



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

1959 · 50 · 2009

FIRST SECTION

CASE OF GENERALOV v. RUSSIA

(Application no. 24325/03)

JUDGMENT

STRASBOURG

9 July 2009

FINAL

09/10/2009

This judgment may be subject to editorial revision.

In the case of Generalov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 24325/03) 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 Yuriy Mikhaylovich Generalov (“the applicant”), on 23 October 2002.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, violations of Articles 3 and 13 of the Convention on account of the conditions in the correctional facility, a violation of Article 3 of the Convention on account of his alleged ill-treatment, a violation of Article 3 of the Convention on account of the alleged failure to diagnose and treat his tuberculosis during his imprisonment and a violation of Article 6 of the Convention as regards the lack of access to a court.

4. By a decision of 15 November 2007 the Court declared the application partly admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in the village of Ferzikovo in the Kaluga Region.

A. General conditions of detention

7. Between 24 August 2001 and 27 December 2002 the applicant served a sentence for theft in detention facility ZhH-385/5 (hereinafter referred to as “ZhH-385/5” or “the prison”) in the village of Lepley in the Republic of Mordovia.

8. During his imprisonment the applicant was detained in the following units of the prison:

- (i) from 24 August 2001 to March 2002 in unit no. 6;
- (ii) from March to August 2002 in a high-security unit;
- (iii) from September to December 2002 in unit no. 2.

9. The parties’ descriptions of conditions in ZhH-385/5 differ on a number of counts.

1. The applicant’s account

10. The applicant stated that unit no. 6 measured 336 sq. m, which included a dormitory, a storage room, a dining room and a common room. The unit housed approximately 200 inmates, and since there were not enough sleeping places the applicant had to sleep in the common room on several stools put together. The unit was equipped with only five washbasins, sometimes with no water in them.

11. Unit no. 2 measured 280 sq. m, which included a dormitory, a storage room, a dining room and a common room. The unit housed approximately 200 inmates, and since there were not enough sleeping places the applicant was again given a sleeping place in the common room, consisting of several stools put together. The unit was equipped with only five washbasins.

12. The toilet facilities, consisting of five cubicles, were shared by four units (nos. 2, 6, 7 and 9) which housed about 700 inmates in total.

13. There were no water-heating facilities in the units that inmates could access.

14. The water in the shower was usually lukewarm; the inmates had to wait for hours for their turn to take a shower. The inmates did not have enough space for their personal belongings and had to dry their washed clothes in their living premises as well, resulting in constant stuffiness and

an unpleasant smell. The living premises and canteen were shared with inmates suffering from tuberculosis, and this caused outbreaks of the disease. The authorities did not comply with the prison regulations on food supply and the provision of clothing and toiletries. The inmates had pearl-barley mush three times a day for months, but received no vegetables, fish or meat at all and sometimes no tea for several weeks. The applicant was provided with a mattress, two sheets and a sweater, but the prison authorities failed to provide him with a blanket, towels, underwear, other clothing, shoes or toothpaste.

15. During his detention the applicant was placed in a disciplinary cell on several occasions. In the disciplinary cell his head was shaved weekly, and when being inspected by the warder he had to stand up facing the wall holding his hands up with the palms turned outwards.

16. In support of his allegations about conditions in the facility the applicant submitted a number of written statements by other inmates of ZhH-385/5, dated 2-4 November 2002, which had been produced for the domestic proceedings (see subsection 3 below). In so far as relevant these statements may be summarised as follows.

17. Mr Kh. wrote that, starting in December 2001, he had been detained in unit no. 10. The unit contained 170 inmates of whom some, including Mr Kh. himself, were infected with tuberculosis and some were not; inmates were allowed about 1.4 sq. m of personal space. Only six washbasins were available for all the inmates of the unit; the kitchen measured 2 sq. m; there was a common room, but it was also turned into a dormitory because of overcrowding. Mr Kh. later repudiated these submissions (see his statement of 2004 among the documents submitted by the Government, subsection 2 below).

18. Mr I. alleged overcrowding in unit no. 7, claiming that inmates were allowed no more than about 0.5 sq. m of personal space.

19. Mr N., who was detained in unit no. 10, wrote that the inmates of two units (that is, about 320 people in total) had to share toilet facilities comprising only eight cubicles and that the number of washbasins was insufficient (about 40 inmates per washbasin). He also alleged severe overcrowding, the presence of inmates infected with tuberculosis in the communal units and poor catering.

20. Mr B. submitted that unit no. 6, which housed about 200 inmates, had only six washbasins. The inmates of units nos. 2, 6, 7 and 9 (about 600 people in total) had to share toilet facilities comprising only seven cubicles, making it difficult to get access to them. He also alleged overcrowding in unit no. 6, claiming that inmates were allowed less than 1 sq. m of personal space, and complained about the extremely poor supplies.

21. Mr S., who was detained in unit no. 10, referred to extremely poor catering, a failure to supply him with any clothes or shoes and a scarcity of

toiletries. He also alleged overcrowding, claiming that inmates were allowed about 1.4 - 1.5 sq. m of personal space and that inmates infected with tuberculosis were accommodated together with the other prisoners. He contended that the unit of over 170 inmates had only seven washbasins and that the toilet facilities shared by two units (about 350 inmates) had only eight cubicles. The shower facilities were also scarce, so that five or six inmates had to use one shower-head at a time. Mr S. later repudiated these submissions (see his statement of 2004 among the documents submitted by the Government, subsection 2 below).

2. The Government's account

22. The Government stated that on admittance to ZhH-385/5 on 24 August 2001 the applicant had been placed in unit no. 6. The dormitory of the unit measured 336 sq. m. It was intended for 183 detainees but was used by no more than 180 inmates. According to the certificate issued by the prison governor in 2005, it was equipped with six taps, and there were seven more taps in a heated washstand in the yard. Another certificate issued by the prison governor in 2007 stated that the unit was equipped with 14 taps.

23. Between March and August 2002 the applicant was placed in a high-security unit measuring 98 sq. m, intended for 49 detainees. However, only 21 inmates were held there.

24. Between September and December 2002 the applicant was held in unit no. 2. The dormitory of the unit measured 280 sq. m. It was intended for 140 detainees but was used by 125 inmates; each detainee was thus allowed 2.24 sq. m. According to the certificate issued by the prison governor in 2005, it was equipped with seven taps, and there were seven more taps in a heated washstand in the yard. Another certificate issued by the prison governor in 2007 stated that the unit was equipped with six taps.

25. The water was supplied from four artesian wells which produced 120 cubic metres of water per hour. The average consumption of ZhH-385/5 was 63.35 cubic metres per hour. Cold water was always available in the taps except on three occasions, on 25 June, 20 July and 21 October 2002, when it was cut off for several hours for maintenance; during these times drinking water was provided from other sources.

26. Every unit had facilities for boiling water. Inmates had free access to such facilities. Once a week they took hot showers. The units had toilets in outhouses with sumps. The inmates of units nos. 2, 6 and 7 shared access to 13 toilet cubicles.

27. Every unit had a room for drying clothes and a dining room equipped with food storage facilities, tables and stools.

28. The applicant was at all times provided with an individual bed, bedding and clothes in accordance with prison regulations. According to the prison records, on 25 August 2001 the applicant received two sheets, one pillow and one pillowcase, and on 29 August 2001 he received a mattress, a

winter coat and a set of clothes. He was also offered a pair of boots but he signed a form refusing them. The meals provided to the inmates included meat, fish, milk, cereals and vegetables. The nutritional value met the required standards. The prison authorities had received no complaints concerning the quality of the catering.

29. The applicant never shared accommodation with inmates infected with tuberculosis. Detainees who had undergone treatment for tuberculosis were placed separately, in unit no. 10, and they were always catered for separately.

30. Owing to numerous breaches of prison discipline the applicant was placed in a disciplinary cell a number of times. In particular, he was in the disciplinary cell in December 2001, February 2002 and November 2002. According to the prison regulations, when an official entered a disciplinary cell the detainee had to stand up holding his hands behind his back. Since the applicant had shown a tendency to self-harm he was also required to turn his palms upwards so that the inspector could see that he was not hiding any objects that could be used for causing injuries. All inmates were required to keep their hair cut short. Only those suffering from head lice were advised to shave their hair. However, this was not the applicant's case and he did not have to have his head shaved.

31. On 17 November 2004 the Government questioned Mr S., who repudiated his 2002 statement, saying that he had written it at the applicant's request and that any allegations he had made in it about unsatisfactory conditions of detention were untrue. On the same day they questioned Mr Kh., who stated that he had not written the statement submitted by the applicant dated 2002, claiming that the handwriting and the signature on it were not his.

3. *Domestic proceedings*

32. Following his release on 27 December 2002, the applicant sent a complaint to the Chief Penitentiary Directorate of the Ministry of Justice of the Russian Federation on 17 February 2003 in which he set out, *inter alia*, the shortcomings in the conditions in ZhH-385/5. He also addressed similar complaints to the Prosecutor General and to the Speaker of the State Duma, both of which were forwarded to the Penitentiary Directorate.

33. On 26 March 2003 and on 5 May 2003 the Penitentiary Directorate sent replies to the applicant dismissing his complaints; however, it acknowledged that there had been certain shortcomings with regard to the conditions in ZhH-385/5. The latter reply stated, in particular, that "the shortcomings in catering, the irregular water supply in the units and the breaches of sanitary regulations were due to [external reasons] related to the excessive number of inmates and have now been overcome".

34. On 15 September 2003 the applicant brought proceedings for damages against the administration of ZhH-385/5, alleging poor conditions

in the facility, unlawfully imposed disciplinary measures and degrading treatment in the disciplinary cell, including regular head shaving; he also alleged that he had sustained damage to his health and complained about the refusal to deliver one of his parcels in May 2002. The Zubovo-Polyanskiy District Court scheduled a hearing for 11 November 2003.

35. On 1 November 2003 the applicant asked for the hearing to be postponed on account of a medical emergency. On 12 November 2003 the Zubovo-Polyanskiy District Court stayed the proceedings pending the applicant's recovery.

36. On 12 February 2004 the proceedings in the case were stayed again on account of the applicant's failure to pay the court fees or submit any documents justifying a fee waiver. The applicant was given until 10 March 2004 to pay the fees or request a fee waiver and provide the supporting documents. The applicant did not pursue these proceedings.

B. Alleged failure to diagnose and treat the applicant's tuberculosis

1. The applicant's account

37. The applicant submitted that during his detention in ZhH-385/5 he had been examined several times by medical specialists who failed to diagnose his tuberculosis.

38. Immediately after his release, on 4 January 2003, the applicant underwent a medical examination at the local clinic. Among other ailments he was diagnosed with "infiltrative pulmonary tuberculosis in the destructive phase".

2. The Government's account

39. The Government submitted that, on 16 August 2001, the applicant had undergone an x-ray of his heart and lungs which showed no anomalies.

40. On arrival in ZhH-385/5 the applicant underwent a medical examination. His state of health was found to be satisfactory, and the checks for tuberculosis, skin diseases, scabs and lice did not reveal any such conditions.

41. On 11 September 2001 he underwent another x-ray of his heart and lungs which also showed them to be normal.

42. On 6 February 2002 another x-ray was made, and the applicant was sent for a further medical examination because of suspected tuberculosis. Further x-rays on 26 February 2002 and clinical tests on 27 February 2002 revealed some pathology in the lungs, but the tuberculosis specialist found that there was no tuberculosis. He recommended monitoring the applicant's condition with an x-ray every 6 months.

43. From 26 February 2002 to 12 March 2002 the applicant was placed in a medical institution for prisoners in order to undergo examination for tuberculosis and other diseases.

44. On 11 March 2002 a further two-projection x-ray revealed changes in the pattern of the lungs and pleural thickening. However, the phlegm test did not confirm tuberculosis.

45. From 13 March 2002 to 3 April 2002 the applicant was in the medical ward of ZhH-385/5 for treatment of a duodenal ulcer, hepatitis, gastritis and furunculosis.

46. On 6 June 2002 the applicant was sent for a regular medical check-up which included an x-ray and gave results similar to those of February 2002, showing no clear indications of tuberculosis. On 14 June 2002 the tuberculosis specialist concluded that there was no evidence of tuberculosis.

47. On 28 September 2002 the phlegm test for tuberculosis proved negative.

48. In December 2002 the applicant's next regular check-up was due, but he was released on parole before the scheduled date.

C. Alleged ill-treatment

1. The applicant's account

49. The applicant stated that on 28 December 2001 he had been placed in a disciplinary cell. Handcuffs were put on his hands behind his back and locked to a water pipe about 40 cm above the floor. On the following day he was beaten up by the officers on duty. His request to have his injuries recorded by medical personnel was refused.

50. On 6 February 2002, when the applicant was detained in the disciplinary unit, a search was conducted in ZhH-385/5. The applicant claimed that a special forces' squadron (OMON) had been brought in for this purpose. He was severely beaten during the search and allegedly received injuries including bruises and abrasions on his left side. However, immediately after the incident the applicant was refused permission to see a doctor.

51. The applicant also claims that a foreign body was found in his left side and was extracted later.

52. The applicant submitted that on 10 February 2002 he had lodged a complaint with the prosecutor's office about having been beaten during the search of 6 February 2002. In February-March 2002 other inmates of ZhH-385/5 wrote statements to the prosecutor's office in support of the applicant's complaint; these may be summarised as follows.

53. Mr L. wrote that on 10 February 2001 he had seen in the shower that the applicant had bruises on his left side, loin and buttock. He also alleged

that the applicant had repeatedly asked the prison authorities to have the traces of beating recorded.

54. Mr A. wrote that during the search of the disciplinary unit on 6 February 2002 he had heard cries and sounds from which he concluded that the applicant was being beaten. He also stated that on 10 February 2001 he had seen in the shower that the applicant had bruises on his left side, loin and buttock. Mr A. later repudiated these submissions (see his statement of 2004 among the documents submitted by the Government, subsection (2) below).

55. Mr K. wrote that on that day he had seen the applicant in the prison medical ward and noticed traces of beating on his left side and traces of handcuffs. He also alleged that the applicant had repeatedly requested the medical personnel to record the traces of beatings. Mr K. later repudiated these submissions (see his statement of 2004 among the documents submitted by the Government, subsection (b) below).

56. Mr G. wrote that on the same day he had been in the disciplinary cell and had seen bruises on the applicant and traces of handcuffs.

57. The applicant submitted that on 11 November 2002, when he was again in the disciplinary cell, he had felt sick and demanded to be seen by a doctor. The warders ignored him at first, but then came into his cell and beat him up. His request for medical assistance for his injuries was refused and he was left in the cell, handcuffed.

58. On 30 November 2002, still in the disciplinary cell, the applicant refused to go to work because he had not been provided with winter shoes. The warders threatened him and then beat him up while the head medical officer was present.

2. The Government's account

59. The Government contended that the applicant had not been beaten or otherwise ill-treated in ZhH-385/5. Although he was regularly examined and treated in hospital for various diseases, none of his ailments had been caused by any injuries other than self-inflicted ones.

60. Owing to numerous breaches of prison discipline the applicant was placed in a disciplinary cell a number of times.

61. The applicant was handcuffed on two occasions, first on 28 December 2001 and then on 11 November 2002, as described below.

62. On 28 December 2001 when he was brought before a prison official for a breach of prison discipline, the applicant broke a window and with a splinter of glass made several scratches on his left forearm. He was therefore handcuffed for three hours from 3 p.m. to 6 p.m. After the handcuffs had been removed, he was placed in a disciplinary cell. The governor of ZhH-385/5 investigated the incident and concluded that the injuries were self-inflicted and were not the result of any criminal act. On

4 January 2002 the prosecutor's office endorsed the decision not to conduct a criminal investigation into the incident.

63. Between 26 February 2002 and 12 March 2002 the applicant was held in a medical institution for prisoners, and was then transferred, until 3 April 2002, to the medical ward of ZhH-385/5 for further treatment of a duodenal ulcer, hepatitis, gastritis and furunculosis. There are no records of any injuries dating from this period.

64. On 18 May 2002 the applicant inflicted a slash wound on his left forearm and was provided with medical aid.

65. On 6 June 2002 the applicant underwent a medical examination in the medical institution for prisoners. He was diagnosed with a hernia and was admitted to hospital. On 5 July 2002 the applicant underwent a surgical operation for the hernia. At the same time a foreign body was found in his left side and was removed.

66. On 11 November 2002, when the applicant was being held in a disciplinary cell, he made a written statement threatening to injure himself as a protest against the authorities' refusal to place him in a medical institution for treatment of his "worsening disorders". To restrain him, the prison warder handcuffed him between 11.30 a.m. and 6 p.m. On 13 November 2002 the governor of ZhH-385/5 investigated the incident and concluded that the handcuffing had been lawful and justified in the circumstances.

67. On 30 November 2002 the applicant was in the disciplinary cell. No force or special restraint measures were used against him on that day.

68. On 17 November 2004 the prison authorities questioned 13 inmates of ZhH-385/5 who had been serving their sentences at the same time as the applicant about the acts of ill-treatment alleged by the applicant. Two of the inmates questioned, K. and A., were those on whose earlier statements the applicant had relied. The statements submitted by the Government may be summarised as follows.

69. Mr S. wrote that he knew the applicant personally and that relations between them had been friendly. The applicant often revolted against the prison regulations and discipline. Mr S. had never heard that the applicant had been beaten in the facility, or that other inmates had been ill-treated in any way.

70. Mr K. stated that he had not written the statement of 26 February 2002, and that the handwriting and the signature on it were not his. He had never seen any injuries on the applicant, although he had met him in the medical ward when they were held in the same unit for one day.

71. Mr Kh. stated that he had not written the statement dated 2002 submitted by the applicant, claiming that the handwriting and the signature on it were not his. He had not seen any injuries on the applicant.

72. Mr A. wrote that he had had friendly relations with the applicant and that the latter had often disobeyed the lawful orders of the prison authorities

and breached discipline. The applicant was placed in the disciplinary cell, but even then continued to disobey. In February 2002 Mr A. was detained in a disciplinary cell next door to the applicant, but he had not heard evidence of any violent acts against him. In the shower, he had not seen any traces of beating on the applicant. He repudiated his 2002 statement, pointing out that he had written it at the applicant's request because of their friendly relations.

73. Mr Shch. wrote that in February 2002 he had been placed in the disciplinary unit. During his detention there a search was conducted, but no force was applied. He did not hear any cries or other violent sounds during the search, although audibility in the unit was very high. He met other detainees from the disciplinary unit during walks, but nobody mentioned any beatings or other use of force against inmates. He did not know the applicant personally.

74. According to the Government, similar submissions had been written by Mr Ya.; however, they did not attach a copy of his statement.

75. Mr Sh. wrote that he knew the applicant but did not have a personal relationship with him. In February 2002 he was detained in a disciplinary cell next door to the applicant, but did not hear him being beaten, though audibility in the disciplinary unit was very high. In the shower, he had not seen any traces of beating on the applicant. He did not hear the applicant complaining about having been beaten.

76. According to the Government, similar submissions were written by Mr Ab. and Mr V.; however, they did not attach a copy of their statements.

77. The Government also referred to statements made by Mr T. and Mr R., who submitted that they did not know the applicant and could not provide any relevant information, and by Mr Kr., who submitted that he knew the applicant but had had no contact with him. No copies of these statements were made available to the Court.

3. Domestic proceedings

78. On an unspecified date the applicant complained to the Dubravnyy district prosecutor's office, alleging that on 28-29 December 2001 he had been ill-treated. On 10 February 2002 he also lodged a complaint alleging that he had been beaten during the search on 6 February 2002. The latter complaint was accompanied by four statements from his fellow inmates, summarised above (see paragraphs 52-56 above).

79. On 31 May 2002 the applicant complained to the Zubovo-Polyanskiy District Court concerning his alleged ill-treatment and the disciplinary sanctions imposed on him by the authorities of ZhH-385/5. He claimed damages in the amount of 45,000 roubles. He sent an additional complaint to the court on 22 June 2002. The complaints were received by the court on 10 July 2002.

80. On 16 July 2002 the Zubovo-Polyanskiy District Court declined to accept the applicant's complaints for consideration, having found that they had been submitted neither through the prison postal service nor through an authorised representative outside the prison, and were therefore in breach of Article 91 of the Penitentiary Code. Its decision was based on Article 129 of the Code of Civil Procedure. The applicant received this decision on 6 August 2002, but did not lodge an appeal against it. Instead he filed numerous petitions with various judicial bodies requesting the quashing of the decision of 16 July 2002 in supervisory review proceedings. None of the petitions was successful.

81. On 17 July 2002 the prosecutor's office decided not to conduct a criminal investigation into the alleged ill-treatment of 28-29 December 2001 and 6 February 2002, having found the complaints unsubstantiated. It was noted, in particular, that during his detention in the disciplinary cell between 28 December 2001 and 12 January 2002 the applicant had not applied to the medical unit in order to have any injuries recorded. As regards the alleged ill-treatment of 6 February 2002, the prosecutor's office questioned three other inmates (A., L. and V.) who had been detained in the same disciplinary unit as the applicant, and two prison officers. They all stated that "nobody from OMON [had] threatened to murder [the applicant]" during the search. The prosecutor's office therefore concluded that the applicant's allegations of ill-treatment were not supported by any evidence and that no further investigation was necessary.

82. On an unspecified date the applicant challenged the decision of the prosecutor's office of 17 July 2002, claiming that the failure to investigate the events of 6 February 2002 had been unlawful. He supported his complaint by written statements from inmates L., G., K. and A. confirming that several days after the search of 6 February 2002 they had seen bruises on his body and abrasions left by handcuffs on his wrists and that inmate A. had heard the applicant being beaten and crying for help.

83. On an unspecified date the applicant complained to the prosecutor's office about the alleged ill-treatment of 30 November 2002. On 13 February 2003 the prosecutor's office declined to institute criminal proceedings, having found the allegations of ill-treatment unsubstantiated.

84. On 18 April 2003 the Zubovo-Polyanskiy District Court examined a complaint by the applicant concerning the decision of the prosecutor's office of 17 July 2002. At the hearing the public prosecutor referred to the investigation conducted into the allegations of ill-treatment which had turned out to be unsubstantiated as there were no witnesses and no record of the applicant's supposed requests for medical aid or his complaints in this respect. Three officials who had been implicated were questioned in court and denied the allegations. Statements by inmates L. and A. were produced, asserting that they had never written any statements concerning the alleged beating of the applicant and that they had neither seen any bruises on him

nor heard any cries from his cell on the relevant date. Neither the applicant nor any other inmates were present in the courtroom. The court dismissed the complaint and found the decision by the prosecutor's office not to conduct a criminal investigation to be lawful and reasonable. The applicant did not appeal against this judgment.

85. On an unspecified date the applicant challenged before the court the alleged failure of the prosecutor's office to register his complaint of ill-treatment on 30 November 2002. On 20 February 2004 the Zubovo-Polyanskiy District Court examined the claim and found that not only had the complaint been registered with the prosecutor's office, but an official decision had been taken on 13 February 2003 not to conduct a criminal investigation into the allegations. The applicant had been informed of it. Having noted that the applicant had not challenged the merits of the latter decision, the court rejected the claim. No appeal was lodged against this decision.

86. On 26 August 2004 the applicant brought new proceedings for damages against the authorities of ZhH-385/5. He alleged ill-treatment in the prison and in the disciplinary cell and complained of unlawfully imposed disciplinary measures and damage to his health.

87. On 31 August 2004 the Zubovo-Polyanskiy District Court stayed the proceedings until 27 October 2004 and ordered that the applicant comply with the formal requirements for lodging a claim by attaching the originals or copies of the documents he referred to in his complaints and paying the full amount of the court fee, or providing reasons justifying a fee waiver. The applicant did not pursue these proceedings.

88. On 19 November 2004 the applicant lodged a new claim with the Zubovo-Polyanskiy District Court, similar to that of 31 August 2004. On 24 November 2004 the court stayed the proceedings because the applicant had again failed to pay the court fee or file a waiver application, and to attach copies of the relevant documents and the required number of copies of his writ. The applicant was given until 13 December 2004 to rectify the shortcomings. The applicant did not pursue these proceedings. Apparently he lodged a new claim of similar content, failing once again to pay the court fee or request a waiver and to provide the required copies. On 11 January 2005 the Zubovo-Polyanskiy District Court stayed the proceedings and gave the applicant until 10 February 2005 to comply with these requirements. The applicant did not pursue these proceedings either. Likewise, he did not appeal against the stay of any of the above-mentioned proceedings.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

89. Article 99 § 1 of the Penitentiary Code of 8 January 1997 provides for a minimum standard of two square metres of personal space for male prisoners in correctional colonies.

B. Criminal-law remedies against ill-treatment

1. Applicable criminal offences

90. Abuse of office associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment (Article 286 § 3 of the Criminal Code).

2. Investigation of criminal offences

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

92. On 29 April 1998 the Constitutional Court of the Russian Federation held that anyone whose legitimate rights and interests had been affected by a decision not to institute criminal proceedings should have the right to appeal against that decision to a court.

93. The Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, in force from 1 July 2002), states that a criminal investigation may be initiated by an investigator or prosecutor on a complaint by an individual (Articles 140 and 146). Within three days of receipt of such a complaint, the investigator or prosecutor must carry out a preliminary inquiry and make one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to decline to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer

the complaint to the competent investigative authority. The complainant must be notified of any decision taken. The decision not to open criminal proceedings is amenable to appeal to a higher prosecutor or a court of general jurisdiction (Articles 144, 145 and 148).

C. Access to court

94. The RSFSR Code of Civil Procedure (in force at the material time) read as follows:

Article 129 Receiving civil claims

“A single judge shall decide whether to accept a civil claim.

The judge shall reject the claim:

- (1) if the claim is not eligible for examination by a court;
- (2) if the plaintiff has not pursued the out-of-court settlement established by law for this category of cases;
- (3) if there exists a final judgment resolving a dispute between the same parties on the same subject matter and on the same grounds, or a judicial decision accepting the plaintiff's repudiation of the claim or a friendly settlement;
- (4) if another case between the same parties on the same subject matter and on the same grounds is pending before a court;
- (5) if there has been a decision taken by a [lay arbitration body] within its competence resolving a dispute between the same parties on the same subject matter and on the same grounds;
- (6) if the parties have agreed to submit the case to arbitration;
- (7) if the court has no jurisdiction over this claim;
- (8) if the claim was submitted by a person whose legal capacity has been limited [owing to disability];
- (9) if the claim was submitted on behalf of the interested person by a person without due authority to conduct the case.

...”

95. Article 91 of the Penitentiary Code and paragraph 12 of the Internal Regulations of Correctional Institutions (Order no. 224 of the Ministry of Justice of 30 July 2001) provide that all incoming and outgoing correspondence of detainees, other than correspondence with courts, prosecutors, penitentiary officials, the Ombudsman and counsel, is subject

to censorship by the colony officials. Letters are to be put in mailboxes or given to officials in an unsealed envelope. Paragraph 13 requires detainees to submit all complaints through the colony officials.

III. RELEVANT INTERNATIONAL DOCUMENTS

96. 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 remand establishments and the complaints procedure read as follows:

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.”

97. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular, as follows:

“10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

...

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

...

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

...

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT’S CONDITIONS OF DETENTION

98. The applicant complained under Article 3 of the Convention of his allegedly poor conditions of detention in correctional facility ZhH-385/5. Article 3 of the Convention provides as follows:

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

99. The Government submitted their account of the general conditions of detention in prison ZhH-385/5 (see paragraphs 22-31 above) and claimed that they had been compatible with Article 3 of the Convention. They asserted that the applicant had been provided with an individual bed at all times and that the sanitary facilities had been satisfactory. They provided detailed information about the space and equipment in the living premises, the provision of food and clothes and the availability of sanitary facilities. In respect of conditions in the disciplinary cell they submitted that the prison regulations required the applicant, for safety reasons, to stand up holding his hands behind his back when a prison official entered the cell. They denied that the applicant’s head had ever been shaved.

100. The Government enclosed statements by several inmates who confirmed that cold water had always been available in the living premises and that hot water could be obtained from heating facilities. In support of their position they provided the statements by other inmates summarised above. They also challenged the witness statements originally submitted by the applicant on the ground that some of the persons who had allegedly made them had subsequently repudiated their statements. They considered that the applicant’s complaints had been thoroughly examined, as required by Article 13 of the Convention.

101. The applicant contested the Government’s account of the conditions in ZhH-385/5, in particular their submissions concerning overcrowding, the information on the quality of catering, the supply of

clothes and bedding and the sanitary conditions, and their submissions concerning the practice of shaving prisoners detained in the disciplinary cell. The applicant's detailed account of the conditions in the facility, accompanied by the statements of other inmates, is set out in paragraphs 10-21 above. In so far as the Government relied on witness statements which contradicted those submitted by the applicant, the applicant pointed out that the Government had only obtained statements from persons who were still in detention and therefore within the power of the prison authorities, who could exert pressure on them.

102. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). However, in order to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). The Court observes that, according to its constant case-law, measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, it is incumbent on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, §§ 101-02, ECHR 2001-VIII).

103. The Court reiterates that it has frequently found a violation of Article 3 of the Convention in cases against Russia on account of a lack of personal space afforded to detainees while in pre-trial detention (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 v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI). It has also found it established that the problems arising from the conditions of detention in Russian remand prisons were of a structural nature (see *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006, and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004).

104. A distinction must be drawn between the above-mentioned cases concerning conditions of detention in remand prisons and the present application, as the Court has not yet found that the conditions of detention in correctional facilities disclose a structural problem from the standpoint of Article 3 of the Convention. In particular, allegations of overcrowding in correctional institutions have been examined with reference to the fact that

personal space in the units must be viewed in the context of the wide freedom of movement enjoyed by detainees in correctional colonies during the daytime, which ensures that they have unobstructed access to natural light and air (see *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004, and *Valašinas*, cited above, §§ 103 and 107). For example, the Court declared manifestly ill-founded a complaint concerning conditions of detention in a correctional facility where the applicant had been allocated 3.5 sq. m of personal space and did not allege that he had not had an individual bed (see *Nurmagomedov*, cited above).

105. Another complaint concerning conditions of detention which was dismissed by the Court as manifestly ill-founded concerned a correctional facility where the applicant had been allocated 2.17 sq. m of personal space in the sleeping area and a further 1.16 sq. m in the communal areas of the unit and was at all times provided with an individual bunk bed (see *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007).

106. On the other hand, the absence of an individual sleeping place combined with a shortage of private space (2.04 sq. m of personal space in the dormitory) has been found by the Court to amount to inhuman and degrading treatment (see *Polufakin and Chernyshev v. Russia*, no. 30997/02, §§ 149-159, 25 September 2008). In the latter case the Court found a violation of Article 3 as regards the individual circumstances of the applicant, having made no assumptions as to the existence of a structural problem of overpopulation in Russian correctional facilities.

107. Turning to the circumstances of the present case, the Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in ZhH-385/5, in particular the existence of overcrowding in units nos. 6 and 2, where the applicant was detained. The Government submitted that unit no. 6, measuring 336 sq. m housed 180 inmates (that is, 1.87 sq. m per person) and unit no. 2, which measured 280 sq. m, housed 125 inmates (that is, 2.24 sq. m per person), and that the applicant had an individual sleeping place at all times. According to the applicant, both units housed roughly 200 inmates each and were overcrowded to such an extent that he had no bed and had to sleep in the common room on several stools put together.

108. As regards the size of the units, the Court observes that the figures submitted by the Government (336 sq. m and 280 sq. m) apparently related to the surface area of the dormitories only. However, since they did not indicate whether the inmates had access to any other rooms in the units, or the total usable floor area of the latter, the Court will accept the applicant's interpretation that these figures included all the living areas in the units.

109. As regards the number of inmates, the Court notes that their number as alleged by the applicant substantially exceeded that reported by the Government. His submissions concerning the allocation of personal space were corroborated by several statements from his former fellow

inmates. Even excluding those (by Kh. and S.) which were later repudiated, the Court considers that the statements by I., N. and B., which were not rebutted, give sufficient support to the applicant's allegations of overcrowding. The statement produced by B. is particularly relevant because it concerns the conditions in unit no. 6, one of the two units specifically complained of by the applicant.

110. The Court further notes that the same witness statements contain reports of poor sanitary conditions in the units, difficulty in gaining access to water taps and toilet cubicles and reduced food supplies, consistent with the applicant's description submitted to the Court. A similar description is contained in the applicant's complaints filed with various authorities at the material time, including those addressed to the Penitentiary Directorate and the court.

111. The Court, moreover, notes that the existence of overcrowding in the prison has, in fact, been officially acknowledged. The Penitentiary Directorate replied to the applicant on 5 May 2003, confirming that in the relevant period the prison had indeed housed "an excessive number of inmates" which was the cause of "the shortcomings in catering, the irregular water supply in the units and the breaches of sanitary regulations" (see paragraph 33 above). It follows that there were at least some periods when the units housed more inmates than they were intended for (183 in the case of unit no. 6 and 140 in unit no. 2; see the Government's submissions in paragraphs 22 and 24 above), thus failing to attain even the domestic legal minimum of 2 sq. m of personal space for male prisoners in correctional colonies. In these circumstances the Court is prepared to accept the applicant's allegation that he was not provided with a bed and had to adapt other furniture for sleeping in the common room.

112. Based on the applicant's and his fellow inmates' submissions, read together with the Penitentiary Directorate's letter of 5 May 2003, the Court also considers it established that the prison's sanitary facilities were inadequate for the number of inmates accommodated in the units and that, in addition to the above, the situation was, at least occasionally, aggravated by an irregular water supply and inadequate catering.

113. The Court concludes that the combination of overcrowding, insufficient sanitary facilities, lack of a proper bed for sleeping and inadequate food and water supplies amounted to inhuman and degrading treatment. In view of this finding the Court does not need to examine other allegations relating to the applicant's conditions of detention.

114. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

115. The applicant complained under Article 13 of the Convention that he had not had an effective remedy before a national authority in respect of his poor conditions of detention in ZhH-385/5. Article 13 provides 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.”

116. The Government submitted that the applicant’s complaints had been thoroughly examined as required by Article 13 of the Convention.

117. The applicant maintained his complaint.

118. The Court notes that the applicant lodged several complaints in relation to the poor conditions in ZhH-385/5, in particular with the penitentiary authority and then the court. On 15 September 2003 his claim was received by the Zubovo-Polyanskiy District Court and a hearing was scheduled. The requirement for the applicant to pay a court fee or request a waiver did not prevent him from pursuing these proceedings, and in any event the applicant did not allege otherwise. In fact, he provided no explanation as to why he did not request a fee waiver and did not pursue the proceedings. Accordingly, the Court cannot find that the failure to examine the applicant’s claim concerning his conditions of detention was attributable to the authorities.

119. The Court therefore considers this part of the application to be unsubstantiated. It concludes that there has been no violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF A LACK OF MEDICAL ASSISTANCE

120. The applicant complained under Article 3 of the Convention that he had contracted tuberculosis in ZhH-385/5 and had not been provided with adequate medical assistance because of the failure to diagnose his illness while he was in prison.

121. The Government provided a detailed account of the applicant’s medical examinations for tuberculosis throughout his detention and supplemented it with copies of the relevant records from his medical file (see paragraphs 39-48 above). They asserted that the applicant had been systematically monitored for tuberculosis and that all necessary checks had been thoroughly carried out.

122. The applicant, on the other hand, maintained that the authorities had been negligent in having failed to establish the presence of tuberculosis in the early stages, resulting in the development of the disease which, by the

time of his release, had reached the stage described as “infiltrative pulmonary tuberculosis in the destructive phase”.

123. The Court observes that according to the records produced by the Government the applicant was under constant medical supervision and that when tuberculosis was suspected further tests were carried out, which did not confirm the condition. The list of tests submitted by the Government included regular x-rays, phlegm tests, further clinical tests and examinations by a tuberculosis specialist.

124. The applicant did not deny that the medical supervision and tests had all been carried out as stated by the Government.

125. The Court considers that the Government provided sufficient evidence enabling it to conclude that applicant had received comprehensive medical assistance in relation to his suspected tuberculosis and that the failure to diagnose his tuberculosis did not result from medical negligence.

126. Accordingly, there has been no violation of Article 3 of the Convention on account of the alleged failure to provide the applicant with adequate medical assistance during his imprisonment.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT

127. The applicant complained under Article 3 of the Convention that he had been ill-treated on three occasions, namely on 28-29 December 2001, 6 February 2002 and 30 November 2002. He also complained that the prosecutor’s office had not conducted an effective investigation into his complaints.

A. Alleged ill-treatment

128. The Government contended that the applicant had never been subjected to ill-treatment during his imprisonment in ZhH-385/5 and had never requested medical assistance in connection with any injuries caused to him by others. On 28 December 2001 the applicant had broken a window and with a splinter of glass had scratched his left forearm. The subsequent medical examination had recorded a scratch on his left forearm and no traces of the alleged beating. As regards the applicant’s allegations of ill-treatment on 6 February and 30 November 2002, the prosecutor had declined to institute criminal proceedings, having found the allegations unsubstantiated. That decision had been upheld by a court. Handcuffs had been lawfully applied to the applicant twice and only for as long as was strictly necessary in order to prevent him causing injuries to himself.

129. The applicant reiterated his submissions concerning the alleged ill-treatment and contended that a medical examination had not been performed in due time in order to record the injuries.

130. 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”. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

131. The Court observes that the applicant in the present case alleged three unrelated episodes of brutality on the part of the prison warders, which allegedly took place in December 2001, February 2002 and November 2002. Only in relation to one of them, which allegedly took place during the search on 6 February 2002, did the applicant provide the Court with sufficient details of the ill-treatment, the injuries sustained by him and the names and statements of witnesses among his fellow inmates. In relation to the other two episodes the information in the Court’s possession is limited to the applicant’s own, very vague, submissions which cannot be considered sufficient for the purposes of establishing ill-treatment. As regards the applicant’s statement concerning the foreign body having been found and surgically removed on 5 July 2002 (see paragraph 50 above), the Court notes that the applicant did not allege its connection with the episodes of ill-treatment. In the absence of any further information on the nature of the object in question or circumstances in which the applicant had had it inserted the Court cannot establish that the presence of a foreign body was a consequence of ill-treatment.

132. Turning to the episode of 6 February 2002, the Court notes that the Government confirmed that on that day OMON servicemen had indeed carried out a search in the cells of the disciplinary unit. The Court has previously examined complaints concerning the deployment of special-purpose squadrons for conducting routine searches in correctional facilities (see *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 74-79, 15 May 2008). In that case the Court, having examined detailed submissions concerning the circumstances of such operations made by the parties, was able to establish a link between the manner in which force was used against inmates and the injuries sustained by the applicant. In the present case, however, the Court is not in possession of sufficient details concerning the events at issue. In particular, the applicant did not provide the Court with any such account, nor did the fellow inmates who wrote the statements in support of his complaint. In particular, it does not appear that L., A., K. or G. (inmates who originally confirmed the applicant’s allegations of ill-treatment) were subjected to, or were eyewitnesses of, the alleged ill-treatment. Furthermore, the file contains no conclusive evidence concerning the origin of the bruises seen on the applicant by other inmates. Even if the Court were to disregard the subsequent repudiation of their submissions by A. and K., the four original 2002 statements contain

insufficient details to enable the Court to establish that the injuries described by them occurred on 6 February 2002, or that the applicant requested and was denied a medical examination.

133. The Court therefore concludes that it cannot establish beyond reasonable doubt that the applicant was ill-treated on 28 December 2001, 6 February 2002 or 30 November 2002.

134. Accordingly there has been no violation of Article 3 under its substantive limb.

B. Alleged inadequacy of the investigation

135. The Government contended that the authorities had conducted an inquiry to verify the applicant's allegations of ill-treatment and they had found no evidence thereof.

136. 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.

137. 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 (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 55, 15 February 2007; *Matko v. Slovenia*, no. 43393/98, § 84, 2 November 2006; *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII; and *Labita*, cited above, § 131).

138. The minimum standards as to effectiveness defined by the Court's case-law also include requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005, and *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III).

139. It has not been contested by the Government that on 10 February 2002, four days after the alleged ill-treatment, the applicant complained to the prosecutor's office. The matter was hence duly brought before the competent authorities at a time when they could reasonably be expected to investigate the circumstances in question. The applicant's allegations were, moreover, corroborated by his fellow inmates whose statements accompanied his complaint (see paragraphs 52-56 above). The Court notes in this respect that none of the inmates' statements was repudiated at the material time: L. and A. repudiated their statements in April 2003, and K. in November 2004. The applicant's claim, as submitted in February 2002, was therefore shown to be "arguable" and the domestic authorities were placed under an obligation to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible" (see, for similar reasoning, *Egmez v. Cyprus*, no. 30873/96, § 66, ECHR 2000-XII, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, §§ 358 and 359, 6 April 2004).

140. It appears from the file that the prosecutor's office took a decision not to institute criminal proceedings on 17 July 2002, that is, five months after the alleged episode of ill-treatment. Although the text of that decision does not expressly indicate what measures were taken to verify the applicant's allegations, it appears that several members of prison staff were questioned about the events of December 2001 and February 2002. The only information concerning the questioning of inmates A., L., and V. is a reference to their having made written statements to the effect that on 6 February "nobody from OMON [had] threatened to murder [the applicant]". It is not clear whether they were asked other questions concerning the two episodes of ill-treatment, in particular relating to the injuries that they claimed to have seen on the applicant. Furthermore, the decision contains no information as to when the questioning took place and who conducted it.

141. The Court notes that the inquiry did not include a medical examination of the applicant at a time when the presence of the traces of beatings could still be verified, failing thus to secure crucial evidence in the ill-treatment case. It also notes the lack of verifiable attempts to question the applicant or the inmates who had submitted written statements in support of his complaint about the events of November 2001 and February 2002. These omissions were not pointed out during, or rectified by, the ensuing judicial review. The Zubovo-Polyanskiy District Court on 18 April 2003 endorsed the decision of the prosecutor's office without questioning the applicant or his fellow inmates, despite the conflicting statements made by inmates L. and A. on which the court relied.

142. Likewise, the decision of the prosecutor's office of 13 February 2003 not to institute criminal proceedings concerning the episode of alleged brutality on 30 November 2002, which was taken more than two months after the alleged ill-treatment, did not elaborate on the measures taken in the course of the inquiry.

143. The Court accordingly has no basis on which to conclude that the two inquiries were either prompt or thorough. It therefore considers that in the instant case the authorities failed on two occasions to carry out an effective investigation in accordance with the requirements of Article 3 of the Convention.

144. There has therefore been a violation of Article 3 of the Convention under its procedural limb.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

145. The applicant complained about the refusal of the Zubovo-Polyanskiy District Court on 16 July 2002 to accept his claims for examination. He alleged that he had been denied access to a court in violation of Article 6 of the Convention which provides, in so far as relevant, as follows:

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

146. The Government referred to Article 91 of the Penitentiary Code and claimed that if a prisoner's correspondence arrived through channels other than the official ones, the receiving officials might not trust the identity of the sender. Moreover, they considered that there had been no need for the applicant to send his post through unofficial channels as he was entitled to send it through the prison postal service. In their observations they stated that limiting the applicant's access to a court had been justified on the following grounds:

“The Internal [Regulations] are [designed to] regulate and specify issues of activity of correctional colonies, prisons, temporary detention facilities with purposes of creation of conditions and serving of punishment, provision of isolation, protection of rights and legal interests of convicted and execution of obligations by them.

The Internal [Regulations] are obligatory for people who serv[e] their imprisonment terms and other people who visit such institutions. And if everyone can violate these rules a question of failure to reach purposes of punishment would arise. The courts would have to check authorship of every complaint, and to send requests to correctional facilities, that would prolong terms of examination. ... the applicant's right under Article 6 § 1 of the Convention was not violated because the applicant's complaint was refused on [a] formal [basis].”

147. The applicant maintained his complaint.

148. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, §§ 35-36, Series A no. 18). This right is not, however, absolute. It may be subject to legitimate restrictions, for example, statutory limitation periods, security for costs orders and regulations concerning minors and persons of unsound mind (see *Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 51-52, *Reports* 1996-IV, and *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, §§ 62-67, Series A no. 316-B). Where the individual’s access is limited either by operation of law or in fact, the Court will examine whether the limitation imposed impaired the essence of the right and in particular whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93).

149. Turning to the circumstances of the present case, the Court observes that on 16 July 2002 the Zubovo-Polyanskiy District Court refused to accept the applicant’s complaints for consideration because the applicant had sent them to the court without having submitted them to the prison authorities, as required by the Penitentiary Code and the Internal Regulations. However, it notes that this refusal was not covered by any of the grounds provided for by Article 129 of the Code of Civil Procedure to which the court referred as the basis for the refusal. Accordingly, its rejection of the claims was not based on the Code of Civil Procedure.

150. In so far as the Government relied on the Penitentiary Code and the Internal Regulations for correctional institutions, these provisions may be relevant as a basis for imposing disciplinary penalties on inmates of these institutions but can in no way serve as a basis for a court’s decision to accept or reject a civil claim. The Code of Civil Procedure does not provide for the possibility of relying on other legislation for limiting access to court. Accordingly there has been no legal ground for rejecting the applicant’s claims. In view of this finding the Court does not need to examine whether the measure in question pursued a legitimate aim and was proportionate.

151. It follows that there has been a violation of Article 6 § 1 of the Convention on account of the District Court’s refusal to accept the applicant’s claim for examination.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. 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.”

153. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum under that head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant’s conditions of detention;
2. *Holds* that there has been no violation of Article 13 of the Convention in respect of the alleged lack of an effective remedy relating to the poor conditions of detention;
3. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged lack of medical assistance;
4. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged ill-treatment of the applicant;
5. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the alleged ill-treatment;
6. *Holds* that there has been a violation of Article 6 of the Convention;
7. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 9 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President