



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

FIRST SECTION

CASE OF ZAKHARKIN v. RUSSIA

(Application no. 1555/04)

JUDGMENT

STRASBOURG

10 June 2010

FINAL

10/09/2010

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

In the case of Zakharkin v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 1555/04) 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 Valeriy Alekseyevich Zakharkin (“the applicant”), on 2 December 2003.

2. The applicant was represented by Ms A. Demeneva, a lawyer with the Urals Centre for Constitutional and International protection of Human Rights. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that he had been detained in appalling conditions, that he had not received adequate medical care in detention, that the criminal proceedings against him had been unfair and that the effective exercise of his right of petition had been hindered by the authorities.

4. On 9 June 2008 the President of the First Section decided to communicate the above complaints to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. On 23 November 2009 the President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970. He is now serving his sentence in the Perm Region.

A. The applicant's arrest and detention at the police station on 15 and 16 October 1999

7. On 15 October 1999 the applicant was arrested in Yekaterinburg on suspicion of robbery. He was allegedly beaten up by the police. At about midnight he was put in a cell at the Kirovskiy District police station.

8. The applicant stayed in the cell until 5.40 p.m. on 16 October 1999. The cell was not equipped with a bunk or a bench. The applicant remained handcuffed all the time. He was not given any food and was escorted to the toilet only once, in the morning.

9. By letter of 11 June 2003, the head of the Kirovskiy District police station of Yekaterinburg confirmed that the cells in the police station were not equipped with bunks or benches and that detainees were not provided with food.

B. The applicant's detention in the temporary detention facilities in Yekaterinburg and Ozersk from 16 October to 25 November 1999

10. On 16 October 1999 the applicant was transported to the Yekaterinburg temporary detention facility.

11. A certificate issued on 29 August 2002 by the doctor of the Yekaterinburg temporary detention facility indicates that the applicant was held in the facility from 16 to 25 October 1999. A medical examination revealed a bruise on his right eye and abrasions on his face.

12. On 25 October 1999 the applicant was transferred to remand centre no. IZ-66/1 in Yekaterinburg.

13. On 2 November 1999 he was escorted to the prosecutor's office, where he was questioned. After questioning he was transported to the Ozersk Town temporary detention facility in the Sverdlovskiy Region. On his way there the escorting officers allegedly beat him and urged him to confess. Once in the detention facility, the applicant signed a confession statement.

14. The applicant remained in the Ozersk Town temporary detention facility until 25 November 1999. He was held in a solitary cell measuring 2 sq. m. The cell was not equipped with a bunk or toilet facilities. The

applicant was escorted to the toilet twice a day. He was given bread and tea three times a day. The window allegedly had no glazing and it was extremely cold in the cell. A certificate issued by the Federal Meteorological Service indicates that the outside temperature in November 1999 ranged from 6° C to - 21° C.

15. On 25 November 1999 the applicant was transported to remand centre no. IZ-66/1 in Yekaterinburg, where he remained for the entire duration of the criminal proceedings against him.

16. On 2 and 3 December 1999 the applicant allegedly complained to the prosecutor's office that he had been ill-treated by the police. He did not receive any reply. He did not produce copies of his complaints.

C. The criminal proceedings against the applicant

17. The trial started on 18 December 2001 in the Sverdlovskiy Regional Court. It transpires from the trial record that on 20 March 2002 the presiding judge Ms G. chose by lot, from a list of ten names, two lay judges and a substitute lay judge to examine the applicant's case. The formation thus included the presiding judge Ms G., two lay judges, Ms T. and Ms O., and a substitute lay judge, Ms Ye.

18. On 19 September 2002 the Sverdlovskiy Regional Court convicted the applicant of several counts of armed robbery, murder and attempted murder of a policeman and sentenced him to life imprisonment. The applicant appealed, complaining, in particular, about the allegedly unlawful composition of the trial court.

19. On 3 June 2003 Ms Perevoshchikova, counsel for the applicant, asked the President of the Sverdlovskiy Regional Court for information about the appointment and terms of office of the lay judges Ms T., Ms O. and Ms Ye. On 17 July 2003 a deputy President of the Sverdlovskiy Regional Court replied that all judges of the Sverdlovskiy Regional Court were competent to try criminal cases at first instance. He disclosed no details about the appointment procedure or terms of office of the lay judges.

20. On 28 August 2003 the Supreme Court of the Russian Federation rejected the applicant's request to allow the lawyer Ms Demeneva to act as his counsel, on the grounds that she was not a professional advocate and was not present at the appeal hearing. It was also noted that the applicant was represented by Ms Perevoshchikova, counsel. The court then examined the applicant's appeal and upheld the conviction. It held that no breach of the rules on the appointment of lay judges had been established.

21. On 8 September 2003 counsel for the applicant applied to the President of the Sverdlovskiy District Court for permission to access copies of judgments delivered by the Sverdlovskiy District Court between 1999 and 2002, in order to verify whether the lay judges Ms T., Ms O. and Ms Ye. had participated in other criminal cases during those years. She also

asked the President whether the names of the lay judges had been drawn at random by lot as required by the Lay Judges Act.

22. By undated letter the President of the Sverdlovskiy Regional Court refused access to the court's archives, stating that counsel could only study the applicant's case file. Ms T. and Ms O. had been appointed as lay judges in 1993, while Ms Ye. had been appointed in 1999. Their terms of office had been extended by presidential decrees. He further mentioned that the names of the lay judges had been drawn by lot, but refused to send a copy of the records.

23. On 30 September 2003 the head of the secretariat of the Sverdlovskiy Regional Legislature informed counsel for the applicant that the list of lay judges for the courts of the Sverdlovskiy Region had been compiled in May 2000. Ms T., Ms O. and Ms Ye. did not appear on the 2000 lists.

24. On 8 February 2006 the Presidium of the Supreme Court, acting on supervisory review, quashed the appeal judgment, finding that the applicant had not been notified of the date and time of the appeal hearing. It remitted the case to the Supreme Court for fresh examination on appeal.

25. On 31 July 2006 the Supreme Court upheld the conviction on appeal. It held, in particular, that the lay judges Ms T. and Ms O. had been appointed in 1993 and that their term of office had been extended by presidential decrees. It concluded that the court's composition had been lawful. The applicant was represented by two lawyers of his choice.

26. The documents submitted by the Government show that on 25 March 1999 the Sverdlovskiy Regional Legislature selected 551 lay judges to be assigned to the Sverdlovskiy Regional Court. The list mentioned Ms Ye., but not Ms T. or Ms O. By decisions of 18 and 25 May 2000 the Sverdlovskiy Regional Legislature determined the number of lay judges to be selected for each district court. No actual selection of lay judges was made.

D. The conditions of the applicant's detention in remand centre no. IZ-66/1 in Yekaterinburg

27. From 25 November 1999 to 18 November 2003 the applicant was held in remand centre no. IZ-66/1 in Yekaterinburg. On 18 November 2003 he was transferred to a correctional colony in the Vologda Region.

1. The Government's description of the conditions of the applicant's detention

28. According to a certificate of 18 August 2008 issued by the remand centre management and produced by the Government, until July 2002 the applicant was held in communal cells. It was not possible to establish the number of inmates in each cell, as the remand centre registers for that period

had been destroyed on expiry of the statutory storage time-limit. From 6 July 2002 to 18 November 2003 the applicant was held in solitary cells. Cell no. 210 measured 6 sq. m, cell no. 32 measured 4.5 sq. m, cell no. 1 measured 4 sq. m and cell no. 10 measured 7 sq. m.

29. The Government submitted, relying on certificates dated 18 August 2008 from the remand centre management, that all the cells were naturally illuminated and ventilated through the windows. The windows in all the cells were glazed. They had no blinds or other screens preventing the access of natural light. Moreover, all the cells were fitted with fluorescent lamps which functioned during the day and at night. The cells were equipped with central heating and the average temperature inside was above 20° C in winter and above 18° C in summer.

30. It follows from the same certificates that all the cells had toilet facilities which were not separated from the living area by a partition as “there was no such requirement under [domestic law]”. It was, however, possible to screen the toilet facilities off by a curtain. The dining table and the beds were situated at least two metres away from the toilet facilities. There were no insects or rodents in the remand centre, as all the cells were disinfected every month. The applicant was allowed to take a shower once a week and was provided at that time with clean bedding. He was also supplied with boiled drinking water and wholesome hot food three times a day. He had an hour-long daily walk. Occasionally the duration of the daily walk was shortened to thirty minutes. In reply to the applicant's complaints, the warders responsible for that omission had been reprimanded. Pursuant to an order by the governor of the remand centre the applicant, who was considered dangerous, was handcuffed when taken to the exercise yard.

31. In addition to the certificates of 18 August 2008 the Government also produced certain documents dating from the period of the applicant's detention in remand centre no. IZ-66/1 in support of their description of the conditions of the applicant's detention. Hence, they submitted a letter of 16 October 2002 addressed to a deputy prosecutor of the Sverdlovskiy Region in which the chief sanitary inspector of penitentiary institutions stated that the applicant was currently held in cell no. 32. The cell measured 6.5 sq. m, was illuminated artificially by fluorescent lamps and was equipped with central heating and sewerage facilities. The average temperature was 18 to 20° C and the humidity was “subjectively normal”. The cell was equipped with a bunk and the applicant was provided with bedding. The inspector added that the applicant had been previously held in cell no. 210, which measured 8.8 sq. m and possessed the same characteristics.

32. The Government also submitted a decision of 1 November 2002 by the governor of the remand centre ordering that the applicant be handcuffed every time he was let out of his cell, including when he was taken to the visitors' room, the exercise yard or the shower room. He noted that the

applicant had been sentenced to life imprisonment and had been registered as a person liable to escape, attack the warders and take hostages. Accordingly, his handcuffing was necessary to protect the warders and escorting officers.

33. According to numerous written statements from the warders, produced by the Government, the conditions of the applicant's detention were satisfactory. He was provided with sufficient food three times a day. His cells were clean, warm and dry. One of the warders, Mr I., stated that the applicant's cell was one of the best in the remand centre. He continued:

“One day in December 2002 [the applicant] asked for a piece of material that he might use to insulate his window. The window was not glazed and it was covered by a blanket. In principle, that had no impact on the temperature in cell no. 10 where [the applicant] was held. It was very warm in the cell... [the applicant] was given a piece of polythene...

[The applicant] always wears handcuffs on the way to the exercise yard, but in the yard the handcuffs are removed...”

34. Finally, without relying on any documents, the Government submitted that one of the solitary cells in which the applicant was held, cell no. 10, measured 5.2 sq. m. The windows in the remand centre were not covered with blinds, these having been removed before 25 December 2002. The toilet facilities were equipped with a flush system and were separated from the living area by a partition.

2. The applicant's description of the conditions of his detention

35. From 25 November 1999 to 6 July 2002 the applicant was held in various cells in buildings nos. 2 and 3 in remand centre no. IZ-66/1. Each cell accommodated from twenty-five to thirty-five inmates. All the cells were overcrowded.

36. On 6 July 2002 the applicant was placed in solitary cell no. 210. The cell measured 3.2 sq. m. It had concrete walls and floor. The window was covered with a metal screen with eight ventilation holes. The toilet was not separated from the living area. There was no hot running water in the cell.

37. On 25 September 2002 the applicant was transferred to solitary cell no. 32, post 13, in the basement, where he remained until 14 October 2002. All his personal belongings, including warm clothes, were taken away from him and he was given dirty prison overalls. The cell was 1.8 metres in width and 4.5 metres in length. The walls were covered with mould, water was dripping from the ceiling and the floor was dirty with mud. There was no access to natural light or fresh air. There was no hot running water in the cell. The applicant, who was ill with arthritis, suffered as a result of the cold and the damp.

38. The applicant submitted photographs of cell no. 32 confirming his description. The photographs show bare concrete walls, floor and ceiling, all

with damp patches on them. The cell is equipped with a floor-level toilet with a rusty water pipe with a tap in place of a flush system. There is also a rusty sink alongside, with its outlet pipe leading to the toilet outlet. The toilet facilities are not separated from the living area. Other photographs show two rusty two-tier metal beds, one of them covered with a dirty mattress, and a small metal shelf used as a dining table. There are two small ventilation outlets immediately under the ceiling. There is apparently no window.

39. One of the photographs shows a door vent about ten centimetres wide. According to the applicant, the food was handed to him through that vent. The food parcels from his wife that could not pass through the vent were not given to him.

40. From 14 to 22 October 2002 the applicant stayed in solitary cell no. 1, post 31. It was stifling inside the cell as it had no window or ventilation device.

41. On 22 October 2002 the applicant was transferred to solitary cell no. 10, post 31, in the basement, where he remained until 18 November 2003. The cell measured 1.7 metres in width and 2 metres in length, that is, 3.4 sq. m. The dimensions of the window were 50 centimetres by 50 centimetres. It was covered with four metal grilles placed behind one another and blocking access to natural light. The window had no glazing and it was extremely cold in the cell during the winter. At the applicant's request the warders gave him a piece of polythene to insulate the window. A certificate issued by a private meteorological company indicates that the outside temperature in October, November and December 2002 ranged from 9° C to - 30° C.

42. The applicant submitted photographs of cell no. 10 confirming his description. The concrete walls of the cell are indeed covered with damp patches. There is no lavatory bowl; instead, there is a hole in the floor at the corner of the cell. There is no sign of a flush or other washout system. The toilet is not separated from the living area. Next to the toilet, there is a rusty sink and a small dining table. A two-tier metal bed is placed along the opposite wall. The only window is an aperture in a thick concrete wall with several metal bars placed behind one another.

43. Finally, according to the applicant, he was handcuffed every time he was let out of his cell and taken to the exercise yard. Given that on some days the air temperature was below zero, the metal handcuffs hurt his hands. His daily outdoor exercise was on many occasions curtailed to half an hour instead of the one hour prescribed by law.

3. The applicant's complaints about the conditions of his detention

44. The applicant submitted copies of his numerous complaints to the supervising prosecutor, together with the replies he received. Thus, on 27 and 30 September, 1, 4, 7, 8, and 11 October 2002 the applicant and his

counsel complained to the supervising prosecutor about the appalling conditions of the applicant's detention in cells nos. 210 and 32. In particular, the applicant complained that the cells were cold, dark and humid, and that his personal belongings had been taken away from him. In the complaint dated 8 October 2002 the applicant also alleged that his daily outdoor exercise had been shortened to half an hour and that he was handcuffed while in the exercise yard.

45. On 30 September 2002 the governor of remand centre no. IZ-66/1 replied that the applicant's cell measured 4 sq. m and that all the sanitary norms were met.

46. By letter of 30 October 2002 the supervising prosecutor replied that the applicant's conditions of detention were satisfactory and met the established norms. In particular, cell no. 210 measured 8.8 sq. m, while cell no. 32 measured 6.5 sq. m. The cells were illuminated artificially. The temperature ranged between 18 and 20 degrees above zero and the humidity was "subjectively normal". He conceded that the applicant's personal belongings had been taken from him unlawfully, but noted that they had been returned to him on 3 October 2002. He also acknowledged that the applicant's handcuffing on his way to the exercise yard had been unlawful and informed the applicant that the warders had been disciplined.

47. In December and January 2002 the applicant and his counsel lodged several more complaints with the supervising prosecutor. They alleged that it was very cold in cell no. 10 as the window had no glazing. They also complained about the insufficient outdoor exercise allowed to the applicant and about his handcuffing while he was in the exercise yard. They further claimed that the amount of food was inadequate, that the applicant was not allowed to buy food in the facility's shop and that food parcels from relatives were limited to 30 kg per month. They complained that on several occasions the applicant had not been given any food during the entire day and that sometimes the warders withheld food parcels brought by the applicant's wife. Lastly, the applicant alleged that his personal television set had been taken away from him.

48. On 16 January 2003 the governor of detention facility no. IZ-66/1 replied that the applicant's conditions of detention were satisfactory.

49. In reply to further complaints by the applicant, the supervising prosecutor acknowledged on 20 January 2003 that the duration of his daily outdoor exercise had been unlawfully restricted. However, he considered that it was necessary to handcuff the applicant when he was taken to the exercise yard, in order to protect the escorting officers. He also informed the applicant that owing to staff shortages it was not possible to provide him with hot food every day.

50. On 5 May 2003 the applicant complained to the supervising prosecutor that it was stifling inside his cell and that it was swarming with rats and mice. He further alleged that the toilet was not separated from the

living area and that when using the toilet he was in full view of the warders, many of whom were women. It appears that the complaint remained without reply.

51. On 15 September 2003 counsel for the applicant complained to the supervising prosecutor that on 11 September 2003 a piece of polythene which he had been using to insulate the window had been taken away from him and that it was cold in his cell because the window had no glazing. The prosecutor of the Sverdlovskiy Region requested an explanation from the head of the penitentiary department of the Sverdlovskiy Region. In his letter of 21 October 2003 the head of the penitentiary department stated that the windows in the remand centre were currently being glazed, and that therefore the inmates were not provided with polythene.

E. Medical assistance

52. In April 2001 the applicant was diagnosed with arthritis.

53. On 18 and 20 April 2001 he was examined by the doctor of remand centre no. IZ-66/1, who prescribed anti-inflammatory treatment for arthritis.

54. On 26 April 2001 the applicant was taken to prison hospital IK-2 in Yekaterinburg (*ОБ нпу ФБУ ИК-2*) for an examination. He was diagnosed with arthropathy (a joint disease) of the knee, ankle and wrist joints. On 8 May 2001 he was discharged.

55. From 23 October to 8 November and from 4 to 6 December 2001 the applicant underwent further examinations in prison hospital IK-2. He was diagnosed with infectious allergic polyarthritis.

56. On 8 and 21 January 2002 the applicant complained to the remand centre doctor of pain, swelling and stiffness in the joints of his upper and lower limbs. The doctor confirmed the previous diagnosis and prescribed anti-inflammatory pills for arthritis.

57. In May 2002 the applicant was examined by the remand centre doctor, who prescribed intra-muscular injections for ten days. The medical record states that ten injections were administered between 21 May and 12 June 2002.

58. On 28 August 2002 the applicant again complained of pain and swelling in his arm, elbow, finger, knee and ankle joints. The remand centre doctor noted that the applicant's disease was "long-standing and persistent" and referred him for examination to the prison hospital.

59. On 12 September 2002 the applicant was admitted to prison hospital IK-2, where he remained until 17 September 2002. He was diagnosed with rheumatoid arthritis and slow-progressing seronegative polyarthritis. The doctors recommended that the applicant stay away from cold and damp places, be examined by a rheumatologist and follow in-patient treatment.

60. On 5 November 2002 the applicant was examined by Dr L., a rheumatologist from the Central Town Hospital. She recommended a high-

calorie diet and avoidance of exposure to cold. She noted that it was unacceptable to restrict the applicant's food intake. She also prescribed treatment. In particular, she recommended that the applicant should take anti-inflammatory pills and apply ointments on a continuous basis and should follow a one-month course of hepatoprotective treatment. Regular blood counts and X-ray testing should be performed. It was, however, premature to prescribe any disease-modifying drugs (*базисная терапия*) or hormone therapy. She concluded that further medical tests and constant medical supervision were necessary.

61. According to the applicant, he did not receive any treatment except analgesics (painkillers) and several injections because the medical unit at the remand centre did not have the necessary medication.

62. In reply to the complaints of insufficient medical assistance, the governor of remand centre no. IZ-66/1 stated in writing on 16 December 2002 that the applicant did not need in-patient treatment. As the applicant did not suffer from any serious diseases, his wife was not allowed to send him food parcels exceeding 30 kg per month.

63. On the same day the applicant was examined by doctors from the medical department of the Ministry of Justice. They noted in the medical records that the applicant's health was satisfactory and that he was receiving vitamins. The doctors also noted that further examinations in the prison hospital were necessary.

64. On 17 December 2002 a deputy head of the medical department of the Ministry of Justice informed the applicant's wife that the medical department had conducted an inquiry and established that the applicant was receiving sufficient and appropriate treatment for his disease.

65. On 8 January 2003 the applicant's wife complained to the medical department of the Ministry of Justice that the applicant was not receiving any medicine except painkillers. As a result of the insufficient treatment provided, his disease had progressed.

66. On 10 January 2003 a deputy head of the medical department of the Ministry of Justice replied that the applicant's state of health was satisfactory.

67. In April 2003 the applicant underwent an X-ray examination.

68. On 27 May 2003 the applicant was for a second time examined by the rheumatologist Dr L. The applicant complained of persistent pains in his joints. Dr L. noted stiffness and swelling of certain joints and limited movement of the right elbow joint and the left wrist joint. She further observed that her previous recommendations had not been followed and issued the same recommendations and prescriptions as before. She further prescribed local hormone injections once every ten to fourteen days until the inflammation in the joints had lessened. Finally, she recommended that blood and urine tests should be performed every month.

69. On an unspecified date (the date indicated in the medical records is unreadable) the applicant was examined by the remand centre doctor. He complained of weakness, loss of weight and aggravation of the pain in his joints. The doctor noted in the medical records that the applicant refused to take anti-inflammatory pills and insisted that he needed intra-articular injections. The doctor recommended that the applicant be taken to the prison hospital for an examination.

70. From 10 to 17 June and from 6 to 17 October 2003 the applicant underwent an examination and followed treatment in prison hospital IK-2.

71. In reply to further complaints of inadequate treatment lodged by the applicant's wife, the head of the medical department of the Ministry of Justice stated on 8 October 2003 that the applicant's state of health was satisfactory. He noted that the rheumatologist had recommended that the applicant take anti-inflammatory medicines, apply ointments and receive intra-articular injections. The applicant had refused to take the anti-inflammatory medicines prescribed to him. Intra-articular injections were not possible because there were no medical officers in the detention facility trained in administering them. The head of the medical department of the Ministry of Justice concluded that the applicant was receiving adequate and sufficient treatment.

72. On 10 October 2003 Dr K., a rheumatologist from Yekaterinburg Town Clinical Hospital no. 40, examined the applicant's medical records and concluded that he was suffering from rheumatoid arthritis. The report continued as follows:

“[Rheumatoid arthritis] is a serious disease causing marked pain in the joints and muscles and restricting the function of the affected joint. It is progressive and incurable. The disease requires constant anti-inflammatory treatment to lessen the pain and inflammation in the joints and muscles. It also requires specific treatment with disease-modifying drugs to slow down the process of destruction of the joints. [The applicant] has not received any disease-modifying drugs.

Owing to the destruction of the joint structures and muscle atrophy, this disease leads to disability within 5 to 10 years of its onset, depending on the rate of progression.

In cases where other internal organs are affected by the disease (this is possible in the absence of adequate treatment) it may progress more rapidly.

The analysis of the submitted materials reveals that at present [the applicant] is affected by an active inflammation process which has resulted in loss of function in the joints.

I recommend an examination ... which is necessary in order to prescribe adequate treatment.

[The applicant] requires wholesome food rich in protein and vitamins. Damp and cold places are strongly contraindicated.”

73. On an unspecified date the applicant lodged a civil claim against remand centre no. IZ-66/1, complaining about the allegedly insufficient medical assistance afforded to him.

74. On 9 December 2003 the Verkh-Issetskiy District Court of Yekaterinburg noted that the applicant suffered from arthritis. The management of the remand centre had an obligation to organise a medical examination of the applicant in order to determine the gravity of his medical condition. It had however failed to do so. Moreover, given that arthritis was a serious disease requiring a high-calorie diet, it had been unlawful to limit food parcels from relatives to 30 kg per month. However, the court rejected the applicant's claim, finding that it was without substance as he was no longer being held in remand centre no. IZ-66/1.

75. On 9 January 2004 the applicant was granted disability status.

F. The applicant's contact with his representative Ms Demeneva

76. The applicant appointed Ms Demeneva, a lawyer with the Urals Centre of Constitutional and International Protection of Human Rights, to represent him before the Supreme Court and the European Court. On 27 November 2002 Ms Demeneva applied to the President of the Sverdlovskiy Regional Court for permission to visit the applicant. On 28 November 2002 her request was refused. No reasons for the refusal were provided.

77. On 5 December 2002 Ms Demeneva for a second time asked the President of the Sverdlovskiy Regional Court to issue her with a visitor's permit. By letter of 11 December 2002 a judge of the Sverdlovskiy Regional Court refused to admit Ms Demeneva as counsel for the applicant. He noted that at that stage of the proceedings the admission of counsel was within the competence of the Supreme Court.

78. In January 2003 Ms Demeneva lodged a new request for a visitor's permit with the President of the Sverdlovskiy Regional Court. The request indicated that Ms Demeneva was the applicant's representative before the Court. It appears that the request was not examined.

79. On 28 April and 14 May 2003 the applicant wrote to the President of the Sverdlovskiy Regional Court, informing him that he wanted to meet Ms Demeneva in order to prepare an application to the European Court of Human Rights. On an unspecified date in July 2003 the Sverdlovskiy Regional Court issued Ms Demeneva with a visitor's permit.

80. On 23, 25 and 30 July 2003 Ms Demeneva came to visit the applicant. However, the management of remand centre no. IZ-66/1 refused to let her in. They did not give any reasons for the refusal.

81. In reply to Ms Demeneva's complaint, the penitentiary department of the Sverdlovskiy Region informed her on 25 August 2003 that she had not been appointed to represent the applicant in the criminal proceedings and

that her legal status was unclear. Therefore, she was not allowed to visit the applicant.

82. By letter of 15 September 2003 a deputy President of the Sverdlovskiy Regional Court informed the penitentiary department of the Sverdlovskiy Region that the applicant's conviction had become final and that the visitor's permit issued to Ms Demeneva was no longer valid.

83. On 3 November 2003 the Sverdlovskiy regional prosecutor's office informed Ms Demeneva that she had been denied access to the applicant because she had not produced a judicial decision by which she had been admitted to act as counsel for the applicant.

84. The applicant challenged the refusals before the Verkh-Issetskiy District Court of Yekaterinburg. On 13 November 2003 the Verkh-Issetskiy District Court found that Ms Demeneva had a power of attorney authorising her to represent the applicant's interests before the European Court of Human Rights and possessed a valid visitor's permit issued by a competent court. It ordered the management of detention facility no. IZ-66/1 to organise the applicant's meetings with Ms Demeneva.

85. No meetings were organised. On 24 February 2004 the bailiffs' service discontinued the enforcement proceedings, finding that it was no longer possible to organise the meetings as the applicant had been transferred to a correctional colony.

II. RELEVANT DOMESTIC LAW

A. Lay judges

1. The RSFSR Code of Criminal Procedure

86. The Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960, in force until 1 July 2002 – “the old CCrP”) provided that criminal cases were tried at first instance by a single judge or by a bench consisting of a professional judge and two lay judges. In their judicial capacity lay judges enjoyed the same rights as professional judges (Article 15).

2. The RSFSR Constitution of 1978 (as amended by Federal Law no. 4061-1 of 9 December 1992)

87. By virtue of Article 164 of the RSFSR Constitution of 1978 (in force until 12 December 1993, when the Constitution of the Russian Federation was adopted), lay judges were elected during meetings of citizens at their place of work or residence for a term of five years.

3. The RSFSR Judicial System Act

88. Under section 29 of the RSFSR Law of 8 July 1981 on the RSFSR judicial system (“the RSFSR Judicial System Act”) (the relevant provisions remained in force until 10 January 2000, date of the official publication of the Federal Law on lay judges at the federal courts of general jurisdiction in the Russian Federation), lay judges at the regional courts were to be elected by the Regional Congress of People's Deputies for a term of five years.

4. The Constitution of the Russian Federation

89. On 12 December 1993 the Constitution of the Russian Federation was adopted. It does not provide for any procedure for the selection of lay judges.

90. Articles 83 and 84 of the Constitution list the powers of the President. They do not mention any power to appoint lay judges or to prolong their term of office.

91. Article 90 provides that the President may issue decrees and orders. Decrees and orders of the President have binding force in the entire territory of the Russian Federation. They may not be contrary to the Constitution or federal laws.

92. Part 2 of the Russian Constitution contains provisions aimed at preserving the continuity of the judiciary and other State bodies during the transitional period. In particular, paragraph 6 establishes that until the adoption of a federal law setting out the procedure for the examination of cases by a jury, the previous procedure for examination of that category of cases by the courts should be preserved.

5. The presidential decree of 22 March 1995

93. On 22 March 1995 the acting President of Russia issued Decree no. 299, which read as follows:

“Relying on Article 90 and paragraph 6 of Part 2 of the Constitution of the Russian Federation, [I] order that:

1. The lay judges at the district (town) courts shall continue their service until the adoption of the relevant federal law.

2. The executive authorities of the constituent elements of the Russian Federation shall, if necessary, organise by-elections of lay judges for the district (town) courts at general staff meetings, general meetings and gatherings of citizens at their places of residence.”

94. On 21 March 1997 the Constitutional Court examined an application by Mr Sh. who submitted, in particular, that the presidential decree was incompatible with the Constitution. The Constitutional Court found that it had no competence to verify the compatibility of presidential decrees with the Constitution at citizens' request. It noted, however, that the procedure

for examination of criminal cases by a judicial bench including lay judges was established by the old CCrP and the RSFSR Judicial System Act. Those acts remained in force in accordance with paragraph 6 of Part 2 of the Constitution. It was therefore necessary to preserve the system of lay judges for the time being.

6. The Judicial System Act

95. On 1 January 1997 Federal Constitutional Law no. 1-FKZ on the judicial system of the Russian Federation (“the Judicial System Act”) entered into force. By virtue of section 1 of the Act judicial authority in the Russian Federation was vested exclusively in courts comprising professional judges, jurors, lay judges and arbitration judges appointed or elected in accordance with the procedure laid down by federal law.

96. Section 8 of the Judicial System Act provided that individuals could participate as jurors, lay judges and arbitration judges in the administration of justice in accordance with the procedure established by federal law.

97. Section 37 established that lay judges elected to serve in the courts before 1 January 1997 should remain in office until the expiry of the term of office for which they had been elected.

7. The presidential decree of 23 January 1997

98. On 23 January 1997 the President of the Russian Federation issued Decree no. 41, which, in so far as relevant, read as follows:

“Having regard to the [fact] that the Federal Constitutional Law on the judicial system of the Russian Federation has come into effect, for the purpose of ensuring the activities of the courts of general jurisdiction in the Russian Federation and for the judicial protection of the rights of individuals, and relying on Article 90 of the Constitution of the Russian Federation, [I] order that:

1. The lay judges at ... regional courts shall continue their service until the adoption of the federal law on the procedure for appointment (election) of lay judges.”

99. On 10 October 2002 the Constitutional Court examined an application by a Mr G., who claimed that the presidential decree was incompatible with the Constitution. The Constitutional Court found that, in accordance with Article 90 of the Constitution, presidential decrees must not be contrary to the Constitution or federal laws. The decree contested by Mr G. prolonged the term of office of lay judges elected earlier. It did not establish any procedure for calling lay judges to sit in particular criminal cases which would differ from the procedure prescribed by federal law. In particular, it did not contain any provisions which would allow lay judges to be called for service on a regular basis and for periods surpassing two weeks per year. The complaint was declared inadmissible.

8. The Lay Judges Act

100. On 10 January 2000 the Federal Law on lay judges at the federal courts of general jurisdiction in the Russian Federation (“the Lay Judges Act”) came into force. Under section 1(2) of the Act, lay judges were persons authorised to sit in civil and criminal cases as non-professional judges.

101. Section 2 provided that lists of lay judges were to be compiled for every district court by local self-government bodies; the lists were subject to confirmation by the regional legislature. The confirmed list was to be submitted to the relevant district court no later than one month before the expiry of the term of office of the lay judges on the previous list. The term of office of lay judges was five years.

102. Section 6 determined the procedure for the selection of lay judges at the regional courts. It provided that the President of the regional court was to draw names at random from the overall list of lay judges assigned to the district courts situated on the territory of that region. The number of lay judges assigned to every professional judge should be at least three times as many as the number needed for a hearing. From the list of lay judges assigned to him the professional judge was to select two lay judges by lot to sit in a particular case.

103. Under the terms of section 9, lay judges could only be called for service in a regional court once a year, for the entire duration of the court proceedings in a particular case.

9. The Regulation on the appointment of lay judges

104. The Presidium of the Supreme Court of the Russian Federation issued on 14 January 2000 a Regulation on the procedure for the selection of lay judges. The Regulation provided that the President of a district court should draw at random from the general list of lay judges 156 names for each judge. The random selection could be made by any method (for example by random computer selection, or by manual selection of each fifth name for one judge, each seventh name for another judge, etc.). The lay judges for a particular case were to be drawn by lot by the judge to whom the case had been assigned. Each court was obliged to keep records of all random selections and drawings by lot.

105. The Regulation further referred to section 37 of the Judicial System Act and section 2 of the lay Judges Act and provided that, given that no lists of lay judges had been compiled by the date of the entry into force of the Lay Judges Act, the acting lay judges should remain in office until the submission of new lists of lay judges to the courts.

10. The presidential decree of 25 January 2000

106. Under the decree of the acting President of Russia issued on 25 January 2000, lay judges serving in the courts of general jurisdiction were authorised to remain in office until the courts received the new lists of judges confirmed by the regional legislatures.

107. On 21 December 2001 the Constitutional Court examined an application by a Mr P., who submitted, in particular, that the presidential decree was incompatible with the Constitution. The Constitutional Court found that it had no competence to verify the compatibility of presidential decrees with the Constitution at citizens' request.

11. The Code of Criminal Procedure

108. On 1 July 2002 the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001 – “the new CCrP”) entered into force. It abolished the system of lay judges as from 1 January 2004.

12. The presidential decree of 5 August 2002

109. On 5 August 2002 the President of the Russian Federation issued Decree no. 855, by which, referring to the entry into force of the Lay Judges Act, he declared his Decrees no. 299 of 22 March 1995, no. 41 of 23 January 1997 and no. 103 of 25 January 2000 to be no longer in force.

B. Visits by counsel

110. The new CCrP provides that advocates authorised by a bar association are admitted to act as counsel in criminal proceedings. At the defendant's request the judge may admit a close relative or any other person to act as counsel (Article 49). Counsel may visit the suspect or the accused in private and in confidence. The frequency or duration of the visits may not be limited (Articles 47 § 4 (9) and 53 § 1 (1)).

111. Federal Law no. 103-FZ of 15 July 1995 on the detention of persons suspected or accused of criminal offences (“the Detention Act”) provides that a suspect or an accused is entitled to receive visits from his counsel from the moment he or she is arrested. Visits are conducted in private and in confidence. Their duration or frequency may be limited only in those cases established by the Code of Criminal Procedure. Counsel may visit a detainee on presentation of his or her bar certificate and a mandate to represent the accused's interests issued by the bar association (*ордер юридической консультации*). It is prohibited to require any other documents. If a non-advocate has been admitted to act as counsel, visits are permitted on presentation of the relevant court decision and an identity card (section 18).

III. RELEVANT INTERNATIONAL INSTRUMENTS

112. 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 in 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.

...”

113. The relevant extracts from the General Reports prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

“47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment.”

Extracts from the 3rd General Report [CPT/Inf (93) 12]

“35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). ... Further, prison doctors should be able to call upon the services of specialists.

...

Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital.

...

37. Whenever prisoners need to be hospitalised or examined by a specialist in a hospital, they should be transported with the promptness and in the manner required by their state of health.

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service.”

Extract from the 11th General Report [CPT/Inf (2001) 16]

“30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of measures of this kind should be the exception rather than the rule. This implies that the relevant authorities must examine the case of each prisoner in order to ascertain whether specific security measures are really justified in his/her case. Further, even when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.

The CPT recognises that the delivery of decent living conditions in penitentiary establishments can be very costly and improvements are hampered in many countries by lack of funds. However, removing devices blocking the windows of prisoner accommodation (and fitting, in those exceptional cases where this is necessary, alternative security devices of an appropriate design) should not involve considerable investment and, at the same time, would be of great benefit for all concerned.”

THE LAW

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

114. The applicant complained that the conditions of his detention at the Kirovskiy District police station in Yekaterinburg, in the temporary detention facilities in Yekaterinburg and Ozersk and in remand centre no. IZ-66/1 in Yekaterinburg had been in breach of Article 3 of the Convention, which provides:

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

A. Admissibility

115. The Court observes that from 15 October to 25 November 1999 the applicant was held at the police station and in the temporary detention facilities, where the cells were allegedly small and cold and were not equipped with sleeping facilities, where he was deprived of food and where his access to the toilet was restricted. He was then transferred to remand centre no. IZ-66/1, where he was held in the allegedly overcrowded communal cells until 6 July 2002. From 6 July 2002 to 18 November 2003 the applicant was held in solitary cells in the remand centre which were allegedly cold, dark, damp and dirty. Having regard to the difference in the nature of the applicant's allegations in respect of the local police station, the temporary detention facilities, the communal cells of the remand centre and the solitary cells of the remand centre, the Court does not find any special circumstances which would enable it to construe the entire period of the applicant's detention as a “continuing situation” (see, for similar reasoning, *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 82-84, 29 January 2009).

116. Given that the present application was lodged on 2 December 2003, the complaints relating to:

(a) the applicant's detention at the local police station and in the temporary detention facilities from 15 October to 25 November 1999, and

(b) his detention in the communal cells of remand centre no. IZ-66/1 from 25 November 1999 to 6 July 2002

were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

117. As to the complaint relating to his detention in the solitary cells of remand centre no. IZ-66/1 from 6 July 2002 to 18 November 2003, the Court notes that it is not manifestly ill-founded within the meaning of

Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

118. The applicant challenged the Government's description of conditions in remand centre no. IZ-66/1, summarised in paragraphs 28 to 34 above, as factually untrue. The certificates prepared by the remand centre management in 2008 could not be considered as credible. The applicant insisted that his description of the cells had been accurate and referred to the documents submitted by him in evidence. The conditions of his detention had been inhuman and therefore incompatible with Article 3. The applicant further argued that his frequent handcuffing had caused him unusual and severe suffering because his hands were affected by rheumatoid arthritis.

119. The Government submitted that the conditions of the applicant's detention had been satisfactory and in compliance with the requirements of Article 3. The cells had been light and warm. There had been glazed windows, artificial illumination and central heating in all cells. The applicant had been provided with an individual bunk and bedding at all times. He had been supplied with sufficient food and drinking water. The sanitary and hygienic norms had been met. The applicant had been able to exercise daily. The Government conceded that occasionally the duration of his daily walk had been shortened but stated that the officials responsible for that omission had been disciplined. The applicant's handcuffing on the way to the exercise yard had been lawful and justified because he had been registered as a person liable to escape or attack the escorting officers. In the exercise yard the handcuffs had been removed.

2. The Court's assessment

120. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-101, ECHR 2001-VIII).

121. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Under this provision the State must 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*, cited above, § 102, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, account must be taken of their cumulative effects as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The duration of the detention is also a relevant factor.

122. The Court notes that the present case is different from many Russian cases where a violation of Article 3 of the Convention was found on account of the lack of personal space afforded to detainees (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mamedova v. Russia*, no. 7064/05, §§ 61-67, 1 June 2006; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005). The applicant in the present case, who was held in solitary cells, did not complain of a lack of personal space. Instead, he complained of other aspects of the physical conditions of detention, including the coldness of his cell, insufficient access to daylight and poor sanitary conditions. The Court has previously found that such factors as access to natural light or air, adequacy of heating arrangements, compliance with basic sanitary requirements, the opportunity to use the toilet in private and the availability of ventilation are relevant to the assessment of whether the acceptable threshold of suffering or degradation has been exceeded (see, for example, *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007; and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III). The Court will have to verify whether the physical conditions of the applicant's detention can be regarded as compatible with Article 3 of the Convention.

123. The parties have disputed many aspects of the conditions of the applicant's detention in the solitary cells of remand centre no. IZ-66/1 in Yekaterinburg. The Court is accordingly faced with the task of establishing the facts on which the parties disagree. It reiterates in this respect that allegations of treatment contrary to Article 3 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, Convention proceedings, such as 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) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these 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, among other authorities, *Kokoshkina v. Russia*, no. 2052/08, § 59, 28 May 2009, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

124. The Court observes at the outset that the applicant described the conditions of his detention in detail. He submitted colour photographs of his cells confirming his description, as well as letters from remand centre officials and the supervising prosecutor which corroborate some of his allegations. The Government, by contrast, confined their supporting evidence to numerous certificates from the remand centre management issued on 18 August 2008, that is, long after the applicant had left the remand centre. They have not submitted any source materials on the basis of which the assertions of comfortable conditions of detention contained in those certificates could be verified. The Court would reiterate that on several previous occasions it has declined to accept the validity of similar certificates on the ground that they could not be viewed as sufficiently reliable given the lapse of time involved and the absence of any supporting documentary evidence (see *Kokoshkina*, cited above, § 60; *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008; and *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007). The certificates are therefore of little evidentiary value for the Court. The few documents dating from the period of the applicant's detention in the remand centre produced by the Government seem to conflict, at least in part, with their description of the conditions of detention and lend some support to the applicant's allegations. The Court will now examine the conditions of the applicant's detention in detail.

125. Firstly, the applicant claimed that it had been very cold in one of his cells, cell no. 10, where he was held from 22 October 2002 to 18 November 2003, as the window there had no glazing. Although the Government disputed that allegation, it is confirmed by the testimony of one of the warders, who conceded that the window was not glazed and was insulated by a piece of polythene (see paragraph 33 above), and by the letter from the regional prosecutor which stated that the windows in the remand centre were glazed only in September 2003 (see paragraph 51 above). The Court therefore considers it established beyond reasonable doubt that for almost a year the applicant was held in a cell which had an unglazed window. It has already found it unacceptable that anyone should be detained

in conditions involving a lack of adequate protection against extreme temperatures (see *Mathew v. the Netherlands*, no. 24919/03, § 214, ECHR 2005-IX). Due to the lack of glazing the applicant in the present case was for long periods of time exposed to extremely low temperatures, falling in the winter months to - 30° C (see paragraph 41 above). This factor undeniably caused him hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. His situation was exacerbated still further by the fact that he suffered from arthritis and staying in cold places had been specifically and repeatedly forbidden to him by doctors (see paragraphs 59, 60 and 72 above). The Court considers that in such circumstances the lengthy exposure of the applicant to low temperatures amounted in itself to inhuman treatment.

126. In view of the above conclusion, it would be unnecessary to assess other aspects of the physical conditions of the applicant's detention. However, the Court cannot but state that it is appalled by the photographs showing the interior of the applicant's cells. The cells are evidently in a deplorable state of repair and cleanliness. The concrete walls, the ceiling and the floor are damaged by dampness. The toilet facilities are decrepit and filthy and are not separated from the living area. There is no lavatory bowl or flush system; the washbasin is eaten away with rust. The metal beds are also rusty and dilapidated, while the bedding is worn out and dirty (see paragraphs 38 and 42 above). The Court considers that such conditions can only be described as degrading and unfit for decent habitation.

127. Further, the Court observes that for more than a year the applicant had limited access to natural light. Indeed, the Government acknowledged that the blinds were removed only in December 2002, which confirms the applicant's allegation that the window in cell no. 210 where he was held from 6 July to 25 September 2002 was covered with a metal screen (see paragraphs 34 and 36 above). The photographs show that cell no. 32, where the applicant was held from 25 September to 14 October 2002, had no window, while the window in cell no. 10 where the applicant was held from 22 October 2002 to 18 November 2003 was blinded by several layers of thick metal grills which significantly reduced the amount of daylight that could penetrate into the cell (see paragraphs 38, 41 and 42 above). The Court therefore finds it established that the window arrangements in the remand centre allowed little or no access to natural light. The access to fresh air was equally limited in certain cells, especially in the two cells, nos. 1 and 32, that had no windows. The Government did not produce any reliable evidence confirming their claim that those cells were equipped with mechanical ventilation. It therefore appears that for at least a month the applicant was kept in cells which were either poorly ventilated or not ventilated at all. The Court notes that the applicant was confined to his insufficiently lit and ventilated cells for the entire day, except for one hour of outdoor exercise. On many occasions the duration of the outdoor exercise

was unlawfully shortened to half an hour, as the Government admitted (see paragraph 30 above). Accordingly, for a considerable part of each day the applicant was deprived of daylight and in certain cells of fresh air, which undoubtedly contributed to the distress that he felt owing to the other factors described above (see, for similar reasoning, *Vlasov*, cited above, §§ 83 and 84).

128. Finally, the Court notes that hot food was served irregularly owing to staff shortages (see paragraph 49 above). It accepts the applicant's argument that this circumstance aggravated even further the appalling conditions of his detention.

129. Having regard to the cumulative effect of the factors described above, the Court finds that the conditions in which the applicant was held diminished his human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him. In view of that finding, there is no need for the Court to establish the truthfulness or otherwise of the applicant's allegations concerning other aspects of his detention such as the presence of parasites in the cells, his handcuffing in the exercise yard, the restrictions on food parcels from relatives or the removal of a television set. The factors analysed in paragraphs 125 to 128 above are sufficient to enable the Court to conclude that the conditions of the applicant's detention in remand centre no. IZ-66/1 in Yekaterinburg amounted to inhuman and degrading treatment.

130. There has therefore been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INSUFFICIENT MEDICAL ASSISTANCE

A. Submissions by the parties

131. The applicant complained under Article 3 of the Convention of the allegedly inadequate medical assistance afforded to him in remand centre no. IZ-66/1 in Yekaterinburg. In his opinion the medical records showed that he had not received any regular treatment for his rheumatoid polyarthritis. The recommendations made by a rheumatologist had not been complied with. An independent medical expert had confirmed that the treatment had been inadequate, in particular because the applicant had not been prescribed any disease-modifying drugs (see paragraph 72 above). As a result of the insufficient medical assistance afforded to him the applicant had suffered from severe pain and his disease had progressed.

132. The Government submitted that the applicant had received adequate and timely treatment. He had undergone several examinations in prison hospital IK-2. He had received the medication prescribed to him. His state of health had always been satisfactory.

B. The Court's assessment

1. Admissibility

133. 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

134. The Court reiterates that although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical assistance (see *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII (extracts); *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; and *Kudla*, cited above, § 94). The Court has held on many occasions that the lack of appropriate medical care may amount to treatment contrary to Article 3 (see, for example, *Wenerski v. Poland*, no. 44369/02, §§ 56 to 65, 20 January 2009; *Popov v. Russia*, no. 26853/04, §§ 210 to 213 and 231 to 237, 13 July 2006; and *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 100-106, ECHR 2005-II (extracts)).

135. Turning to the present case, the Court notes that it is undisputed between the parties that the applicant has suffered from rheumatoid polyarthritis since April 2001. What the parties disagree on, and what appears to lie at the core of the case at hand, is the adequacy or otherwise of the treatment afforded to the applicant. The Government claimed that the applicant had been provided with the necessary care, whereas the applicant contested the Government's arguments. In these circumstances, the Court finds it necessary to establish whether the applicant was in fact denied adequate medical assistance and, as a consequence, was caused suffering of a level going beyond the threshold set by Article 3.

136. The applicant's medical records indicate that he was regularly examined by the remand centre doctor and was on six occasions taken to IK-2 prison hospital for comprehensive examinations. He was also seen twice by Dr L., a specialist in joint diseases, who set up a course of treatment for him. The applicant, however, argued that the doctors' recommendations concerning anti-inflammatory pills and hormone injections had not been complied with and that in any event the prescribed course of treatment had been inadequate as it did not include any treatment with disease-modifying drugs.

137. The Court will firstly examine the applicant's allegation concerning treatment with disease-modifying drugs. Relying on the opinion of Dr K.

(see paragraph 72 above), the applicant claimed that disease-modifying drugs were necessary to slow down the destruction of the joints and that as a result of the failure to administer such drugs his disease had quickly progressed to disability. The Court is faced with conflicting medical evidence as regards the appropriateness of such treatment in the applicant's situation. Thus, Dr K. stated in her report that disease-modifying drugs were an essential part of anti-arthritis treatment, while the rheumatologist Dr L., who examined the applicant twice, decided that they were not required in his case (see paragraph 60 above). The Court is inclined to endorse the opinion of Dr L. because she had the benefit of having examined the applicant in person while Dr K. never saw the applicant and gave her opinion, which is couched in general terms, on the basis of the medical records alone. Moreover, there is nothing in Dr K.'s report to give support to the applicant's allegation that there was a causal link between the absence of treatment with disease-modifying drugs and his disability. On the contrary, Dr K. admitted that arthritis was incurable and almost invariably led to disability. The Court finds, therefore, that it is not substantiated that treatment with disease-modifying drugs was indicated in the applicant's case or that the absence of such treatment had an adverse effect on the development of his disease. Although his condition had indeed deteriorated by 2004, there is insufficient evidence to conclude that this was the result of inadequate treatment rather than the natural and intrinsic consequence of his chronic disease.

138. As regards the allegation that the applicant did not receive the anti-inflammatory pills and hormone injections recommended for him, the Court notes that the applicant was prescribed anti-inflammatory treatment first by the remand centre doctor in April 2001 and January 2002 (see paragraphs 53 and 56 above), and subsequently by Dr L., who additionally recommended ointments, hepatoprotective treatment and intra-articular hormone injections (see paragraphs 60 and 68 above). Dr L. particularly stressed that the applicant's condition required constant application of the anti-inflammatory treatment. However, there is no indication in the applicant's medical records that he received the prescribed medication, apart from ten injections in May and June 2002 (see paragraph 57 above). The Court reiterates that the authorities of the penitentiary institution have an obligation to keep a record of the applicant's state of health and the treatment he underwent while in detention. Such medical records should contain sufficient information specifying what kind of treatment the patient was prescribed, what treatment he actually received, when and by whom it was administered, how the applicant's state of health was monitored, and so on. If the applicant's medical file is not specific enough in these respects, the Court may draw inferences (see *Aleksanyan v. Russia*, no. 46468/06, § 147, 22 December 2008). Given that the applicant's medical records do not contain any entries confirming that the prescribed medication was in fact administered to him,

and taking into account the fact that Dr L. stated unambiguously in her report of 27 May 2003 that her recommendations had not been complied with (see paragraph 68 above), the Court finds it established that the applicant did not receive the treatment prescribed to him by his doctor.

139. Further, the Court takes note of the fact that on an unspecified date in the summer or autumn of 2003 the applicant refused to take the anti-inflammatory pills proposed to him, insisting that he should be given injections (see paragraph 69 above). This circumstance, however, is of little significance for the present case, as by the time of the refusal the applicant had already been left without any treatment for more than two years. In any event, the treatment proposed on that occasion did not correspond to the doctor's prescription. It was limited to anti-inflammatory pills and did not include the injections, ointments or hepatoprotective pills prescribed by Dr L.

140. Finally, it remains to be ascertained whether the failure to provide the prescribed treatment caused the applicant suffering attaining the minimum level of severity required to fall within the scope of Article 3. The Court notes in this respect that the treatment recommended to the applicant was aimed at soothing the inflammation in the affected joints and, as a consequence, reducing the pain. As a result of the failure to administer that treatment the applicant must have endured constant and considerable suffering. Although he was occasionally supplied with painkillers, their effect was limited in time and, in any event, they could not be considered as a proper substitute for the treatment duly prescribed by the doctor. Indeed, the Court observes that the applicant often complained of pain in his joints (see paragraphs 58, 68 and 69 above) which must have been due to the failure to administer the prescribed medication. Accordingly, the Court is satisfied that the acceptable threshold of suffering was exceeded.

141. The foregoing considerations are sufficient to enable the Court to conclude that by leaving the applicant to suffer considerable pain for a prolonged period of time as a result of the failure to provide him with treatment for his arthritis, the custodial authorities in remand centre no. IZ-66/1 in Yekaterinburg failed to meet the standards of medical care for detained persons imposed by Article 3 of the Convention and subjected the applicant to inhuman and degrading treatment. There has therefore been a violation of that Article.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

142. The applicant further complained under Article 6 § 1 of the Convention that he had been tried and convicted by a court which was not composed in accordance with the law. The relevant parts of Article 6 § 1 read as follows:

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

A. Admissibility

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

B. Merits

1. Submissions by the parties

144. The Government submitted that the lay judges T., O. and Ye. had been competent to sit in the applicant's case as they had been lawfully elected in 1993 and 1999 and their statutory term of office had been extended by the presidential decrees of 22 March 1995, 23 January 1997 and 25 January 2000. They had been chosen by lot to sit in the applicant's case. Accordingly, the lay judges had been selected in accordance with the procedure prescribed by domestic law.

145. The applicant submitted that the Government had not produced any documents confirming that there had been a legal basis for lay judges T., O. and Ye. to sit on the judicial bench that had examined his case. In his opinion, the selection of lay judges for his case should have been governed by the Lay Judges Act which was in force at the material time. The presidential decree of 25 January 2000 ran contrary to that Act as it allowed the lay judges selected in accordance with the old procedure to remain in office without any time-limit, and thereby unlawfully deferred the implementation of the Lay Judges Act for an uncertain period of time. Further, the Government had not submitted any documents showing that the lay judges had indeed been drawn by lot as required by the Lay Judges Act. Therefore, the lay judges who had examined the applicant's case had not been appointed in accordance with the procedure established by the Lay Judges Act. The applicant referred to the case of *Posokhov v. Russia* (no. 63486/00, ECHR 2003-IV), in which a violation of Article 6 § 1 was found in similar circumstances.

2. The Court's assessment

146. The Court reiterates that the phrase “established by law” covers not only the legal basis for the very existence of a “tribunal” but also the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000). The Court is therefore required to examine

allegations such as those made in the present case concerning a breach of the domestic rules on the appointment of judicial officers. The fact that the allegation in the present case concerned lay judges does not make it any less important as, by virtue of Article 15 of the Code of Criminal Procedure then in force, in their judicial capacity lay judges enjoyed the same rights as professional judges (see paragraph 86 above).

147. The Court has already found violations of Article 6 § 1 of the Convention in a number of cases against Russia pertaining to the appointment of lay judges. In some cases the finding of a violation was made on account of the domestic authorities' failure to produce documentary evidence showing that the lay judges had been appointed in accordance with the procedure established by domestic law, combined with "the apparent failure to observe the requirements of the Lay Judges Act regarding the drawing of random lots and two weeks' service per year" (see, for example, *Fedotova v. Russia*, no. 73225/01, §§ 41-44, 13 April 2006, and *Posokhov*, cited above, §§ 40-44). In another case a serious breach of the procedure for the appointment of lay judges was in itself sufficient to undermine the fairness of the criminal proceedings against the applicant and to lead the Court to the conclusion that the courts which heard the applicant's case had not been tribunals "established by law" (see *Ilatovskiy v. Russia*, no. 6945/04, §§ 39-43, 9 July 2009).

148. Turning to the facts of the present case, the Court observes that according to the Government the lay judges who tried the applicant's case were selected in 1993 and 1999, that is, at a time when the RSFSR Judicial System Act of 1981 was still in force. Their term of office was several times extended by presidential decrees, the last of which, the decree of 25 January 2000, provided that all lay judges should remain in office pending compilation and approval of the new lists of lay judges in accordance with the Lay Judges Act, which had just entered into force. By the time of the beginning of the applicant's trial, almost two years after the entry into force of the Lay Judges Act, those lists still had not been compiled and the lay judges elected in 1993 and 1999 remained in office. Accordingly, in order to establish whether the Sverdlovskiy Regional Court which convicted the applicant can be regarded as a "tribunal established by law", the Court has to examine two related issues. Firstly, it has to decide whether the essential requirements of the procedure for selection of lay judges, as laid down in the RSFSR Judicial System Act of 1981, were respected. Secondly, it has to examine the lawfulness of the extensions of the lay judges' term of office by the presidential decrees, and especially by the decree of 25 January 2000 which, the applicant alleged, was incompatible with the recently adopted Lay Judges Act.

149. On the first issue, the Court notes that the Government submitted the decision of the Sverdlovskiy Regional Legislature selecting Ms Ye. to serve as a lay judge at the Sverdlovskiy Regional Court (see paragraph 26

above). The Court is therefore satisfied that Ms Ye. had been lawfully appointed to that office. By contrast, the Government failed to produce any documents that could constitute the legal basis for the appointment of Ms T. and Ms O. as lay judges at the Sverdlovskiy Regional Court. Nor were the domestic authorities able to produce, in reply to the applicant's requests, any evidence that those persons had ever been elected to serve as lay judges. It follows that there existed no legal grounds for the participation of lay judges T. and O. in the administration of justice. Accordingly, the Sverdlovskiy Regional Court which convicted the applicant could not be regarded as a "tribunal established by law".

150. In view of the above finding, it is unnecessary to examine separately whether the fairness of the proceedings was also breached because the lay judges' term of office had been extended by presidential decrees after the Lay Judges Act laying down the new procedure for the selection of lay judges had already come into force (see *Ilatovskiy*, cited above, § 43). Nor is it necessary to ascertain whether the requirements of the Lay Judges Act regarding the drawing of random lots were observed in the applicant's case.

151. The Court concludes that the fairness of the criminal proceedings against the applicant was undermined by serious defects in the initial selection of the lay judges who heard the applicant's case. There has therefore been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

152. The applicant further complained that his representative before the Court had been refused permission to visit him in remand centre no. IZ-66/1 in Yekaterinburg. He relied on Article 34 of the Convention, which provides as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

153. The applicant submitted that by forbidding Ms Demeneva from visiting him in the remand centre, the domestic authorities had hindered the preparation of his application to the Court. Although the applicant was represented by two advocates in the domestic proceedings, those advocates had no experience of the Court's procedures or case-law. The applicant had therefore retained Ms Demeneva, a lawyer with an NGO specialising in international protection of human rights, to represent his interests in the Strasbourg proceedings. However, Ms Demeneva had not been allowed to visit him, and therefore they had been unable to discuss in person many issues crucial for the preparation of the application.

154. The Government submitted that the applicant had been represented by two professional advocates in the domestic proceedings. Ms Demeneva, not a professional advocate, had no right to visit the applicant unless a special permission was issued by the courts. In July 2003 Ms Demeneva had been issued with a visitor's permit. However, she had not been allowed to visit the applicant as she had failed to produce a judicial decision by which she had been admitted to act as counsel for the applicant, as required by domestic law (see paragraph 111 above). In the Government's opinion, it followed from the above that the applicant's right of petition had not been hindered.

155. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005-I). In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy. The fact that the individual actually managed to pursue his application does not prevent an issue arising under Article 34: should the Government's action make it more difficult for the individual to exercise his right of petition, this amounts to “hindering” his rights under Article 34 (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 105 and 254, *Reports* 1996-IV). The intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with; what matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34 (see *Paladi v. Moldova* [GC], no. 39806/05, § 87, 10 March 2009).

156. The Court has already found in a number of cases that measures limiting the applicant's contacts with his representative may constitute interference with the exercise of the applicant's right of individual petition (see, for example, *Shtukurov v. Russia*, no. 44009/05, § 140, 27 March 2008, where a ban on lawyer's visits, coupled with a ban on telephone calls and correspondence, was held to be incompatible with the respondent State's obligations under Article 34 of the Convention). The Court has, however, accepted that compliance by a representative with certain formal requirements might be necessary before obtaining access to a detainee, for instance for security reasons or in order to prevent collusion or perversion of the course of the investigation or justice (see *Melnikov v. Russia*, no. 23610/03, § 96, 14 January 2010). At the same time, excessive formalities in such matters, such as those that could *de facto* prevent a prospective applicant from effectively enjoying his right of individual

petition, have been found to be unacceptable. By contrast, where the domestic formalities were easy to comply with, no issue arose under Article 34 (see *Lebedev v. Russia*, no. 4493/04, §§ 119, 25 October 2007).

157. Turning to the present case, the Court observes that the applicant's representative before the Court, Ms Demeneva, is a lawyer with a human rights NGO. She is not a professional advocate and does not belong to any bar association. However, given that under Rule 36 § 4 (a) of the Rules of Court permission to represent an applicant may be granted to a non-advocate, the Contracting States must ensure that non-advocate representatives are allowed to visit detainees who have lodged or intend to lodge an application with the Court under the same conditions as advocates. Russian law does not provide for any special rules for visits of detainees by their representatives before the Court. Accordingly, the general visiting rules designed for counsel representing a detainee in domestic criminal proceedings apply to visits from representatives before the Court. As far as non-advocates are concerned, section 18 of the Detention Act provides that a non-advocate may visit a detainee in a remand centre only if the former possesses a judicial decision by which he or she has been admitted to act as counsel in the domestic criminal proceedings, such admittance being within the discretionary powers of the trial or appeal judge (see paragraphs 110 and 111 above). No exceptions to that rule are possible. Accordingly, non-advocate representatives before the Court are faced with difficulties in obtaining permission to visit their clients.

158. The circumstances of the present case illustrate those difficulties amply. The domestic courts refused to admit Ms Demeneva as counsel for the applicant (see paragraphs 20 and 77 above). After Ms Demeneva's repeated requests for permission to visit the applicant, supported by the applicant's letters expressing his wish to meet her for the preparation of an application to the European Court, the Regional Court issued Ms Demeneva with a visitor's permit. However, the remand centre management did not allow Ms Demeneva to meet the applicant, on the ground that she did not possess a judicial decision by which she had been admitted to act as counsel for the applicant in the domestic proceedings. After the Supreme Court gave the final judgment in the applicant's criminal case the visitor's permit was annulled without Ms Demeneva having once seen the applicant. As a result Ms Demeneva was unable to visit the applicant for almost a year, despite her repeated attempts to obtain permission. Although the District Court eventually ordered the remand centre to organise the applicant's meetings with Ms Demeneva, that order could not be enforced owing to the applicant's transfer to a correctional colony (see paragraphs 78 to 85 above).

159. The Court notes that it was never alleged that meetings between the applicant and Ms Demeneva might present any security risk or a risk of collusion or perversion of the course of justice. It appears that the refusal of visits was due to a gap in the domestic law, which was designed to govern

meetings with counsel in domestic proceedings and did not envisage dealing with requests for visits from representatives before the Court.

160. In view of the foregoing, the Court considers that the restriction of the applicant's contacts with his representative before the Court constituted an interference with the exercise of his right of individual petition which is incompatible with the respondent State's obligations under Article 34 of the Convention. The Court therefore concludes that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

161. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

162. 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

163. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

164. The Government submitted that the claim was excessive and had not been substantiated by documents. In their opinion the finding of a violation would constitute sufficient just satisfaction.

165. The Court accepts that the applicant suffered distress and frustration which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 21,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

166. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

167. 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 UNANIMOUSLY

1. *Declares* the complaints concerning the allegedly inhuman conditions of the applicant's detention, the allegedly inadequate medical assistance afforded to him and the allegedly unlawful composition of the trial court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman conditions of the applicant's detention;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the inadequate medical assistance afforded to the applicant;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 21,000 (twenty-one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President