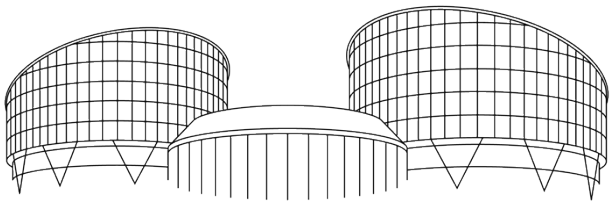

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YEVGENIY ALEKSEYENKO v. RUSSIA

(Application no. 41833/04)

JUDGMENT

STRASBOURG

27 January 2011

FINAL

27/04/2011

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

In the case of Yevgeniy Alekseyenko v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 41833/04) 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 Yevgeniy Yuryevich Alekseyenko ("the applicant"), on 2 December 2003.

2. The applicant, who had been granted legal aid, was represented by Ms Y. Yefremova and Ms K. Moskalenko, lawyers practising in Moscow. The Russian Government ("the Government") were initially represented by Mrs 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 in the Izhevsk detention facility from 30 January 2002 to 16 July 2004, that he had contracted tuberculosis in detention and had not been provided with adequate medical assistance in the facility, that he had been subjected to ill-treatment by warders and had not benefited from an effective investigation into the events, that the criminal proceedings against him had been excessively long, that there had been no remedy for the violation of his right to trial within a reasonable time, and that the authorities had interfered with his right of individual petition.

4. On 5 July 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 28 April 2008 the Judge appointed as rapporteur requested the Government pursuant to Rule 49 § 2 of the Rules of Court to submit factual

information concerning the alleged interference with the applicant's right of individual petition.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1972 and lived until his arrest in the town of Kuybyshev in the Novosibirsk Region. He is now serving his prison sentence in a correctional colony in the Novosibirsk Region.

A. Criminal proceedings against the applicant

8. On 12 October 2001 the Kuybyshev Town Court found the applicant guilty of having threatened a person with murder and sentenced him to a suspended term of one year's imprisonment.

9. In December 2001 the applicant was arrested on suspicion of manslaughter. On 24 April 2002 the Supreme Court of the Udmurtiya Republic found the applicant guilty of unintentional manslaughter and aggravated disorderly behaviour and sentenced him to thirteen years' imprisonment.

B. New set of criminal proceedings against the applicant

10. On 16 January 2002 criminal proceedings were instituted against the applicant on suspicion of robbery. On an unspecified date the criminal charges against him were amended: he was charged with several counts of aggravated robbery, unlawful possession and manufacturing of weapons, car hijacking and theft of identification documents.

11. On 17 June 2002 the applicant was served with the bill of indictment. A month later the pre-trial investigation was completed and the applicant was committed to stand trial before the Supreme Court of the Udmurtiya Republic.

12. On 5 August 2002 the Supreme Court fixed a preliminary hearing for 13 August 2002. At that hearing the Supreme Court returned the case to a prosecutor's office for five days, finding that the applicant had been served with an illegible copy of the bill of indictment. The following preliminary hearing was fixed for 30 September 2002. That hearing was rescheduled for

3 December 2002 because the applicant was participating in a hearing before another court.

13. On 3 December 2002 the Supreme Court remitted the case to the prosecutor's office for the drafting of a new bill of indictment. It noted that the bills of indictment which had been served on the defendants did not include the list of evidence on which the prosecution grounded their accusations. The following preliminary hearing scheduled for 4 January 2003 was adjourned because two counsel for the defendants had failed to attend.

14. From 13 to 20 January 2003 the Supreme Court held four preliminary hearings. At the hearing on 20 January 2003 the applicant unsuccessfully sought the removal of the entire bench, alleging that the judges could have been influenced by various publications concerning his case.

15. On 20 January 2003 the Supreme Court fixed the first trial hearing for 18 February 2003. The applicant and his co-defendants were to be tried by a jury.

16. On 19 February 2003 the Supreme Court remitted the case to the prosecutor's office for correction of defects in the bill of indictment. At the beginning of March 2003 the prosecutor's office returned the case file to the Supreme Court and the first preliminary hearing was fixed for 19 March 2003. At that hearing the prosecution dropped certain charges against the defendants and the Supreme Court transferred the case to the Industrialniy District Court of Izhevsk, which acquired subject-matter jurisdiction. The applicant was to be tried by professional judges. The District Court fixed a preliminary hearing for 29 April 2003.

17. At the hearing of 29 April 2003 the District Court remitted the case file to the prosecutor's office because a defendant, Mr H., had been served with an illegible copy of the bill of indictment. On 19 May 2003 Mr H. received the bill of indictment and on 4 June 2003 the District Court fixed a preliminary hearing for 11 June 2003. However, the hearing fixed for 11 June 2003, as well as that listed for 19 June 2003, was adjourned in view of counsel's failure to attend.

18. On 3 July 2003 the District Court held the first trial hearing. At the following hearing on 7 July 2003 the applicant requested the District Court to dismiss his counsel, Mr Ch., from the proceedings owing to the fact that their positions regarding the defence strategy did not coincide. Of the six hearings listed between 14 July and 15 September 2003, three were adjourned because the defendants were ill, two were rescheduled because counsel Ch. had refused to represent the applicant and had not attended, and two were annulled because witnesses defaulted. On 9 September 2003 the District Court appointed Mr B. to act as the applicant's counsel. As shown by the Government's submissions, some time later the applicant refused Mr B.'s services and on 16 December 2003 Ms Zh. was assigned to the case

as the applicant's representative. Between 5 March and 21 April 2004 the defendants and their lawyers studied the case-file materials.

19. In the meantime, at a hearing of 12 April 2004 the applicant unsuccessfully sought the dismissal of his counsel, Ms Zh., from the proceedings. Ms Zh. did not attend the two subsequent hearings, on 21 and 27 April 2004, and did not inform the District Court about the reasons for her absence. On 12 May 2004 the District Court appointed Ms G. to act as the applicant's counsel and stayed the proceedings until 24 May 2004 to allow the applicant's new lawyer to familiarise herself with the case.

20. On 9 June 2004, having received the applicant's petition for a dismissal of his counsel, Ms G., from the case, the District Court stayed the proceedings until 29 June 2004. On 2 July 2004 Ms G. successfully asked the District Court to be released from her duty as the applicant's representative. Two weeks later Mr S. was assigned the task of representing the applicant. The District Court granted a two-week stay in the proceedings for Mr S. to read the case file and develop the defence strategy with the applicant.

21. According to the parties, between 17 August 2004 and 25 January 2005 the District Court scheduled and held hearings at regular intervals.

22. On 25 January 2005 the Industrialniy District Court of Izhevsk found the applicant guilty of several counts of aggravated robbery and car hijacking and sentenced him to seventeen years and six months' imprisonment. The District Court acquitted the applicant of the remaining charges.

23. On 27 September 2005 the Supreme Court of the Udmurtiya Republic amended the judgment, reducing the applicant's sentence to seventeen years' imprisonment.

C. Conditions of the applicant's detention

24. The applicant complained about the conditions of his detention in temporary detention facility no. IZ-18/1 in Izhevsk from 30 January 2002 to 16 July 2004.

25. Relying on submissions by the three inmates who had been detained in facility no. 1 in Izhevsk, the applicant alleged that he had been detained in severely overcrowded cells. Having indicated the average number of inmates for each cell in which he had been detained and the number of sleeping places, the applicant argued that he had usually had less than two square metres of personal space. Given the lack of beds, inmates had slept in shifts. They were not provided with bedding.

26. The applicant further submitted that the sanitary conditions had been appalling. The cells were infested with insects but the management did not provide any insecticide. The walls in the cells were covered with a thick layer of mould. The applicant submitted that the windows were covered

with metal blinds which blocked access to natural light and air. The artificial ventilation system did not function. It was impossible to take a shower as inmates were given only fifteen minutes and several men had to use one shower-head at the same time. That situation was further aggravated by the fact that the applicant frequently missed a "bathing day" if he had to take part in a hearing before the court. For instance, he was denied an opportunity to shower for two months in December 2003 and January 2004. Inmates had to wash and dry their laundry indoors, creating excessive humidity in the cells. They were also allowed to smoke in the cells. In the majority of the cells the lavatory pan was not separated from the living area by a small partition. However, even if a small partition was installed, it did not afford any privacy. In fact, at no time did inmates have complete privacy. Anything they happened to be doing – using the toilet, sleeping – was in view of the guard or fellow inmates. No toiletries were provided. The food was of poor quality and in scarce supply. Inmates were afforded an hour of outdoor recreation per day.

27. According to certificates issued on 27 August 2007 by a deputy director of the facility and produced by the Government, the applicant was kept in eighteen different cells measuring from 6 to 37.3 square metres. The Government submitted that, given the average number of inmates which had been detained together with the applicant and the size of the cells, the applicant had never been afforded less than four square metres of personal space. They further noted that at all times he had had an individual bunk and bedding.

28. Relying on the information provided by the deputy director of the facility, the Government further argued that the sanitary conditions in the cells were satisfactory. In particular, they submitted that the cells received natural light and ventilation through one or two windows each measuring no less than one square metre. Each cell was equipped with a lavatory pan separated from the living area by a one-metre-high partition, a sink, a tap with running water, bunks and a table. Inmates were allowed to take a shower once every seven days for no less than fifteen minutes. Clean bedding was also provided once a week. The cells were disinfected. The Government, relying on the information provided by the deputy director of the facility, further stated that the applicant was given food "in accordance with the established norms".

D. Contraction of tuberculosis and quality of medical assistance in detention

29. On 30 January 2002, on his admission to detention facility no. IZ-18/1, the applicant was examined by the prison doctor and given a chest fluorography examination, which revealed no signs of tuberculosis. According to the Government, between February 2002 and June 2004 the

applicant was subjected to three fluorography tests. The most recent fluorography test in the series performed on 20 February 2004 revealed no pathology in the applicant's lungs. On 20 June 2004, in the course of a medical check-up, also involving an X-ray examination, tuberculosis changes in the applicant's lungs were detected. That finding was confirmed by another radiography test performed on 25 June 2004.

30. On 16 July 2004 the applicant was transferred to prison tuberculosis hospital no. 4 in the Udmurtiya Republic. Following a number of medical analyses carried out in the hospital he was diagnosed with infiltrative tuberculosis ("TB") of the left lung in the disintegration stage. A number of sputum smear tests performed in the hospital showed that the applicant was smear-negative. On 23 July 2004 the applicant was released from the hospital, having failed to comply with the hospital's internal regulations. He was, however, prescribed continuation of the treatment started in the hospital under intensive chemotherapy regimen and comprising a number of drugs: isoniazid, pyrazinamide, rifampicin, ethambutol, antihistamines, etc. (so-called "2HRZE" regimen). The applicant was transferred to the medical unit of detention facility no. 18/1.

31. As shown by a copy of the applicant's medical record produced by the Government, during the initial stage of the treatment the applicant adhered to a strict medication regime, having received prescribed doses of anti-bacteriological medicines. An intake of every dose was observed by the facility medical staff. Attending tuberculosis specialists examined the patient on a regular basis, sometimes daily, to react to his concomitant complaints about the state of his health and to identify whether a correction of the drug regimen was necessary. Clinical blood and urine analyses, sputum monitoring, as well as regular chest radiography and liver examinations, were conducted regularly. In the first few months of the treatment the doctors already noted a positive dynamic in the clinical TB symptoms.

32. On the completion of the intensive phase of the treatment, the continuation phase of the therapy commenced, accompanied by a special dietary ration. That phase of the treatment ended in March 2005.

33. The applicant's medical history contained a number of entries made by attending tuberculosis specialists, recording the applicant's negative attitude towards the treatment, his refusal to take anti-bacteriological medicines and his decisions to go on a hunger-strike. The attending doctors had conversations with the applicant, persuading him to continue the treatment and warning about negative effects of treatment interruption and fasting.

34. Following medical examinations of the applicant in April and May 2005 it was established that the infiltrative tuberculosis had gone into the resolution stage. Recommendations to continue treatment on a reduced chemotherapy regimen were made and followed through.

35. On 14 October 2005 the applicant was examined by a medical panel comprising a number of specialists. Having studied his medical history, including results of the most recent X-ray examinations, blood and urine analysis and sputum smear tests, the panel issued the following diagnosis: "clinical recovery from infiltrative tuberculosis". The applicant's medical record shows that he continued to remain under close medical supervision, undergoing necessary medical testing and being prescribed seasonal retreatment chemotherapy courses to prevent relapse of the illness.

E. Events of 10 July 2003 and investigation into alleged ill-treatment by warders

36. According to the applicant, at a trial hearing on 9 July 2003 he informed the Industrialniy District Court of his intention to waive his right to attend hearings and participate in the trial because the trial court was impartial and violated his rights as a defendant. On the following day warders attempted to take the applicant to the courthouse. He agreed to proceed to a prison van but informed the warders about his refusal to take part in the hearing. After the van had arrived at the courthouse, the applicant refused to leave it. The warders dragged him out of the van, accompanying their actions with kicks and blows. After the District Court had recessed for lunch, the applicant was taken back to facility no. IZ-18/1. After lunch the applicant was driven to the courthouse. He again refused to leave the prison van. A warder tried to force the applicant out of the van and, in response to the applicant's resistance, hit him with handcuffs on the head. The applicant's forehead started bleeding. He was taken to a warder's office, where he remained until approximately 5 p.m. On arrival back at the detention facility in the evening of 10 July 2003 the applicant was examined by a prison doctor, who recorded a laceration on his forehead. No other injuries were discovered during the examination.

37. The Government provided the following version of events. On 10 July 2003 the applicant and another inmate, Mr H., refused to leave a prison van to take part in a trial hearing. Acting on an order from the presiding judge, warders, Mr K., Mr P., Mr I. and Mr Ka., used physical force and handcuffs to ensure the defendants' presence in the courtroom. The applicant resisted, hit and kicked a warder. He slipped, having fallen in the van and injured his head. In the evening of the same day the applicant was examined by a prison doctor in facility no. IZ-18/1. A laceration measuring four millimetres in length and two millimetres in depth covered by a crust of dried blood was recorded on his forehead.

38. On 11 July 2003 the applicant complained to the Prosecutor of the Udmurtiya Republic alleging that the warders had hit him on the head on 10 July 2003 in response to his refusal to leave the prison van. He asked the prosecutor to initiate an investigation into the events and consider the

warders criminally liable. Having provided the Court with a copy of the applicant's complaint to the prosecutor, the Government submitted that the applicant had never asked for criminal proceedings to be brought against the warders. The Government also produced a copy of the applicant's co-defendant's complaint to the prosecutor's office. The co-defendant alleged that warders had threatened him with violence and that he perceived those threats as real because the warders had already beaten the applicant up on 10 July 2003, causing him a head injury.

39. On 11 July 2003 the applicant was examined by experts of the Forensic Medical Expert Bureau of the Udmurtiya Republic, who confirmed the findings of the prison doctor. The experts concluded that the head injury was minor, that the applicant had been afforded necessary medical assistance and that he did not require placement in a hospital.

40. The head of the warders' service issued a written report describing the events of 10 July 2003. Without providing any details, he stated that the applicant had refused to leave the prison van and had injured his forehead inside the vehicle.

41. An investigator of the Industrialniy District prosecutor's office interviewed the applicant about the events of 10 July 2003. As shown by a copy of the interview record submitted by the Government, the applicant testified that in the morning of 10 July 2003 the warders had grabbed him by the hands to force him out of the prison van. In the afternoon of the same day, when the warders had again ordered him to leave the van, the applicant had attempted to bite a warder. The latter responded by hitting the applicant on the head with handcuffs, cutting his forehead open. The investigator also interrogated inmate H., who had been in the prison van during the alleged beatings, the applicant's lawyer and a co-defendant, Mr S. Mr H. corroborated the applicant's account of events, noting that a warder had placed handcuffs on his fist in a knuckle-duster manner and hit the applicant on the forehead. Mr S. testified that on 10 July 2003 he had seen the applicant in a courtroom. His forehead was bleeding. The lawyer confirmed seeing an injury on the applicant's forehead.

42. The investigator also questioned the warders who had witnessed the events of 10 July 2003. The warders testified that on arrival at the courthouse the applicant and Mr H. had started acting aggressively, having refused to leave the van. The applicant had given a warder a head-butt and had attempted to hit and kick other warders. The warders had lifted the applicant and Mr H. and carried them to the courthouse. In the courtroom the applicant and Mr H. had screamed obscenities, thrown personal belongings at the warders and threatened them with violence. Similar events had occurred again in the afternoon when the applicant had injured his forehead and had refused to leave the prison van.

43. On 8 August 2003 the investigator issued a decision, finding that the warders' actions had constituted a lawful response to the applicant's

improper behaviour. The applicant was provided with a copy of the decision and with an opportunity, following his request, to study materials from the prosecution investigation.

44. On 9 December 2003 the Industrialniy District Court, on the applicant's request, quashed the decision of 8 August 2003 finding that it was premature because the investigator had not questioned all witnesses who had been present when the applicant had been injured. The District Court ordered an additional investigation.

45. Having once again interviewed the warders, the applicant and inmate H., on 15 June 2004, the investigator refused to institute criminal proceedings against the warders, finding no prima facie case of ill-treatment. The participants in the events of 10 July 2003 did not amend their previous statements, save for the applicant, who added that in addition to a head injury the warder had cut his lip. The investigator concluded that the use of force against the applicant had been necessary and had been the result of his unlawful behaviour.

46. On 29 November 2004 the Ustinovskiy District Court of Izhevsk quashed the decision of 15 June 2004 and sent the case for additional investigation. The relevant part of the decision read as follows:

> "After having heard the parties to the proceedings and having examined the case file, the court considers that [the applicant's] claims are substantiated and should be upheld on the following grounds.
>
> The decision of the investigator, Mr N., is based on the conclusion that the use of physical force against [the applicant] was caused by his unlawful behaviour and was conducted in accordance with orders and instructions of the Ministry of Internal Affairs of the Udmurtiya Republic, as a result of which [the investigator] refused to institute criminal proceedings in accordance with Article 24 § 1 (2) of the Code of Criminal Procedure of the Russian Federation – absence of criminal conduct.
>
> At the same time, as shown by the decision of the investigator, Mr N., [the applicant], in fact, sustained an injury; however, the person who had caused that damage was not established. The investigator only refers in his decision to statements by the warders who had participated in escorting [the applicant], and who had used the following formula: "a member of the warders' team", in order to describe the person who had injured [the applicant], without referring to the particular individual."

47. On 7 February 2005 the investigator dismissed the applicant's complaint against the warders, finding that the applicant had been injured as a result of his unlawful behaviour in the prison van. That decision was quashed on 18 April 2005 by the Ustinovskiy District Court, which concluded that the investigation was "incomplete" as the investigator had not questioned all the warders who had taken the applicant to the courthouse after lunch and had not established whether the applicant could have hurt himself as had been stated by the warders.

48. On 4 July 2005 the investigator issued a decision finding no criminal conduct in the warders' actions. The decision was based on statements by the entire staff of the warders' service.

In particular, warder B. testified that on 10 July 2003 the applicant and inmate H. had resisted lawful orders, had refused to leave the prison van and had several times hit warder P. The warders had used force, lifted the applicant and carried him to a courtroom. The applicant had used offensive language, threatened the warders and spat on them. On the same day, warders who had escorted the applicant to the courthouse after lunch had told Mr B. that the applicant had injured his forehead in the prison van. When the applicant and inmate H. had been taken back to the detention facility after the hearing, the warders had used force and handcuffed them to prevent unlawful behaviour. The applicant had not had any visible injuries.

Warder K. confirmed the statements given by warder B.

Warder I. stated that he had escorted the applicant from the detention facility to the prison van. The applicant had not had any visible injuries. After the applicant had refused to leave the prison van, the warders had reported this to a judge. The judge had ordered that the applicant be brought to the courthouse against his will. The applicant had refused to leave the van and the warders had forced him out. Warder I. testified that the applicant had blood on his face.

Warder P. explained that on 10 July 2003, in the morning, the applicant had hit him several times in the prison van. The warders who had taken the applicant to the courthouse after lunch had told Mr P. that the applicant had hit his head against the door of the prison van.

The investigator noted that the applicant's injury had been “acquired as a result of his unlawful behaviour in the Industrialniy District Court of Izhevsk and in the prison van... That conclusion was corroborated by the injuries received by warder P.”

49. On 18 October 2005 the Ustinovskiy District Court upheld the decision of 4 July 2005, having found that the prosecution investigation had been meticulous, objective and thorough. The District Court noted that the investigator had heard eyewitnesses, had authorised a medical examination of the applicant and of the warder who had been injured by the applicant, and had assessed the warders' actions and those of the applicant on the basis of the evidence before him and the requirements of the domestic legal norms.

50. In the spring of 2006 the applicant, who had been duly served with a copy of the District Court's judgment on 20 October 2005, appealed against it. However, the leave to appeal was rejected because the applicant had missed the ten-day time-limit stipulated by Russian law.

F. Assault in December 2001 and criminal proceedings

51. According to the applicant, on 7 December 2001 a police patrol had found him in a street. He had been severely beaten up by unidentified individuals. The police had taken him to a nearby police station and later to a hospital. Criminal proceedings were instituted, but they were closed on 31 August 2002 because the investigation had been unable to identify the perpetrators of the offence.

G. Publications

52. The applicant complained that numerous articles had been published in the local press concerning the last set of criminal proceedings against him and his co-defendants. They had been referred to as "a gang of Mr Alekseyenko". The applicant's attempts to institute criminal proceedings against the newspapers and reporters had been unsuccessful.

H. Alleged interference with the applicant's right of individual petition

53. On 7 April 2008 the applicant's representative sent a letter to the Court alleging that following the communication of the case to the Government the applicant had been visited on a number of occasions by Ms I. Rassadina, the Ombudsman of the Udmurtiya Republic, who had urged him "to settle the case before the Court and to withdraw his application". In return Ms Rassadina had allegedly promised that the applicant would be allowed to continue serving his sentence in the Udmurtiya Republic instead of being transferred back to a correctional colony in the Novosibirsk Region.

54. A letter from the applicant was attached to the representative's letter of 7 April 2008. The applicant submitted that the authorities had suggested that he sell his flat in Novosibirsk. The sale could have legitimised his stay in the Udmurtiya Republic as he would no longer have been resident in Novosibirsk.

55. In response to the Court's request for factual information, the Government submitted that on 20 and 22 August 2007 the applicant had had meetings with a high-ranking official of the Federal Service for Execution of Sentences in the Udmurtiya Republic, Ms I. Rassadina. The meetings had been organised on a request from the office of the Representative of the Russian Federation at the European Court of Human Rights to determine the applicant's position regarding a friendly settlement in the case. Relying on written statements from Ms Rassadina and the head of the detention facility, Mr Galiyev, the Government argued that during the first meeting held in Mr Galiyev's presence Ms Rassadina had interviewed the applicant about

his terms for settling the case. The applicant had allegedly responded by putting forward one requirement, namely that he would continue to serve his sentence in the Udmurtiya Republic. On 22 August 2007, when Ms Rassadina arrived at the detention facility with the draft of the friendly settlement agreement, the applicant, without providing any further explanation, had refused to sign it.

56. In May 2008 the applicant was transferred to a correctional colony in the Novosibirsk Region.

57. On 19 September 2008 the Court received another letter from the applicant's representative in which she alleged that in July 2008 the authorities had delayed dispatching the applicant's two letters to the Court by approximately four days. Having been uncertain about the fate of those letters, the applicant gave copies to his wife during a conjugal visit several days later. At the same time the applicant was also allowed to have a short telephone conversation with his representative before the Court.

58. Copies of the applicant's letters were attached to his representative's letter of 19 September 2008. In those letters the applicant alleged that the conditions of his detention in the colony in the Novosibirsk Region were inferior to those in the detention facility in the Udmurtiya Republic and that his transfer to the Novosibirsk colony had been carried out merely for the sake of expedience.

59. The letters which the applicant allegedly sent directly to the Court in July 2008 have never been received.

II. RELEVANT DOMESTIC LAW

A. Health care of detainees

1. Federal Law of 18 June 2001 no. 77-FZ "On Prevention of Dissemination of Tuberculosis in the Russian Federation"

Section 7. Organisation of anti-tuberculosis aid

"1. Provision of anti-tuberculosis aid to individuals suffering from tuberculosis is guaranteed by the State and is performed on the basis of the principles of legality, compliance with the rights of the individual and citizen, [and] general accessibility in the amount determined by the Programme of State guarantees for provision of medical assistance to citizens of the Russian Federation, free of charge.

2. Anti-tuberculosis aid shall be provided to citizens when they voluntarily apply [for such aid] or when they consent [to such aid], save for cases indicated in Sections 9 and 10 of the present Federal law and other federal laws..."

Section 8. Provision of anti-tuberculosis aid

"1. Individuals suffering from tuberculosis who are in need of anti-tuberculosis aid shall receive such aid in medical anti-tuberculosis facilities licensed to provide [it].

2. Individuals who are or have been in contact with an individual suffering from tuberculosis shall undergo an examination for the detection of tuberculosis in compliance with the laws of the Russian Federation..."

Section 9. Regular medical examinations

1. Regular medical examinations of persons suffering from tuberculosis shall be performed in compliance with the procedure laid down by a competent federal executive body...

2. Regular medical examinations of persons suffering from tuberculosis shall be performed irrespective of the patients' or their representatives' consent.

3. A medical commission appointed by the head of a medical anti-tuberculosis facility... shall take decisions authorising regular medical examinations or terminating them and record such decisions in medical documents...; an individual in respect of whom such a decision has been issued, shall be informed in writing about the decision taken."

Section 10. Mandatory examinations and treatment of persons suffering from tuberculosis

"2. Individuals suffering from contagious forms of tuberculosis who... intentionally avoid medical examinations aimed at detecting tuberculosis, or avoid treating it, shall be admitted, by court decision, to specialised medical anti-tuberculosis establishments for mandatory examinations and treatment."

Section 12. Rights of individuals.... suffering from tuberculosis

"2. Individuals admitted to medical anti-tuberculosis facilities for examinations and (or) treatment, shall have a right to:

receive information from the administration of the medical anti-tuberculosis facilities on the progress of treatment, examinations...

have meetings with lawyers and clergy in private;

take part in religious ceremonies, if they do not have a damaging impact on the state of their health;

continue their education...

3. Individuals... suffering from tuberculosis shall have other rights provided for by the laws of the Russian Federation on health care..."

Section 13. Obligations of individuals... suffering from tuberculosis

"Individuals... suffering from tuberculosis shall;

submit to medical procedures authorised by medical personnel;

comply with the internal regulations of medical anti-tuberculosis facilities when they stay at those facilities;

comply with sanitary and hygiene conditions established for public places when persons not suffering from tuberculosis [visit them]."

Section 14. Social support for individuals... suffering from tuberculosis

"4. Individuals... suffering from tuberculosis shall be provided with medication free of charge for out-patient treatment of tuberculosis by federal specialised medical facilities in compliance with the procedure established by the Government of the Russian Federation..."

2. Regulation on Medical Assistance to Detainees

60. Russian law gives detailed guidelines for the provision of medical assistance to detained individuals. These guidelines, found in joint Decree no. 640/190 of the Ministry of Health and Social Development and the Ministry of Justice, on Organisation of Medical Assistance to Individuals Serving Sentences or Detained ("the Regulation"), enacted on 17 October 2005, are applicable to all detainees without exception. In particular, section III of the Regulation sets out the procedure for initial steps to be taken by medical personnel of a detention facility on admission of a detainee. On arrival at a temporary detention facility all detainees must be subjected to preliminary medical examination before they are placed in cells shared by other inmates. The examination is performed with the aim of identifying individuals suffering from contagious diseases or in need of urgent medical assistance. Particular attention must be paid to individuals suffering from contagious conditions. No later than three days after the detainee's arrival at the detention facility, he should receive an in-depth medical examination, including fluorography. During the in-depth examination a prison doctor should record the detainee's complaints, study his medical and personal history, record injuries if present, and recent tattoos, and schedule additional medical procedures if necessary. A prison doctor should also authorise laboratory analyses to identify sexually transmitted diseases, HIV, tuberculosis and other illnesses.

61. Subsequent medical examinations of detainees are performed at least twice a year or at detainees' request. If a detainee's state of health has deteriorated, medical examinations and assistance should be provided by medical personnel of the detention facility. In such cases a medical examination should include a general medical check-up and additional

methods of testing, if necessary, with the participation of particular medical specialists. The results of the examinations should be recorded in the detainee's medical history. The detainee should be fully informed of the results of the medical examinations.

62. Section III of the Regulation also sets the procedure for cases of refusals by detainees to undergo medical examination or treatment. In each case of refusal, a corresponding entry should be made in the detainees' medical record. A prison doctor should fully explain to the detainee the consequences of his refusal to undergo the medical procedure.

63. Detainees take prescribed medicines in the presence of a doctor. In a limited number of cases the head of the medical department of the detention facility may authorise his medical personnel to hand over a daily dose of medicines to the detainee for unobserved intake.

64. Section X of the Regulation regulates medical examinations, monitoring and treatment of detainees suffering from tuberculosis. It lays down a detailed account of medical procedures to be employed, establishes their frequency, and regulates courses of treatment for new tuberculosis patients and previously treated ones (relapsing or defaulting detainees). In particular, it provides that when a detainee exhibits signs of a relapse of tuberculosis, he or she should immediately be removed to designated premises (infectious unit of the medical department of the facility) and should be sent for treatment to an anti-tuberculosis establishment. The prophylactic and anti-relapse treatment of tuberculosis patients should be performed by a tuberculosis specialist. Rigorous checking of the intake of anti-tuberculosis drugs by the detainee should be put in place. Each dose should be recorded in the detainee's medical history. A refusal to take anti-tuberculosis medicine should also be noted in the medical record. A discussion of the negative effects of the refusal should follow. Detainees suffering from tuberculosis should also be put on a special dietary ration.

3. Anti-Tuberculosis Decree

65. On 21 March 2003 the Ministry of Health adopted Decree no. 109 on Improvement of Anti-Tuberculosis Measures in the Russian Federation (“the Anti-Tuberculosis Decree” or “Decree”). Having acknowledged a difficult epidemic situation in the Russian Federation in connection with a drastic increase in the number of individuals suffering from tuberculosis, particularly among children and detainees, and a substantial rise in the number of tuberculosis-related deaths, the Decree laid down guidelines and recommendations for country-wide prevention, detection and therapy of tuberculosis which conform to international standards, identifying forms and types of tuberculosis and categories of patients suffering from them, establishing types of necessary medical examinations, analyses and testing to be performed in each case and giving extremely detailed instructions on their performance and assessment; it also laid down rules on vaccination,

determined courses and regimens of therapy for particular categories of patients, and so on.

66. In particular, Addendum 6 to the Decree contains an Instruction on chemotherapy for tuberculosis patients. The aims of treatment, essential anti-tuberculosis drugs and their dose combinations, as well as standard regimens of chemotherapy laid down by the Instruction for Russian tuberculosis patients conformed to those recommended by the World Health Organisation in *Treatment of Tuberculosis: Guidelines for National Programs* (see below).

B. Conditions of detention

67. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

C. Investigation into criminal offences

68. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002, "the CCrP") provides that a criminal investigation can be initiated by an investigator or a prosecutor upon a complaint by an individual or on the investigative authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147). The prosecutor is responsible for the overall supervision of the investigation (Article 37). He or she can order specific investigative measures, transfer the case from one investigator to another or order an additional investigation. If there are no grounds upon which to initiate a criminal investigation, the prosecutor or investigator shall give a reasoned decision to that effect, which must be brought to the attention of the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction in accordance with a procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of parties to proceedings or prevent access to court.

D. Authorities' response to alleged instances of ill-treatment in detention facilities

69. Russian law sets out detailed guidelines for the detention of individuals in temporary detention facilities. These guidelines are found in Ministry of Justice Decree no. 189 on Internal Regulations of Temporary Detention Facilities ("the Decree"), enacted on 14 October 2005. In particular, Section II of the Decree provides that an investigation should be carried out into the circumstances in which a detainee sustained injuries. Case-file materials drawn up as part of the investigation into the circumstances of a possible offence should be transferred to a prosecutor's office which has to take a decision on the institution or refusal to institute criminal proceedings in compliance with the requirements of the Russian Code of Criminal Procedure (paragraph 16 of section II).

E. New remedy for a violation of the right to trial within a reasonable time

70. On 30 April 2010 the Russian Parliament enacted Federal Law no. 68-FZ "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" ("the Compensation Act"). The Compensation Act entered into force on 4 May 2010. It provides that in case of a violation of the right to trial within a reasonable time, an individual is entitled to seek compensation for the non-pecuniary damage. Federal Law № 69-FZ, also enacted on 30 April 2010, introduced the pertinent changes to the Russian legislation.

71. Section 6.2 of the Compensation Act provides that all individuals who have complained to the European Court of Human Rights that their right to a trial within a reasonable time has been violated may claim compensation in domestic courts under the Act within six months of its entry into force, provided the European Court has not ruled on the admissibility of the complaint.

F. Determination of detention facility for serving of sentence

72. Section 73 of the Russian Code on the Execution of Criminal Sentences (no. 1-FZ adopted on 8 January 1997) provides that an individual sentenced to imprisonment, save in exceptional cases, should serve his sentence in correctional institutions in a region where he lived prior to conviction or where he was convicted. In exceptional cases, in view of poor health, for considerations of personal safety or with his consent, he may be sent to serve the sentence in a correctional institution in another region. If there is no corresponding correctional facility in the region where the

individual resided or where he was convicted, he should be sent to a correctional institution in another region following consultations with higher-ranking authorities within the system for execution of criminal sentences.

III. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

A. General health care issues

1. *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies ("the European Prison Rules")*

73. The European Prison Rules provide a framework of guiding principles for health services. The relevant extracts from the Rules read as follows:

"*Health care*

39. Prison authorities shall safeguard the health of all prisoners in their care.

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

...

41.4 Every prison shall have personnel suitably trained in health care.

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

...

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

..;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

…

f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;

...

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

...

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment."

2. 3rd General Report of the European Committee for the Prevention of Torture ("the CPT Report")

74. The complexity and importance of health care services in detention facilities was discussed by the European Committee for the Prevention of Torture in its *3rd General Report* (CPT/Inf (93) 12 - Publication Date: 4 June 1993). The following are the extracts from the Report:

"33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.

34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay...

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.

As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.

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...

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. ...

54. A prison health care service should ensure that information about transmittable diseases (in particular hepatitis, AIDS, tuberculosis, dermatological infections) is regularly circulated, both to prisoners and to prison staff. Where appropriate, medical control of those with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors) should be carried out."

3. *Committee of Ministers Recommendation No. R (98) 7 on Health care in Prisons*

75. A further elaboration of European expectations towards health care in prisons is found in the appendix to Recommendation no. R (98) 7 of the Committee of Ministers to Member States on the ethical and organisational aspects of health care in prison (adopted on 8 April 1998 at the 627th meeting of the Ministers' Deputies). Primarily restating the European Prison Rules and CPT standards, the Recommendation went beyond reiteration of the principles in some aspects to include more specific discussion of the management of certain common problems including transmissible diseases. In particular, in respect of cases of tuberculosis, the Committee of Ministers stressed that all necessary measures should be applied to prevent the propagation of this infection, in accordance with relevant legislation in this area. Therapeutic intervention should be of a standard equal to that outside prison. The medical services of the local chest physician should be requested in order to obtain the long-term advice that is required for this condition, as is practised in the community, in accordance with relevant legislation (Section 41).

B. Health care issues related to transmissible diseases

1. *Committee of Ministers Recommendation no. R (93) 6 on Control of Transmissible Diseases in Prisons*

76. The fact that transmissible diseases in European prisons have become an issue of considerable concern prompted a recommendation of the Committee of Ministers to Member States concerning prison and criminological aspects of the control of transmissible diseases and related health problems in prison (adopted on 18 October 1993 at the 500th meeting of the Ministers' Deputies). The relevant extracts from the Recommendation read as follows:

"2. The systematic medical examination carried out on entry into prison should include measures to detect intercurrent diseases, including treatable infectious diseases, in particular tuberculosis. The examination also gives the opportunity to provide health education and to give prisoners a greater sense of responsibility for their own health....

15. Adequate financial and human resources should be made available within the prison health system to meet not only the problems of transmissible diseases and HIV/Aids but also all health problems affecting prisoners."

2. *11th General Report of activities of the European Committee for the Prevention of Torture*

77. An expanded coverage of the issue related to transmissible diseases in detention facilities was given by the European Committee for the Prevention of Torture in its *11th General Report* (CPT/INF (2001) 16 published on 3 September 2001), a discussion prompted by findings of serious inadequacies in health provision and poor material conditions of detention which were exacerbating the transmission of the diseases. Addressing the issue, the CPT reported as follows:

"31. The spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/AIDS has become a major public health concern in a number of European countries. Although affecting the population at large, these diseases have emerged as a dramatic problem in certain prison systems. In this connection the CPT has, on a number of occasions, been obliged to express serious concerns about the inadequacy of the measures taken to tackle this problem. Further, material conditions under which prisoners are held have often been found to be such that they can only favour the spread of these diseases.

The CPT is aware that in periods of economic difficulties - such as those encountered today in many countries visited by the CPT - sacrifices have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment. Compliance with this duty by public authorities is all the more important when it is a question of care required to treat life-threatening diseases.

The use of up-to date methods for screening, the regular supply of medication and related materials, the availability of staff ensuring that prisoners take the prescribed medicines in the right doses and at the right intervals, and the provision when appropriate of special diets, constitute essential elements of an effective strategy to combat the above-mentioned diseases and to provide appropriate care to the prisoners concerned. Similarly, material conditions in accommodation for prisoners with transmissible diseases must be conducive to the improvement of their health; in addition to natural light and good ventilation, there must be satisfactory hygiene as well as an absence of overcrowding.

Further, the prisoners concerned should not be segregated from the rest of the prison population unless this is strictly necessary on medical or other grounds...

In order to dispel misconceptions on these matters, it is incumbent on national authorities to ensure that there is a full educational programme about transmissible diseases for both prisoners and prison staff. Such a programme should address methods of transmission and means of protection as well as the application of adequate preventive measures.

It must also be stressed that appropriate information and counselling should be provided before and - in the case of a positive result - after any screening test. Further, it is axiomatic that patient-related information should be protected by medical confidentiality. As a matter of principle, any interventions in this area should be based on the informed consent of the persons concerned.

Moreover, for control of the above-mentioned diseases to be effective, all the ministries and agencies working in this field in a given country must ensure that they co-ordinate their efforts in the best possible way. In this respect the CPT wishes to stress that the continuation of treatment after release from prison must be guaranteed."

C. Health care reports on the Russian Federation

1. The CPT Report on Russia

78. The CPT report on the visit to the Russian Federation carried out from 2 to 17 December 2001 (CPT/INF (2003) 30) provides as follows:

"102. The CPT is also seriously concerned by the practice of transferring back from SIZO [temporary detention facility] to IVS [temporary detention ward in police departments] facilities prisoners diagnosed to have BK+ tuberculosis (and hence highly contagious), as well as by the interruption of TB treatment while at the IVS. An interruption of the treatment also appeared to occur during transfers between penitentiary establishments.

In the interest of combating the spread of tuberculosis within the law-enforcement and penitentiary system and in society in general, the CPT recommends that immediate measures be taken to put an end to the above-mentioned practice."

2. The World Bank Report on Tuberculosis and Aids Control Project in Russia

79. On 23 December 2009 the World Bank published the *Implementation Completion and Results Report* (Report no. ICR00001281, Volume I) on a loan granted to the Russian Federation for its Tuberculosis and Aids Control Project. The relevant part of the Report read as follows:

"According to the World Health Organization (WHO), Russia was one of the 22 high-burden countries for TB in the world (WHO, Global Tuberculosis control: Surveillance, Planning, Financing, Geneva, 2002). The incidence of TB increased throughout the 1990s. This was due to a combination of factors, including: (i) increased poverty, (ii) under-funding of TB services and health services in general, (iii) diagnostic and therapeutic approaches that were designed for a centralized command-and-control TB system, but were unable to cope with the social mobility

and relative freedom of the post-Soviet era, and (iv) technical inadequacies and outdated equipment. Migration of populations from ex-Soviet republics with high TB burdens also increased the problem. Prevalence rates were many times higher in the prison system than in the general population. Treatment included lengthy hospitalizations, variations among clinicians and patients in the therapeutic regimen, and frequent recourse to surgery. A shrinking health budget resulted in an erratic supply of anti-TB drugs and laboratory supplies, reduced quality control in TB dispensaries and laboratories, and inadequate treatment. The social conditions favouring the spread of TB, combined with inadequate systems for diagnosis, treatment, and surveillance, as well as increased drug resistance, produced a serious public health problem.

TB control in the former Union of Soviet Socialist Republics (USSR) and in most of Russia in the 1990s was heavily centralized, with separate hospitals (TB dispensaries), TB sanatoriums, TB research institutes and TB specialists. The system was designed in the 1920s to address the challenges of the TB epidemic. Case detection relied strongly on active mass screening by X-ray (fluorography). Specificity, sensitivity, and cost-effectiveness considerations were not features of this approach. Bacille Calmette-Guerin (BCG) immunization was a key feature of the TB control system...

By 2000, there was more than a two-fold increase in TB incidence, and mortality from TB increased 3 times, compared with 1990. The lowered treatment effectiveness of the recent years resulted in an increase in the number of TB chronic patients, creating a permanent 'breeding ground' for the infection. At that moment, the share of pulmonary TB cases confirmed by bacterioscopy did not exceed 25%, and the share of such cases confirmed by culture testing was no more than 41% due to suboptimal effectiveness of laboratory diagnosis, which led to poor detection of smear-positive TB cases. Being a social disease, TB affected the most socially and economically marginalized populations in Russia."

D. General guidelines for tuberculosis therapy

80. The following are extracts from *Treatment of Tuberculosis: Guidelines for National Programmes,* World Health Organisation, 1997, pp. 27, 33 and 41:

"Treatment regimens have an initial (intensive) phase lasting 2 months and a continuation phase usually lasting 4-6 months. During the initial phase, consisting usually of 4 drugs, there is rapid killing of tubercle bacilli. Infectious patients become non-infectious within about 2 weeks. Symptoms improve. The vast majority of patients with sputum smear-positive TB become smear-negative within 2 months. In the continuation phase fewer drugs are necessary but for a longer time. The sterilizing effect of the drugs eliminates remaining bacilli and prevents subsequent relapse.

In patients with smear positive pulmonary TB, there is a risk of selecting resistant bacilli, since these patients harbour and excrete a large number of bacilli. Short-course chemotherapy regimens consisting of 4 drugs during the initial phase, and 2 drugs during the continuation phase, reduce this risk of selecting resistant bacilli. These regimens are practically as effective in patients with initially resistant organisms as in those with sensitive organisms.

In patients with smear negative pulmonary or extra-pulmonary TB there is little risk of selecting resistant bacilli since these patients harbour fewer bacilli in their lesions. Short-course chemotherapy regimens with three drugs during the initial phase, and two drugs in the continuation phase, are of proven efficacy...

Patients with sputum smear-positive pulmonary TB should be monitored by sputum smear examination. This is the only group of TB patients for whom bacteriological monitoring is possible. It is unnecessary and wasteful of resources to monitor the patient by chest radiography. For patients with sputum smear-negative pulmonary TB and extra-pulmonary TB, clinical monitoring is the usual way of assessing response to treatment. Under programme conditions in high TB incidence countries, routine monitoring by sputum culture is not feasible or recommended. Where facilities are available, culture surveys can be useful as part of quality control of diagnosis by smear microscopy...

Directly observed treatment is one element of the DOTS strategy, i.e. the WHO recommended policy package for TB control. Direct observation of treatment means that a supervisor watches the patient swallowing the tablets. This ensures that a TB patient takes the right drugs, in the right doses, at the right intervals...

Many patients receiving self-administered treatment will not adhere to treatment. It is impossible to predict who will or will not comply, therefore directly observed treatment is necessary at least in the initial phase to ensure adherence. If a TB patient misses one attendance to receive treatment, it is necessary to find that patient and continue treatment."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION IN FACILITY NO. IZ-18/1

81. The applicant complained that the conditions of his detention from 30 January 2002 to 16 July 2004 in facility no. IZ-18/1 in Izhevsk had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

82. Relying on the certificates issued by the deputy director of facility no. IZ-18/1, the Government gave a detailed description of the conditions of the applicant's detention in that facility, arguing that they fully complied with the requirements of Article 3 of the Convention. In their additional

observations the Government stressed that the submissions by the applicant's fellow inmates in support of his description of the conditions of detention "give rise to doubt". At the same time the Government drew the Court's attention to the fact that the deputy director's certificates were official documents bearing all the necessary requisites, including the official's signature, seal, etc. Furthermore, should it transpire that the information submitted by the State official was incorrect, he could be found criminally responsible.

83. The applicant disputed the Government's description, noting that it was not supported by any objective evidence, such as registration logs. At the same time the only possibility for him to corroborate his submissions was to rely on statements by inmates, as he did. The applicant insisted that the conditions of his detention had been inhuman and degrading. He steadfastly maintained his description of the detention conditions, alleging, *inter alia*, severe overcrowding, poor sanitary conditions, insufficient lighting, and inadequate food.

B. The Court's assessment

1. Admissibility

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

2. Merits

85. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-18/1 in Izhevsk. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts which have been presented to it and which the respondent Government failed to refute.

86. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The applicant claimed that the number of detainees in the cells had considerably exceeded their intended capacity. The Government, relying on certificates issued by the deputy director of the detention facility three years after the applicant's detention in that facility had come to an end, claimed that the applicant had been afforded no less than four square metres of personal space and had been provided with an individual sleeping place at all times. At the same time they did not refer to any original source of information on the basis of which their assertion could be verified. In this connection the Court notes that on several previous occasions when the Government have failed to

submit original records it has held that documents prepared after a considerable period of time cannot be viewed as sufficiently reliable, given the length of time that has elapsed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009, and *Shilbergs v. Russia*, no. 20075/03, § 91, 7 December 2009). The Court is of the view that these considerations hold true in the present case. The certificates prepared by the Russian authorities three years after the events in question cannot be regarded as sufficiently reliable sources of data.

87. In these circumstances, having regard to the evidence presented by the applicant in support of his submissions, together with the fact that the Government did not submit any convincing relevant information, the Court finds it established that the cells in facility no. IZ-18/1 were overcrowded. The Court also accepts the applicant's submissions that, owing to the overpopulation of the cells and the resulting lack of sleeping places, he had to take turns with other inmates to rest. Given the size of the cells, the number of inmates detained in them at the same time and the parties' submission that the cells had been equipped with bunks, a table, and a cubicle in which a lavatory pan was situated, the Court doubts that there was sufficient floor space even to pace out the cell. In this connection, the Court notes that, irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

88. The applicant's situation was further exacerbated by the fact that the opportunity for outdoor exercise was limited to one hour a day, leaving him with twenty-three hours per day of detention in facility no. IZ-18/1 without any kind of freedom of movement. The Court also does not lose sight of the applicant's argument, supported by written statements of other inmates, that the windows in the cells were covered with metal shutters. In these circumstances the Court is not convinced by the Government's argument that the windows had given access to natural light and air. The metal construction on the windows, as described by the applicant, significantly reduced the amount of daylight that could penetrate into the cell, and cut off fresh air. It therefore appears that for almost two and a half years, between 30 January 2002 and 16 July 2004, the applicant had to spend a considerable part of each day in the facility in a cramped cell with no window in the proper sense of the word (compare *Peers v. Greece*, no. 28524/95, § 75, ECHR 2001-III). Furthermore, even proceeding on the assumption that the Government's submissions pertaining to bathing arrangements in the detention facility were more accurate, the Court notes that the fact that applicant had access to a shower and could wash his linen and clothes only once a week raises serious concerns as to the conditions of hygiene and sanitation, given the acutely overcrowded accommodation in

which he found himself (see, for similar reasoning, *Melnik v. Ukraine*, no. 72286/01, § 107, 28 March 2006).

89. To sum up, the Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

90. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the very fact that the applicant was obliged to live, sleep and use the toilet in a particularly limited space with so many other inmates was sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

91. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in facility no. IZ-18/1 in Izhevsk from 30 January 2002 to 16 July 2004.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF CONTRACTION OF TUBERCULOSIS AND FAILURE TO DIAGNOSE THE ILLNESS

92. In his application form the applicant complained under Article 3 of the Convention that he had contracted tuberculosis during his detention in facility no. IZ-18/1 and that he had not been provided with adequate medical assistance in that facility. In his observations lodged with the Court on 21 December 2007, while maintaining his initial complaint of having contracted tuberculosis, the applicant stated that the prison authorities had not taken steps to safeguard his health and well-being by failing to detect the illness promptly. Article 3 is cited above.

A. Submissions by the parties

93. Relying on a copy of the applicant's medical record, the Government argued that the applicant had been under effective medical supervision in the course of his detention. That supervision involved regular medical

check-ups prior to his having been diagnosed with tuberculosis and a prompt and effective response to any health grievances the applicant had, as well as effective medical treatment to the point of cure after the illness revealed itself. The treatment the applicant had received complied with requirements laid down by Russian law and international medical standards.

94. At the same time the Government submitted that it was impossible to establish "beyond reasonable doubt" that the applicant had contracted tuberculosis while in detention. They reasoned that according to medical specialists and research, the majority of the Russian adult population and, consequently, the majority of individuals entering the Russian penitentiary system, are already infected with mycobacterium tuberculosis ("MBT"). The Government stressed that detection of dormant MBT cannot be made through ordinary radiological methods of screening and a period of several years may pass between the date when a person contracts the illness and the date when the illness fully develops. They cited statistical data, arguing that out of 100,000 persons infected with the bacteria only 89 will develop an active form of the illness. The Government drew the Court's attention to the fact that modern science did not clearly identify the factors which led to the reactivation of the tuberculosis process. It is, however, established that persons with a weak immune system are prone to the infection. Hereditary factors should also be taken into account.

95. Relying on a medical certificate issued by a civil hospital, the applicant averred that he had not suffered from tuberculosis before his placement in facility no. IZ-18/1 and that no signs of tuberculosis had been detected for over two years during his detention in that facility. His health had seriously deteriorated as a result of his detention in the appalling sanitary conditions with so many inmates who could have been infected with tuberculosis. The applicant insisted that the State was entirely responsible for his having contracted tuberculosis, which had negatively affected the quality of his life and his life expectancy. The authorities had failed to take any steps to eliminate the risk of the infection. In particular, the screening procedures had been performed sporadically. The authorities had delayed fluorography examinations, which were to be carried out once every six months. The correct diagnosis had only been made when the applicant started exhibiting all signs of the illness: he lost a lot of weight, had a high temperature and suffered from shortness of breath. The delayed diagnosis had caused him severe mental suffering and was a clear sign of inadequate medical assistance.

B. The Court's assessment

Admissibility

(a) General principles

96. 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, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

97. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

98. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention (see, *mutatis mutandis*, *Tyrer v. the United Kingdom*, 25 April 1978, § 30, Series A no. 26, and *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161).

99. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him 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 *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most of the cases concerning the detention of people who are ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this respect that even if Article 3 does not entitle a detainee to be released “on compassionate grounds”, it has always interpreted the

requirement to secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

100. The "adequacy" of medical assistance remains the most difficult element to determine. The CPT proclaimed the principle of the equivalence of health care in prison with that in the outside community (see paragraph 74 above). The Court insists that, in particular, authorities must ensure that the diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik*, cited above, §§ 104-106; and, *mutatis mutandis, Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006), and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109, 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, cited above, § 211). However, the Court has also held that Article 3 of the Convention cannot be interpreted as securing for every detained person medical assistance at the same level as "in the best civilian clinics" (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). In another case the Court went further, holding that it was "prepared to accept that in principle the resources of medical facilities within the penitentiary system are limited compared to those of civil clinics" (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007).

101. On the whole, the Court allows a certain flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

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

102. Turning to the circumstances of the present case, the Court observes that following a fluorography test on 20 June 2004, more than two years after the arrest in December 2001, the applicant was diagnosed as having tuberculosis, from which, according to him, he had not suffered prior to his arrest. In fact, the medical certificate submitted by the applicant, as well as medical evidence provided by the Government, shows that he had no history of tuberculosis before his placement in detention facility no. IZ-18/1 in Izhevsk. Likewise, no symptoms of tuberculosis were discovered in the period from 30 January 2002, when the applicant underwent his first fluorography exam in detention, until the end of June 2004, when the disease was diagnosed. The three fluorography tests performed during that period revealed no signs of infection.

103. In this respect, the Court shares the Government's opinion that Mycobacterium tuberculosis (MBT), also known as Koch's bacillus, may lie dormant in the body for some time without exhibiting any clinical signs of the illness. However, for the Government to argue effectively that the applicant was infected with Koch's bacillus even before his arrest, it would have been necessary for the authorities to perform the Mantoux test on the applicant upon his admission to the detention facility and in addition to conduct a fluorography examination, or a special tuberculosis blood test which would have indicated the presence of the latent infection. However, as is apparent from the parties' submissions, apart from fluorography examinations Russian custodial facilities did not use any other method of screening for the presence of MBT in detainees at the time of their admission. The possibility that the applicant might never have been exposed to the infection prior to his arrest and that he only contracted tuberculosis during his detention cannot therefore be ruled out, particularly as the severe overcrowding, unsatisfactory access to fresh air and poor sanitary conditions in which the applicant found himself in facility no. IZ-18/1 (see paragraphs 85-91 above) constitute a recognised setting for the transmission of tuberculosis (see *Ghavtadze v. Georgia*, no. 23204/07, § 86, 3 March 2009, and, most recently, *Pakhomov v. Russia,* no. 44917/08, 30 September 2009, § 64). Nor does the Court lose sight of the statistical estimations that place Russia among one of the twenty-two high-burden countries for tuberculosis in the world, it having recorded a dramatic increase in the incidence of the disease in the 1990s, with some reports indicating that TB is twenty times more prevalent in Russian prisons than in the country in general (see paragraph 79 above). With all these considerations in mind, added to the fact that the first five fluorography tests performed between January 2002 and June 2004 showed no disease in the applicant's lungs, the Court considers it most probable that the applicant contracted tuberculosis in detention facility no. IZ-18/1 (see *Staykov v. Bulgaria*, no. 49438/99, § 81, 12 October 2006; *Yakovenko v. Ukraine*, no. 15825/06, §§ 28 and 95, 25 October 2007; *Hummatov,* cited above, §§ 108 and 111; and *Ghavtadze,* cited above, § 86).

104. While finding it particularly disturbing that the applicant's infection with tuberculosis might have occurred in a custodial institution within the State's control, as an apparent consequence of the authorities' failure to eradicate or prevent the spread of the disease, the Court reiterates its constant approach that the State does have a responsibility to ensure treatment for prisoners in its charge and a lack of adequate medical assistance for serious health problems not suffered from prior to detention may amount to a violation of Article 3 (see *Hummatov*, cited above, §§ 108 et seq.). A lack of or inadequate treatment for tuberculosis, particularly when the disease has been contracted in detention, is most certainly a matter of concern for the Court. Its ordinary task in such cases is therefore to assess

the quality of medical services rendered to applicants and, if they have been deprived of adequate medical assistance, to ascertain whether this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005).

105. The Court observes that the applicant amended his complaint under Article 3 relating to his suffering from tuberculosis, arguing delayed diagnosis of the illness and no longer maintaining his complaint of inadequate medical care after the diagnosis had been made. In this connection, the Court observes that no evidence before it corroborates the applicant's claims as to belated screening for the illness. In fact, the applicant did not provide any explanation in support of his argument, merely noting a general deterioration of his health preceding the discovery of the disease during the medical check-up on 20 June 2004. At the same time the Court does not detect any delay on the part of the prison authorities in responding to the applicant's health complaints. In particular, the Court notes that the applicant was promptly seen by an attending prison doctor, who studied his medical history, recorded the complaints and scheduled an X-ray examination. As the applicant's medical history shows, on 20 June 2004, that is merely four months after the previous chest fluorography test in February 2004, the applicant was subjected to a complete medical check-up, including an X-ray examination. Another radiography test followed shortly after and it confirmed the discovery of the illness. The Court is therefore convinced that the facility's medical personnel acted timeously and diligently in identifying the illness, through the key measure in the modern strategy of tuberculosis control and treatment.

106. While the quality of the medical service rendered to the applicant following the detection of the disease is no longer the subject matter of the Court's examination (see paragraphs 92, 95 and 105 above), it still considers it necessary to emphasise that the quality of the treatment provided to the applicant following the detection of the tuberculosis appears to be adequate. In particular, the evidence put before the Court shows that the Russian authorities used all existing means (sputum smear bacterioscopy, culture testing and chest X-ray exams) for correct diagnosis of the applicant, having considered the extent of the disease and determined the severity of the tuberculosis, in order to prescribe appropriate treatment.

107. Having been placed on a strict medication regime necessary for the tuberculosis therapy when the initial stage of the treatment was followed by the continuation stage, as recommended by the WHO, the applicant received a number of anti-tuberculosis medicines and concomitant antihistamine drugs, which were administered to him in the requisite dosage, at the right intervals and for the appropriate duration. During the entire period of his treatment the applicant was subjected to regular and systematic clinical and radiological assessment and bacteriological monitoring, which formed part of the comprehensive therapeutic strategy aimed at curing the disease. The

detention authorities also effectively implemented the doctors' recommendations about a special dietary ration necessary for the applicant to improve his health (contrast *Gorodnitchev v. Russia*, no. 52058/99, § 91, 24 May 2007).

108. Furthermore, the Court attributes particular weight to the fact that the facility administration not only ensured that the applicant was attended to by doctors, that his complaints were heard and that he was prescribed a trial of anti-tuberculosis medication, they also created the necessary conditions for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116). The Court notes that the intake of medicines by the applicant was supervised and directly observed by the facility medical personnel throughout the whole treatment regimen as required by the DOTS strategy. In addition, in a situation where the authorities met with the applicant's occasional refusal to cooperate and his resistance to the treatment, they offered him psychological support and attention, having provided clear and complete explanations about medical procedures, the sought-after outcome of the treatment and the negative side-effects of interrupting the treatment, irregular medication or fasting (contrast *Gorodnitchev,* cited above, § 91; *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007; and *Tarariyeva v. Russia*, no. 4353/03, § 80, ECHR 2006-XV (extracts)). The authorities' actions ensured the applicant's adherence to the treatment and compliance with the prescribed regimen, this being a key factor in the treatment's success.

109. The medical record containing the applicant's diagnosis following the completion of the treatment in the spring of 2005 as "infiltrative tuberculosis in the resolution phase" showed positive dynamics in the applicant's treatment, meaning that he was recovering. His treatment was adjusted accordingly to take account of his improving health. Nothing in the case file can lead the Court to conclude that the applicant did not receive comprehensive medical assistance during the various stages of his tuberculosis treatment. The applicant did not deny that medical supervision had been provided and tests had been carried out, or that the prescribed medication had been provided, as indicated in the medical records submitted by the Government. In fact, he did not indicate any shortcomings in his medical care, save for an allegedly belated diagnosis.

110. Finally, after the completion of the treatment resulting in the applicant's "clinical recovery from infiltrative tuberculosis" he remained under medical supervision aimed at preventing a relapse of the illness.

111. To sum up, the Court considers that the Government provided sufficient evidence to enable it to conclude that the domestic authorities, without undue delay, diagnosed the applicant with tuberculosis and afforded him comprehensive, effective and transparent medical assistance in respect of that illness. 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.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ALLEGED ILL-TREATMENT BY WARDERS

112. The applicant, relying on Article 3 of the Convention, complained that he had been severely beaten up by warders on 10 July 2003 and that the investigation had not led to punishment of those responsible.

A. Submissions by the parties

113. The Government argued that the State bore no responsibility for the injury which the applicant had sustained on 10 July 2003. While accepting that physical force had been used against the applicant on that day, the Government stressed that the force had been no more than a lawful and adequate response to the applicant's unruly behaviour. They further noted that the laceration on the applicant's forehead had been caused when the latter had fallen in the prison van while resisting the warders' lawful orders. The domestic authorities had performed a thorough inquiry into the events of 10 July 2003 and, having collected evidence of the applicant's unruly conduct, had dismissed the complaint about an excessive use of force.

114. The applicant averred that he had sustained a number of injuries, including one on the head, which could not have been self-inflicted as his hands had been handcuffed throughout the events in question. The handcuffing had also made it impossible for him to use force against the warders. He further stressed that following the beatings he had been forced to remain for hours in the warders' room and that medical assistance had only been rendered to him in the detention facility in the evening of 10 July 2003. The applicant insisted that the laceration on his forehead could only have been caused as a result of a blow from handcuffs. He could not have sustained that injury though a mere fall, as the walls and floor of the van were smooth and did not have any sharp edges on which he could have cut his forehead by falling. The applicant noted that the Government's submissions were inconsistent as they put forward two contradictory versions of events, insisting that the warders had used force against him whilst at the same time arguing that the injury on his forehead had been self-inflicted.

115. The applicant further alleged that the investigation into the events in question had been ineffective and subjective as the investigator had readily accepted the veracity of the warders' submissions but had dismissed his version of the events as inaccurate. The investigators had failed to perform a number of procedural actions. The District Court's refusal to

support the investigator's decision on a number of occasions was, in the applicant's view, a major sign of the inadequacy of the investigation.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the scope of Article 3

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

118. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudla v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

119. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... (extracts); *Sarban v. Moldova*,

no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

(ii) As to the establishment of the facts

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

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

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

(i) Establishment of facts and application of the rule on the minimum level of severity

122. The Court observes, and the parties did not dispute this fact, that on 10 July 2003 the applicant and his fellow inmate, Mr H., had an argument with warders who escorted them to the courthouse. It was likewise uncontested that the warders used physical force against the applicant.

123. The Court reiterates that the exact circumstances and the intensity of the use of force against the applicant were disputed by the parties. The

Government alleged that the force had been used lawfully in response to the applicant's unruly conduct. The force did not exceed what was reasonable and necessary in the circumstances of the case. As is apparent from the reports by the warders and their interviews with the investigator, when in the morning of 10 July 2003 the applicant had refused to leave the van and proceed to the courthouse, the warders had overpowered him and had carried him there. Similar events had occurred in the afternoon of the same day, when the applicant had not only refused to leave the van, but had also attempted to bite a warder (see paragraph 41 above). The applicant did not dispute that he had disobeyed the warders' orders and had actively resisted them, to the point of using violence. However, relying on the statement by his fellow inmate, Mr H., he submitted that the warders had repeatedly hit and kicked him in various parts of his body and had hit him on the head with handcuffs, causing the cut on his forehead.

124. The Court first notes that the applicant was examined by a prison doctor in the evening on 10 July 2003. As shown by a medical certificate drawn up by the doctor, the applicant had a small laceration, covered with a crust of dried blood, on his forehead (see paragraphs 36 and 37 above). No other injuries were discovered. On 11 July 2003 the applicant was examined by forensic medical experts, who also noted a laceration on his forehead and did not record any other injuries on his body. In this respect the Court is particularly mindful of the fact that the applicant did not dispute the credibility or accuracy of the findings made by the medical personnel on either occasion.

125. The Court notes the Government's argument that the applicant could have acquired the laceration when he was resisting the warders and that he must have slipped and fallen inside the prison van. The applicant provided a completely different version of events, arguing that a warder had hit him with handcuffs on the head. The Court, however, cannot overlook the inconsistencies that abounded in the various accounts of the events which the applicant gave in his submissions to the Court and complaints to domestic authorities. For instance, during the first interview with the investigator of the Industrialniy District prosecutor's office the applicant complained that in response to his attempt to bite a warder the latter had cut the applicant's forehead with handcuffs (see paragraph 41 above). When questioned for the second time the applicant amended his version of events by asserting that the warder had also cut his lip (see paragraph 45 above). However, in his application to the Court the applicant described the events on 10 July 2003 as a severe beating, alleging that the warders had repeatedly kicked and hit him. Following the communication of his complaint to the Government and in response to their memorial, the applicant gave an account of events that was similar to what he had told the investigator in the aftermath of the events of 10 July 2003.

126. Keeping in mind the inconsistencies in the applicant's versions of events recounted at the various stages of the proceedings, the Court further observes that it is unable to conclude beyond reasonable doubt that the laceration discovered on the applicant's forehead by the prison doctor was caused in the circumstances described by the applicant. The evidence before the Court does not allow it to exclude either the Government's or the applicant's version of events. The injury found on the applicant's forehead is consistent both with a minor physical confrontation between the applicant and the warders and with an accidental fall in the prison van.

127. While noting the inconclusive analysis of the first applicant's injury, the Court further observes that there was no other evidence which could have shed light on the events of 10 July 2003. It is unconvinced by the statements made by the applicant's fellow inmate, Mr H., in support of the applicant's claims of official brutality. The Court doubts whether Mr H. could be considered an "objective observer" in the circumstances of the case. It is also surprising that, having actively resisted the warders' orders himself, Mr H. was able to take note of the exact circumstances in which the applicant had sustained an injury. The Court does not lose sight of the fact that in describing the manner in which a warder had hit the applicant on the forehead, Mr H. stated that the warder had put the handcuffs on his fist to resemble a knuckle-duster. However, that description sits ill with the nature of the applicant's injury: a short and narrow laceration on the forehead. It rather supports the version that the injury resulted from an inadvertent application of force during the confrontation between the applicant and the warders, or an accidental fall in the prison van.

128. The Court therefore concludes that there is nothing to show that the warders used excessive force when, in the course of their duties, they were confronted with the alleged disorderly behaviour of the applicant. The Court is also not persuaded that the force used had such an impact on the applicant's physical or mental well-being as to give rise to an issue under Article 3 of the Convention.

129. Under these circumstances, the Court cannot consider it established beyond reasonable doubt that on 10 July 2003 the applicant was subjected to treatment contrary to Article 3 or that the authorities had recourse to physical force which had not been rendered strictly necessary by the applicant's own behaviour.

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

(ii) Alleged inadequacy of the investigation

131. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights

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

132. Turning to the circumstances of the present case, the Court notes that the prosecution authorities, who were made aware of the applicant's beating, carried out a preliminary investigation which did not result in criminal prosecution. The applicant's ill-treatment complaints were also a subject of the examination by the domestic courts. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was "effective".

133. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to identify and, if need be, prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case, despite the Government's surprising argument to the contrary, the Court finds it established that the applicant complained of ill-treatment to the prosecution authorities on 11 July 2003 (see paragraph 38 above). The Court is mindful of the fact that the prosecutor's office opened its investigation immediately after being notified of the alleged beatings. On the same day the applicant was subjected to a medical examination authorised by the investigating authorities. Further steps were promptly taken in the aftermath of the events under examination. In particular, the authorities took significant investigative measures, including collecting an official explanatory report from the head of the warders' service and questioning the warders, the fellow inmate of the applicant, his co-defendant and lawyer. They also

called for an expert medical examination of the warder who had been injured by the applicant when the latter had offered resistance. The Court does not find the fact that the three investigator's decisions were annulled by a court to be evidence of any inefficiency in the investigation, since from the materials in the case file it appears that the investigating authorities made diligent efforts to establish the circumstances of the events and to reconcile conflicting versions of events. In particular, they persistently tried to identify and interview additional witnesses who could have shed light on the events in question. They also further questioned the known witnesses in order to eliminate or explain the discrepancies which had arisen in their previous statements. The Court is also mindful of the fact that the authorities' task was significantly complicated by the applicant's confusing complaints and inconsistent description of the events. The investigators were forced to proceed more cautiously and thoroughly when processing vague or perplexing information from the applicant. At the same time the Court is satisfied that the investigators did not delay questioning the applicant in person and also provided him with opportunities to clarify his testimony. In addition, the Court does not overlook the fact that the applicant did not complain that he had not been duly informed of the progress of the investigation.

134. Further assessing the course of the investigation, the Court observes that the investigator apparently did not inspect the prison van where the alleged beatings had occurred. While reiterating that proper inspection of a crime scene is an essential procedural step for investigation of an offence, the Court is not convinced, in the circumstances of the instant case, in particular in view of the lack of any indication by the parties that physical evidence had been left in the van, that the failure to inspect it led to a loss of opportunity for the collection of evidence and prevented the investigation from establishing the principal facts of the case.

135. The Court is also of the opinion that from the start of the investigation the authorities thoroughly evaluated the medical evidence before them, attempting to draw conclusions from it, without accepting too readily the warders' version of events. The Court does not therefore find it established that the investigating authorities failed to look for corroborating evidence or exhibited a deferential attitude towards the warders. The Court also finds that the authorities may be regarded as having acted with sufficient promptness and having proceeded with reasonable expedition.

136. Having regard to its findings in paragraphs 133 and 134 above, the Court considers that the domestic investigation was effective for the purposes of Article 3 of the Convention. There has accordingly been no violation of the procedural obligation under Article 3 of the Convention.

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

137. The applicant further complained that the length of the criminal proceedings in respect of the robbery charges had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Submissions by the parties

138. The Government argued that the domestic authorities had fully complied with the "reasonable-time" requirement under Russian law and Article 6 § 1 of the Convention. The length of the proceedings had an objective justification, consisting in the complexity of the criminal case involving four defendants and examination of a number of charges and criminal events, the need to ensure participation of witnesses and victims at the trial hearings, and the inability of defence counsel to attend hearings owing to their involvement in other unrelated proceedings. At the same time, in the Government's opinion, a substantial delay in the proceedings had been caused by the applicant and his co-defendant who, on a number of occasions, had refused the services of their legal-aid counsel. Each appointment of new counsel required the trial court to give the new lawyer additional time to study the case file and prepare his line of defence. Furthermore, the applicant had actively made use of his defence rights, having filed a large number of motions, applications and requests, which the trial court was forced to act upon.

139. The applicant averred that the proceedings, which had lasted three years and eight months, had not progressed steadily. There had been lengthy periods when the domestic authorities were either completely passive or were correcting their procedural mistakes. In particular, on four occasions the trial court had remitted the case file to the investigation authorities to eliminate serious flaws which precluded examination of the case. The applicant further noted that the complexity of the case could not serve as justification for the length of the proceedings, particularly as the investigation had been completed within a few months and the proceedings had subsequently been pending for more than three years before the courts at two instances. Having addressed his own behaviour during the criminal proceedings, the applicant stressed that he had been detained throughout the proceedings and therefore had been within the State's full control. He had never failed to participate in investigative actions or attend hearings. As to the alleged abuse on his part of the right to defence, the applicant argued

that the majority of his requests had been dismissed by the trial court. However, those which had been accepted, such as his request for a change of legal-aid counsel, were valid and well-founded. By accepting those requests the trial court had demonstrated that the applicant's right to a fair trial could have been violated if it had refused to rule in his favour.

B. The Court's assessment

1. Admissibility

140. The Court observes that the period to be examined began on 16 January 2002 when the criminal investigation was opened. It ended on 27 September 2005 with the final judgment of the Supreme Court of the Udmurtiya Republic. The proceedings therefore lasted approximately three years and eight months at two levels of jurisdiction.

141. The Court notes that the 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

142. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

143. The Court accepts that the proceedings at issue were complex. However, it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings. The Court further observes that the fact that the applicant was held in custody required particular diligence on the part of the courts dealing with the case to ensure expeditious administration of justice (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI).

144. As to the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be held responsible for lodging numerous requests. The Court firstly reiterates its constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Kolomiyets v. Russia*, no. 76835/01, § 29, 22 February 2007). The Government did not provide any evidence in support of their allegations that the applicant's unsuccessful requests were improper and contributed to the length of the

proceedings. At the same time, the Court does not lose sight of the Government's argument that a substantial delay in the proceedings was caused by the four consecutive dismissals of the applicant's legal-aid lawyers. Each time a dismissal took place, the trial court was forced to adjourn hearings for the purpose of assigning new counsel to the applicant and giving the lawyer an opportunity to study the case file. Bearing in mind the prominent place which the right to a fair trial holds in a democratic society (see, *inter alia, De Cubber v. Belgium*, 26 October 1984, § 30, Series A no. 86), the Court considers that the State should bear responsibility for a delay incurred through a successful challenge by a defendant of State-appointed counsel. The Court reiterates that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can fulfil the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria (No. 2)*, no. 72159/01, § 57, 4 March 2004). Therefore, the responsibility for an aggregate delay of approximately six months, caused by successful requests for dismissal of legal-aid lawyers, rests ultimately with the State (see, *mutatis mutandis, Marchenko v. Russia*, no. 29510/04, § 39, 5 October 2006, and *Sidorenko v. Russia*, no. 4459/03, § 32, 8 March 2007).

145. Further addressing the conduct of the authorities, the Court notes that there were other substantial delays in the proceedings for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. In particular, the Court observes that having been opened in January 2002, the pre-trial investigation was already completed in July 2002 when the case was transferred to the trial court. However, the preliminary examination of the case by the trial court led to the remittal of the case to the investigation authorities for correction of procedural defects. The transfer of the case from the trial court to the investigation authorities occurred on three further occasions, causing an aggregate delay of approximately eight months in the examination of the case (see paragraphs 12, 13, 16 and 17 above).

146. The Court also notes the Government's argument that the conduct of the co-defendants, witnesses, victims and their lawyers was one of the reasons for the prolongation of the proceedings. In this respect the Court observes that it was incumbent on the court dealing with the case to discipline the parties in order to ensure that the proceedings were conducted at an acceptable pace (see *Sidorenko*, cited above, § 34). It therefore considers that the delay occasioned by the trial court's failure to discipline the participants in the proceedings is attributable to the State (see *Kuśmierek v. Poland*, no. 10675/02, § 65, 21 September 2004).

147. Finally, it does not escape the Court's attention that for the major part of the overall period of three years and eight months the case was pending before the trial court. However, as stated in the parties'

submissions, the only period when the trial court actively dealt with the case was between 17 August 2004 and 25 January 2005, when hearings were scheduled at regular intervals and no delays occurred.

148. To sum up, having examined all the material before it and taking into account what was at stake for the applicant, the Court considers that in the instant case the length of the criminal proceedings was excessive and failed to meet the "reasonable-time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

149. The applicant further complained that he had not had any effective remedy by which to complain about the excessive length of the criminal proceedings. This complaint falls to be examined under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Submissions by the parties

150. The Government submitted that the applicant's complaint was manifestly ill-founded and should be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

151. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

153. The Court takes cognisance of the existence of a new remedy introduced by the Compensation Act in the wake of the pilot judgment adopted in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009-...). The remedy enables those concerned to seek compensation for the damage sustained as a result of an unreasonable length of proceedings (see paragraphs 70 and 71 above).

154. The Court observes that in the present case the parties' observations in respect of Article 13 arrived before 4 May 2010, the date on which the

Compensation Act entered into force. The observations did not contain any reference to the new legislative development. However, the Court accepts that since 4 May 2010 the applicant has been entitled to use the new remedy (see paragraph 71 above).

155. The Court observes that in the pilot judgment cited above it stated that it would be unfair to request the applicants, whose cases had already been pending for many years in the domestic system and who have come to seek relief at the Court, to bring again their claims before domestic tribunals (see *Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decided to examine the applicant's complaint of excessive length of criminal proceedings on its merits and found a violation of Article 6 § 1 of the Convention.

156. However, the fact of the examination of the merits of the applicant's length-of-proceedings complaint should in no way be interpreted as predetermining the Court's assessment of the quality of the new remedy. It will examine this question in other cases more suitable for such analysis. The Court does not consider the present case to be suitable, particularly in view of the fact that the parties' observations were made in the context of the situation that existed before the introduction of the new remedy (see, for similar reasoning, *Kravchenko and Others (military housing) v. Russia*, nos. 11609/05, 12516/05, 17393/05, 20214/05, 25724/05, 32953/05, 1953/06, 10908/06, 16101/06, 26696/06, 40417/06, 44437/06, 44977/06, 46544/06, 50835/06, 22635/07, 36662/07, 36951/07, 38501/07, 54307/07, 22723/08, 36406/08 and 55990/08, §§ 40-45, 16 September 2010, and *Vasilchenko v. Russia*, no. 34784/02, §§ 54-59, 23 September 2010).

157. Having regard to these special circumstances, the Court does not consider it necessary to continue a separate examination of the complaint under Article 13 in the present case.

VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

158. The applicant complained under Article 34 of the Convention that on a number of occasions State officials had exerted pressure on him in connection with his application lodged with the Court. In particular, he claimed that the officials had tried to force him to settle the case in return for a promise that he would be allowed to stay in the detention facility in the Udmurtiya Republic. He further complained that the prison administration had impeded the dispatch of his letters to his representative.

159. Article 34 of the Convention reads, in so far as relevant, as follows:

> "The Court may receive applications from any person ... 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."

A. Submissions by the parties

160. The Government stressed that the two meetings with the applicant held by Ms Rassadina in August 2008 had been organised, further to a request from the Representative of the Russian Federation at the European Court of Human Rights, for the sole purpose of attempting to settle the case pending before the Court. On no occasion had the State officials compelled the applicant by the use of pressure or coercion to withdraw his application from the Court. They had merely explained the legal consequences for the applicant of a settlement and attempted to determine his position on the matter. The applicant's refusal to accept the friendly settlement agreement proposed by the State officials did not affect his situation. The Government argued that his transfer to the correctional colony in the Novosibirsk Region had been carried out in accordance with the requirements of Russian law, in particular section 73 of the Code on the Execution of Criminal Sentences, as the applicant had lived in Novosibirsk prior to his conviction, had family there and had been sent to serve his sentence in a correctional colony in the Novosibirsk Region following his final conviction. He had been detained in the Udmurtiya Republic temporarily, having been placed in a specialised medical detention facility. The Government insisted that the applicant also had not argued that he had been threatened or intimidated. They drew the Court's attention to the fact that it had taken almost eight months after the meetings with Ms Rassadina before the applicant had complained about them to the Court. In the Government's opinion, by lodging his Article 34 complaint the applicant had merely attempted to manipulate the State into allowing his further stay in the detention facility in the Udmurtiya Republic. The complaint to the Court was sent not long before the transfer was to be effected. The Government noted that the applicant had never made use of domestic avenues to seek a stay or annulment of his transfer to the Novosibirsk Region.

161. The Government further submitted that the Representative of the Russian Federation at the European Court of Human Rights had sent a letter to the head of the Russian Federal Service for Execution of Sentences prohibiting any future direct consultations with inmates whose cases, pending before the Court, had been notified to the Government. The Representative stated that any friendly settlement consultations were to be carried out only with the Court's participation or by the Representative himself.

162. The applicant argued that by virtue of the domestic legal norms he was to serve his sentence in the Udmurtiya Republic. Therefore, having known of that legal requirement, he had refused to settle the case when approached by State officials. He further stressed that the only ties he had had with the Novosibirsk Region had been severed when his mother had

died. He had kept a flat there, but all his remaining relatives lived in the Udmurtiya Republic.

163. In his letter which reached the Court in September 2008, the applicant, without providing any further details, complained that the authorities had impeded his correspondence with his representative. He further alleged that during the two meetings in August 2007 Ms Rassadina had threatened him with transfer to a correctional colony in the Novosibirsk Region should he refuse to sign a friendly settlement agreement. She had also allegedly promised that the applicant would be denied any contact with his family and that all his incoming and outgoing correspondence with the Court and his representative would be blocked. The applicant submitted that following his refusal to sign the friendly settlement agreement the administration of the detention facility in the Udmurtiya Republic had not allowed any meetings between him and his wife. At the same time he argued that he had been forced to hand to his wife all the letters which he had wished to send to the Court or his representative, as he had been certain that the facility administration would not dispatch them. He further stressed that he had been unable to complain to the domestic authorities about the administration's unlawful actions as his letters had been destroyed by the facility administration and he had had no contact with the outside world as his wife had been denied permission to visit him.

B. The Court's assessment

1. Interference with correspondence

164. The Court notes the applicant's complaint that Russian authorities had impeded his correspondence with his representative, as well as preventing any contact with the latter or family members, and that this, as a result, had allegedly rendered the applicant's communication with the Court more difficult. In this respect, accepting the direct link which exists between the applicant's communication with his representative and the effective exercise of the applicant's right of petition (see *Öcalan v. Turkey* [GC], no. 46221/99, § 200, ECHR 2005-IV), the Court observes that the applicant did not provide any details of the alleged interference by the authorities with his letters to the representative and did not corroborate his general complaint of alleged hindrance by any evidence of delays in transmitting his letters to the representative or of tampering with his correspondence. He merely mentioned that the transmission of his two letters to the Court in July 2008 had been delayed by at least four days. While noting that the applicant has not made a formal complaint to the Court about that alleged incident, the Court reiterates that the occasional stopping of an applicant's letter to the Court will not necessarily raise an issue under Article 34 of the Convention (see *Hosein v. the United Kingdom*, no. 18264/91, Commission

decision of 8 September 1993), particularly as it is apparent that, before or after the incident, the applicant's letters to the Court (or others) were sent without hindrance, and that even delays of some weeks in transmitting the applicant's letters to the Court will not be always regarded as significant or as hindering the exercise of the applicant's right of petition (see *Valašinas v. Lithuania*, no. 44558/98, §§ 134-137, ECHR 2001-VIII).

165. However, the Court cannot overlook the fact that the two letters allegedly handed over by the applicant to the prison administration in July 2008 to be subsequently dispatched to the Court have never reached it. In this respect, the Court doubts the validity of the applicant's allegation that he asked the prison administration to transmit those letters. It firstly observes that since the appointment of the representative in 2007 and the Court's subsequent notification to the applicant that it would correspond only with the representative, the applicant has approached the Court directly, bypassing his representative. In this respect, the Court notes that the applicant did not explain what special circumstances had driven him to communicate directly with the Court in July 2008. He also did not specify why the two letters should have been withheld by the prison administration. At the same time, given the fact that the copies of the applicant's July letters were attached to the letter of his representative of 19 September 2008 and the Court was able to study them, it does not see that their content has any bearing on the outcome of the present case.

166. In the circumstances of the present case, and having regard to the fact that all of the applicant's previous letters had been sent without any delay, the Court is not convinced that there is any evidence of obstruction of the exercise of the applicant's right of individual application as regards his correspondence with the Court or his representative (see, *mutatis mutandis*, *Cooke v. Austria*, no. 25878/94, §§ 46-49, 8 February 2000).

167. Furthermore, the Court attributes particular weight to the fact that the applicant's submissions pertaining to the alleged hampering of his right of petition were particularly confusing and inconsistent. For instance, while arguing that he had been denied contact with his wife and had been precluded from communicating with his representative, the applicant at the same time claimed that he had handed the letters over to his wife whenever the facility administration had allegedly delayed their dispatch or had refused to transmit them and that he had been allowed to have at least one phone conversation with his representative. The Court is also mindful of the fact that numerous letters from the applicant's representative to the Court, including those received in 2008, were always accompanied by the applicant's lengthy handwritten submissions. There is therefore nothing to indicate that the applicant was hindered in the exercise of his right of individual application to any significant degree as regards this aspect of his complaint under Article 34.

2. Visits by State officials

168. 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, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports* 1996-VI). 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 (see *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III).

169. Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Akdivar and Others,* cited above, § 105, and *Kurt,* cited above, § 160). The applicant's position might be particularly vulnerable when he is held in custody with limited contacts with his family or the outside world (see *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003). Even an informal "interview" with the applicant, let alone his or her formal questioning in respect of the Strasbourg proceedings, may be regarded as a form of intimidation (contrast *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 117 et seq,, ECHR 2007-II).

170. The Court notes that the applicant alleged that he had been contacted by a State official in August 2007. He submitted that the official had tried to force him to settle the case pending before the Court and had offered him the possibility of remaining in the detention facility in the Udmurtiya Republic in exchange for his decision to withdraw the application before the Court. The Government admitted that a high-ranking official from the Federal Service for Execution of Sentences, Ms Rassadina, had talked to the applicant in the presence of the head of the detention facility, and on a request from the Representative of the Russian Federation to the Court, on two occasions in August 2007, in an attempt first to determine the applicant's terms for settling the case pending before the Court and then to sign the friendly settlement agreement drafted in line with the applicant's demands.

171. The Court observes that neither the applicant nor his representative have adduced any concrete or independent proof of acts of intimidation or harassment calculated to hinder the conduct by the applicant of the proceedings which he brought before the Court. In fact, apart from arguing in the April letter to the Court that the authorities had enticed him with the

annulment of his transfer to a colony in the Novosibirsk Region and suggested that he sell a flat in Novosibirsk to make his prolonged stay in the Udmurtiya Republic legitimate, the applicant did not indicate any particular instance of alleged coercion or intimidation on the part of the Russian authorities. Having said that, the Court, however, does not lose sight of the fact that in the letter received by the Court in September 2008 the applicant amended his description of his contacts with the authorities, arguing that Ms Rassadina had also threatened to stop him having contact with family members, with his representative and with the Court. However, in view of the conclusions in paragraphs 164-167 above, and finding it peculiar that the applicant did not raise those allegations in the letter of 7 April 2008, the Court does not consider them to be credible. Against this background, the Court's evaluation of the evidence before it leads it to find, for the reasons laid down below, that there is an insufficient factual basis on which to conclude that the authorities of the respondent State have intimidated or harassed the applicant in circumstances which were calculated to induce him to withdraw his application or otherwise interfere with the exercise of his right of individual petition (see, for similar reasoning, *Aydın v. Turkey*, 25 September 1997, §§ 116-117, *Reports* 1997-VI).

172. In particular, in assessing the very fact of the State's contacts with the applicant, the Court reiterates that not every enquiry by the authorities about an application pending before the Court can be regarded as "intimidation". The Court emphasises that Article 34 does not prevent the State from taking measures in order to improve the applicant's situation or solve the problem which is at the heart of the Strasbourg proceedings. Moreover, acting on the principle that, like any judicial system, the Convention system is open to "out of court" and "in court" settlements or agreements between the parties at all stages of the proceedings, the Court has never underestimated the importance of the settlement work and has always encouraged and actively promoted settlement negotiations between the parties. This approach reflects the traditional view that the Convention is not an instrument of accusation or prosecution of Contracting States, but a collective fulfilment of their obligations and undertakings, the surveillance of which was entrusted to the Court under Article 19 of the Convention.

173. The Court accepts that the shape of settlement negotiations may vary, largely depending on the relationship between the parties. Negotiations may be triangular with the Court at the apex but may vary down to the point of a straight line of bilateral negotiations between the parties. It is obvious that where the settlement has been secured in collaboration with the Court, no question would normally arise as to whether the applicant has acted of his own free will. However, to deny a State the right to contact an applicant directly for the purpose of settling the case pending before the Court would have the effect of substantially discouraging settlement discussions, stemming the free flow of ideas and

information, offers and claims within the settlement negotiations, and ultimately placing a heavy burden on the Court. The parties should be left with ample room to explore the possibility of resolving disputes otherwise than by a judgment. At the same time, the Court requires that steps taken by a State in the context of settlement negotiations with an applicant should not take on any form of pressure, intimidation or coercion.

174. With this word of caution in mind, the Court turns to the circumstances of the present case. It notes the Government's argument that by virtue of the Russian Code on the Execution of Criminal Sentences, in particular section 73, it was within the State's discretion to assign the applicant to a correctional facility in the Novosibirsk Region, that is the region where he had lived before the conviction (see paragraph 72 above). The applicant started serving his sentence in the Novosibirsk Region and was only transferred to a medical detention facility in the Udmurtiya Republic temporarily. The Court is unconvinced by the applicant's argument that the State officials had threatened him with transfer back to the Novosibirsk Region to influence his decision to settle the case pending before the Court. In this respect, the Court attributes particular weight to the fact that it was more than seven months after the negotiations between the applicant and State officials had taken place, and not long before the transfer back to the Novosibirsk Region was to be effected, that he decided to raise his Article 34 complaint with the Court. In view of the finding of the absence of any indication of interference by the State with the applicant's correspondence or hindrance of his contact with his representative or wife (see paragraphs 164-167 above), the Court is prepared to accept the Government's argument that the applicant's delay in filing the complaint under Article 34 was a sign that the complaint itself was no more that a disguised attempt to induce the authorities to annul his transfer to the Novosibirsk Region. This conclusion is strengthened by the Court's inability to find any signs of negative consequences for the applicant following the State's failure to secure a friendly settlement. In addition, the Court does not lose sight of the fact that the applicant has never attempted to approach the competent domestic authorities with a request to determine his further place of detention in the Udmurtiya Republic. In these circumstances the Court is unable to conclude that the actions of the authorities can be described as “improper”. It follows that the Government have not breached their obligations under Article 34 of the Convention as regards their contact with the applicant for the purpose of securing a friendly-settlement agreement.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

175. Lastly, 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.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

176. 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

177. The applicant claimed 65,000 euros (EUR) in respect of non-pecuniary damage. Without indicating the exact sum or providing any documents in support, the applicant further claimed compensation for pecuniary damage.

178. The Government submitted that the applicant's claim for compensation for pecuniary damage should not be granted as he had neither indicated the sum nor provided any evidence in support of his allegation that such pecuniary damage had, in fact, been sustained. They further stressed that the claim for compensation for non-pecuniary damage was excessive and unsubstantiated.

179. As regards the applicant's claim for compensation for pecuniary damage, the Court finds no reason to make any award under this head in the absence of the indication of the sum of expenses which the applicant had allegedly incurred or any proof that any pecuniary damage had, in fact, been sustained.

180. As to the non-pecuniary damage claim, the Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that the applicant suffered humiliation and distress on account of the inhuman and degrading conditions of his detention and the excessive length of criminal proceedings. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated by a mere finding of a violation. However, the particular amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

181. The applicant also claimed EUR 35,000 for the costs and expenses incurred before the domestic courts and the Court.

182. The Government argued that the applicant's failure to submit any documents on the basis of which his claim could be verified rendered his claim inadmissible.

183. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court observes that in 2007 the applicant issued the lawyers from the International Protection Centre in Moscow with authority to represent his interests in the proceedings before the Court. It is clear from the length and detail of the pleadings submitted by the applicant that a great deal of work was carried out on his behalf. Keeping in mind that the applicant was granted legal aid by the Court in the amount of 850 euros and that some of his complaints were declared inadmissible, the Court awards EUR 3,000 to the applicant in respect of costs and expenses for his representation before the Court, together with any tax that may be chargeable on that amount.

C. Default interest

184. 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* admissible the complaint concerning the conditions of the applicant's detention in facility no. IZ-18/1 from 30 January 2002 to 16 July 2004, the ill-treatment of the applicant by warders on 10 July 2003, the ineffectiveness of the investigation into his ill-treatment complaints, the excessive length of the criminal proceedings on robbery charges, and the absence of an effective remedy by which to complain about that excessive length, 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 conditions of the applicant's detention in facility no. IZ-18/1 from 30 January 2002 to 16 July 2004;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected on 10 July 2003 by the warders;

4. *Holds* that there has been no violation of Article 3 of the Convention on account of the investigation into the applicant's ill-treatment complaints;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings;

6. *Holds* that there is no need for separate examination of the complaint under Article 13 of the Convention;

7. *Holds* that the respondent State has not failed to comply with its obligations under Article 34 of the Convention on account of the alleged hindering of the applicant's correspondence and contacts with his representative or the Court;

8. *Holds* that there has been no violation of Article 34 of the Convention on account of the contacts between the applicant and State authorities;

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

(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros) in respect of costs and expenses incurred before the Court;

(iii) any tax that may be chargeable to the applicant on the above amounts;

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

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

Done in English, and notified in writing on 27 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President