted above, such force may be used only if indispensible and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, with further references). Recourse to physical force which has not been made strictly necessary by the detainee's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.

169. The Court does not discern any necessity which might have prompted the use of rubber truncheons against the applicant. On the contrary, the actions by the officers were grossly disproportionate to the applicant's imputed transgressions and manifestly inconsistent with the goals they sought to achieve. Thus, it follows from the Government's submissions (see paragraph 46 above) that a group of officers entered cell no. 3, where the applicant was detained, intending to search it. The applicant refused to leave the cell, insulted the officers and pulled their clothes. The Court accepts that in these circumstances the officers may have needed to resort to physical force in order to take the applicant out of the cell. However, the Court is not convinced that hitting a detainee with a truncheon was conducive to the desired result, namely facilitating the search. In the Court's eyes, in that situation a truncheon blow was merely a form of reprisal or corporal punishment.

170. Furthermore, the Court notes that the applicant was beaten up not in the course of a random operation which might have given rise to unexpected developments to which the officers of the special-purpose unit might have been called upon to react without prior preparation. The Government did not dispute that the officers had planned their operations in advance and that they had had sufficient time to evaluate the possible risks and to take all necessary measures for carrying out their task. There were a group of officers involved and they clearly outnumbered the applicant, who, it appears, was alone in the cell at that time. Furthermore, the Court is not convinced that the applicant had resisted the officers' orders in a manner which could have prompted the use of rubber truncheons.

171. The Court is also mindful of the applicant's complaint that the beatings continued in the corridor even after he had complied with the order and had left the cell. In this respect, the Court notes that if the Government considered these allegations untrue, it was open to them to refute them by way of, for instance, witness testimony or other evidence. Nevertheless, at

no point in the proceedings before the Court did the Government challenge that aspect of the applicant's factual submissions.

172. As noted above, the use of rubber truncheons against the applicant was retaliatory in nature. It was not, and could not be, conducive to facilitating the execution of the tasks the officers had set out to achieve. The punitive violence to which the officers deliberately resorted was intended to arouse in the applicant feelings of fear and humiliation and to break his physical or moral resistance. The purpose of that treatment was to debase the applicant and drive him into submission. In addition, the truncheon blows must have caused him intense mental and physical suffering.

173. Accordingly, the Court finds that there has therefore been a violation of Article 3 of the Convention, in that on 21 January 2002 the Russian authorities subjected the applicant to inhuman treatment in breach of that provision.

(c) Alleged inadequacy of the investigation

174. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev*, cited above, §§ 107 et seq., and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII).

175. The Court will now examine the effectiveness of the investigation into the applicant's ill-treatment complaints in the light of these principles.

176. The Court notes that the events of which the applicant complained had unfolded under the control of the authorities and with their full knowledge. The colony officials must have been aware of the magnitude of

the beatings on 23 October 2001 and 21 January 2002, having regard to a number of inmates who had reported ill-treatment to the prosecution authorities (see paragraph 55 above). Furthermore, on 7 November 2001 and 21 January 2002 the authorities drew up the reports on the use of force against the applicant. Under these circumstances, the applicant had an arguable claim that he had been ill-treated and that the State officials were under an obligation to carry out an effective investigation (see *Dedovskiy*, cited above, § 88, and *Vladimir Romanov v. Russia*, no. 41461/02, § 83, 24 July 2008).

177. Turning to the facts of the present case, the Court observes that the applicant was entirely reliant on the prosecution authorities to assemble the evidence necessary for corroborating his complaint. The prosecutor had the legal powers to interview the warders and officers, summon witnesses, visit the scene of the incidents, collect forensic evidence and take all other crucial steps for establishing the truth of the applicant's account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offence but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see paragraph 86 above). The Court notes that the prosecution authorities who were made aware of the applicant's alleged beatings initiated an investigation which has not yet resulted in criminal prosecutions against the perpetrators of the beatings. The investigation was closed and reopened a number of times and is currently pending. In the Court's opinion, the issue is consequently not so much whether there has been an investigation, since the parties do not dispute that there has been one, as whether it has been conducted diligently, whether the authorities have been determined to identify and prosecute those responsible and, accordingly, whether the investigation has been "effective".

178. The Court will therefore first assess the promptness of the prosecutor's investigation, as a gauge of the authorities' determination to prosecute those responsible for the applicant's ill-treatment (see *Selmouni*, cited above, §§ 78 and 79). In the present case the applicant brought his allegations of ill-treatment to the attention of the authorities by making a number of complaints to the Kaliningrad Regional Prosecutor (see paragraph 48 above). It appears that the prosecutor's office promptly launched an investigation after being notified of the alleged beatings. However, the Court is mindful of the fact that at no point during the investigation were attempts made to conduct a medical expert examination of the applicant. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). In this connection, the Court notes with concern that the

lack of objective evidence – such as medical expert examinations could have been – was subsequently relied on as a ground for a refusal to institute criminal proceedings against the perpetrators.

179. Furthermore, although it appears that certain steps were taken by the authorities at the initial stage of the investigation, the investigation became protracted. The Court finds it striking that for a period of almost three years between 9 July 2003 and 29 March 2006 there were no further developments and the criminal proceedings remained closed until the present case was communicated to the respondent Government (see paragraphs 53 and 59 above). Since being reopened in March 2006 the investigation has remained pending. The Government failed to provide any explanation for the protraction of the proceedings. In such circumstances the Court is bound to conclude that the authorities failed to comply with the requirement of promptness (see *Kişmir v. Turkey*, no. 27306/95, § 117, 31 May 2005, and *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007). The Court also notes the District Court's finding on 29 March 2006 that due to the protraction of the investigation, the authorities may no longer be able to investigate the applicant's ill-treatment complaints effectively.

180. With regard to the thoroughness of the investigation, the Court notes a number of significant omissions capable of undermining its reliability and effectiveness. Firstly, as it was found by the District Court in its decision on 29 March 2006 the prosecutor had not questioned in person the officers and warders who were involved or witnessed the events in question. He limited himself to a restatement of their reports written in the aftermath of the events. The applicant's right to participate effectively in the investigation was also not secured. It transpires from the same decision of 29 March 2006 that the prosecutor had not heard the applicant in person. Furthermore, the applicant was not given an opportunity to identify and confront the officers and warders who had allegedly taken part in the beatings.

181. Secondly, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decisions submitted to the Court that the prosecutor based his conclusions mainly on the reports written by the officers and warders involved in the incidents. Although excerpts from the applicant's complaints were included in the decisions on refusal to institute criminal proceedings, the prosecutor did not consider those complaints to be credible, apparently because they reflected personal opinions and constituted an accusatory tactic by the applicant. However, the prosecutor did accept the warders' and officers' reports as credible, despite the fact that their statements could have constituted defence tactics and have been aimed at damaging the applicant's credibility. In the Court's view, the prosecution inquiry applied different standards when assessing the statements, as those made by the applicant were deemed to be subjective but not those given by the warders and

officers. The credibility of the latter statements should also have been questioned, as the prosecution investigation was supposed to establish whether they were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

182. Further, it transpires from the prosecutor's decisions that he based his conclusions solely on the statements made by the colony administration, warders and officers. The prosecutor had been provided with the names of inmates who could have seen the beatings. However, he had not taken any steps to question them or to identify any other eyewitnesses. Furthermore, he took no meaningful steps to search the premises where the applicant had allegedly been ill-treated. The Court therefore finds that the prosecutor's failure to look for corroborating evidence and his deferential attitude to the officers and warders must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, 25 September 1997, § 106, *Reports* 1997-VI).

183. Finally, as regards the judicial proceedings pertaining to the applicant's appeal against the prosecutor's decision of 9 July 2003, the Court finds it striking that neither the District nor Regional courts manifested interest in identifying and personally questioning eyewitnesses to the applicant's beating and hearing the warders and officers involved in the incidents (see *Zelilof*, cited above, § 62, and *Osman v. Bulgaria*, no. 43233/98, § 75, 16 February 2006). For the Court, this unexplained shortcoming in the proceedings deprived the applicant of an opportunity to challenge effectively the alleged perpetrators' version of the events (see *Kmetty v. Hungary*, no. 57967/00, § 42, 16 December 2003). As to the tort proceedings, the Court does not lose sight of the fact that the domestic courts heard certain inmates. However, their statements were subject to somewhat conflicting evaluations and did not have attributed to them sufficient evidentiary weight. The courts once again based their conclusions on the reports and statements by the warders and officers. In fact, it appears that the domestic authorities did not make any meaningful attempt to bring those responsible for the ill-treatment to account.

184. Having regard to the above failings of the Russian authorities, the Court finds that the investigation carried out into the applicant's allegations of ill-treatment was not thorough, expedient or effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S DETENTION TOGETHER WITH HIV-POSITIVE DETAINEES

185. The applicant, relying on Article 3 of the Convention, further complained that he had been exposed to a risk of contracting HIV during his detention in correctional colony no. OM-216/9.

A. Submissions by the parties

186. The Government submitted that from 19 to 26 May 1999 a group of HIV-positive detainees had been in colony no. OM-216/9 where the applicant had served his sentence. The colony administration took every possible precaution to avoid the spread of disease. Prior to the group's arrival, the colony administration carried out explanatory work, lecturing inmates on AIDS and how it is transmitted. On their arrival in the colony the HIV-positive detainees were accommodated in separate premises and were allocated sterilised medical equipment and tableware. The administration had ensured safe sanitary conditions by assigning a separate day in the bathhouse for those detainees and washing their bedding and clothes separately. Furthermore, the use of drugs, sexual contact and tattooing, which are the means by which the virus could have been transmitted, were forbidden in the colony. The Government pointed out that there were no cases of HIV transmission and that the applicant did not argue otherwise. They further stressed that while admitting the HIV-positive detainees to a regular colony the colony administration had followed the CPT recommendations prescribing that no form of segregation should be envisaged in respect of HIV-positive detainees.

187. The applicant disputed the Government's submissions, arguing that the HIV-positive detainees had used the same premises, including the bathhouse, the kitchen, the laundry room and prison hospital, as the rest of the detainees. He confirmed that the colony administration had lectured the inmates on the means of transmitting HIV. However, he insisted that a single lecture had not been enough. The applicant was sure that his own careful actions had saved him from the virus.

B. The Court's assessment

188. The Court observes that, according to the existing international standards (see paragraphs 96-100 above), segregation, isolation and restrictions on occupational and recreational activities are considered unnecessary in the case of HIV-infected persons in the community or when they are detained (see also *Enhorn v. Sweden*, no. 56529/00, § 55, ECHR 2005-I). When detained, they should not be segregated from the rest of the

prison population unless this is strictly necessary on medical or other relevant grounds. Adequate health care should be afforded to HIV-positive detainees, with due regard to the obligation of confidentiality. National authorities should provide all detainees with counselling on risky behaviour and modes of HIV transmission.

189. The Court notes certain discrepancies in the parties' submissions concerning the conditions in which the HIV-positive detainees were kept in the colony. However, the Court will examine the applicant's complaint on the assumption that he did share the premises with the HIV-positive detainees. The Court need not determine the truthfulness of each and every allegation because the complaint is in any event inadmissible for the following reasons.

190. In the present case, it has not been claimed that the applicant contracted HIV or that he had been unlawfully exposed to a real risk of infection, for instance, through sexual contact or intravenous drug use. The applicant did not dispute that the colony administration had taken necessary steps to prevent sexual contact between inmates and that it had forbidden drug use and tattooing. The Court also does not overlook the fact that the colony administration employed a harm-reduction technique, namely condom distribution, together with universal precaution policies such as sterilising medical equipment for each patient. The mere fact that HIV-positive detainees use the same medical, sanitary, catering and other facilities as all other prisoners does not in itself raise an issue under Article 3 of the Convention (see *Korobov and Others v. Russia* (dec.), no. 67086/01, 2 March 2006). The administration provided inmates with accurate and objective information about HIV infection and AIDS, clearly identifying ways in which HIV can be transmitted. The Court attributes particular importance to the HIV risk-reduction counselling which was performed by the colony administration (see, by contrast, *Salmanov v. Russia*, no. 3522/04, § 53, 31 July 2008). In these circumstances the Court does not find that the authorities failed to secure the applicant's health.

191. Therefore, the Court considers that the applicant's complaint does not disclose any appearance of a violation of Article 3 of the Convention. It follows that it is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

192. The applicant complained that the courts had refused to secure his attendance at the hearings on 5 April, 13 May, 24 July, 7 and 21 August and 4 December 2002, 28 February, 4 June, 23 September and 18 November 2003, 24 March, 26 April, 12 May and 13 October 2004. He relied on Article 6 § 1 which provided in so far as relevant as follows:

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

A. Submissions by the parties

193. The Government argued that the applicant's absence had been objectively justified by the fact that he had been serving his prison sentence in a remote correctional colony and that it had been impossible to transport him to the hearings. However, he was informed of his procedural rights, including the right to be represented, of which he did not make use.

194. The applicant averred that he had not been brought to the hearings because the Russian law on civil procedure did not guarantee such a right. He further stated that he had been unable to retain counsel because he had limited financial resources. At the same time Russian law did not provide for free legal aid in similar cases.

B. The Court's assessment

1. Admissibility

195. The Court observes that the applicant was involved in a number of proceedings before the domestic courts. He complained of a breach of the principle of equality of arms in that in those proceedings the domestic courts examining his claims refused him leave to appear. The Court will look into the admissibility of those complaints pertaining to each separate set of the proceedings.

196. As regards the proceedings in which the applicant challenged the lawfulness of the prosecutor's decision of 9 July 2003, the Court observes that the applicant was not present at the hearings on 23 September 2002 before the Tsentralniy District Court and on 18 November 2003 before the Kaliningrad Regional Court. On 13 February 2006 the Presidium of the Kaliningrad Regional Court expressly acknowledged that the courts which had heard the case had not granted the applicant leave to appear at the hearings, in violation of Russian law. The Presidium quashed the judgments of 23 September and 18 November 2003 and ordered a re-examination of the case. The Court further notes that following the decision of 13 February 2006, on 29 March 2006 the Tsentralniy District Court re-examined the applicant's case in his presence and issued a judgment in his favour, quashing the prosecutor's decision of 9 July 2003. The Court does not lose sight of the fact that the applicant did not appeal against the judgment of 29 March 2006. Having regard to the content of the judgment of 13 February 2006, the subsequent re-examination of the case by the District Court in the applicant's presence and the quashing of the prosecutor's

decision of 9 July 2003, the Court finds that the national authorities have acknowledged, and then afforded redress for, the alleged breach of the Convention. It follows that the applicant can no longer claim to be a victim of the alleged violation of Article 6 § 1 of the Convention within the meaning of Article 34 of the Convention (see *Fedosov v. Russia* (dec.), no. 42237/02, 25 January 2007, *Hans-Joachim Enders v. Germany*, no. 25040/94, Commission decision of 12 April 1996, and, *mutatis mutandis, Hajiyev v. Azerbaijan,* no. 5548/03, 16 June 2005, and *Wong v. Luxemburg* (dec.), no. 38871/02, 30 August 2005) and that this complaint is to be rejected, pursuant to Articles 34 and 35 §§ 3 and 4.

197. The applicant further complained that he could not attend hearings on 5 April and 24 July 2002 in the tort proceedings pertaining to the presence of the HIV-positive detainees in the correctional colony. The Court reiterates that it has already examined a similar complaint in another case against Russia and found it to be inadmissible (see *Skorobogatykh v. Russia* (dec.), no. 37966/02, 8 June 2006). In particular, the Court held:

> "According to the Court's well-established case-law, the applicability of the civil limb of Article 6 § 1 requires the existence of "a genuine and serious dispute" over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law. Thus, a claim submitted to a tribunal for determination must be presumed to be genuine and serious unless there are clear indications to the contrary which might warrant the conclusion that the claim is frivolous or vexatious or otherwise lacking in foundation (see, e.g. *Benthem v. the Netherlands*, judgment of 23 October 1985, Series A no. 97, § 32 and *Rolf Gustafson v. Sweden*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 38).
>
> On the facts, the Court may accept that the claim made by the applicant was, as such, civil since the applicant demanded not only to declare the actions of prison authorities unlawful but also to grant him compensation for non-pecuniary damage allegedly caused through the authorities' fault (see, e.g., *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 92). As to whether the dispute was "genuine and serious", the Court notes that under the domestic law compensation for non-pecuniary damage is only payable in respect of a proven prejudice resulting from actions or omissions of authorities breaching a plaintiff's rights. The Court further notes that from the applicant's statement of claim, the case file and the court decisions in the case it clearly follows that throughout the proceedings both at first instance and on appeal the applicant did not make any specific allegations of personal prejudice or interference with his individual rights which could, at least on arguable grounds, have called for an award of compensation under the applicable domestic law. His dissatisfaction was directed solely against the mere presence of HIV-positive prisoners in that prison and the alleged unlawfulness of the related legal acts and administrative decisions. In the Court's view these circumstances provide a sufficiently clear indication that the dispute in question was not genuine and serious (see, for example, *Kaukonen v. Finland*, no. 24738/94, Commission decision of 8 December 1997, Decisions and Reports (DR) 91-A, p. 14). Accordingly, Article 6 § 1 is not applicable in the instant case and the applicant's complaint should be rejected as incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention."

The Court does not see any reason to depart from that finding in the present case and rejects the applicant's complaint as incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

198. The Court considers that the similar reasoning, as in the previous paragraph, applies to the applicant's complaint about his absence at the hearings on 7 August and 4 December 2002 in the proceedings concerning the screening of films. The Court takes note of the Bagrationovskiy District Court's finding that the applicant's claim had no basis in domestic law, since the legislation in force at the material time did not provide inmates, including the applicant, with the right to see films in prison facilities (see paragraph 77 above). Accordingly, the Court is not convinced that Article 6 applies to the proceedings at issue. However, even assuming that the applicant's action constituted "a civil claim" within the meaning of Article 6 § 1 of the Convention as he did not merely seek to find the authorities' actions unlawful but claimed compensation for the non-pecuniary damage, the Court does not find that the dispute was "genuine and serious". The Court notes that the applicant did not demonstrate either to the domestic courts or to the Court any impediments, personal prejudice or interference with his individual rights resulting from the authorities' failure to organise screenings of films which could, at least on arguable grounds, have called for an award of compensation under the applicable domestic law. The domestic courts found no direct link between the alleged failure and the alleged damage which, furthermore, was unsubstantiated. Accordingly, there was no established right that the domestic authorities failed to respect, no direct link between the alleged failure and the alleged damage, and, moreover, no evidence of any damage whatsoever (see *Kunkova ad Kunkov v. Russia* (dec.), no. 74690/01, 12 October 2006). The Court therefore finds that Article 6 § 1 is not applicable to the proceedings under consideration and the complaint must be rejected as incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

199. As regards the remaining complaints pertaining to the four sets of the proceedings concerning the conditions of the applicant's detention and the beatings in the colony (see paragraphs 16-18, 31-33, 63-65 and 76-78 above), the Court considers that they are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

200. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to

have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). The Court has previously found a violation of the right to a "public and fair hearing" in several cases against Russia, in which a party to civil proceedings was deprived of an opportunity to attend the hearing because of belated or defective service of the summons (see *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, 5 October 2006). It also found a violation of Article 6 in a case where a Russian court refused leave to appear to an imprisoned applicant who had wished to make oral submissions on his claim that he had been ill-treated by the police. Despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

201. The Court observes that the Russian Code of Civil Procedure provides for the plaintiff's right to appear in person before a civil court hearing his claim (see paragraph 92 above). However, neither the Code of Civil Procedure nor the Penitentiary Code make special provision for the exercise of that right by individuals who are in custody, whether they are in pre-trial detention or are serving a sentence. In the present case the applicant's requests for leave to appear were denied precisely on the ground that the domestic law did not make provision for convicted persons to be brought from correctional colonies to the place where their civil claim was being heard. The Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

202. The issue of the exercise of procedural rights by detainees in civil proceedings has been examined on several occasions by the Russian Constitutional Court, which has identified several ways in which their rights can be secured (see paragraph 94 above). It has consistently emphasised representation as an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting convicted persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the

plaintiff's personal experiences, as in the above-mentioned *Kovalev* case, representation of the detainee by an advocate would not be in breach of the principle of equality of arms.

203. In the instant case, given the personal nature of his claims related to the conditions of his detention in facility no. IZ-39/1 (hearings on 28 February and 4 June 2003 (see paragraphs 16 and 18 above) and hearings on 24 March and 12 May 2004 (see paragraphs 31 and 33)) and in the ward of the Gvardeyskiy District police department (hearings on 13 May and 21 August 2002 (see paragraphs 76 and 78 above)) and to the beatings in the correctional colony (hearings on 26 April and 13 October 2004 (see paragraphs 63 and 65 above)), the applicant sought leaves to appear before the civil courts, which were consistently refused to him. In the first three sets of the proceedings the courts decided to examine the applicant's civil claims, finding that there were no legal grounds to ensure the applicant's attendance. The situation was, however, different in the proceedings concerning the beatings in the colony. The Bagrationovskiy District Court held a hearing in the correctional colony and heard the applicant and his co-plaintiff (see paragraph 63 above). The applicant's leave to appear before the Kaliningrad Regional Court, acting on appeal against the judgment of the Bagrationovskiy District Court, was refused (see paragraph 65 above).

(a) Three sets of the proceedings concerning the conditions of the applicant's detention

204. The Court reiterates, and the Government did not argue otherwise, that the applicant insisted on his presence at the hearings, arguing, among other things, that he did not have means to pay for a lawyer. The Court observes that the option of legal aid was not open to the applicant (see paragraphs 18 and 92 above). In such a situation the only possibility for him was to appoint his relative, friend or an acquaintance to represent him in the proceedings. However, as it appears from the domestic courts' judgments, after they had refused the applicant leave to appear, they did not consider the means of securing his effective participation in the proceedings. They merely noted that the applicant was aware of his procedural rights and could have appointed a representative. They did not inquire whether the applicant was able to designate a representative, in particular whether, having regard to the time which he had already spent in detention, he still had a person willing to represent him before domestic courts and, if so, whether he had been able to contact that person and provide him with a power of authority. Moreover, it appears that at least in the two sets of the proceedings the applicant learned that he had not been granted leave to attend, at the same time as he received a copy of the judgment in which his claim was dismissed on the merits. Thus, the applicant was obviously unable to decide on a further course of action for the defence of his rights until such time as the decision refusing him leave to appear was communicated to him (see

Khuzhin and Others v. Russia, no. 13470/02, § 107, 23 October 2008). The appeal court did nothing to remedy that situation.

205. In any event, given the nature of the applicant's claims which were, to a major extent, based on his personal experience, the Court is not convinced that the representative's appearance before the courts could have secured the effective, proper and satisfactory presentation of the applicant's case. The Court considers that the applicant's testimony describing the conditions of his detention of which only the applicant himself had first-hand knowledge would have constituted an indispensable part of the plaintiff's presentation of the case (see *Kovalev v. Russia*, cited above, § 37). Only the applicant himself could describe the conditions and answer the judges' questions, if any.

206. The Court reiterates that the domestic courts refused the applicant leave to appear, relying either on the absence of a legal provision requiring his presence or alleging a direct prohibition on transport of detainees. In this connection, the Court is also mindful of another possibility which was open to the domestic courts as a way of securing the applicant's participation in the proceedings. That possibility was effectively employed by the Bagrationovskiy District Court in the proceedings pertaining to the applicant's ill-treatment complaints. The District Court in that case held a session in the applicant's correctional colony. The Court finds it unexplainable why in any of the three sets of the proceedings the domestic courts did not even examine such an option.

207. In these circumstances, the Court finds that in the proceedings concerning the conditions of the applicant's detention in facility no. IZ-39/1 and the Gvardeyskiy District police department the domestic courts deprived the applicant of the opportunity to present his case effectively.

208. There has therefore been a violation of Article 6 § 1 of the Convention on account of the applicant's absence before the domestic courts in those three sets of the proceedings.

(b) Proceedings concerning the beatings in the colony

209. The Court once again reiterates that the applicant was present at the hearing before the Bagrationovskiy District Court and effectively argued his case. However, his leave to appear before the Kaliningrad Regional Court was dismissed.

210. It thus remains to be determined whether the refusal of the Kaliningrad Regional Court to secure the applicant's presence involved a breach of his rights under Article 6 § 1. In this connection the Court observes that the jurisdiction of the Kaliningrad Regional Court was not limited to matters of law but also extended to factual issues. Yet the applicant did not claim that there were any new facts which were not raised by him before the District Court and thus, not addressed in the case file materials. He also did not argue any new points of law in his grounds of

appeal. It appears that in his grounds of appeal the applicant merely restated his versions of events as raised before the District Court. He did not request the Kaliningrad Regional Court to call any witnesses on his behalf and did not seek leave to adduce any additional evidence. The Court therefore considers that the appeal court could adequately resolve the issues on the basis of the case file and the applicant's detailed written submissions. It further takes into account that the applicant did not argue that his case could have been better dealt with in oral argument rather than in writing.

211. Having regard to the foregoing and taking into account the Court's finding that it is understandable that in the sphere involving participation of convicted persons in civil cases the national authorities should have regard to the demands of efficiency and economy (see paragraph 202 above), the Court finds that there were circumstances which justified dispensing with the applicant's right to attend the hearing before the Kaliningrad Regional Court (see, *mutatis mutandis, Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263, and *Zagorodnikov v. Russia*, no. 66941/01, §§ 33,34, 7 June 2007).

212. Accordingly, there has been no violation of Article 6 § 1 of the Convention on account of the applicant's absence at the appeal hearing on 13 October 2004.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

213. Lastly, relying on Articles 6, 8, 10, 13 and 14 of the Convention, the applicant complained of various procedural violations committed by the domestic courts in the proceedings to which he was a party, of incorrect interpretation and application of the domestic law by the courts, of unclear reasoning in their judgments, of inability to receive full information on the state of his health, and of the prosecutor's refusals to institute criminal proceedings against the judge. He further argued that he had not had an effective remedy because all his complaints and actions had been dismissed and that he had been discriminated against by domestic authorities.

214. However, having regard to all the material in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

215. 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

216. The applicant claimed 68,000 euros (EUR) in respect of non-pecuniary damage caused to him by violations of his rights guaranteed by Articles 3 and 13 of the Convention. He further claimed EUR 500 in respect of each finding of a violation of his rights under Article 6 § 1 of the Convention.

217. The Government submitted that the applicant's claims were manifestly ill-founded as they were not supported by any documents.

218. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that it has found a combination of particularly grievous violations in the present case. The Court accepts that the applicant suffered humiliation and distress on account of the inhuman and degrading conditions of his detention, the absence of an effective remedy in respect of his complaints about the conditions of his detention and ill-treatment inflicted on him on two occasions in the correctional colony. In addition, he did not benefit from an adequate and effective investigation of his complaints about the ill-treatment and he was unable to present his case effectively in the three sets of the civil proceedings. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 54,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

219. The applicant, who was represented before the Court by two lawyers from the International Protection Centre in Moscow, claimed EUR 2,490 for fees and costs involved in bringing his application to the Court. In particular, his counsel claimed to have spent more than forty hours on the case. They submitted an itemised schedule of costs and expenses that included research and drafting of legal documents submitted to the Court, at

a rate of EUR 60. The applicant further claimed EUR 100 for his lawyers' postal expenses and charges for telephone communications.

220. The Government submitted that the applicant had not produced any document showing that he had had to pay legal fees to his *pro bono* counsel. They insisted that the applicant's claims were unsubstantiated and should not, therefore, be granted.

221. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation or violations found, and are reasonable as to quantum, are recoverable under Article 41 of the Convention (see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII). The Court observes that in 2004 the applicant issued the lawyers from the International Protection Centre in Moscow with authority to represent his interests in the proceedings before the European Court of Human Rights. It is clear from the length and detail of the pleadings submitted by the applicant that a great deal of work was carried out on his behalf. Having regard to the documents submitted and the rates for the lawyers' work, the Court is satisfied that these rates are reasonable. However, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees on account of the fact that some of the applicant's complaints were declared inadmissible. A further reduction is required as the applicant was granted EUR 850 in legal aid by the Court. Having regard to the materials in its possession, the Court awards EUR 1,000 to the applicant in respect of costs and expenses for his representation before the Court, together with any tax that may be chargeable to the applicant on that amount.

222. As regards the postal expenses and telephone charges, the Court notes that neither the applicant nor his lawyers submitted any evidence (bills, receipts, etc.) in support of that claim. Accordingly, the Court rejects it.

C. Default interest

223. The Court considers it appropriate that the default interest 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

1. *Declares* unanimously the complaints concerning the inhuman and degrading conditions of the applicant's detention in facility no. IZ-39/1 from 19 December 2003 to 12 January 2004, the absence of an effective remedy in respect of his complaint about the conditions of his detention,

the ill-treatment of the applicant in correctional colony no. OM-216/13, the ineffectiveness of the investigation into his ill-treatment complaints and the breach of the equality-of-arms principle in the four sets of the civil proceedings concerning the conditions of his detention and the beatings in the colony admissible and *declares* by a majority the remainder of the application inadmissible;

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 19 December 2003 to 12 January 2004 in facility no. IZ-39/1 in Kaliningrad;

3. *Holds* unanimously that there has been a violation of Article 13 of the Convention;

4. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected on 23 October 2001 and 21 January 2002 in correctional colony no. OM-216/13;

5. *Holds* unanimously that there has been no violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected on 7 November 2001 in correctional colony no. OM-216/13;

6. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's ill-treatment complaints;

7. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in the three sets of civil proceedings concerning the conditions of the applicant's detention;

8. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention in the civil proceedings concerning the beatings in the correctional colony;

9. *Holds* unanimously

(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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 54,600 (fifty-four thousand and six hundred euros) in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros) in respect of costs and expenses incurred before the Court;
(iii) any tax that may be chargeable to the applicant on the above amounts;

(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;

10. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos ROZAKIS
President