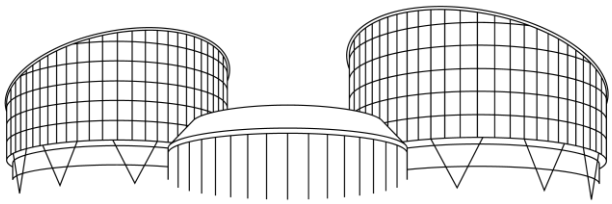

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BUNTOV v. RUSSIA

(Application no. 27026/10)

JUDGMENT

STRASBOURG

5 June 2012

FINAL

05/09/2012

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 15 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 27026/10) 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 Vitaliy Maratovich Buntov ("the applicant"), on 15 May 2010.

2. The applicant was represented by Ms A. Polozova, and Ms K. Moskalenko, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been tortured by the officials of the penal colony where he was detained, that they had tried to poison him, that he had been detained and transported in harsh conditions, and that he had had no effective remedy in respect of those complaints.

4. On 27 August 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's situation before his transfer to the Plavsk colony

5. The applicant was born in 1976. He is currently serving a twenty-five year prison sentence for armed robbery of Ms L., murder of Ms L. and for attempted murder of a policeman during his arrest. He was convicted in 2003 (the conviction was amended in 2004) and began serving his sentence in penal colony FBU IK-5, and then in colonies FBU IK-13 and FBU IK-8, all situated in the Russian Far East.

6. In the Far Eastern colonies the applicant was diagnosed with several chronic diseases. However, there is no evidence that his finger or toenails were affected by a fungal infection at that time. It appears that in 2002 he was also seen by colony doctors in connection with dermatitis and eczema. Otherwise, the materials of the case file indicate that the applicant's state of health was satisfactory, he exercised regularly – mostly doing weightlifting – and, as can be seen from the applicant's photos taken in 2010, he was very muscular and must have been a physically strong man (he weighed 115 kilos and was 180 cm tall).

7. The administration of the colonies where the applicant was detained during that period characterised the applicant rather positively as belonging to a group of convicts loyal to the administration. Some time after his transfer to colony FBU IK-13 he informed the administration of a conflict between him and several other convicts, who allegedly belonged to a gang. An internal inquiry carried out in 2008 concluded that the applicant was simulating conflicts with his co-detainees in order to get a transfer to another colony, closer to Moscow. However, the administration later changed its opinion and recommended that the applicant be transferred for security reasons. As a result, in January 2009 the applicant was transferred to FBU IK-1, a penal colony situated in the town of Plavsk, Tula Region.

B. The applicant's situation during his first year in the Plavsk colony

1. Relations with the colony administration and other convicts

8. As can be seen from the applicant's disciplinary file, during the first year of his detention in FBU IK-1 his behaviour and attitude were considered by the administration of the colony as "positive". He was attributed to the category of "loyal" convicts and obtained various

disciplinary bonuses (such as additional family visits). He was on good terms with most of his co-detainees. At the same time, he had a conflict with some of the hardened criminals. In July 2009 he was temporarily placed, for his own safety and based on a reasoned decision of the colony administration, in the SHIZO (the punishment and isolation unit), which was also occasionally used as a "safe place" in such situations.

9. The applicant alleged that soon after his transfer to the Plavsk colony he had learnt of the existence of an informal group of loyal convicts which helped the colony administration. That group (which the applicant called "the death squad") was composed solely of ethnic Russians. Their role was to threaten, beat or kill those convicts who opposed the colony administration, or those who had influential enemies outside the colony or refused to pay money to the administration. One of the cells in the colony (no. 112) was turned into a torture room and was used by the members of the group to "break down" those convicts who resisted the administration.

10. According to the applicant, the group was responsible for at least two deaths which had occurred in the colony – the death of Mr Gr. in December 2009, and that of Mr Kl. in 2005. Both convicts were found asphyxiated on the premises of the SHIZO; officially both deaths were characterised as suicides, although in respect of Mr Kl. an investigation into an alleged "forced suicide" was opened and then suspended for want of a suspect. In 2010 the case of Mr Kl. was reopened because of the failure of the investigator to establish the origin of the injuries found on the body of the deceased that did not fit with the scenario of suicide.

11. According to the applicant, some time after his transfer to the Plavsk colony one of the officers of the colony proposed that he join the "death squad". Out of fear of reprisals, the applicant had agreed. He started his "apprenticeship" under the guidance of several colony officials and other convicts. However, several months after joining the "death squad" he understood that he might be required to do terrible things. In addition, the colony administration realised that he was of Jewish origin. His relations with the supervising officers and other loyal convicts deteriorated. The applicant decided to quit and try to obtain a transfer to another colony. Having learnt of his intention to quit, the colony administration decided to punish him for refusing to cooperate.

2. Health condition

12. On 28 January 2009, upon his arrival at the Plavsk colony (hereinafter "the colony"), the applicant underwent a medical check-up which revealed several chronic diseases, in particular, kidney diseases (such as nephrolithiasis, urolithiasis, and nephroptosis).

13. It is unclear whether the applicant was suffering from a fungal infection (mycosis) at that time. According to the transcript of the applicant's medical record made on 31 May 2010 by the Tula Regional

Department of the Federal Prison Service, before 15 February 2010 the applicant did not suffer from mycosis. It can be seen from an extract from the applicant's medical file (to the extent that it is legible) that the applicant underwent a check-up on 27 January 2010. His overall state of health was recorded in the report as "satisfactory". The record did not contain any mention of an injury or abnormality on his hands or feet.

14. At the same time, a certificate issued by the chief doctor of the colony, Dr Pr., indicated that the applicant had a fungal infection on his feet. That certificate had no date on it; an authentic copy was dated "17 November 2010". Another certificate issued by Dr Pr. and dated 29 January 2009 specified that on the day of his arrival to the colony the applicant had been offered hospitalisation, but he had refused. The applicant's medical notes apparently also contained the following handwritten entry dated 29 January 2009: "foot mycosis". The applicant asserted that those entries had been added to his medical file much later, in 2010, and that the certificates issued by Dr Pr. had been backdated and did not reflect his real condition at that time.

15. From the documents submitted by the Government it appears that on 4 February 2010 the applicant underwent another medical check-up. The extract of the record of 4 February 2010, to the extent that it is legible, does not mention any injury or abnormality on the applicant's hands or feet.

C. The applicant's description of the events of 27 - 29 January 2010

16. On 27 January 2010 the applicant was placed in the SHIZO. According to the Government, it was done at the applicant's own oral request, because of a conflict with other convicts.

17. On the same day the applicant was subjected to a body search, during which Mr Sch. and Mr Dm. (warders), Mr Tn., Mr Vr. (convicts), and several other convicts, whose names the applicant did not know, insulted him. In the applicant's words, they were trying to provoke a fight. Colony officers hit him several times with a rubber truncheon.

18. After that he was taken to cell no. 313 in the SHIZO. Several colony officials gathered in that cell: the acting head of the colony, Mr Yer., and two colony officials, Mr Kzh., and Mr Avd., an officer from the prison security department. They handcuffed the applicant to a bench and started to beat him severely with a wooden stick wrapped in cloth. They also used a gas mask to induce suffocation. He lost consciousness several times. Other colony officials were also present during the beatings, including Mr Sr. and Mr Mkh. Some time later other people arrived: the deputy head of the colony, Mr Zhd., another officer from the prison security department, Mr. Chr., the personnel officer, Mr Vl., the chief doctor, Dr Pr., and Mr Yud. The chief doctor checked his pulse and eyes several times to see whether the applicant was conscious. Mr Chr. and Mr Zhd. personally took

part in the beatings. The applicant presented a very detailed account of what they were doing and saying. After a heavy blow to the head the applicant passed out.

19. On the morning of 28 January 2010 the applicant found himself in cell no. 203. Mr Kzh. and Mr Avd., Mr Tn., Mr Vb. (convicts) and some other convicts arrived bringing with them a wooden tool resembling a clamp and some other tools. The applicant's hands were fixed in the clamp and his feet were tied to the legs of the stool. They put a gas mask on him and started to insert needles under his nails and then began tearing his nails away with the pincers: first his toenails, then his fingernails. The applicant described in detail where he had been sitting, and how he had been tied up. At a certain point the applicant started to vomit and passed out. Mr Vb. and Mr Tn. then gave him an injection and ordered him to wipe his blood off the floor with a rug. While doing that he managed to collect and hide some of his finger and toenails.

20. On the following day the applicant was beaten again. He gave the names of people who had beaten him (Mr Sh., Mr Yersh., Mr Sch., Mr Dm., and Mr Slm.). He spent several nights naked and handcuffed in a seated position by an open window.

21. On 1 February 2010 the applicant saw Dr Pr. and Mr Kzh. They returned his clothes to him and gave him an injection. As the applicant understood from their dialogue, the injection was supposed to make the bruises disappear. In the evening he was allowed to call his wife, but was ordered not to tell her anything about what had happened to him.

22. The applicant alleged that for several weeks after that episode he did not take any outdoor exercise, since he had been afraid of being attacked by other convicts loyal to the administration of the colony in the areas of the exercise yard not covered by the video surveillance cameras.

23. On 4 February 2010, during a family visit, the applicant managed to pass nine of his nails to his mother. According to the applicant, he concealed the nails by sticking them to his body with tape. The applicant's mother saw numerous bruises on his body.

D. The first official inquiry

24. On 11 February 2010 the applicant's wife formally complained to the Investigative Department of the Tula Region that her husband had been tortured. She sought to initiate criminal proceedings against the colony officials involved in the alleged torture. To her request she attached a hand-written statement by the applicant dated 5 February 2010 in which he had described the ill-treatment and had identified colony officers and convicts involved in it. On the same day her complaint was forwarded to the Donskoy Town Investigative Department, with a cover letter.

25. On 15 February 2010 the complaint was allocated to investigator Kn. of the Donskoy Town Investigative Department. At 2 p.m. he decided to open a preliminary inquiry into those events.

26. Having arrived to the colony the investigator questioned the applicant, who confirmed his earlier account, and seven colony officials, who unanimously denied the applicant's allegations. Later on that day the applicant underwent a medical check-up by a doctor, a trauma surgeon. Having visually examined the applicant's hands and feet the doctor concluded that the applicant "did not have any traumatic injuries or post-traumatic changes to his finger or toenails", but that his finger and toenails had been "deformed" by fungal infection ("onychomycosis", or "ringworm of the nail").

27. On the same day the colony was visited by a delegation of the Commission on the Public Supervision of Penal Institutions of the Tula Region. The head of the delegation had a private conversation with the applicant himself and the colony administration officials and concluded that the applicant's allegations were lies.

28. On 16 February 2010 the investigator visually examined cell no. 203. The investigator did not find any traces of blood or other evidence to confirm the applicant's account. The examination took place in the presence of several colony officials, namely Mr Kzh., Mr Sch., Mr Avd., and Mr Bl. In the record of the examination the applicant made a handwritten remark to the effect that he had felt intimidated by the presence of the colony officials during the examination. After the examination the applicant gave the investigator one of the nails which he had kept.

29. On the same day the investigator questioned twenty-three other colony officers and convicts and recorded their written explanations. The witnesses had been informed of their right not to testify against themselves or against their close relatives. However, they had not been warned about criminal liability for perjury. They all denied any ill-treatment of the applicant; they also denied having heard of it, or having seen any traces of ill-treatment on the applicant. Written statements obtained from many of those witnesses were similar in their language, structure and content. It appears that none of them was questioned in detail about their contact with the applicant between 27 and 29 January 2010, or about their whereabouts.

30. Among other witnesses, the investigator obtained explanations from Dr Pr. While describing the applicant's health condition at the time of his arrival at the colony in January 2009 Dr Pr. mentioned eczema and dermatitis on the hands and feet, but no fungal infection. He also testified that the applicant had not complained of any health problems before February 2010. None of the convicts questioned by the investigator mentioned any abnormalities on the applicant's hands or toes before the events complained of.

31. On the same day the investigator commissioned two examinations of the applicant, a medical one and a psychological one, and formulated a number of questions for the experts to answer.

32. On that same day the acting head of the Tula Regional Department for the Execution of Sentences decided not to proceed with the internal disciplinary inquiry for want of evidence of any abuse of power on the part of the colony officials. It was established, *inter alia*, that on 27 January 2010 the applicant had been placed in the SHIZO "at his own oral request", because of a conflict with other convicts. The decision to close the inquiry did not contain any reference to the injuries found on his body.

33. On 17 February 2010 the applicant was transferred to cell no. 207 in the SHIZO. According to him, it was freshly painted, not ventilated and very cold – the applicant had to put all of his clothes on. In the cell the applicant was constantly under videosurveillance, even when using the toilet, which had no partition. In that cell the applicant met with a journalist, in the presence of several colony officials (including those allegedly involved in the beatings). He confirmed to the journalist his account of the events and demonstrated his hands without nails. He also tried to give the journalist a sample of his saliva, asking him to give it to an expert for examination, but the colony officials present at the meeting opposed to it, so the journalist did not take the sample. The journalist later testified that he had smelt the odour of fresh paint in the cell.

34. On the same day the investigator questioned the applicant again. The applicant confirmed his account. In addition, in his written comments added to the record of his questioning he complained that the investigator in charge of the case had refused to investigate the case thoroughly, that he had discouraged the applicant from pursuing the case, and warned that it would not bring the applicant anything but trouble, that he might be killed, that the colony officials had friends everywhere, in particular in the prosecutor's office, and so on. The applicant indicated that on the previous day he had met with two of the colony officials involved in the torture and had seen in their hands copies of the official materials of the inquiry. They had allegedly told him that the investigator, Kn., had been helping them to conceal the evidence of the crime, and that he had been well paid by them to do so.

35. On an unspecified date the investigator obtained a copy of the video footage from the surveillance cameras on the premises of the SHIZO. Copies of the video surveillance recordings were submitted to him by Mr Kzh. Having watched the recordings, the investigator drew up a report stating that no beatings could be seen on them. It was not specified what time period and what area of the SHIZO premises those recordings covered, or what they showed exactly.

36. On the same day the investigator commissioned an expert examination from the Tula Regional Dermatovenerology Clinic. The

investigator sought to establish whether the applicant suffered from any skin condition affecting the nails.

37. On 18 February 2010 the applicant's relatives hired a lawyer, Mr St., to represent the applicant's interests in that case.

38. On 18 and 19 February 2010 two doctors from the Tula Regional Dermatovenerology Clinic examined the applicant. After a visual examination of his hands and feet they concluded that the applicant suffered from "onychomycosis of the finger and toenails". The report had a postscript indicating that the applicant had been diagnosed with mycosis in January 2009, when he had arrived at the colony.

39. On 19 February 2010 a visual examination by Dr G. from the Forensic Bureau confirmed that the applicant did not have any fingernails, but that this was related to a fungal infection. The examination also revealed traces of beatings (caused by about fifteen blows to different parts of his body, including the shoulders, chest, belly and hips), received between three and twelve days prior to the examination. The expert considered that all those blows had been to parts of the body "accessible to the applicant's own hand".

40. On 19 February 2010 the colony administration organised a press conference on the premises of the colony. The applicant was afforded an opportunity to answer the journalists' questions.

41. On the same day the applicant wrote to his lawyer expressing his wish to provide a sample of his saliva on a cotton ball in the event that the nails he had given to his mother were examined.

42. On 24 February 2010 a psychological expert examination of the applicant was carried out on the premises of the colony. It did not reveal any significant details. The doctors were unable to conclude whether or not the applicant was prone to self-harm or to fantasising. The doctors recommended conducting an additional psychological examination of the applicant in a hospital.

43. Several "psychological profiles" of the applicant were obtained from the administration of the colonies and prisons where he had been detained before. They described the applicant as mentally stable, self-confident, a religious person, obedient to the prison rules, and not belonging to any criminal gang within the colony. A psychological profile drawn up by the staff of the Tula colony was quite different; the applicant was described as a skilful, ambitious, arrogant and egotistical person, who liked to dominate others and to "show off". The investigator also obtained personal characteristics and a disciplinary record of the applicant.

44. On 24 February 2010 the investigator questioned the relatives of the applicant, who had seen him shortly after the described events. The investigator also obtained one of the applicant's nails from his relatives. The applicant's relatives described the state in which they had found the applicant on 4 February 2010 and the circumstances in which they had

received the nails from him. In particular, Ms Krk., the applicant's sister, testified that she had visited him in the colony together with their mother. According to her, when the applicant had entered the meeting room, he had been fully dressed and was wearing outdoor clothes. He had explained to her that it had been very cold in the cell. Then he had described to her and their mother what had happened to him over the previous few days and had given them the nails. She had seen shreds of skin on the nails and traces of needles on them. According to her, at that moment the applicant's hands had been so damaged that he had been unable to wash himself and had had to ask his mother to help him with that. It had taken him two days to write his first description of the events. When he had taken off his shoes his socks had been stained with blood and traces of injections had been visible on his arms and legs. She had also seen yellowish bruises on his body; the applicant had been very pale and weak. The applicant's mother gave evidence in similar terms.

45. On the same day the applicant's lawyer wrote to the investigator, asking him to organise for an expert in mycology to examine the applicant, to take samples of his blood, skin and scrapes from the nail beds to examine whether they contained traces of a fungal infection, to establish whether the nails in the possession of the applicant's relatives did indeed belong to the applicant, and to examine whether or not the applicant had had a brain concussion. The investigator replied to the applicant's lawyer that since no criminal investigation had been opened, the alleged "victim" had no right to request such investigative actions.

46. On 25 February 2010 the investigator decided not to open an investigation on the ground that there was no indication that a crime had been committed. The testimony of the applicant and his relatives was not, in the investigator's opinion, credible. The investigator held that the applicant's allegations were not confirmed by other evidence collected during the inquiry, namely the answers of the colony officers and convicts, the video recordings, and the results of the forensic examinations which had concluded that his fingernails had been affected by a fungal infection and that all the bruises on his body had been located in places accessible to the applicant's own hand.

E. Expert examinations commissioned by the applicant's lawyer

47. On an unspecified date the applicant's lawyer, Mr St., commissioned an expert examination of the fingernails he had received from the applicant's relatives.

48. On 19 February 2010 the State Scientific Centre for Dermatovenerology in Moscow concluded that the fingernails they had been given had not been affected by a fungal infection. On the same date the applicant sent his lawyer samples of his saliva on a cotton ball for genetic

examination. The lawyer sent that sample together with one fingernail to an expert.

49. On 1 March 2010 an expert from the Medical Agency "Bion" concluded, on the basis of the DNA analysis of the samples of saliva provided by the applicant and the nails submitted by the applicant's mother, that the fingernail had belonged to the applicant.

50. On 9 March 2010 experts from a private forensic laboratory "Granat" answered the questions put by the applicant's representative. They concluded that the fingernails had been extracted with the help of a blunt and hard tool, from a living person with blood type A II.

51. On 11 March 2010 the applicant wrote to the colony governor asking him to allow the expert to visit the colony and examine him.

52. On 12 March 2010 the applicant, through his lawyer, concluded an agreement with the State Centre for Forensic and Criminological Examinations of the Ministry of Defence.

53. On 23 March 2010 a medical expert from that Centre, Ms M., visited the applicant in the colony. She examined the applicant and discovered several long scars, mostly on the right side of his body. His fingernails were one third of the normal size; his toenails were one quarter of the normal size, and very thin. The expert did not detect any visual signs of a fungal infection, but established that the applicant's fingertips and toes had been injured and then infected. She concluded that the applicant had lost finger and toenails by "traumatic extraction", which had happened within a short period of time. She took samples of his blood, urine, and subungual matter. A visual inspection showed the presence of blood in the urine; the expert concluded that it was the result of kidney damage. She also concluded that the applicant had had a traumatic head injury, high blood pressure and high blood sugar levels. The colony officials took part in the taking of samples and signed, *inter alia*, the blood collection record.

54. When Ms M. was about to leave, the colony administration stopped her, referring to the absence of authorisation from the investigator, and ordered her to destroy the samples. According to her, the colony officers offered her money if she agreed to sign a statement that she had never examined the applicant and had never been in the colony. When she refused, the colony officers threatened to plant prohibited goods in her bag if she insisted on taking the samples back. She was held on the colony administration premises until she agreed to give or destroy the samples she had collected. Thus, she had to tear up the written record of the sample collection which contained the applicant's blood samples, but she kept the shreds of it with the signatures of the colony officials, so she managed to examine them later in the Centre's laboratory.

55. On the same day Mr Kzh., who had seized the samples from Ms M., wrote a report explaining the circumstances of Ms M.'s visit. He explained

that the samples had been seized from her because her participation in the expert examination had not been approved by investigator Kn.

56. On the same day the State Scientific Centre for Dermatovenerology in Moscow sent the applicant a written reply to his questions. The letter indicated that a diagnosis of mycosis could be confirmed only following a microscopic examination for the presence of fungi. A fungal infection may affect all nails on the hands and feet, and is very often provoked by a trauma, and not by the fungi. Long-term mycosis may result in the infection spreading to other parts of the body, especially to the soles of the feet and the groin, but can also remain located in the nail area. The letter excluded that nail mycosis could disappear by itself.

57. On 24 March 2010 Ms M. wrote a report to her superior, describing the events of the previous day.

58. On 12 April 2010 the State Centre for Forensic and Criminological Examinations of the Ministry of Defence issued a report in which it concluded that the blood on the fingernails and the blood on the "shreds" of the record belonged to the same person.

59. On 15 April 2010 the Federal Security Service (FSB) sent a letter to the Moscow Investigative Department concerning a criminal investigation in an unrelated case. That case involved several lawyers who worked together with Mr St., the applicant's lawyer. It appears from that letter that the FSB obtained information from the telephone operating company about the telephone calls of Mr St., their time and duration.

F. Further official inquiries; criminal-law complaints of the applicant before the courts

60. On 3 March 2010 the Tula Regional Prosecutor's Office ordered the Donskoy District Investigative Department to conduct an additional inquiry. It ordered it, in particular, to question the warders in detail, to establish the identity of some other persons involved in the alleged torture and question them, to search cell no. 112 (the "torture room"), to assess the applicant's psychiatric condition, to examine other allegations of ill-treatment in the colony in respect of other convicts referred to by the applicant, to establish the cause of the injuries found on the applicant's body, and to question him again. The Tula Regional Prosecutor indicated, in particular, that the list of investigative actions to be taken was not exhaustive and that other measures might be required in order to establish the circumstances of the case.

61. The case was again entrusted to investigator Kn. of the Donskoy Town Investigative Department. Investigator Kn. added information concerning the death of the convict Mr Gr. to the case-file materials. He also added materials in respect of Mr Kl. – the investigation in that case was pending and the main suspicion at that time was that Mr Kl. had died as a result of a "forced suicide". It can be seen from the decision of 1 March

2010 concerning the investigation in the case of Mr Kl. that he had been beaten before his death, whereas the death itself had been caused by asphyxiation.

62. On 11 March 2010 investigator Kn. questioned thirteen people – colony officials and convicts. The investigator concluded from the written explanations obtained from them that the applicant had not been ill-treated. The wording of their testimony was identical in some places.

63. On 12 March 2010 the investigator visited the colony and examined cell no. 112. He did not find any visible traces of blood on the floor. He also continued to question the colony officials and convicts.

64. On 13 March 2010 the investigator questioned the doctors of the Tula Regional Dermatovenerology Clinic who had examined the applicant earlier. The doctors confirmed that the applicant's finger and toenails had been deformed by a fungal infection. The wording of their testimony was identical in some places.

65. On 22 March 2010 the investigator commissioned an expert examination of the two fingernails he had earlier received from the applicant and his wife.

66. On 9 April 2010 the medical examination was completed. Although some of the pages from the examination report in the Court's possession are missing, it appears that the experts concluded that the blood on the fingernails was of the same group as the applicant's blood. Furthermore, they did not find any traces of "mechanical extraction" on the "outer edges" of the fingernails, but did not exclude the "traumatic" origin of their removal due to the shape of the "inner edges" of the nails.

67. On 12 April 2010 the Deputy Chief Investigator of the Donskoy District gave formal instructions to the investigator in charge of the inquiry about further investigative actions to be taken. In particular, the investigator was ordered to carry out an additional expert examination of cell no. 112 with the use of special techniques, to carry out a medical examination of the applicant in order to establish whether he was indeed suffering from a fungal infection, and to clarify contradictions in the statements of some witnesses.

68. On 21 April 2010 the investigator examined cells nos. 203, 112, and 313 in the colony with the use of an ultraviolet lamp. No traces of blood were found there.

69. On 21 April 2010 the investigator commissioned the Forensic Bureau to carry out a second medical examination of the applicant. On 28 April 2010 the Bureau refused to conduct the examination requested with reference to its earlier findings to which they had nothing to add in the absence of any new facts or materials.

70. On 21 April 2010 the investigator ordered an examination of the fingernails received from the applicant and his relatives. The expert from the Tula Regional Dermatovenerology Clinic concluded that one of the nails

(received by the investigator from the applicant himself) did have traces of fungal infection, whereas the other (received from the applicant's wife) did not.

71. On 21 April 2010 the investigator tried to question the applicant, but the applicant refused. The applicant told the investigator that he would give evidence only if a criminal case was opened, and only in the capacity of the injured party and in the presence of his lawyer. The applicant also refused to be questioned with a polygraph.

72. On 21 April 2010 the investigator requested an additional expert examination of the applicant's case by the Forensic Bureau. However, on 28 April 2010 the head of the Forensic Bureau refused to conduct the examination since the questions put by the investigator were the same as those addressed in the report of 19 February 2010.

73. On 24 April 2010 the investigator questioned two colony officials, allegedly involved in the torture. They denied any ill-treatment; their testimony was identical in some places.

74. On 27 April 2010 the applicant was transferred to another colony in the Tula Region, FBU IK-4.

75. On 6 May 2010 the investigator questioned two convicts, Mr Abr. and Mr Mat. Those convicts had been detained in the SHIZO at the time of the events at issue, next to the cell where the applicant had allegedly been ill-treated. According to the written text of their testimony, both convicts had not heard any screams or other sounds and had not seen the applicant. The type-written text of their testimony contained a handwritten note by the investigator stating that both witnesses had refused to sign it.

76. On 13 May 2010 the investigator decided to test the credibility of the witnesses with a polygraph. The applicant refused to undergo the test without having obtained the opinion of his lawyer. Two of the officers of the colony underwent the test. They denied any involvement in the applicant's ill-treatment.

77. On 14 May 2010 the investigator decided not to initiate a criminal investigation into the applicant's allegations. In support of his decision the investigator referred mainly to the testimony of the colony officials, who had denied any ill-treatment. Their major argument was that if the applicant had been beaten or ill-treated, other convicts would have learnt of it, and that would represent a serious security issue, maybe even cause a riot. They all claimed that nobody had heard the noise of beatings or screams. The convicts questioned by the investigator testified that they had not heard the screams, neither had they seen traces of torture or beatings on the applicant. The investigator also referred to the testimony of the doctors who had examined the applicant as part of the official inquiry and who had confirmed their findings that the applicant had suffered from a fungal infection which could lead to the "deformation of, or damage to the nails". They had also not detected any signs of the forceful extraction of the nails.

The investigator considered that the expert examinations carried out by Granat and by Ms M., hired by the applicant's lawyer, were unreliable, since they had been conducted "by inappropriate persons using extra-procedural methods". The investigator also summarised the applicant's medical history. That summary states that the fungal infection was not detected before the examination of the applicant on 15 February 2010. The investigator concluded that the applicant's allegations were untrue and refuted by other evidence obtained in the course of the previous inquiries.

78. On 20 May 2010 the Donskoy Town Prosecutor quashed the decision of the investigator and ordered him to continue the inquiry. On 25 May 2010 the Deputy Chief Investigator of the Tula Regional Prosecutor's Office also ordered the investigator to continue the inquiry. In particular, he ordered him to question the applicant in the presence of his lawyer, to carry out investigative actions specified in the decision of 3 March 2010 (see paragraph 60 above), and to assess the conclusions of expert Ms M.

79. On 26 May 2010 the applicant was questioned in the presence of his lawyer. He testified that he would give evidence only as part of a formal criminal investigation in respect of the colony officials who had tortured him.

80. On 2 June 2010 the investigator again examined cell no. 203 and established that loud screams in that cell were perfectly audible in the adjacent cell and in the corridors.

81. On 4 June 2010 investigator Kn. decided not to open a criminal investigation into the applicant's allegations. In his decision the investigator summarised the statements made by the applicant and his relatives, and compared them with the statements of the colony officials and convicts questioned in the course of the previous inquiries. The text of the decision of investigator Kn. was very close to the text of his earlier decision of 14 May 2010. Thus, he referred to the testimony of the colony officials, all of whom denied ill-treatment and characterised the applicant's allegations as "lies", "fairy-tales", "delirium", and so on. The colony officials excluded any possibility of the unlawful use of force by a colony official and or by a "loyal" convict in respect of another convict, since this would not have passed unnoticed by other detainees, and would have provoked a riot. This phrase, with minor variations, was repeated in the statements of at least seven colony officials and three convicts. They denied having seen the applicant being ill-treated or having heard of anything of that kind. The investigator also referred to the expert reports which attributed the absence of the applicant's finger and toenails to mycosis (reports of 15 and 19 February 2010) and described the bruises on his body as not having been received before 4 February 2010. The investigator summarised the testimony of Mr Abr. and Mr Mat., two other convicts detained in the SHIZO at the time of the events at issue. He also mentioned the testimony

of prison warder Kol., who had been on duty on an unspecified date after 10 February 2010. Warder Kol., in particular, testified as follows:

> "... During my round [I] noticed [the applicant] sitting by the table and beating himself with both hands in the chest, belly and legs. [I] did not attach any importance to it, since [I] believed that [the applicant] was trying either to flex his muscles or to warm himself up, although it was quite warm in the cell, and [the applicant] had his outdoor clothes on. [The applicant] hit himself on the hips, belly, chest, arms, and shoulders. Later [I] learned that [the applicant] had complained of beatings ... and then ... [I] reported [that incident] to my superiors."

82. The applicant challenged the decision of 4 June 2010 before the Donskoy Town Court. On 20 August 2010 the Town Court dismissed his complaint. The applicant lodged an appeal against the decision of the Donskoy Town Court. The court of appeal, having examined the decision, quashed it and remitted the case to the first-instance court for fresh examination.

83. According to the Government, the court proceedings are still pending. According to the information and copies of court documents produced by the applicant, on 9 December 2010 the Donskoy Town Court decided to quash the decision of 4 June 2010 and remit the case for further inquiry to the investigator. In the operative part of the judgment, the Town Court held, with reference to the provisions of Article 13 of the European Convention, that the applicant's arguments about the ineffectiveness of the inquiry were convincing, that the investigator had failed to establish with certainty the existence of grounds precluding further criminal investigation, and that the expert opinions should have been obtained by the investigator in full compliance with the law, in particular, by complying with the obligation to inform the experts about criminal liability for perjury. The Town Court added that the information thus obtained (that is, not in accordance with proper procedure) was unfit for confirming or rebutting the applicant's allegations. The Town Court also noted that it was incapable of addressing the applicant's allegations concerning the reliability of the information collected during the inquiry, since it was not the court's role to predetermine the possible conclusions of a future criminal case. The case was thus referred back to the investigator. That decision was confirmed by the Tula Regional Court on 16 February 2011.

84. On 21 March 2011 investigator Kn. decided not to open a criminal investigation into the case. The conclusions of investigator Kn. repeated his earlier decisions not to open a case. Investigator Kn. compared the applicant's submissions and the testimony of the applicant's relatives with other evidence, and concluded that the applicant had lied. The investigator concluded that the bruises found on the applicant's body had been self-inflicted. He also concluded that the applicant had lost his fingernails as a result of a fungal infection. The investigator's decision referred to the conclusions of the experts hired by the applicant's lawyer. The investigator

concluded that their reports were unreliable since those examinations had not been made as part of the official inquiry.

G. Other court proceedings

1. Proceedings concerning expert Ms M.

85. On 2 April 2010 the Head of the State Centre for Forensic and Criminological Examinations of the Ministry of Defence, Mr P., wrote to the Prosecutor General about the incident of 23 March 2010 when one of the experts of the Centre, Ms M., was detained and threatened by colony officials. He asked the Prosecutor General to conduct an inquiry into that episode. In the opinion of Mr P. such actions of the colony officials could amount to an abuse of power, a criminal offence under the Criminal Code.

86. That request was forwarded from the General Prosecutor's Office to the Donskoy Town Investigative Department and was received there on 11 May 2010.

87. On 14 May 2010 the investigator decided to open an inquiry into the actions of Ms M. The decision to open an inquiry pointed to various procedural irregularities in the expert report and its overall unreliability. The investigator also considered that the conclusions of Ms M. were outside of the field of her professional competence. He characterised the actions of the expert as having been in "excess of power". There is no information about any development in those proceedings.

88. On 3 June 2010 investigator B. of the Donskoy Town Investigative Department refused to open an investigation into the episode of 23 March 2010. Based on the testimony of colony officials who had accompanied Ms M. during her visit, the investigator concluded that she had lied about the circumstances of her visit to the colony.

89. On an unspecified date the applicant complained to a court about the incident of 23 March 2010. The applicant sought to have the actions of the colony officials declared unlawful.

90. On 15 July 2010 the Donskoy Town Court of the Tula Region dismissed the applicant's complaint. The judge found that the colony administration had granted Ms M. leave to visit and examine the applicant, but that the permission had not included taking samples. When she had tried to obtain samples of the applicant's blood and urine, the colony officials had contacted investigator Kn., who had informed them that Ms M. was not an officially appointed expert in the case. The colony officials had then examined her documents again, and decided that she was not entitled to provide medical assistance to the applicant. They had seized the samples and some medical instruments she had had with her. All those objects were "prohibited items" within the meaning of the prison rules, so their seizure had been lawful.

91. The applicant appealed. On 23 September 2010 the Tula Regional Court dismissed the appeal, having confirmed the conclusions of the Town Court.

2. Proceedings concerning backdated entries in the applicant's medical documents

92. On 23 June 2010 the applicant complained to the court that several entries in the medical file allegedly related to January, February and September 2009, had in fact been added much later by Dr Pr., or on his orders. Those entries indicated that the applicant had been diagnosed with "foot mycosis", that he had twice refused hospitalisation without giving reasons, and that he had received some "ointment" from the colony pharmacy. The applicant claimed that those entries had been falsified and asked the court to commission an expert examination of his medical file.

93. On 15 July 2010 the Donskoy Town Court dismissed his complaint as unfounded. The Town Court refused to commission an examination of the medical file or of the specific entries made by the medical personnel of the colony by a graphologist. The Town Court indicated that the applicant had sought to have the lawfulness of the colony officials' actions verified. The court concluded that when making the entries at issue the colony officials had acted within their competence and thus lawfully, and that the applicant's right to receive adequate and accessible information about his health condition and about the treatment he had received had not been breached. On 9 September 2010 the Tula Regional Court upheld the judgment of 15 July 2010 by the Town Court.

3. Proceedings against the applicant

94. On 16 July 2010, upon a complaint by a number of colony officials accused by the applicant of torture, the police of the Donskoy Town charged the applicant with criminal libel. He was prosecuted for having falsely accused those colony officials. By a decision of 17 November 2010 (confirmed on appeal on 30 March 2011) the Donskoy Town Court confirmed the lawfulness of the prosecutor's decision to open a criminal case. There is no information about any further development in those proceedings.

H. The "poisoning accident"

95. On 12 April 2010, in the evening, the applicant felt sick after having eaten: he suspected that he had been poisoned deliberately by the colony officials. He asked the warder on duty, Mr Shm., to call a doctor. He then purged himself in his cell, using tap water. According to the applicant, Dr Pr. came to examine him and gave him some pills. After taking one pill,

the applicant felt acute pain in his stomach and started vomiting blood. Dr Pr. came again, but did not do anything to help. From his words the applicant understood that Dr Pr. expected him to die. At 7.40 p.m. Dr Pr. ordered the applicant's transfer to the colony medical unit. The applicant refused to take any medicine from the colony doctors since he did not trust them, so an ambulance was called from a nearby town. The ambulance team arrived at 8.40 p.m.; the doctors gave him injections and fitted a drip. The applicant felt better. After that incident the applicant remained in the colony medical unit. He refused to eat the food prepared in the colony and ate only tinned food, out of fear of poisoning.

96. According to the documents produced by the Government, on 12 April 2010 the applicant started to vomit blood. He was examined by a colony doctor and by an external ambulance team; however, he refused hospitalisation since he did not trust the doctors. According to the testimony of the doctors, he refused to show his mouth for examination.

97. On 27 April 2010 the applicant was transferred to another colony, FBU IK-4, in the Tula Region. In his words, during the transfer he was insulted – the warders dragged him across the floor despite his weakness and the high fever he had that day.

98. On 30 April 2010 the applicant had a meeting with his lawyer, Mr St. He gave Mr St. his T-shirt tainted with blood, which he had been wearing the day of the alleged poisoning.

99. On 12 May 2010 the investigator questioned the colony doctor who testified that he had not detected any signs of the applicant having been poisoned. On the same day the applicant was taken from FBU IK-4 to FBU IK-1 for questioning. According to the applicant, the temperature in the prison van which transported him there and back was very high. In FBU IK-1 he was questioned by an investigator who threatened him and his wife, distorted his words, and refused to record his exact testimony.

100. On 19 May 2010 the applicant was taken to FBU IK-1 for questioning again. He spent six hours in an overheated compartment of a metal prison van, in which he could not even stand upright (the dimensions of that compartment were 0.5 x 0.6 x 1.2 metres). The applicant stated that this had been on purpose, to cause a heart attack or other medical incident that would kill him.

II. RELEVANT DOMESTIC LAW

101. Abuse of office associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment (Article 286 § 3 of the Criminal Code). Article 112 § 2 establishes liability for intentionally causing bodily harm of medium gravity with particular cruelty (up to five years' imprisonment). Article 117 § 2 establishes liability for torture (up to seven years' imprisonment).

102. The Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, the CCrP), establishes that a criminal investigation may be initiated by an investigator upon the complaint of an individual (Articles 140 and 146). Within three days, upon receipt of such complaint, the investigator must carry out a preliminary inquiry and make one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to refuse to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the competent investigative authority. The complainant must be notified of any decision taken. The refusal to open criminal proceedings is amenable to an appeal to a supervising prosecutor or to a court of general jurisdiction (Articles 144, 145 and 148).

103. The victim shall have the right to take part in criminal proceedings (Article 22). The decision to recognise the procedural status of a victim may be taken by an investigator, within a criminal investigation, or by a judge (Article 42 § 1), where the case is before a court.

104. The victim has, in particular, the following rights: to submit statements and evidence, to take part in the investigative steps which are carried out at his request, to read the findings of forensic studies, to obtain copies of the decisions concerning the institution of criminal proceedings and their discontinuation or adjournment, and to participate in the trial and appeal proceedings (Article 42 § 2 (2, 4, 9, 11, 13 and 14)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ILL-TREATMENT OF THE APPLICANT IN JANUARY 2010

105. The applicant complained, under Article 3 of the Convention, that between 27 and 29 January 2010 he had been tortured by the colony officers and convicts. He also complained that the investigation into his allegations was not effective, and thus contrary to Articles 3 and 13 of the Convention.

Article 3 of the Convention reads as follows:

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

Article 13 of the Convention 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. Admissibility

1. The Government's submissions

106. The Government argued that the applicant had had at his disposal a number of legal remedies but had failed to use them appropriately. First, he was entitled to complain about the investigator's refusal to initiate criminal proceedings to a hierarchically superior body – the head of the investigative department or the prosecutor. Second, the applicant was entitled to seek the reopening of the inquiry through a court, by lodging a criminal-law complaint. The decision of a court in such cases was subject to appeal. Third, the applicant was entitled to seek damages in connection with the alleged ill-treatment in civil courts. Fourth, the applicant was entitled to bring an administrative complaint to a local prosecutor supervising the colony or to complain to the Federal Prison Service which was in charge of the colony. The Government concluded that the applicant had had at his disposal an array of remedies capable of addressing his grievances.

107. The Government noted that the applicant had tried to initiate criminal proceedings against the colony officials, and when his attempts had failed, he had lodged a criminal-law complaint with the courts. Following examination of his complaint by the court of appeal, the applicant's case had been referred back to the investigative authorities. The Government concluded that the applicant had not exhausted the effective domestic remedies at his disposal.

108. The Government further argued that the applicant's allegations of ill-treatment were unsubstantiated and refuted by the results of the domestic inquiries. Thus, a fungal infection had first been diagnosed when the applicant underwent a medical examination upon his arrival at the colony, on 28 January 2009, and the doctors "had prescribed a treatment" for the applicant at that time. The applicant, who had allegedly been recruited by a secret extremist organisation, had been unable to give further details about its name, goals, structure, or about particular acts of violence involving members of that organisation. The applicant's behaviour and attitude had created a conflict situation in the colony. On 27 January 2010 he had asked the colony administration to transfer him to a "safe place", which, in the Plavsk Colony, was cell no. 203 in the SHIZO, where he had been detained until 17 February 2010. Visual examinations of the cell in which the applicant had been detained had not revealed any traces of torture or the presence of any special equipment, such as gas masks, wood sticks wrapped in clothes or needles. Furthermore, the questioning of twenty-two colony officers and nine convicts had not confirmed the applicant's story. Following a medical examination of the applicant on 19 February 2010, as well as following his examination by the Dermatovenerology Clinic, it had been established that the applicant suffered from a fungal infection which

had caused the deformation of his finger and toenails. An expert examination report, prepared at the request of the investigator, had concluded that some of the nails had no traces of forced extraction, whereas two nails had probably been extracted by a "traumatic" method. The applicant's allegations had been dismissed as unfounded by the Commission on the Public Supervision of Penal Institutions of the Tula Region. The applicant had been offered medical treatment in the colony hospital, but he had refused. The Government finally reiterated that the examination of the applicant's complaint was still pending.

2. The applicant's submissions

109. The applicant maintained that although the remedies referred to by the Government existed in theory, in practice they were ineffective. In his complaint to the competent authorities he had described the relevant facts in detail, identified the officers and convicts who had taken part in the alleged torture and produced evidence in support of his allegations. However, the authorities had failed to investigate the case. Several consecutive inquiries had not resulted in a criminal investigation being opened; without such investigation the applicant had been unable to fully enjoy his right to an "effective investigation". On several occasions the inquiry had been closed by investigator Kn. All his complaints to the Federal Prison Service had been either dismissed or referred back to the prosecuting authorities. All the attempts of the applicant's lawyer to collect evidence (in particular, by taking samples of the applicant's blood, urine and saliva by expert Ms M.) had been impeded by the colony administration. Following the reopening of the inquiry by the court, the case had returned to the hands of investigator Kn. who, on 21 March 2011, had decided not to proceed with it and not to open a formal criminal investigation.

110. On the merits the applicant claimed that his description of the events of 27-29 January 2010 was accurate, and that he had been tortured as he described. Furthermore, the investigative authorities had decided to institute a criminal case against the applicant, in order to put pressure on him in connection with his application to the Court. According to the applicant, his lawyer, Mr St., had been threatened by investigator Kn. in connection with the former's participation in the applicant's case.

3. The Court's assessment

111. The Court notes the Government's submission that the applicant failed to exhaust domestic remedies. The Court reiterates that if an individual raises an arguable claim that he has been seriously ill-treated by law-enforcement officials, a criminal-law complaint may be regarded as an adequate remedy within the meaning of Article 35 § 1 of the Convention (see *Assenov and Others v. Bulgaria*, no. 24760/94, 27 June 1996,

Decisions and Reports 86-B, p. 71). As a general rule, the State should be given an opportunity to investigate the case and respond to allegations of ill-treatment; however, if the remedy chosen is adequate in theory, but in the course of time proves to be ineffective, the applicant is no longer obliged to exhaust it (see *Tepe v. Turkey*, 27244/95, Commission decision of 25 November 1996, as confirmed in *Mikheyev v. Russia*, no. 77617/01, § 86, 26 January 2006).

112. The Court further reiterates that where an individual raises an arguable claim that he has been seriously ill-treated, that provision requires by implication that there should be an effective official investigation (see *Georgiy Bykov v. Russia*, no. 24271/03, § 60, 14 October 2010). A somewhat similar (although not always identical in scope and nature) obligation also follows from the Court's case-law under Article 13 of the Convention, which provides that in cases involving serious allegations of ill-treatment, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the acts of ill-treatment (see *Cobzaru v. Romania*, no. 48254/99, §§ 80-82, 26 July 2007; *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

113. The Court observes that in the present case the applicant sustained serious injuries while in the SHIZO of the colony. Thus, he either "lost" his finger and toenails or they were seriously "deformed". Further, he had over a dozen bruises on his body. The applicant's description of the circumstances in which he had received those injuries was very detailed, specific, and consistent throughout the whole period under examination. The applicant identified most of the officers involved in the alleged ill-treatment. In the Court's opinion, the applicant's complaint in such circumstances was at least "arguable".

114. The Court further observes that the applicant sought the institution of criminal proceedings against the colony officers. Following several refusals to open a case, his complaint was reviewed by the court at two levels of jurisdiction and then remitted to the investigative authorities. When the investigative authority decided again not to proceed with the case, the applicant realised that any further attempt to obtain the criminal prosecution of the colony officers was futile. He concluded that he was not therefore required to exhaust that remedy as it was ineffective.

115. The Court observes that in the present case it is impossible to address the question of whether the applicant's complaints were compatible with the exhaustion criteria without addressing the substance of his complaints under the "procedural" limb of Article 3 of the Convention and under Article 13 thereof. It follows that this objection of the Government should be joined to the merits. Having regard to this, the Court considers, in the light of the parties' submissions, that the complaints under Articles 3

and 13 of the Convention raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It further notes that they are not inadmissible on any other grounds. The Court therefore concludes that these complaints should be declared admissible.

B. Merits

1. Establishment of facts – general principles

116. The Court notes that the applicant's allegation of ill-treatment is contested by the Government on nearly all accounts. The Court has already established that the applicant's allegations amounted to at least an "arguable claim" of ill-treatment. However, that is insufficient to find a substantive violation of Article 3. 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). Having regard to the conflicting evidence submitted by the parties, the firm denial by the colony officers of any violence towards the applicant, and the decision of the domestic authorities not to proceed with the case, it is difficult to conclude that the applicant's allegations have been proven "beyond reasonable doubt", if the burden of proof rests solely on him.

117. However, the Court has repeatedly held that where the events complained of lie within the exclusive knowledge of the authorities, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Thus, the burden of proof may be shifted to the authorities to provide a satisfactory and convincing explanation for injuries sustained by a detainee while in detention, where he had been taken into police custody in good health (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI). In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002). The Court considers that in the circumstances the burden of proof should be shifted to the respondent Government. The Court must therefore establish whether the explanation for the applicant's injuries presented by the domestic authorities, in particular by the investigator in his decision not to open a criminal investigation, was "satisfactory and convincing".

118. The Court emphasises that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are

made under Article 3 of the Convention the Court must apply a "particularly thorough scrutiny" (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, cited above, § 51) even if certain domestic proceedings and investigations have already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007). In other words, in such context the Court is prepared to be more critical of the conclusions of the domestic courts. In examining them, the Court may take into account the quality of the domestic proceedings and any possible flaws in the decision-making process (see, for example, *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 83, 12 February 2009).

119. In view of the above, the Court finds it appropriate, in the circumstances, to start its analysis with the procedural aspect of the applicant's complaint under Articles 3 and 13 of the Convention, namely with his allegation that the domestic investigation was incomplete and ineffective.

2. Effectiveness of the investigation – general principles

120. The Court reiterates that an obligation to investigate allegations of ill-treatment "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see, amongst recent authorities, *V.C. v. Slovakia*, no. 18968/07, § 124, 8 November 2011).

121. The Court acknowledges that the scope of the State's procedural obligation under Article 3, as well as the particular form of investigation, may vary depending on the situation that has triggered that obligation (see, *mutatis mutandis*, in the context of the procedural obligations under Article 2, *Jasinskis v. Latvia*, no. 45744/08, § 72, 21 December 2010, with further references, and *Gongadze v. Ukraine*, no. 34056/02, § 175, ECHR 2005-XI). Furthermore, the list of factors which may affect the "effectiveness" of the domestic investigation is not exhaustive. Nevertheless, it is possible to discern several main criteria used by the Court in this context. These criteria, to the extent that they are relevant in the particular circumstances of the case, are the following.

122. First, the investigation 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 and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling

foul of this standard (see, among many authorities, *Mikheyev*, cited above, §§ 107 et seq., and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports of Judgments and Decisions* 1998-VIII).

123. Second, the investigation must be expeditious. The Court has often assessed whether authorities reacted promptly to complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV) and to the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

124. Third, the investigation should be independent (see *Öğur v. Turkey*, [GC], no. 21954/93, §§ 91-92, ECHR 1999-III, and *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004). Thus, an investigation lacks independence where members of the same department as those implicated in alleged ill-treatment are the ones undertaking the investigation (see *Güleç v. Turkey*, 27 July 1998, §§ 80-82, *Reports* 1998-IV). Independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms (see, for example, *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports* 1998-IV).

125. Fourth, the victim should be able to participate effectively in the investigation in one form or another, in particular, by having access to the materials of the investigation (see, *mutatis mutandis*, *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III, and *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 106, 6 November 2008; see also *Denis Vasilyev v. Russia*, no. 32704/04, § 157, 17 December 2009; *Dedovskiy and Others v. Russia*, no. 7178/03, § 92, ECHR 2008 (extracts); and *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 107, 23 February 2006). Lastly, following an investigation there should be a reasoned decision available to reassure a concerned public that the rule of law has been respected (see, *mutatis mutandis*, *Kelly and Others v. the United Kingdom*, no. 30054/96, § 118, 4 May 2001).

3. Effectiveness of the investigation – application to the present case

(a) Opening of the inquiry

126. In the Court's opinion, any serious complaint of ill-treatment requires prompt reaction by the investigative authorities. It is particularly important in cases where those allegedly responsible for the ill-treatment can easily destroy evidence and put pressure on the witnesses. The written complaint by the applicant's wife received by the Tula Regional Investigative Department on 11 February 2010 (see paragraph 24 above) fell within that category: it concerned serious violence against a convict, involved several high-ranking officials of the colony, including the chief

doctor, and the events described in it took place in the SHIZO of the colony, namely, in the most isolated and restricted area.

127. However, it was not until 2.00 p.m. on 15 February 2010 that the investigator decided to start an inquiry into the incident (see paragraph 25 above). The Government did not account for that delay. The Court observes that in the past it has found a violation of the Convention where officers allegedly involved in ill-treatment were not kept separate after the incident, and were not questioned until nearly three days later, notwithstanding the fact that no evidence indicated any collusion among them or with their colleagues. It was found that the mere fact that appropriate steps were not taken to reduce the risk of such collusion amounted to a significant shortcoming in the adequacy of the investigation (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-VI). In the present case the Court is unaware of any measure taken by the authorities to reduce the risk of collusion or destruction of evidence.

(b) Examination of the cells

128. The initial inaction on the part of the Investigative Department is in striking contrast with the pace of the investigator's work on 16 February 2010, when, within one working day, he questioned twenty-three people, examined cell no. 203, and prepared two requests for expert examinations (see paragraph 29 above). The Court will first look at the investigator's visit to the place of the incident. The Court notes that, having examined cell no. 203, the investigator did not discover any traces of blood. However, it must have been known to the investigator from the applicant's written submissions of 5 February 2010 that on 28 January 2010 the colony officers had ordered him to wash his blood from the floor (see paragraph 19 above). The Court stresses that on that day the investigator satisfied himself with a visual examination of the cell. It was only natural that he was unable to detect any traces of blood without special equipment.

129. Furthermore, having examined cell no. 203, the investigator did not do the same in respect of cells nos. 313 and 112, which were also mentioned in the applicant's version of events. It was not until 21 April 2010 that all three of these cells were examined, this time with the use of an ultraviolet lamp. It appears that in the meantime some of the cells in the SHIZO were freshly painted (see paragraph 33 above); none of these three cells was sealed after the opening of the inquiry; they thus remained in the full control of the colony administration.

130. Lastly, the examination of 16 February 2010 was conducted – the applicant's objections notwithstanding – in the presence of several colony officials, namely officers Kzh, Sch., and Avd., who allegedly participated in the ill-treatment of the applicant (see paragraph 28 above). The role which those officers played during the examination is unclear. The Court observes in this respect that in the case of *Kelly and Others* (cited above, § 114) the

Court was not satisfied that the investigation had been conducted jointly with police officers connected with the operation under investigation. In the circumstances of the present case, although the examination was conducted by a formally independent officer (investigator Kn.), the fact that he was accompanied by those officers inevitably raises reasonable doubt as to his independence. In sum, the examination of 16 February 2010 was conducted in such a way that deprived it of any useful effect.

(c) "Explanations" by the witnesses

131. The Court observes that on 16 February 2010, besides the examination of the place of the incident, the investigator alone questioned over twenty witnesses. In the Court's opinion, the number of people questioned on that day shows that the questioning was superficial at best, if not meaningless. Indeed, having examined the substance of the explanations given by the colony officers and convicts, the Court notes that most of them made formulaic statements to the effect that they had not participated in any ill-treatment, that they had not heard of it, and had not seen any signs of ill-treatment on the applicant (see paragraphs 29 and 62 above). The investigator either did not try or was unwilling to put to them more precise questions, in particular about their whereabouts between 27 and 29 January 2010 and the whereabouts of other officers and convicts identified by the applicant. Furthermore, there was no confrontation between the applicant and the witnesses, where the applicant would have had an opportunity to put questions to them.

132. More importantly, the witnesses questioned by the investigator were not liable for perjury or for the refusal to give evidence. The Court notes that those persons were questioned within the framework of a preliminary inquiry, not a criminal case. The Court has already emphasised that the failure to open a criminal case in a situation where an individual was injured in police custody is a serious breach of domestic procedural rules capable of undermining the validity of any evidence that has been collected (see *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 94-96, 24 January 2008). This logic is fully applicable in the case at hand: "explanations" collected by the investigator were not strictly "witness statements"; consequently, their evidential value was somehow lower. Nevertheless, in his first and subsequent decisions not to proceed with the case the investigator relied heavily on those "explanations".

(d) The applicant's involvement in the inquiry

133. Not only did the absence of a criminal investigation influence the quality of evidence collected by the investigator – it also undermined the applicant's right to effective participation in the proceedings. He was not granted the procedural status of "victim" and could not therefore exercise the procedural rights attached to that status, such as the rights to lodge

applications, to put questions to the experts or to obtain copies of procedural decisions (compare *Denis Vasilyev v. Russia*, no. 32704/04, § 157, 17 December 2009, and *Tarariyeva v. Russia*, no. 4353/03, § 93, ECHR 2006-XV (extracts)). Thus, when on 24 February 2010 the applicant's lawyer asked the investigator to commission an expert examination of the applicant, investigator Kn. replied that since no criminal investigation had been opened, the alleged "victim" had no right to request such investigative actions (see paragraph 45 above).

134. The investigator also actively impeded the applicant's attempts to obtain expert opinions on matters which were relevant and important to the case. When Ms M., a medical expert working at the Ministry of Defence hired by the applicant's lawyer, visited the colony with a view of taking samples of the applicant's blood and urine, investigator Kn. instructed the colony administration to prevent her from doing so (see paragraphs 53 et seq. above). Lastly, when assessing expert opinions submitted by the applicant, the investigator discarded them as obtained "by inappropriate persons and by extra-procedural methods" (see paragraph 77). Since the investigator repeatedly refused to open a criminal case and/or to commission expert examinations sought by the applicant, it is difficult to see how it was possible for the latter to obtain such evidence by "procedural methods".

135. The Court concludes that in the absence of a criminal case the applicant's procedural status did not permit him to participate effectively in the domestic proceedings, and that this problem persisted throughout the whole period under consideration.

(e) Forensic evidence

136. As regards the gathering of forensic evidence by the investigator, the Court, at the outset, notes certain inconsistencies in the opinions of different doctors (see paragraphs 26, 38 and 39 above): the first doctor noted that the applicant's finger and toenails had been "deformed" by a fungal infection, whereas the third examination ascertained the absence of the nails. Second, the Court observes that the first, second and third medical examinations of the applicant consisted of a simple visual inspection of his hands, feet and body. The Court acknowledges that a visual inspection of a victim by a doctor may be appropriate in some circumstances. However, in the present case it was inadequate, since it could not explain the origin of the nails which had been given by the applicant to his relatives and to the investigator. The Court notes that in *Vladimir Romanov v. Russia* (no. 41461/02, § 86, 24 July 2008) it found that three medical reports which listed injuries sustained by the applicant were deficient, since "no evaluation was carried out with respect to the quantity and nature of the applicant's injuries in view of the different versions of what had occurred". In the present case, during the first inquiry nothing was done to examine the nails

in the possession of the applicant's relative and the investigator with a view to establishing whether they had belonged to the applicant, and, if so, how they had been extracted or lost, even though the applicant's lawyer insisted on such an examination (see paragraph 45 above).

137. Furthermore, the expert in psychology who examined the applicant was unable to make any conclusive findings about his character and attitudes. The medics who had examined the applicant did not verify whether the applicant had concussion or kidney damage. Despite that, the investigator decided not to commission another psychological examination and concluded that the applicant's allegations of ill-treatment were unmeritorious.

138. The omission was partially rectified within the second inquiry, when the investigator commissioned an expert examination of the nails obtained from the applicant and his relatives (see paragraphs 66 and 70 above). However, the results of both examinations were uncertain: the doctors did not rule out the traumatic extraction of his nails, and did not detect traces of fungal infection on the nail received from the applicant's relatives, whereas another nail was affected by a fungal infection. Moreover, their findings were rebutted by the expert opinions obtained at the initiative of the applicant's lawyer (see paragraphs 48, 50 and 56 above). Despite such serious contradictions the investigator again decided that the case was not worth any further examination and closed it. During further inquiries the investigator did not try to obtain any additional examinations, and repeatedly relied on the reports obtained in February and March 2010 and on the explanations of the doctors who had prepared them.

139. The Court will not speculate on the evidential value of each particular medical report in this case, be it a report prepared at the request of the investigator or of the applicant's lawyer. However, the reliance of the investigator on those expert opinions which supported his version of the events, coupled with a disregard for other elements of the same expert reports and opposite expert opinions, shows, in the circumstances, a certain one-sidedness to the inquiry.

(f) Gathering of other evidence

140. In the Court's opinion, during the first inquiry the investigator did not do enough to obtain additional evidence which could have shed light on the events of 27-28 January 2010. Thus, although he watched a video recording from the surveillance cameras in the corridors of the SHIZO, he did not try to compare the applicant's story with what could have been seen on those recordings, for example, by identifying people entering and leaving the cells where the applicant had been detained. The investigator merely noted the fact that no ill-treatment could be seen on those recordings. The Court observes that, according to the applicant's written submissions, the ill-treatment took place in the cells, so the fact that the cameras installed in

the corridors did not record any ill-treatment is irrelevant. Furthermore, the investigator obtained those records from officer Kzh., one of those allegedly involved in the ill-treatment. There is no evidence that a full copy was obtained in the course of the following examinations.

141. Furthermore, the investigator did not try to obtain other material evidence, for example, to examine the applicant's clothes and shoes, which might have been tainted with blood. Neither did the investigator try to obtain samples of the applicant's saliva or blood, even though this was proposed by the applicant and his lawyer.

142. The Court observes that it took the investigator several weeks to identify certain important witnesses. Thus, warder Kol., who had allegedly seen the applicant beating himself up in the cell (see paragraph 81 above), was questioned only during the third inquiry into the applicant's allegations. The Court does not see any reason why warder Kol. could not have been identified as a witness and questioned much earlier. According to his testimony, he reported the incident to his superiors as soon as he had learnt of the applicant's complaint. Since the applicant's allegations were widely publicised (see, for example, paragraph 40 above), warder Kol. must have told his superiors about that incident before the closure of the first inquiry. However, no reference to that incident or to Mr Kol.'s report can be found in the testimony of senior officers of the colony, collected earlier.

143. Lastly, Mr Mat. and Mr Abr., the two convicts who were detained with the applicant in the SHIZO in January 2010, were not questioned before 6 May 2010 (see paragraph 74 above). The Court notes that between February and April 2010 the investigator questioned dozens of other convicts, but not those two who had been detained next to the applicant's cell, although it would have been relatively easy to identify them. The Court also observes that those two witnesses refused to sign the type-written "explanations", for reasons which remain unknown. Nevertheless, it did not prevent the investigator from using their testimony in his decision of 4 June 2010 and in his subsequent decisions not to open a criminal case.

(g) Position of the colony administration during the inquiry

144. The Court has noted the behaviour of the colony administration and their supervising bodies in the course of the domestic investigation. First, the Court notes that a disciplinary inquiry into the applicant's allegations was closed on 16 February 2010, that is, one day after the first criminal inquiry had started (see paragraph 32 above). The decision not to initiate disciplinary proceedings did not mention the applicant's injuries, even though the colony administration must have known about them.

145. The Court also notes the behaviour of the colony officials during the visit of the expert hired by the applicant's lawyer, Ms M. The Court will not analyse whether or not the officers tried to bribe Ms M., threatened her or illegally detained her, as she alleged and as she described in her report to

her superiors (see paragraphs 53 et seq.). It is clear, though, that the colony authorities impeded her attempt to collect samples of blood and urine from the applicant – this fact was established by the domestic courts (see paragraph 90 above). Furthermore, it is not contested that it was Mr Kzh., an officer allegedly involved in the ill-treatment of the applicant, who seized the materials obtained by Ms M. during her visit to the applicant. The Court notes in this respect that Ms M.'s visit was originally approved by the colony administration. During the visit she did not appear to have gone beyond the normal duties of a medical professional. She was constantly accompanied by the colony officials, who were present during the taking of samples and signed the records of the taking, so her contact with the applicant did not pose any security risks. It is difficult to see how, in such circumstances, these samples might have become "prohibited items" within the meaning of the prison rules. It appears that the main concern of the colony officials was that expert M. was obtaining materials for examination independently from the official inquiry. The Government did not explain why in such context the alleged victim, through his lawyer, could not commission alternative examinations, especially when such examinations would not have any predetermined evidential value and where, in the absence of a criminal case, expert opinions obtained by the investigator could not strictly be regarded as evidence either.

146. In the Court's opinion, although the colony administration was not formally in charge of the investigation, it was nevertheless required to act more prudently and take certain distance from the officers who had been identified by the applicant as those involved in the ill-treatment. However, the circumstances of the present case demonstrate that from the very beginning the colony administration was not willing to give any serious consideration to the applicant's allegations.

(h) Assessment of the proceedings as a whole

147. The Court acknowledges that the authorities did not remain idle: thus, several consecutive inquiries were conducted, a large number of witnesses questioned, and several expert opinions obtained. However, in view of the cumulative effect of the flaws described above, and, in particular, in the absence of a criminal investigation, the Court considers that investigator Kn. either showed a lack of diligence and professionalism, or was not determined to establish the facts of the case.

148. A similar conclusion was reached by the Donskoy Town Court on 9 December 2010 (see paragraph 83 above), which referred the case back to the investigative authorities, stating, at the same time, that it had no power to evaluate information obtained during the inquiry. However, the case was again put into the hands of investigator Kn., who, on 21 March 2011, refused to proceed with it, relying essentially on the same reasons and information as before. By that time more than a year had elapsed since the

opening of the first inquiry. In such circumstances the Court does not have reason to believe that yet another round of inquiries would have redressed the earlier shortcomings and rendered the investigation effective (see *Vergelskyy v. Ukraine*, no. 19312/06, § 100, 12 March 2009). The Court concludes that the applicant was not required to pursue further remedies, by lodging a hierarchical appeal against the investigator's decision, or by initiating judicial review proceedings.

149. The Court does not see any other remedy that the applicant could have used in the circumstances. A complaint to a prosecutor supervising the colony or to the Federal Prison Service would result in either yet another criminal inquiry, which has proved to be ineffective in practice, or in a disciplinary inquiry, the effectiveness of which is also doubtful (see, in particular, paragraph 32 above). As regards the possibility of lodging a civil claim, mentioned by the Government, there is no case-law authority for Russian civil courts being able, in the absence of any results from the criminal investigation, to consider independently the merits of a civil claim relating to alleged serious criminal actions, especially in a case such as the present one, where all principal facts are disputed (see *Tarariyeva*, cited above; *Isayeva v. Russia*, no. 57950/00, § 155, 24 February 2005; *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 147, 24 February 2005; *Menesheva*, cited above, § 77; and *Corsacov v. Moldova*, no. 18944/02, § 82, 4 April 2006).

150. The Court concludes that the criminal investigation carried out into the applicant's allegations of ill-treatment was not effective, and that the applicant did not have other legal remedies in respect of his allegations. The Court thus dismisses the Government's objection of non-exhaustion, and finds that there has been a violation of Article 3 of the Convention under its procedural limb.

151. As to the applicant's complaint under Article 13 of the Convention on account of the absence of other legal remedies, the Court notes that this complaint, to a large extent, overlaps with his allegations under the procedural limb of Article 3 thereof. Consequently, there is no need to consider this complaint separately.

4. Whether the applicant was ill-treated

152. The Court reiterates that not every breach of a procedural obligation under Article 3 leads to a finding of a violation of the State's negative obligations under that Convention provision (see, for example, *Maksimov v. Russia*, no. 43233/02, §§ 80-94, 18 March 2010). In all such cases the Court must establish, with due regard to all materials in its possession, whether the explanation for the applicant's injuries given by the authorities at the national level and by the Government in the proceedings before the Court was "convincing and plausible".

153. The Court starts with observing that the applicant provided a detailed description of the ill-treatment to which he had allegedly been subjected, indicated its place, time and duration, and identified most of the colony officers and convicts involved. The Court also notes the consistency of the allegations made by the applicant throughout the domestic proceedings. Indeed, these things alone cannot prove the veracity of his words. A person with a vivid imagination, good memory and logical skills may invent an almost perfect story about something which has never happened. However, the applicant's account was supported by serious medical evidence, in particular, by the nine nails which he gave to his relatives, and by the fifteen bruises which were found on his body.

154. Furthermore, there is another aspect of the case which adds credibility to the applicant's words. The applicant is serving a very long prison sentence. Even if the applicant proves his allegations, it would not affect his conviction or reduce the sentence (unlike in cases concerning the use of violence to obtain evidence from a criminal suspect). And, *a fortiori*, if he fails to prove his allegations, he risks putting himself in a very difficult situation for the next fifteen years of his prison term. The applicant must therefore have had weighty reasons for putting forward such serious accusations against several high-ranking officials of the colony.

155. The Court will first address the applicant's allegations concerning the extraction of the nails. It was not contested that the nails given by the applicant to the investigator and his relatives had belonged to him. The main question was thus how he had lost them, or how they had been extracted. The Court notes that the domestic investigative authorities failed to make any positive findings in this respect: the investigator simply concluded that the applicant's allegations were refuted by other evidence, without formulating any alternative story. Based on the Government's submissions in this case the Court could conclude that the main cause of the loss of the nails, according to the authorities, was natural, namely a fungal infection.

156. That version is not persuasive, though. Having examined the medical documents in its possession, the Court cannot find it established with sufficient certainty that the applicant suffered from a fungal infection prior to his transfer to the SHIZO on 27 January 2010. Thus, the transcript of the applicant's medical record prepared in May 2010 in reply to a request for factual information by the Court did not mention any fungal infection in the entries prior to 15 February 2010 (see paragraph 13 above). Indeed, according to some documents in the case file, in particular the two certificates issued by Dr Pr., the applicant was diagnosed with mycosis in 2009 (see paragraph 14). However, the credibility of those documents is doubtful. First, Dr Pr. was accused by the applicant of having participated in the ill-treatment, so he was not a disinterested witness. Secondly, during the first questioning Dr Pr. did not mention that in 2009 the applicant had been

diagnosed with a fungal infection (see paragraph 29 above). Thirdly, there is no information about any specific medical follow-up and treatment of the applicant's "mycosis" since January 2009 (except for a very general reference to some "ointment", the veracity of which was contested by the applicant – see paragraph 92 above). Fourthly, when the applicant's lawyer tried to challenge the veracity of those records, the domestic courts did not address his complaint properly (see paragraph 93 above). Lastly, and most importantly, the doctor who examined the applicant on 27 January 2010 (see paragraph 13 above) did not record any injuries or abnormalities on the applicant's hands or feet. In such circumstances the Court finds strength in the applicant's argument that at least some of the documents mentioning fungal infection or mycosis in 2009 might have been issued or amended much later, in order to support the conclusions of the official inquiry.

157. Even assuming that the applicant's hands and feet were affected by mycosis, it is striking that the applicant lost all his nails almost simultaneously. While it is clear that mycosis can affect nails and even cause their partial or complete destruction, the investigator did not try to establish whether it can cause the sudden and simultaneous loss of all nails on the hands and feet. If the applicant's condition was so bad that he risked losing all his nails, the question arises why his medical file did not contain more detailed information about that and about the treatment he received. It is noteworthy that none of the convicts questioned by the investigator mentioned that they had ever seen signs of mycosis on the applicant's hands and toes before the events complained of.

158. An alternative explanation might be that the applicant extracted the nails himself. As can be seen from the expert examinations conducted at the request of the applicant's lawyer, the nails had traces of mechanical (that is, forced, as opposed to natural) removal (see paragraphs 50 and 53 above). Furthermore, the expert appointed by the investigator did not exclude that the extraction had been "traumatic" in origin (see paragraph 66 above). It is difficult to believe that it was the applicant who pulled out all twenty of his nails himself, one by one. Further, it is unclear how it was possible for him to do such an act in the conditions of solitary confinement in an isolation cell, without tools, medical assistance or painkillers.

159. Next, the Court will turn to the bruises on the applicant's body. The only explanation given by the investigator in his first two decisions was that all of them had been located in places "accessible to the applicant's own hand". Thus, the investigator implied that the applicant had beaten himself up (probably after having pulled out all of his nails). From the third decision onwards the investigator also started to refer to the explanation of Mr Kol., a prison warder (see paragraph 81 above). That testimony has already been examined above (see paragraph 142). The Court observes that the credibility of that witness is more than doubtful.

160. The Court acknowledges that the factual situation remains somewhat unclear. It is surprising that the examination of the applicant on 4 February 2010 did not reveal any abnormalities on his hands and feet or any bruises. Furthermore, the Court notes that the applicant was quite uncooperative during the inquiry, which is, however, understandable in the light of the allegations made by him. Also, the degree of violence described by the applicant, the sophistication of its methods and its institutionalised character beggar belief, at least in a civilised society. However, even assuming that a part of the applicant's story cannot be verified, or some extra details have been added, the applicant's allegations were tenable, whereas the answer given by the authorities was clearly unsatisfactory. In reaching this conclusion the Court stresses the investigative authorities' lack of determination to establish the facts of the case, which seriously undermined the reliability of their conclusions.

161. Having in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of a "convincing and plausible" explanation by the Government in the instant case, the Court considers that it can draw inferences from the authorities' conduct and finds it established to the standard of proof required in Convention proceedings that the injuries sustained by the applicant were the result of the treatment of which he complained and for which the Government bore responsibility (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004). Given the severity and deliberate character of that treatment and other relevant factors (see *Selmouni v. France* [GC], no. 25803/94, § 96, ECHR 1999-V), the Court concludes that the applicant was subjected to torture and that there has therefore been a violation of Article 3 of the Convention on this account.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

162. In his observations the applicant claimed that the authorities had opened a criminal case against him in order to prevent him from complaining to the Court. He referred in this respect to Article 34 of the Convention, which reads as follows:

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

The Court observes that on 16 July 2010 the applicant was indeed charged with criminal libel (see paragraph 94 above) in connection with his accusations against the colony officials. In the Court's opinion, the criminal case against the applicant logically followed from the main finding of the inquiry into the applicant's own complaints, namely that the applicant's

allegations had been deliberately false. The Court has already found that the inquiry into the applicant's complaints was ineffective, and that the conclusions of the investigator were not based on a reasonable assessment of evidence. The criminal case against the applicant, opened on 16 July 2010, was therefore one of the consequences of the original breach of his rights under Article 3 of the Convention, identified above. In view of its findings under Article 3, the Court does not consider it necessary to decide separately whether, by opening that criminal case, the authorities also sought to hinder the applicant's right of individual petition under Article 34 of the Convention.

163. Under Articles 3 and 13 of the Convention, referred to above, the applicant complained of having been poisoned, about the conditions in which he had been detained in the colony (FBU IK-1), and about the conditions of his transportation to and from the colony where he had been placed after 27 April 2010 (FBU IK-4). The parties submitted their observations regarding these complaints. Having regard to the observations, an in so far the examination of these complaints fall within its competence, in view of the materials in its possession the Court finds that the applicant's complaints in respect of these facts do not disclose any appearance of a violation of Articles 3 and 13 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. 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

165. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

166. The Government considered that amount excessive and claimed that a finding of a violation would constitute sufficient compensation in the present case.

167. The Court notes that it has found two breaches of Article 3 of the Convention in the present case; in particular, it concluded that in the colony the applicant was subjected to the most appalling form of deliberate ill-treatment – torture. Making its assessment on an equitable basis and in view of all the evidence and information available to it, the Court awards the

applicant EUR 45,000 on account of non-pecuniary damage, plus any tax that might be chargeable to the applicant.

B. Costs and expenses

168. The applicant claimed 537,000 Russian roubles (RUB) for the costs and expenses incurred in the domestic proceedings and in the proceedings before the Court. He submitted copies of several agreements with Mr St. (concerning various domestic proceedings), Ms Polozova and Ms Moskalenko (concerning the proceedings before the Court), agreements with experts who gave their opinions in the case, and receipts and bank transfer orders confirming partial payment of the amounts due under those agreements.

169. The Government claimed that the applicant had not submitted any document proving the "reasonableness" of the amounts claimed. Furthermore, they maintained that the applicant had not properly presented contracts drawn up to confirm the provision of legal assistance.

170. 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. It can be seen from the documents appended by the applicant to his just satisfaction claims that he and his relatives concluded several agreements with the lawyers representing his interests at the national level and before the Court. Furthermore, it is clear that at least some part of the sums due under those agreements has already been paid and everything suggests that the remaining part is legally recoverable. Therefore, all these amounts can be considered as "actually incurred".

171. The Court observes that the legal fees of Mr St. concern his participation in various domestic legal proceedings on behalf of the applicant. It appears from the agreements concluded between Mr St. and the applicant's wife that some of those proceedings had no direct bearing on the applicant's complaints which led to a finding of a violation in the present case. Regard being had to the documents in its possession, the Court considers it appropriate to award the applicant RUB 170,000 to cover Mr St.'s legal fees, plus RUB 53,000 on account of the cost of the expert examinations carried out at the domestic level, which amounts to EUR 5,717 in total, plus any tax that may be chargeable to the applicant.

172. As regards legal fees related to the proceedings before the Court, the Court notes that the amount claimed under this head is RUB 230,000 which comprises Ms Polozova's fees for the preparation of the application form (RUB 70,000) and Ms Polozova and Ms Moskalenko's fees for the preparation of the written observations in reply to those of the Government (RUB 160,000 in total). The lawyers did not present more detailed information about their rates and the time spent on the case. Having regard

to the complexity of the factual and legal issues, and to the amount of work done in the case, the Court considers that this amount is somewhat excessive. The Court considers it reasonable to award the sum of EUR 5,000 to cover the legal costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection on non-exhaustion of domestic remedies;

2. *Declares* the complaints concerning the alleged ill-treatment of the applicant between 27 and 29 January 2010, the lack of an effective investigation into his allegations and the absence of other effective remedies admissible, and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegations of ill-treatment, and rejects the Government's preliminary objection;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds* that there has been a violation of Article 3 of the Convention in that the applicant was tortured in colony FBU IK-1;

6. *Holds* that there is no need to examine whether the applicant's right of individual petition under Article 34 Convention was breached;

7. *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 45,000 (forty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 5,717 (five thousand seven hundred and seventeen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred in the domestic proceedings;
(iii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs incurred in the proceedings before the Court;

(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;

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

Done in English, and notified in writing on 5 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President