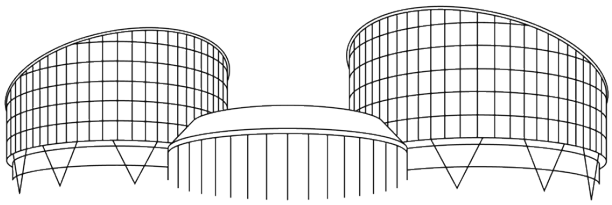

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RAZVYAZKIN v. RUSSIA

(Application no. 13579/09)

JUDGMENT

STRASBOURG

3 July 2012

FINAL

03/10/2012

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

In the case of Razvyazkin v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 12 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 13579/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Vyacheslavovich Razvyazkin ("the applicant"), on 5 March 2009.

2. The applicant, who had been granted legal aid, was represented by Mr V. Shukhardin, a lawyer 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 complained, in particular, about the conditions of his solitary confinement in the correctional colony's punishment cells, and also that medical assistance had been inadequate, that there had been no effective domestic remedy with regard to the above issues, and that the civil proceedings to which he was a party (procedural inequality and proceedings not held in public) had been unfair.

4. On 10 January 2011 the above complaints were communicated to the Government under Articles 3, 6 § 1 and 13 of the Convention. It was 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

5. The applicant was born in 1963 and is currently serving a term of imprisonment in correctional colony IK-4, Tula Region.

A. The applicant's conviction and imprisonment

6. On 6 April 2001 the Moscow City Court convicted the applicant of robbery and murder and sentenced him to thirteen years' imprisonment.

7. On 3 August 2001 the applicant was sent to correctional colony IK-4, Tula Region *(ФБУ "Исправительная колония № 4" УФСИН по Тульской области)*, to serve his sentence.

8. Between 2001 and 2010 the applicant was repeatedly disciplined for breaching colony rules, including by placement in punishment cells or SHIZO *(ШИЗО)* and solitary confinement cells or PKT *(ПКТ)*. In August 2006 the applicant was declared a "persistent rule-breaker" and placed in the colony's strict regime unit *(СУС)*.

9. Between December 2007 and December 2010 the applicant was held in solitary confinement cells almost uninterruptedly, the disciplinary measure being applied every time on account of the applicant's refusal to return to the strict regime unit. The applicant was never provided with copies of the decisions placing him in the PKT, as it was not required under domestic law.

10. On 12 March 2010 the Plavskiy District Court, Tula Region, reviewed the qualification of the applicant's conviction in connection with the entry into force of amendments to the Criminal Code.

11. On 30 June 2010 the Tula Regional Court, having examined the above judgment on appeal, reduced the applicant's sentence to twelve years and ten months' imprisonment.

12. On 27 January 2011 the applicant was transferred from the strict regime unit to a regular unit.

B. Conditions of the applicant's detention in PKT solitary confinement and relevant complaints

13. On numerous occasions between December 2007 and December 2010 the applicant was held in solitary confinement in PKT punishment cells in correctional colony IK-4, Tula Region. The dates of the applicant's stay in various PKT cells as from December 2007 until December 2010 are given in the table below:

Cell no.:	Dates of stay:
14	12 December 2007 – 12 March 2008
14	14 March - 14 August 2008
5	29 August – 29 November 2008
14	8 March – 8 April 2009
2	25 April – 25 May 2009
14	26 June – 26 September 2009
10	27 January – 27 March 2010
17	6 May – 7 December 2010

1. The Government's account

14. Cell 10 measured 6.7 square metres and cells 14 and 17 measured 12.1 square metres. No information was provided regarding the measurements of cells 2 and 5.

15. Each cell was lit by two 40-watt filament lamps from 5 a.m. to 9 p.m. and by a 40-watt security light from 9 p.m. to 5 a.m. Natural lighting was available through windows measuring 90 by 50 cm and covered with grids on both the inside and the outside of the cell.

16. The cells were not equipped with ventilation as such. However, natural ventilation was available through window vents.

17. The cells were equipped with central heating. The average winter temperature was maintained at 18 degrees Celsius and the average summer temperature at 20-25 degrees Celsius.

18. In each cell the lavatory was situated in the corner and was separated from the living area by a brick partition 1.4 to 1.5 metres high. It was separated from the bunk beds and the dining table by sufficient distance.

19. The applicant was provided with hot meals three times a day in accordance with the established legal norms. Once a week he could take a shower. After each shower the applicant was provided with clean linen.

20. The cells were rodent-free. Regular monthly disinfections, delousing and disinfestations were carried out in the facility.

21. The applicant enjoyed daily outside exercise, limited to one and a half hours. The PKT exercise yards, which measured 13.8 to 15.7 square metres, provided shelter from rain yet provided access to fresh air and daylight.

22. The applicant was found fit to be detained in PKT punishment cells on 14 March, 6 and 14 June and 29 August 2008, 25 April and 26 August 2009, and 27 January, 27 February and 6 July 2010. The doctors never assessed the applicant's physical or psychological capacity to deal with long-term solitary confinement, as it was not part of their duties.

23. The Government supported their submissions with documents issued by the director of IK-4 on 24 February and 2 and 10 March 2011, a

document issued by the director of IK-2 on 28 February 2011, and the applicant's medical file.

24. The Government were unable to provide any information as to the effect that the long-term solitary confinement has had on the applicant.

2. The applicant's account

25. The applicant alleged that the windows in the cells provided very limited daylight. The cells were stuffy and damp, cold in winter and hot in summer. The central heating did not function.

26. The food was very dull and consisted mainly of cooked cereal.

27. The cells were overrun by rats.

28. The applicant was not allowed to receive visits from members of his family or to receive parcels from outside. His access to reading material was restricted. He could not use his sleeping place during the day without special permission to that effect from a doctor.

29. The applicant submitted that he was not fit to stay long in solitary confinement. He referred to a document issued by the colony's psychological laboratory on 11 November 2004 which, having carried out a psychological examination of the applicant, arrived at the following conclusions:

> "...Recommendations:
>
> 1. It is necessary to monitor periodically the establishment and development of [the applicant's] interpersonal relationships.
>
> 2. It should be taken into consideration that [the applicant] operates more productively in a dynamic and diverse environment associated with constant communication.
>
> 3. Solitude, monotony, and strict discipline are contra-indicated ..."

3. Relevant complaints

30. On 28 May 2008 the applicant challenged before the court the lawfulness of his placement in a PKT punishment cell on 14 March 2008. He claimed, in particular, that such a measure was incompatible with his severe health problems and amounted to inhuman and degrading treatment in violation of Article 3 of the Convention. The applicant asked the court to examine the case in the presence of his representative.

31. On 26 June 2008 the applicant's representative was informed that the off-site court hearing would take place on 30 June 2008 at 9.30 a.m. in correctional colony IK-4.

32. On 30 June 2008 at 9.30 a.m. the representative arrived at the colony for the hearing. With him was an expert from the Defence of Prisoners' Rights Fund ("the Fund") who the applicant also wanted to act in his

defence. However, the director of the colony did not allow either of them on the premises of the colony, since the applicant's representative was carrying a dictaphone, a mobile phone, a camera and a laptop, which he refused to leave at the entrance, and because the person from the Fund did not have any documents determining her status in the proceedings.

33. The hearing started at 11.30 a.m. without the applicant's representative.

34. The court read out the request from the applicant's representative for the hearing to be held at Plavskiy District Court, Tula Region, on the grounds that it would be unlawful to hold the hearing of the case in a closed controlled-access facility.

35. The representative of the colony submitted that all those wishing to participate in the hearing could do so and asked that the above request be dismissed.

36. The court dismissed the request in question, stating that the domestic law did not provide for the possibility of transfer of convicts so that they could participate in the hearing of their civil cases.

37. The court observed that the hearing could be held without the applicant's representative. The applicant objected.

38. The representative of the colony submitted that the applicant's representative had not been allowed into the colony because he was carrying a dictaphone, a mobile phone, a camera and a laptop without having obtained permission to use such equipment.

39. The court decided to proceed without the applicant's representative.

40. The applicant refused to participate in the hearing without the representative. He stated that he would make no submissions, as he feared for his own safety, and left the hearing room.

41. The court proceeded without the applicant. Having examined the material of the case and heard the representative of the colony, the court dismissed the applicant's claim. The court held that the decision to transfer the applicant to the PKT punishment cell had been lawful and that it had not breached the applicant's rights.

42. The applicant appealed. He complained, *inter alia*, that the hearing of his case in the first instance had taken place on the premises of a closed controlled-access facility to which his representative had been unlawfully denied access, which amounted to a violation of his right to defence and breached the principle of equality of arms. The applicant requested that the examination of his case on appeal be carried out in the presence of both himself and his representative.

43. On 11 September 2008 Tula Regional Court, having examined the case-file material, the arguments put forward by the applicant and having heard the applicant's representative, upheld the judgment of 30 June 2008 on appeal. The court held that the applicant's representative had refused to abide by the requirements of the facility's management that he should be

granted access, and that the applicant had himself chosen to leave the courtroom.

44. On 13 October 2008 the applicant's representative challenged before the court the applicant's ten months' almost uninterrupted confinement in PKT punishment cells. Citing Article 3 of the Convention, the applicant's representative claimed that the applicant's confinement in the PKT significantly affected his physical and mental health, and has been causing him distress and anguish exceeding the legally acceptable level. He relied, in particular, on the limitation of the time for outside walks, restrictions on receiving parcels from the outside and family visits, poor nutrition, restrictions on reading material, and inadequate medical assistance.

45. On 17 November 2008 the Plavskiy District Court, Tula Region, having examined the lawfulness of application of the disciplinary sanctions to the applicant, dismissed the claim. The court found that the applicant's health did not prevent him from being detained in the PKT punishment cells, and that placement there did not amount to a violation of the applicant's rights and freedoms. The court did not establish a causal link between the decisions to place the applicant in the PKT punishment cells and the latter's health problems. The complaints of inadequate medical assistance were found unsubstantiated.

46. On 5 March 2009 the Tula Regional Court upheld the above judgment on appeal.

47. On 13 October 2008 and 17 February 2009 the applicant's representative challenged the lawfulness of the decision of the head of IK-4 to refuse to hand over to the applicant a human rights magazine. On 5 March 2009 and 9 September 2009 respectively the Tula Regional Court, as the final court of appeal, dismissed the applicant's challenge finding the decisions lawful.

48. On 6 September 2010 the applicant's representative complained to the Tula Region Prosecutor's Office supervising compliance with the law in correctional facilities about the conditions of the applicant's detention in the PKT punishment cells. On 5 October 2010 the Prosecutor's Office found the above complaint unsubstantiated.

C. Medical assistance and relevant complaints

1. Applicant's medical conditions and treatment

49. The applicant's medical file indicates that from his arrival at the IK-4 facility on 3 August 2001 the applicant was treated by a psychiatrist of the medical unit for "personality disorder of hysterical type and organic disorder of the central nervous system, of complex origin". He regularly received outpatient treatment at the correctional colony's medical unit.

50. On numerous occasions throughout his detention in IK-4 the applicant received inpatient treatment for various conditions: consequences of craniocerebral injury, psychopathy, hysterical personality disorder, psychotic disorder, paranoid disorder, asthenovegetative syndrome, encephalopathy, hyperopia, partial optic nerve atrophy, osteochondrosis, chronic gastritis, duodenitis, arthrosis of left mandibular joint, chronic orchiepididymitis, chronic prostatitis, varix dilatation of lower limbs, gallbladder deformation, urine acid diathesis, chronic pancreatitis, gastrointestinal tract dyskinesia and heel spurs. The applicant underwent this treatment at the medical unit of IK-4, the Tula Regional prison hospital at correctional colony IK-2, and the Interregional Psychiatric Hospital in Smolensk.

51. On several occasions the applicant underwent inpatient ophthalmological examination and treatment in the regional prison hospital for his hyperopia and partial optic nerve atrophy. In particular, specialised ophthalmological treatment was provided to the applicant between 26 July and 2 August 2002, between 26 February and 4 March 2004, between 2 and 11 November 2005, between 20 and 26 April 2007, between 22 and 28 February 2008, between 11 and 21 April 2008, and between 3 and 10 April 2009. On 10 February 2011 the applicant was examined by an ophthalmologist at the regional prison hospital and diagnosed with partial atrophy of the optic nerves, hyperopia and hypermetric astigmatism. Inpatient treatment was recommended. The case file contains no further information regarding this issue.

52. In August 2009 the applicant was diagnosed with oblique fracture of the instep bone of the right foot. The head of the IK-4 medical unit informed the applicant of the diagnosis. The applicant, however, denied the injury and submitted that he had hurt himself in 2000. The applicant was given crutches and prescribed bed rest.

2. Relevant complaints

53. In November 2008 the IK-4 medical unit referred the applicant to the regional prison hospital for a check-up and treatment for rapidly deteriorating eyesight and atrophy of optic nerves.

54. Since three months later the applicant had still not been transferred to the regional prison hospital, on 5 March 2009 the applicant's representative challenged before the court the failure of the administration of the IK-4 correctional colony to send the applicant to the regional prison hospital.

55. On 25 March 2009 the Plavskiy District Court, Tula Region, allowed the claim and obliged the IK-4 administration to send the applicant to the regional prison hospital for examination and treatment of his eyesight problems.

56. From 3 April to 10 April 2009 the applicant underwent treatment in the regional prison hospital.

57. It appears from the Government's submissions that between 2004 and 2010 the applicant made numerous complaints to the Tula Regional Prosecutor's Office of inadequate medical assistance in the IK-4, to no avail. Neither party provided copies of the relevant complaints or replies to them.

D. Proceedings related to the applicant's transfer to a prison regime

58. In January 2009 the IK-4 correctional colony authorities requested that the applicant be transferred to a prison.

59. On 27 January 2009 Plavskiy District Court, Tula Region, decided to transfer the applicant to a prison for two years. The hearing took place in the colony. The applicant's representative was not granted access, because he had a dictaphone, a mobile phone, a camera and a laptop with him. The applicant refused to participate in the hearing, giving as reasons his health and the absence of his representative. He requested that the hearing be adjourned, without success. The representative of the colony made oral submissions to the court.

60. On 15 April 2009 the Tula Regional Court quashed the judgment on appeal in view of a violation of the applicant's right to defence, and remitted the case for a fresh examination.

61. On 16 June 2009 Plavskiy District Court decided to transfer the applicant to prison for two years. The applicant was properly represented by counsel.

62. On 19 August 2009 Tula Regional Court quashed the judgment of 16 June 2009 on appeal, because the court had failed to examine the disciplinary offences committed by the applicant and the validity of the sanctions imposed on the latter as a result.

63. On 26 November 2009 Plavskiy District Court again decided to transfer the applicant to prison for two years. The court held that there was no evidence that such a transfer would be incompatible with the applicant's state of health.

64. On 24 March 2010 Tula Regional Court quashed the judgment of 26 November 2009 on appeal, because the court had failed to examine the circumstances in which disciplinary sanctions had been imposed on the applicant in 2007 and 2008.

65. On 21 June 2010 Plavskiy District Court decided once more to transfer the applicant to prison for two years.

66. On 30 September 2010 the case was moved to a new territorial jurisdiction and the case was transferred to Shchekinskiy District Court, Tula Region.

67. On 24 November 2010 the Shchekinskiy District Court refused the applicant's transfer to a prison. The court held that the disciplinary sanctions imposed on the applicant in the period between 2004 and 2008 had been unlawful and unjustified, so as the decision to declare the applicant a "persistent rule-breaker" and his transfer to the strict regime unit. On 12 January 2011 the Tula Regional Court upheld the above decision on appeal.

68. However, on 14 June 2011 the Presidium of the Tula Regional Court quashed the decision of 24 November 2010, as upheld on appeal on 12 January 2011, and remitted the matter for fresh consideration.

69. On 22 July 2011 the Shchekinskiy District Court discontinued the proceedings in view of the fact that the administration of the colony had withdrawn its request for the applicant to be transferred to a prison regime.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of the Russian Federation

70. Article 21:

"1. Human dignity shall be protected by the State. Nothing may serve as a basis for its derogation.

2. No one shall be subject to torture, violence or other severe or humiliating treatment or punishment ..."

71. Article 41:

"1. Everyone shall have the right to health protection and medical aid. Medical aid in state and municipal health establishments shall be rendered to individuals gratis, at the expense of the corresponding budget, insurance contributions, and other proceeds ..."

72. Article 123:

"1. Examination of cases in all courts shall be open. Examinations in camera shall be allowed only in cases envisaged by the federal law.

2. ...

3. Judicial proceedings shall be held on the basis of controversy and equality of the parties."

B. The Code on the Execution of Sentences (of 8 January 1997 no. 1-FZ)

73. Male inmates serving their sentences in correctional colonies of general and strict regimes who have been declared persistent rule-breakers of the established order of sentence serving can be placed in PKT punishment cells for a period of up to six months (Article 115 § 1).

74. The placement of inmates in PKT punishment cells is carried out with indication of a specific end date for that measure (Article 117 § 4)[1].

75. Inmates subjected to placement in PKT punishment cells can be subjected to disciplinary measures other than placement in PKT punishment cells (Article 117 § 5).

76. Inmates placed in PKT punishment cells have the right to spend 500 roubles per month on foodstuffs and articles of prime necessity, to receive a parcel once every six months, to have one-and-a-half hours' daily outdoor exercise, and, upon approval by the administration of the correctional facility, to receive a short-term visit once every six months (Article 118 § 2).[2] A priest of an officially registered religious association can be called to an inmate in a PKT punishment cell at his request (Article 118 § 2.1). Inmates placed in PKT punishment cells work separately from other inmates (Article 118 § 3). The time that an inmate subjected to placement in PKT punishment cell spends in medical establishments of the prison system is counted as part of his detention in the PKT (Article 118 § 5).

77. Inmates are entitled to primary health care and specialised inpatient and outpatient medical care (Article 12 § 6).

78. Medical units and hospitals (including specialised psychiatric and tuberculosis hospitals) are available within the penal system to provide medical care for inmates (Article 101 § 2).

79. Convicts can be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77.1). The Code does not indicate any opportunity for a convicted person to take part in civil proceedings, whether as a plaintiff or defendant.

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[1] This provision was amended the by Federal Law of 7 February 2011 no. 5-FZ to include the requirement of prior medical examination of a person before placement in a PKT punishment cell and also the issue of a medical report on the feasibility of such a placement, taking into account the health of the person concerned

[2] Pursuant to the Ruling of the Constitutional Court of 1 April 2004 no. 77-O the restriction on visits stipulated in Article 118 § 2 of the Code on the Execution of Sentences does not apply to visits by lawyers and other persons entitled to provide legal assistance

C. The Code of Civil Procedure (of 14 November 2002 no. 138-FZ)

80. The hearing of civil cases in all courts shall be held in public, with some exceptions. Those involved in the case and those present in open court have the right to record the progress of the trial by taking written notes or by means of audio recording. Photography, video recording and broadcasting the hearing on radio and television are allowed with the permission of the court. Judgments are pronounced publicly, except when they concern the rights and legitimate interests of minors (Article 10 §§ 1, 7 and 8).

81. Judicial proceedings in civil cases shall be adversarial and based on equality between the parties (Article 12).

82. Individuals can appear before the court in person or act through a representative (Article 48 § 1).

83. A court can hold an off-site session if, for instance, it is necessary to examine evidence which cannot be brought to the court-house (Articles 58 and 184).

D. Internal Regulations of Correctional Institutions, enacted by Ministry of Justice order 205 of 3 November 2005

84. A correctional facility provides medical examinations, supervision and treatment of inmates, using the means and facilities recommended by the Ministry of Health Care. It provides storage and distribution of medicines and other medical items, detection of contraindications for professional suitability, and medical expert opinion in case of temporary disability (Section 122).

85. In instances where medical aid cannot be provided in a medical institution within the penal system the inmate can be transferred to a medical institution within the state or municipal health care system (Section 124).

86. Short-term visitors to inmates are prohibited from carrying any items (including cameras, photo materials, movie cameras, video and audio equipment, communication devices, and so on) into correctional institutions. Such items are to be left with a junior inspector responsible for the meeting until the end of their visit (Sections 76 and 80).

E. Case-law of the Constitutional Court and the Supreme Court

87. On several occasions the Constitutional Court examined complaints by convicts whose requests for leave to appear in civil proceedings had been refused by courts. It consistently declared the complaints inadmissible, finding that the contested provisions of the Code of Civil Procedure and the Code on the Execution of Sentences did not, as such, restrict the convicted person's access to court. It emphasised, nonetheless, that a convicted person

should be able to make submissions to a civil court, either through a representative or in any other way provided by law. If necessary, the hearing could be held at the location where the convicted person was serving the sentence or the court hearing the case could instruct the court with territorial jurisdiction over the correctional colony to obtain the applicant's submissions or take any other procedural steps (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004, and no. 94-O of 21 February 2008).

88. In 2009 the Supreme Court held that the provisions of sections 76 and 80 of the Internal Regulations of Correctional Institutions should not be applied to lawyers as long as it was necessary for them to bring with them the items in question during their visits to correctional institutions in order for them to provide their clients with qualified legal assistance (decision of 15 April 2009 no. ГКПИ09-13).

III. RELEVANT COUNCIL OF EUROPE DOCUMENT

Solitary confinement of prisoners

89. The relevant extracts from the *21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* (CPT/Inf (2011) 28) read as follows:

> "53. Solitary confinement of prisoners ... can have an extremely damaging effect on the mental, somatic and social health of those concerned. This damaging effect can be immediate and increases the longer the measure lasts and the more indeterminate it is ...
>
> 54. The CPT understands the term "solitary confinement" as meaning whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned ...
>
> 55. Solitary confinement further restricts the already highly limited rights of people deprived of their liberty. The extra restrictions involved are not inherent in the fact of imprisonment and thus have to be separately justified. In order to test whether any particular imposition of the measure is justified, it is appropriate to apply the traditional tests enshrined in the provisions of the European Convention on Human Rights and developed by the case-law of the European Court of Human Rights. ...
>
> (a) Proportionate: any further restriction of a prisoner's rights must be linked to the actual or potential harm the prisoner has caused or will cause by his or her actions (or the potential harm to which he/she is exposed) in the prison setting. Given that solitary confinement is a serious restriction of a prisoner's rights which involves inherent risks to the prisoner, the level of actual or potential harm must be at least equally serious and uniquely capable of being addressed by this means. ... The longer

the measure is continued, the stronger must be the reason for it and the more must be done to ensure that it achieves its purpose.

(b) Lawful: provision must be made in domestic law for each kind of solitary confinement which is permitted in a country, and this provision must be reasonable. It must be communicated in a comprehensible form to everyone who may be subject to it. The law should specify the precise circumstances in which each form of solitary confinement can be imposed, the persons who may impose it, the procedures to be followed by those persons, the right of the prisoner affected to make representations as part of the procedure, the requirement to give the prisoner the fullest possible reasons for the decision ..., the frequency and procedure of reviews of the decision and the procedures for appealing against the decision. The regime for each type of solitary confinement should be established by law, with each of the regimes clearly differentiated from each other.

(c) Accountable: full records should be maintained of all decisions to impose solitary confinement and of all reviews of the decisions. These records should evidence all the factors which have been taken into account and the information on which they were based. There should also be a record of the prisoner's input or refusal to contribute to the decision-making process. Further, full records should be kept of all interactions with staff while the prisoner is in solitary confinement, including attempts by staff to engage with the prisoner and the prisoner's response.

(d) Necessary: the rule that only restrictions necessary for the safe and orderly confinement of the prisoner and the requirements of justice are permitted applies equally to prisoners undergoing solitary confinement. Accordingly, during solitary confinement there should, for example, be no automatic withdrawal of rights to visits, telephone calls and correspondence or of access to resources normally available to prisoners (such as reading materials). Equally, the regime should be flexible enough to permit relaxation of any restriction which is not necessary in individual cases.

(e) Non-discriminatory: not only must all relevant matters be taken into account in deciding to impose solitary confinement, but care must also be taken to ensure that irrelevant matters are not taken into account. Authorities should monitor the use of all forms of solitary confinement to ensure that they are not used disproportionately, without an objective and reasonable justification, against a particular prisoner or particular groups of prisoners.

56. ... Withdrawal of a prisoner from contact with other prisoners may be imposed under the normal disciplinary procedures specified by the law, as the most severe disciplinary punishment. ...

Given the potentially very damaging effects of solitary confinement, the CPT considers that the principle of proportionality requires that it be used as a disciplinary punishment only in exceptional cases and as a last resort, and for the shortest possible period of time. ... The CPT considers that the maximum period should be no higher than 14 days for a given offence, and preferably lower. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which it is felt call for more severe sanctions should be dealt with through the criminal justice system.

57. ... The reason for the imposition of solitary confinement as a punishment, and the length of time for which it is imposed, should be fully documented in the record of the disciplinary hearing. Such records should be available to senior managers and oversight bodies. There should also be an effective appeal process which can re-examine the finding of guilt and/or the sentence in time to make a difference to them in practice. A necessary concomitant of this is the ready availability of legal advice for prisoners in this situation. Prisoners undergoing this punishment should be visited on a daily basis by the prison director or another member of senior management, and the order given to terminate solitary confinement when this step is called for on account of the prisoner's condition or behaviour. Records should be kept of such visits and of related decisions.

58. The cells used for solitary confinement should meet the same minimum standards as those applicable to other prisoner accommodation. Thus, they should be of an adequate size, enjoy access to natural light and be equipped with artificial lighting (in both cases sufficient to read by), and have adequate heating and ventilation. They should also be equipped with a means of communication with prison staff. Proper arrangements should be made for the prisoners to meet the needs of nature in a decent fashion at all times and to shower at least as often as prisoners in normal regime. Prisoners held in solitary confinement should be allowed to wear normal prison clothing and the food provided to them should be the normal prison diet, including special diets when required. As for the exercise area used by such prisoners, it should be sufficiently large to enable them genuinely to exert themselves and should have some means of protection from the elements...

61. As with all other regimes applied to prisoners, the principle that prisoners placed in solitary confinement should be subject to no more restrictions than are necessary for their safe and orderly confinement must be followed. Further, special efforts should be made to enhance the regime of those kept in long-term solitary confinement, who need particular attention to minimise the damage that this measure can do to them. It is not necessary to have an "all or nothing" approach to the question. Each particular restriction should only be applied as appropriate to the assessed risk of the individual prisoner. Equally, as already indicated, there should be a clear differentiation between the regimes applied to persons subject to solitary confinement, having regard to the type of solitary confinement involved.

(b) Prisoners undergoing solitary confinement as a disciplinary sanction should never be totally deprived of contacts with their families and any restrictions on such contacts should be imposed only where the offence relates to such contacts. And there should be no restriction on their right of access to a lawyer. They should be entitled to at least one hour's outdoor exercise per day, from the very first day of placement in solitary confinement, and be encouraged to take outdoor exercise. They should also be permitted access to a reasonable range of reading material .... It is crucially important that they have some stimulation to assist in maintaining their mental wellbeing...

63. ... Health-care staff should be very attentive to the situation of all prisoners placed under solitary confinement. The health-care staff should be informed of every such placement and should visit the prisoner immediately after placement and thereafter, on a regular basis, at least once per day, and provide them with prompt medical assistance and treatment as required. They should report to the prison director whenever a prisoner's health is being put seriously at risk by being held in solitary confinement. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S SOLITARY CONFINEMENT

90. The applicant complained under Article 3 of the Convention about the conditions of his almost uninterrupted solitary confinement between December 2007 and December 2010 in the correctional colony's PKT punishment cells. Article 3 of the Convention provides:

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

He also claimed that he did not have at his disposal an effective remedy for the violation of the guarantee against ill-treatment, which is required under Article 13 of the Convention reading as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...."

A. The parties' submissions

91. The applicant submitted that his long-term solitary confinement had significantly affected his mental health. He became unstable, depressive, apathetic and desperate. The decisions by which he was found fit for confinement in PKT punishment cells were taken by unqualified medical staff, mostly by medical assistants, and, in some rare cases, by a therapist. Furthermore, at no time did the domestic authorities undertake to assess the effect his long-term solitary confinement was having on his physical and mental well-being. The applicant further maintained his complaint as to the absence of an effective domestic remedy with regard to his complaint under Article 3. He noted, in particular, the difficulties in collecting evidence to substantiate his grievances relating to the conditions of his detention and the lack of procedural parity between the parties in arguing such claims before the domestic courts.

92. For their part, the Government argued that the conditions of the applicant's detention in IK-4 punishment cells complied with Article 3 of the Convention. In their view, the nature and the context of the applicant's treatment and the effect of this treatment on his physical and mental condition did not attain the minimum level of severity. The Government further submitted that the applicant had at his disposal, and had repeatedly used, domestic remedies for his complaints about conditions of his detention in the PKT. In that respect they referred to the various claims brought by the applicant's representative before the domestic court.

B. The Court's assessment

1. Admissibility

(a) Compliance with the six-month time-limit

93. The six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008, and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

94. The concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on behalf of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). As a general rule, complaints which have as their source specific events which occurred on identifiable dates do not create a continuing situation (see *Nevmerzhitsky v. Ukraine* (dec.), no. 54825/00, 25 November 2003, where the applicant was subjected to force-feeding, and *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005, where the applicant's son was denied medical assistance). However, in the event of a repetition of the same events, such as an applicant's transport between a remand prison and a court-house, even though the applicant was transported on specific days rather than continuously, the absence of any marked variation in the conditions of transport to which he had been routinely subjected created, in the Court's view, a "continuing situation" which brought the entire period complained of within the Court's competence (see *Vlasov v. Russia* (dec.), no. 78146/01, 14 February 2006, and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004). Similarly, in a situation where the applicant's detention in a police cell was not continuous but occurred at regular intervals when he was taken there for interviews with the investigator or other procedural acts, the Court accepted that in the absence of any material change in the conditions of his detention, the breaking up of his detention into several periods was not justified (see *Nedayborshch v. Russia*, no. 42255/04, § 25, 1 July 2010).

95. In the present case, over the period of three years between December 2007 and December 2010 the applicant was routinely subjected to placement in correctional colony's PKT solitary confinement punishment cells (see paragraph 13 above). In view of this continuing practice and in the absence of any marked variation in the conditions of the applicant's detention in those cells, the Court considers that the entire period should be

construed as a "continuing situation". The application having been lodged on 5 March 2009, the applicant has therefore complied with the six-month requirement of Article 35 § 1 of the Convention.

(b) Well-foundedness of the complaints

96. The Court considers that the applicant's complaints concerning the conditions of his solitary confinement in the correctional colony's PKT punishment cells and the lack of an effective domestic remedy in this respect are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) Article 3

(i) General principles

97. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV).

98. In order to fall under Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, ibid., § 74).

99. The Court has consistently stressed that, for Article 3 to come into play, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve an element of suffering or humiliation. However, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and

well-being are adequately secured (see *Kudła v. Poland* [GC], cited above, §§ 92-94).

100. The prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, most recently, *Csüllög v. Hungary*, no. 30042/08, § 30, 7 June 2011). Whilst prolonged removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005, and *A.B. v. Russia,* no. 1439/06, § 102, 14 October 2010).

101. In order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by. Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement (see *Ramirez Sanchez*, v. France [GC], no. 59450/00, § 139, ECHR 2006-IX; *Onoufriou v. Cyprus*, no. 24407/04, § 70, 7 January 2010; *A.B. v. Russia*, cited above, § 108; and *Csüllög,* cited above, § 31).

(ii) Application of those principles in the present case

102. The Court notes that between December 2007 and December 2010 the applicant was on numerous occasions placed in solitary confinement PKT punishment cells of the correctional colony. The applicant stayed in solitary confinement uninterruptedly from 12 December 2007 to 14 August 2008 (eight months), from 29 August to 29 November 2008 (three months), from 8 March to 8 April 2009 (one month), from 25 April to 25 May 2009 (one month), from 26 June to 26 September 2009 (three months), from 27 January to 27 March 2010 (two months), and from 6 May to 7 December 2010 (seven months). The Court takes note that in addition to social isolation the applicant's placement in solitary confinement PKT punishment cells was associated with a number of further restrictions involving, in particular, limited access to outdoor exercise and limitations on family visits and receiving any parcels from outside (see paragraph 76 above).

103. The Court accordingly notes that over a period of three years the applicant was repeatedly returned to solitary confinement. It notes several

rather lengthy uninterrupted periods of solitary confinement of the applicant in the PKT, and negligibly short breaks between some of them.

104. The Court reiterates that solitary confinement without appropriate mental and physical stimulation is likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities (see *Csüllög,* cited above, § 30). It further observes in this connection the conclusions of the CPT, which in its 2011 general report stated that the damaging effect of solitary confinement can be immediate, and increases the longer the measure lasts and the more indeterminate it is. Given the potentially very damaging effects of solitary confinement, it should be used as a disciplinary punishment only in exceptional cases and as a last resort, and for the shortest possible period of time (see paragraph 89 above). Bearing in mind the gravity of the measure, the domestic authorities are under an obligation to assess all relevant factors in an inmate's case before placing him in solitary confinement (see *A.B. v. Russia*, cited above, § 104; *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 83, 27 January 2009; and *Onoufriou*, cited above, § 71).

105. In the present case the applicant was put in solitary confinement in PKT punishment cells on account of his refusal to return to the strict regime unit where he had been placed in August 2006 as a "persistent rule-breaker" (see paragraph 8 above). The Court notes that the Government have not provided copies of the relevant decisions on the applicant's placement in the PKT punishment cells. The Court is therefore unable to establish whether any substantive reasons, aside from the applicant's refusal to comply with the lawful demands of the colony's authorities, were put forward by the authorities when the applicant was placed in solitary confinement in the PKT punishment cells. Neither it is possible to ascertain whether the authorities carried out any reassessment taking into account any possible changes in the applicant's situation, whether they assessed whether the imposed disciplinary measure attained its purpose, or whether the statements of reasons were increasingly detailed and compelling as time went by.

106. The Court notes that the applicant's routine placement in solitary confinement in the PKT punishment cells had been carried out despite the findings of the correctional colony's psychological laboratory noting that solitude and monotony were contraindicated for the applicant and that it was recommended that the establishment and development of the applicant's interpersonal relationships be monitored (see paragraph 30 above). It further observes that the domestic authorities continuously applied the measure in question, despite the applicant's psychiatric disorders and various other chronic conditions (see paragraphs 49-50 above). On nine occasions throughout the period under consideration the applicant was found fit for detention in the PKT punishment cells. On no occasion, however, did the domestic authorities assess the applicant's physical or psychological

capacity to deal with long-term solitary confinement and the effect that such routine solitary confinement for rather extended periods of time ranging from one to eight months had on him over the period of three years (see paragraphs 22 and 24 above). The Court observes in this respect that those kept in long-term solitary confinement need particular attention, to minimise the damage that this measure can do to them (see the above-cited CPT general report for 2011).

107. In view of the above, the Court considers that the applicant was routinely placed in solitary confinement PKT punishment cells in the absence of any substantive reasons, in the absence of any objective assessment of whether the repeated application of the measure in question attained its goals, in disregard of the applicant's physical and mental condition and in disregard of the effect of the long-term solitary confinement on his mental, physical and social health.

108. The Court therefore finds that the applicant's repeated solitary confinement in PKT punishment cells of correctional colony IK-4, Tula Region, between December 2007 and December 2010, amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. In these circumstances, the Court does not need to consider separately the applicant's arguments concerning the physical conditions of his detention in the PKT punishment cells. The issue of the adequacy of the medical assistance provided to the applicant will be examined separately.

(b) Article 13

109. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, cited above, § 157, and *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

110. The Court has previously found a violation of Article 13 of the Convention on account of lack of an effective and accessible remedy under

Russian law in respect of complaints about general conditions of detention (see, for detailed analysis of existing remedies, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 100-119, 10 January 2012, with further references). The present case is, however, different, in that the applicant's complaint did not concern a problem of a general nature, but his personal situation alone. In this connection the Court reiterates that where the applicant's complaint stems not from a known structural problem, such as general conditions of detention, and overcrowding in particular, but from an alleged specific act or omission by the authorities, the applicant must be required, as a rule, to exhaust domestic remedies in respect of it (see *Vladimir Sokolov v. Russia*, no. 31242/05, § 70, 29 March 2011, with further references).

111. The Court observes that the applicant challenged before the domestic court the lawfulness of his placements in the PKT (see, as one example, paragraph 30 above). He further challenged before the court his long-term confinement in the PKT punishment cells, claiming that it has been affecting his physical and mental well-being and causing him distress and anguish exceeding the legally acceptable level it (see paragraph 44 above). The applicant subsequently challenged before the domestic court the restrictions imposed on him in connection with his placements in the PKT (see paragraph 47 above). Furthermore, he raised the issue of the conditions of his confinement in the PKT punishment cells before the prosecutor (see paragraph 48 above). On each occasion the domestic authorities addressed the substance of the applicant's complaints and gave reasons for their decisions. It is true that the outcome of the proceedings in question was unfavourable to the applicant, as his claims were rejected. However, in the Court's view this fact alone cannot be said to have demonstrated that the remedy under examination did not meet the requirements of Article 13.

112. In the light of the foregoing, the Court concludes that there has been no violation of Article 13 of the Convention in conjunction with Article 3 of the Convention on account of the applicant's sequential solitary confinement between December 2007 and December 2010 in the correctional colony's PKT punishment cells.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE ALLEGEDLY INADEQUATE MEDICAL ASSISTANCE

113. The applicant complained under Article 3 of the Convention that he had not been provided with adequate medical assistance while serving his sentence in correctional colony IK-4, Tula Region. He further complained under Article 13 of the Convention that no effective domestic remedy had been available to him in this regard. Articles 3 and 13 were both cited above (see paragraph 90 above).

A. The parties' submissions

114. The applicant asserted that throughout his detention in correctional colony IK-4 his health had been persistently deteriorating, his health problems worsening, and the medical treatment being provided within the limits of medicines available at the colony's medical unit. No treatment had allegedly been provided for his deteriorating eyesight and his fractured foot. The applicant further maintained his complaint as to the absence of an effective domestic remedy with regard to his complaint of inadequate medical assistance.

115. Relying on the applicant's medical file (see paragraphs 49-50 above), the Government submitted that the applicant, who was suffering from an organic disorder of the central nervous system and psychopathy of a hysterical type, as well as other conditions, had been receiving and continued to receive regular outpatient treatment in the medical unit of the IK-4 correctional colony. On numerous occasions he had been hospitalised in the facility's medical unit and the Tula Regional prison hospital. All prescribed medicines and treatments had been made available to the applicant. Effective domestic remedies were available to the applicant for his complaints of allegedly inadequate medical assistance, to which he had recourse on many occasions. The Government noted, in particular, that between September 2004 and October 2010 the applicant and his representatives on twelve occasions brought relevant complaints to the prosecutor. However, his complaints were found to be unsubstantiated. The applicant also had recourse to domestic courts, which on one occasion, on 25 March 2009, obliged the administration of the IK-4 correctional colony to send the applicant to the regional prison hospital for examination and treatment. Following the court's judgment, from 3 April to 10 April 2009 the applicant underwent inpatient treatment in the regional prison hospital. In view of the above finding of the domestic court it was open to the applicant to claim compensation, which he never did.

B. The Court's assessment

1. Article 3

(a) General principles

116. Referring to the aforementioned general principles relating to the prohibition of ill-treatment (see paragraphs 97-99 above), the Court further reiterates that, although Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds save in exceptional cases (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001), a

lack of appropriate medical treatment in prison may in itself raise an issue under Article 3, even if the applicant's state of health does not require his immediate release. The State must ensure that given the practical demands of imprisonment, the health and well-being of a detainee are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła*, cited above, §§ 93-94; *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

117. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care in detention facilities, including prison hospitals, are prompt and accurate, and that where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing his or her condition from worsening (see *Pitalev v. Russia,* no. 34393/03, § 54, 30 July 2009, and *Valeriy Samoylov v. Russia*, no. 57541/09, § 78, 24 January 2012). On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

118. Where complaints are made of failure to provide requisite medical assistance in detention, it is not essential for such a failure to lead to any medical emergency or otherwise cause severe or prolonged pain in order to find that a detainee has been subjected to treatment incompatible with the guarantees of Article 3 (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 114, 15 June 2010). The fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to reach a conclusion that such treatment was in breach of that Article (ibid).

119. In its assessment the Court gives thorough scrutiny to the question of compliance with recommendations and prescriptions issued by medical professionals, in the light of specific allegations made by the applicant and with due regard to the gravity of the medical condition. At the same time, an unsubstantiated allegation of no or unsatisfactory medical care is insufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question, related medical prescriptions and recommendations which were sought, made or refused, as well as some evidence - for instance, expert reports - capable of disclosing serious failings in the applicant's medical care (see, *mutatis mutandis, Valeriy Samoylov,* cited above, §§ 79-80).

(b) Application of those principles in the present case

120. It is undisputed between the parties that the applicant's medical conditions were rather serious and required a wide range of treatment (see paragraphs 49-50 above). The Court's analysis will, however, focus only on the specific allegations made by the applicant in the context of his complaint of allegedly inadequate medical assistance. These allegations concerned, namely, (1) allegedly deficient provision of medicines, (2) lack of treatment for the applicant's deteriorating eyesight, and (3) lack of treatment for the applicant's broken foot (see paragraph 114 above).

121. As regards the first allegation, the Court observes that the applicant failed to substantiate it, at the very least by making reference to any specific medical condition and the related medical prescription which had allegedly been unavailable to him in the correctional colony.

122. As to the second allegation, the Court observes that the applicant was regularly examined in connection with his ophthalmological problems and underwent specialised treatment in the regional prison hospital (see paragraph 51 above). The Court notes that on one occasion in 2009 it took the applicant an application to the domestic court to obtain the necessitated ophthalmological examination and treatment (see paragraphs 53-56 above). There is no evidence in the case file, however, that on any other occasion the applicant sought and was refused any specialised medical assistance in connection with his eyesight problem. The applicant made no specific allegation to the effect that the treatment provided to him in the regional prison hospital had been in some way inadequate.

123. Regarding the third allegation, the Court observes that in August 2009 the applicant was diagnosed with an oblique fracture of the instep bone of the right foot. After being informed of the diagnoses the applicant denied the injury and stated that he had hurt himself in 2000. It follows from the applicant's medical file that the applicant was given crutches and prescribed bed rest (see paragraph 52 above). There is no evidence in the material of the case file that the prescribed treatment had in any way been inadequate or deficient, that the applicant ever requested any other specific treatment in connection with this problem, or that such treatment was denied.

124. Regard being had to the foregoing and the material in its possession, the Court finds no basis on which to conclude that the medical assistance provided to the applicant in the context of the specific complaints brought by him under Article 3 was inadequate. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. Article 13

125. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order, where there is an "arguable claim" of a violation of a substantive Convention provision (see paragraph 109 above).

126. The Court notes that it has declared the applicant's complaint under Article 3 on account of allegedly inadequate medical assistance inadmissible. Accordingly, the applicant did not have an "arguable claim" of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable to this part of the application. It follows that the complaint under Article 13 must also be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

127. The applicant complained that the hearing of his case on 30 June 2008 had not been public and fair. In the latter respect he alleged, in particular, a violation of his rights to equality of arms and adversarial proceedings. The applicant relied on Article 6 of the Convention which, in so far a relevant, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal... Judgments shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. The parties' submissions

1. The applicant

128. The applicant submitted that the hearing of his case on 30 June 2008 had been carried out on the premises of the correctional colony – a closed controlled-access facility. The court formally announced open court session, but in reality the hearing was not open to the public as it could not be accessed without permission of the head of the correctional colony. Furthermore, in accordance with the internal rules of correctional facilities the hearing could not be accessed if those wishing to attend it brought in any communication, recording or data storage devices. In such

circumstances, the court session of 30 June 2008 was not open and public as required by Article 6 § 1 of the Convention.

129. The applicant further submitted that the proceedings in question had not complied with the requirement of fairness enshrined in Article 6 § 1. He claimed, in particular, that he had not enjoyed equality of arms with the other party, and the adversarial nature of the proceedings as his representatives were denied access to the hearing and the hearing took place only in the presence of the applicant's adversary.

2. The Government

130. Referring to the domestic law, the Government submitted at the outset that the proceedings over the lawfulness of the applicant's placement in the PKT punishment cell on 14 March 2008 had been civil in nature. They noted in this connection the Court's case-law to the effect that the requirements inherent in the concept of a "fair hearing" are not necessarily the same in cases concerning determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge, and that the Contracting States have greater latitude when dealing with civil cases.

131. The Government further submitted that the hearing of the applicant's case on the premises of the correctional colony had been public. All persons wishing to take part in it, including the applicant's representative and the expert from the human rights organisation, were afforded an opportunity to appear at the off-site court session on condition of compliance with certain rules connected with the special status of the applicant as a convicted person serving his sentence in a penal facility.

132. The Government further argued that the District Court had provided the applicant with the opportunity to attend the hearing of his case by holding an off-site court hearing in the correctional colony where he was serving his sentence. The applicant's representative was also duly notified about the time and the place of the off-site hearing and issued with a pass enabling him to enter the territory of the colony. Thereby the applicant was afforded an opportunity to present his case effectively before the court and enjoy equality of arms with the opposing side. The applicant's representative, however, chose not to enter the colony's territory, by refusing to leave his mobile phone, dictaphone, camera and laptop at the entrance. The District Court examined the reasons for the absence of the applicant's representative and the applicant's refusal to attend without his representative. The court also examined the request lodged by the applicant's representative to hold the hearing at the court-house and dismissed it on the ground that the domestic law did not provide for the possibility of transferring inmates so they could take part in the hearing of their civil cases. The applicant made use of an effective remedy, the appeal procedure against the decision of the District Court of 30 June 2008. In such

circumstances the hearing of the applicant's case satisfied the requirement of fairness set out in Article 6 § 1 of the Convention.

B. The Court's assessment

1. Admissibility

133. Having regard to its previous case-law, the Court considers that Article 6 of the Convention is applicable under its civil head to the applicant's complaint about the lawfulness of the disciplinary sanction imposed on him in the correctional colony in the form of his placement in the PKT punishment cell (see *Ganci v. Italy*, no. 41576/98, §§ 20-26, ECHR 2003-XI; *Musumeci v. Italy*, no. 33695/96, § 36, 11 January 2005; *Gülmez v. Turkey*, no. 16330/02, §§ 24-31, 20 May 2008; and *Enea v. Italy* [GC], no. 74912/01, §§ 97-107, ECHR 2009). Indeed, this was not disputed before the Court.

134. Since this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and no other ground for declaring it inadmissible has been established, the Court declares it admissible.

2. Merits

(a) General principles

(i) Public hearing

135. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 § 1. This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Axen v. Germany*, 8 December 1983, § 25, Series A no. 72; *Szücs v. Austria*, 24 November 1997, § 42, *Reports of Judgments and Decisions* 1997-VII; *Gülmez,* cited above, § 34; and *Juričić v. Croatia*, no. 58222/09, § 84, 26 July 2011).

136. Article 6 § 1 does not, however, prohibit courts from deciding, in the light of the special features of the case submitted to them, to derogate from this principle: in accordance with the actual wording of this provision, "... the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society,

where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice"; holding proceedings, whether wholly or partly, *in camera*, must be strictly required by the circumstances of the case (see, most recently, *Welke and Białek v. Poland*, no. 15924/05, § 74, 1 March 2011, with further references).

(ii) Fair hearing: adversarial proceedings and equality of arms

137. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

138. Article 6 of the Convention does not expressly provide for a right to a hearing in one's presence; rather, it is implicit in the more general notion of a fair trial that a criminal trial should take place in the presence of the accused (see, for example, *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). However, in respect of non-criminal matters there is no absolute right to be present at one's trial, except in respect of a limited category of cases, such as those where the character and lifestyle of the person concerned is directly relevant to the subject matter of the case, or where the decision involves the person's conduct (see, for example, *Kabwe and Chungu v. the United Kingdom* (dec.), nos. 29647/08 and 33269/08, 2 February 2010).

(b) Application of those principles in the present case

139. Turning to the circumstances of the present case, the Court notes at the outset that the provisions of the domestic law did not provide for the possibility for a convicted person to be transferred from a correctional institution to a courthouse to take part in the examination of a civil case (see paragraph 79 above). In this connection the Court points out that it has previously found a violation of Article 6 § 1 of the Convention in a number of Russian cases where the Russian courts refused leave to appear in court to prisoners who had wished to make oral submissions on their civil claims (largely based on their personal experience), having found that the applicants had not been afforded adequate opportunities to effectively argue their civil cases (see *Kovalev v. Russia*, no. 78145/01, §§ 35-38, 10 May 2007; *Khuzhin and Others v. Russia*, no. 13470/02, §§ 106-109, 23 October 2008; *Shilbergs v. Russia*, no. 20075/03, §§ 107-113, 17 December 2009;

Artyomov v. Russia, no. 14146/02, §§ 204-208, 27 May 2010 and *Roman Karasev v. Russia*, no. 30251/03, §§ 65-70, 25 November 2010. In those cases the Court pointed out the failure of the domestic courts to consider other possibilities for securing the applicants' participation in the hearing of their civil cases, one of which being holding a hearing at the location where the convicted person was serving the sentence (see also paragraph 87 above).

140. The Court notes that, in contrast to the above-cited cases, in the present case the domestic court did consider another possibility for securing the applicant's personal attendance at the hearing of his civil case and held an off-site court session at the colony where the applicant was serving his sentence.

141. The Court takes note of the Government's argument to the effect that all persons wishing to take part in the hearing of the applicant's case were afforded an opportunity to attend the off-site court session on condition of compliance with certain rules connected with the special status of the applicant as a convicted person serving his sentence in a penal facility and that, therefore, the hearing had not been deprived of its public character (see paragraph 131 above).

142. The Court is aware, however, of the practicalities of holding a hearing on the premises of a correctional colony, a closed controlled-access facility. The general public and the media may not be informed of the hearing, which would most probably take place on premises which do not provide sufficient room for accommodating any potential spectators, who would in any case have to undergo strict identity and security checks and comply with other access requirements (see, for example, paragraph 86 above). All these factors cannot be said to have no implication on the public character of the proceedings. At the same time, the Court is of the opinion that for practical reasons one cannot expect the hearing of his or her civil case in an off-site court session taking place in a prison to have exactly the same public exposure as it would have in an ordinary courtroom.

143. The Court considers therefore that any detrimental effect which the practicalities of holding the proceedings at issue on the premises of the correctional colony might have had on the public character of the proceedings was counterbalanced by the applicant's being afforded an adequate opportunity to argue his civil case effectively before the court by, above all, his personal participation, which otherwise would not have been possible.

144. The Court will further examine whether the hearing of the applicant's case on 30 June 2008 complied with the principle of adversarial proceedings and equality of arms enshrined in Article 6 § 1 of the Convention.

145. The Court notes that the applicant appointed a legal representative to secure his defence at the hearing of his civil case on 30 June 2008. The

latter, however, refused to abide by the internal regulations of the correctional institutions and leave his dictaphone, mobile phone, camera and laptop in deposit so as to be given access to the colony grounds. The Court further notes that, left without the benefit of legal advice, the applicant refused to participate in the hearing as a sign of protest. As a result, the hearing took place only in the presence of the opposite party to the proceedings.

146. The Court observes that the provisions of the domestic law in force at the material time prohibited any short-term visitors to inmates from carrying any items (including cameras, photo materials, movie cameras, video and audio equipment, communication devices, and so on) into correctional institutions. Such items were to be left with a junior inspector responsible for the meeting until the end of the visit (see paragraph 86 above). The Court considers that those restrictions cannot be said to have been insurmountable, and were certainly not such as to strip the applicant of the opportunity of receiving high quality legal advice. It finds therefore that the applicant's lawyer should bear the responsibility for not respecting the colony's internal rules and leaving the applicant to represent himself.

147. Regarding the applicant's absence, the Court observes that by holding an off-site court session on the premises of the correctional colony where the applicant was serving his sentence the domestic court afforded him a genuine opportunity to participate in the hearing on equal grounds with his opponent. Having learnt, however, that his lawyer had not been let in, the applicant explicitly and unequivocally waived his right to take part in the proceedings. The Court reiterates in this connection that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, entitlement to the guarantees of a fair trial (see, among other authorities, *Sibgatullin v. Russia*, no. 32165/02, § 46, 23 April 2009).

148. In such circumstances, the domestic courts cannot be blamed for the fact that that the hearing of the applicant's case on 30 June 2008 took place in the absence of the applicant and his representative.

149. There has therefore been no violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

150. The applicant raised further complaints under Articles 3 and 6 of the Convention about his imminent transfer to a prison and the alleged unfairness of the relevant proceedings.

151. The Court has examined the above complaints, as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights

and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

153. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

154. The Government considered that this claim was excessive and that, if the Court were to find a violation, such a finding would constitute adequate just satisfaction.

155. Having regard to the nature of the violations found and making an assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

156. The applicant also claimed EUR 2,500 for costs and expenses incurred before the domestic courts and the Court.

157. The Government quoted the Court's case-law to the effect that the applicants have to prove that the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum.

158. The Court notes that the applicant was granted EUR 850 in legal aid for his representation by Mr V. Shukhardin. Having regard to the material in its possession, the Court finds that the applicant did not justify having incurred any expenses exceeding that amount. Accordingly, it makes no award in respect of costs and expenses.

C. Default interest

159. 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. *Declares* the complaints concerning the conditions of the applicant's solitary confinement in PKT punishment cells from December 2007 to December 2010 and lack of an effective domestic remedy in this respect, and the complaint about the lack of a public and fair hearing of his civil case on 30 June 2008 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's repeated solitary confinement in PKT punishment cells of the correctional colony;

3. *Holds* that there has been no violation of Article 13 of the Convention, in conjunction with Article 3, as to the absence of an effective domestic remedy with regard to the applicant's complaint about his solitary confinement in correctional colony's PKT punishment cells;

4. *Holds* that there has been no violation of Article 6 of the Convention on account of lack of a public and fair hearing of the applicant's civil case on 30 June 2008;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen Registrar	Nina Vajić President