



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

FIRST SECTION

Application no. 34636/09
Sergey Olegovich GORYACHKIN
against Russia
lodged on 28 May 2009

STATEMENT OF FACTS

The applicant, Mr Sergey Olegovich Goryachkin, is a Russian national, who was born in 1982 and lived until his arrest in the town of Achinsk, the Krasnoyarsk Region. He is serving his sentence in correctional colony no. 42 in the village of Oktyabrskiy, the Krasnoyarsk Region.

The circumstances of the case

1. Conditions of detention

(a) Detention in a punishment ward [III/30]

The applicant complained about his placement in a punishment ward in the correctional colony on the following occasions: for five days on 25 August 2005 for his refusal to work in the colony kitchen, for ten days on 21 October 2006 for a refusal to take part in the cleaning of the colony territory, for ten days on 19 February 2007 for a refusal to follow the wake-up drill, for ten days on 7 August 2007 for a behaviour violating internal regulations, for twelve days on 12 September 2007 for a refusal to sign a disciplinary report, for ten days on 2 November 2007 for a failure to perform on-duty service, for five days on two occasions in 2008 and for five days in 2009. He provided a similar description of the conditions of his detention in the ward for every period. In particular, the applicant explained that he had been detained either in a cell which had measured 3.8 metres in width and 4 metres in length and had accommodated up to six inmates or in

a cell which had measured 3.8 square metres in length and 2 metres in width and had housed three detainees.

The cells had not had a ventilation shaft and it had been impossible to open a small casement in a window to let a flow of fresh air in as metal bars had blocked the window. Windows had measured seventy to thirty centimetres and did not allow sufficient lighting during the day. A small bulb of 60 to 80 watts had not produced sufficient lighting. The cells had been damp. In winter walls in the cells had been moist. It had been extremely cold in winter due to the malfunctioning heating system. A lavatory pan had been installed on a small pedestal twenty centimetres above the floor and had not been separated from the rest of the cell. Anything the applicant had happened to be doing – using the toilet, sleeping – had been subject to observations by other inmates and guards. The toilet had been grimy and an unpleasant odour lingered in the cell. Bedding had been old and dirty. Inmates had been allowed to take a shower once a week for fifteen minutes. Uniform and shoes provided to inmates detained in the punishment ward had also been old, dirty and infected. The applicant had contracted feet fungus during his detention in the ward.

(b) Detention in a special type punishment unit [ЕПКТ]

On 17 August 2007 the applicant was placed in a special type punishment unit [*единое помещение камерного типа*] where he remained for a year, save for short periods when he was transferred to the punishment ward or a prison hospital. The applicant indicated that during that year he had been detained in two types of cells: cells of the first type had been two metres wide and five metres long and cells of the second type had measured 2.5 metres in width and 3 metres in length. The bigger cells housed four inmates and had a window. The smaller cells accommodated two detainees and had two windows. Windows measured approximately 80 to 60 centimetres, had a small casement and were separated from the cell by a closed-space metal net limiting access of natural light and fresh air. In addition, windows in four cells were covered by metal bars installed in such a way, that they sufficiently limited the surface of the cell. Inmates could open the window casement twice a day using a long stick. With the cells having no artificial ventilation system, detainees suffered from extreme heat during the summer. A lavatory pan was installed in the corner of the cell, having been separated from the door by a metal plate of no more than a meter high. Whenever an inmate used the toilet, he was the subject of observation by the entire cell population.

Four metal tubes with wooden covers were installed in the middle of the cell to be used as seats by inmates. The wooden covers were usually heavily worn off with rusty nails sticking out of the covers making it very uncomfortable to sit. That construction further limited the surface of the cell, leaving it approximately three square metres of space which inmates could use to walk or stretch or do some physical activity. It was forbidden to sit on the floor. A metal plate thirty centimetres wide and forty centimetres long was welded to a wall near each sit. The applicant stressed that the plate had served as a table. The cells did not have any other furniture, save for several metal shelves welded to the walls. Inmates were forced to take an hour or an hour and a half daily walks in recreation yards irrespective of the

weather conditions and in disregard of any objections. The yards did not have any cover from snow or rain or sun and did not have benches.

Loud music was played in corridors throughout the day making it impossible to have a conversation with inmates and giving the applicant a severe headache. Occasionally, the music was left on for a couple of hours even after the lights-out order.

Inmates could clean themselves once a week with four detainees sharing one shower cabin during ten to fifteen minutes. The applicant insisted that shower heads had been missing and the detainees had splashed water on each other with two small basins. In summer, hot water was turned off and inmates were given two buckets of tepid water to clean themselves.

The food had no taste and when inmates complained to the administration about the quality of the food, on the following day it was served too salty. The food was scarce and of low quality.

Inmates could not have personal belongings in the punishment ward, including clothes. They were given uniform which was dirty, old and torn off. Inmates were also provided with mattresses to sleep on. The mattresses were so old that they had no filling in the middle.

Video recording devices were installed in the cells, placing inmates under twenty-four-hour video surveillance.

Inmates who did not smoke, such as the applicant, were detained together with heavy smokers.

(c) Detention in a prison hospital from 13 May to 1 June 2008

On 13 May 2008 the applicant arrived at the prison hospital in correctional colony no. 18 in Krasnoyarsk. He was admitted to psycho-neurological department to treat his pinched nerve in the back. Following an examination by a neurologist and a surgeon he was transferred to a surgical department where he remained for three weeks.

The applicant, who supported his submissions with colour photos of hospital rooms, argued that the conditions of his detention in the prison hospital had not satisfied the requirements for the detention of seriously ill persons, such as he was, and had been plainly appalling. In particular, he stated that the surgical department had had ten rooms each measuring approximately 21 square metres and accommodating 12 to 14 persons. The rooms were stuffy as there was no system of artificial ventilation and they did not have either radio or TV sets. Forty or fifty centimetres separated two-tire beds from each other, thus making it extremely uncomfortable for inmates using crutches or canes to move around. A shower room measuring seven square metres and equipped with three shower heads was open once a week, on Saturdays for three hours during which the entire hospital population, 120 to 140 inmates, had to take a shower. The floor in the shower room was extremely slippery particularly for persons using canes. A curb thirty centimetres high separated the shower room from the changing room. That curb became an insuperable obstacle for inmates, such as the applicant, who had problems moving unassisted. In three weeks of his detention in the prison hospital the applicant was able to use the shower room once, with the help of other detainees.

The surgical department had two very small lavatory rooms each equipped with two lavatory pans. While in the one lavatory room the pans

were separated from each other by a wooden partition slightly over a metre high, another room had not partitions installed. A passage between a wall and a pan measured no more than fifty centimetres which also made it difficult to walk with crutches or a cane. A couch was placed in a lavatory room to give enemas to inmates before surgeries. Thus, an inmate using the toilet in the evening usually observed that medical procedure.

The entire surgery department had two or three pairs of crutches to be shared by inmates. No recreation walks were allowed. On 16 May 2008 the applicant received crutches from an inmate who was dismissed from the hospital.

On 14 May 2008 the applicant was examined by a surgeon who drew up a report. The applicant informed the doctor that he had been beaten up by warders and asked to examine his injured back, shoulder and leg. The doctor promised to perform a further examination. The applicant submitted that his treatment had been ineffective, having consisted of a half a pill of acetylsalicylic acid per day, injections of novocaine, glucose and nicotine acid and a certain medicine for his back. He also received a painkiller for a night. The treatment was completed on the eleventh day of his stay in the hospital. After that date, he was not provided with any treatment and was not seen by a doctor. On the day of the applicant's return to the special type punishment ward crutches were taken from him.

(d) Conditions of detention and medical assistance after 1 June 2008

On 1 June 2008 the applicant arrived at temporary detention facility no. 1 in Krasnoyarsk. Given that his leg continued to hurt and was still heavily swollen, the next morning he applied for medical assistance. A surgeon from the detention facility examined the applicant, having confirmed that he suffered from acute condition of deep venous thrombosis of the left leg and of the left iliac vein, osteochondrosis and hernia of nucleus pulposus, and concluded that the applicant's treatment had not been completed and that he needed re-admission to the prison hospital as soon as possible. The applicant was transferred to a medical unit of the detention facility, having been prescribed bed rest.

On 7 June 2008 the applicant was sent back to the special type punishment ward of the correctional colony. Following two or three days of detention in the ward the applicant's condition deteriorated, the swallowing of his leg intensified and the extreme pain returned. Without a cane or crutches, the applicant moved in the facility using one leg and walls for support.

In the beginning of July 2008, prior to the arrival of a medical commission from the prison hospital, the applicant was prescribed bed rest. As a result the oedema of his leg diminished, but the leg turned purple and was extremely painful. Having examined the applicant a doctor from the medical commission decided that he was not fit for detention in the special type punishment ward and he was sent to the correctional colony, having been given a crutch to assist him in walking. On the last day of his detention in the punishment ward the applicant was forced to write a statement saying that he had never been subjected to physical or moral pressure and that his future complaints of ill-treatment in the ward should be considered a lie.

In October 2008, given that the applicant's state of health continued deteriorating (his leg was purple and swollen, he had pain in the leg and kidneys), the head of the medical unit of the correctional colony sent a request for the applicant's transfer to the prison hospital.

During his stay in the prison hospital the applicant was taken to see a deputy head of the Krasnoyarsk Regional penitentiary system who examined his medical record. The applicant discovered that pages recording his health complaints in 2007 and 2008 disappeared from the file. However, the head of the medical unit Ms G. assured the applicant that she had made a copy of his entire medical record for the Nizhnepoymenskiy District prosecutor before his admission to the prison hospital and that it was possible to restore the file.

The applicant submitted that the material conditions of detention in the prison hospital improved significantly with the opening of the new surgical department in November 2008 and he had no complaints to make. However, the quality of medical care was still something to be desired. The treatment was not completed once again before his readmission to the correctional colony in April 2009. He did not receive any assistance at all in respect of his kidney and back problems.

2. Alleged beating in the special type punishment ward and investigation into the events

The applicant complained that on admission to the special type punishment ward and at least on two more occasions of his detention there he had been beaten up by warders to force him to serve as a "snitch" and as a punishment for minor disciplinary offences. The applicant explained that he had not promptly complained about the beating to a prosecutor or court as he had been afraid for his life. However, following the beating on 5 March 2008 the applicant started experiencing a serious back and kidney pain. The applicant described the events on 5 March 2008 as follows: following a heated argument with one of his inmates the applicant was taken out of the cell, having been ordered to take a "spread-eagle" position by the wall. A warder started kicking the applicant on the legs, having forced him to the floor. The applicant was then handcuffed and taken to a search room. He was again hit a number of times on the head, kicked in the legs and placed in a metal cage measuring ninety centimetres long, eighty centimetres wide and two metres high and handcuffed to metal bars forming the ceiling of the cage. He was left in that position for an hour. Warders I. and C. took the applicant from the cage and again started hitting and kicking him, having also threatened him with murder. The beating continued for two or three hours. He was then forced to write a statement explaining that he had no complaints. Two days later he was sentenced to a fifteen-day detention in the punishment ward. The applicant's complaints to the administration of the punishment ward about the state of his health were to no avail.

The applicant insisted that despite his serious health condition prison doctors had remained indifferent. When the pain became unbearable the applicant was prescribed a certain medicine in injections which elevated the pain and led to a further deterioration of his health. The applicant refused

the treatment after the two shots. He complained about the ineffective treatment to the head of the penitentiary service in the Krasnoyarsk Region.

Following the complaint, the head of the special type punishment ward authorised the applicant's transfer to the prison hospital in exchange for the applicant's statement to a prosecutor that he had not been ill-treated by warders. However, the transfer was not effected.

On 9 April 2008 the applicant was again beaten up by warders, including an officer on duty, Mr Sh. The beatings were so severe that the applicant was unable to walk unassisted. He was therefore dragged to his cell where he was thrown on the floor and locked there alone. On the following morning the applicant was taken to the office of the head of the unit and thrown on the floor. He crept up to a chair and was half laying on it as he could not sit up straight due to a pain in his back and leg. Warders I. and C. were in the office. The former hit the applicant on the head and told him not to fake it. They forced the applicant to write a statement to the head of the penitentiary service of the Krasnoyarsk Region, noting that no force had ever been used against the applicant or other detainees in the correctional colony and that his health problems had resulted from an accident in his childhood. The applicant was then ordered to return on his own to the cell. The applicant could not step on the left leg so it took him almost twenty minutes to walk twenty metres which separated his cell from the office.

For a month the applicant experienced a severe pain in his leg and back. He urinated blood. His movements were extremely restricted due to the pain. At the same time, the applicant was provided treatment for his health problems. However, the doctors were unable to find any solution, having changed the medication regime a number of times. In that period the applicant was taken on a number of occasions to the head of the special type punishment ward where he had been forced to write statements that he had not been beaten up and that he had either received a leg trauma during a recreation walk or that it was his childhood injury.

On 12 May 2008 the applicant was finally taken to the prison hospital having been provided with a cane to walk. Prior to the transfer, the warders warned the applicant that his complaints to any officials would result in further beatings. The applicant submitted that he had taken those threats seriously as he had been aware that an inmate, Mr Kh., had been beaten to death in the special type punishment ward in January 2007.

In August 2008, during a meeting with his mother in the colony, the applicant complained about the treatment he had sustained in the special type punishment ward. His mother applied to supervising officials asking for a thorough inquiry into the acts of possible ill-treatment of her son.

On 24 October 2008 the Boguchanskiy District prosecutor supervising penitentiary facilities summoned the applicant to write a complaint about the ill-treatment committed by warders in the special type punishment ward. While having agreed to file a complaint, the applicant was unable to make the full and detailed account of the events which took place in the special type punishment ward during his detention there as his interview with the prosecutor was conducted in the presence of a staff member of the applicant's correctional colony.

On 1 November 2008 the applicant was informed that his case was transferred to the Bogichanskiy District Investigative Department. He did

not receive any further information on the outcome of the proceedings. Following his admission to the prison hospital, in January 2009 the applicant sent two requests to the Krasnoyarsk Regional Investigative Department and the Krasnoyarsk Regional Prosecutor, asking for a transfer of his case against the warders to Krasnoyarsk officials. No response followed. The applicant had never been visited by an investigator.

On 15 November 2008 a senior investigator of the prosecutor's office dismissed the complaint, having found no evidence of a criminal conduct. The applicant submitted that he had learned about that decision when his similar complaint in 2010 had again been dismissed by the senior investigator on 15 July 2010 with a reference to the decision of 15 November 2008.

However, on 23 May 2011 the latter decision was annulled by a higher-ranking prosecutor, given that the inquiry into the events was not thorough.

On 27 June 2011 the senior investigator again issued the decision refusing to institute criminal proceedings against the colony warders. The decision was quashed less than a month later with the instructions to perform certain investigative steps.

Another decision refusing to open a criminal case followed on 8 August 2011, only to be quashed on 25 August 2011 as unlawful.

On 5 September 2011 the senior investigator of the Boguchanskiy District Investigation Department dismissed the applicant's request for criminal proceedings, having found as follows:

"In the course of the inquiry it was established that in his complaint of 24 October 2008 [the applicant] insists that on 5 March and 9 April 2008 he had been beaten up by on-duty officers in the special type punishment ward of correctional colony no. 43, as a result of which nerve endings in his left leg had been torn off and he now suffers from oedema and pain in the left leg.

[The applicant] was transferred to the special type punishment ward in colony no. 43 on 17 August 2007. On admission, a doctor immediately examined him; no complaints were made. On a number of occasions [the applicant] explained to inmates who were detained with him in the cell that prior to his conviction he had had a pinched nerve in the back which had caused a regular swelling of his left leg and pain. In his statement of 17 July 2008 [the applicant] also states that from 17 August 2007 to 17 July 2008 he had not been subjected to any physical violence by staff members of the special type punishment ward; the statement was handwritten and no moral or psychical pressure was applied; [the applicant's] previous complaints are no more than his attempt to discredit the administration of the special type punishment ward of the colony. Moreover, the warders of the special type punishment ward in the colony explained in their statements that during his detention in the ward [the applicant] had not made any complaints about their conduct. He had been examined by a doctor on the daily basis as on admission to the ward he had complained about the pain and oedema of the left leg. On 5 March and 9 April 2008 no injuries had been discovered on [the applicant's] body.

[The applicant], questioned in the course of the inquiry, confirmed the events described in his statements in relation to the unlawful actions of the warders in the special type punishment ward.

The staff members of the special type punishment ward, questioned in respect of [the applicant's] statement, Mr I., Mr B., Mr C., Mr CH., Mr D., and Mr S. explained that neither they nor other staff members of the ward had applied physical violence towards [the applicant]. Those staff members described [the applicant] as a persistent

violator of the existing regulations of the internal order of correctional institutions who was prone to the excessive complaining.

In the course of the inquiry [the applicant's] medical record was summoned from the medical unit of the correctional colony. The record was sent to the Boguchanskiy District Bureau of the Forensic Medical Examinations to establish whether he had had any injuries or illnesses. A report on the results of the expert examination has not yet been received.

The inquiry established the inmates of [the applicant] and the places of their current detention. Requests for their interrogations in respect of the alleged instances of [the applicant's] ill-treatment by warders from the special type punishment ward were sent to the places of the detention of [the applicant's] inmates, Mr V., Mr Ba., and Mr L. The investigation department has not yet received any responses to the requests. The place of detention of another inmate, Mr K., is being established.

As follows from the log of admission of inmates to the special type punishment ward, on 5 March 2008 an examination of [the applicant] by a dentist was recommended. The log does not contain any other recommendations by a doctor. As follows from the same log, on 9 April 2008 [the applicant] did not make any complaints.

A log recording results of examination of inmates for the purpose of discovering physical injuries states that during the periods from 4 to 8 March 2008 and from 8 to 10 April 2008 no injuries were discovered on the detainees of the special type punishment ward.

According to a medical log, on 5 March and 9 April 2008 the applicant was not prescribed any treatment.

Having regard to the abovementioned, the inquiry did not establish any objective data showing that [the applicant] had been subjected to physical violence by the staff members of the ward; it follows that in his complaint of 24 October 2008 [the applicant] tried to discredit the staff members of the ward and that [the complaint] did not contain any evidence of a criminal conduct ... [by warders].”

On 19 September 2011, in response to the applicant's complaint about the decision of 5 September 2011, a higher-ranking official of the investigating department found no reason to set that decision aside.

3. Tort proceedings

(a) Proceedings concerning the detention in the punishment ward

The applicant lodged an action against the colony administration, the Ministry of Finance and the Krasnoyarsk Regional Department for Execution of Sentences seeking compensation for damage caused to him by his allegedly unlawful detention in appalling conditions in the punishment ward on a number of occasions.

The applicant was represented by legal aid counsel.

On 26 January 2009 the Boguchanskiy District Court of the Krasnoyarsk Region dismissed the applicant's action, having found that each instance of his admission to the ward had been warranted and based on a proper legal order. As to the applicant's complaints about the conditions of his detention, the District Court held as follows:

“Cells in the punishment ward are equipped with a lavatory pan and a sink; the cells are regularly ventilated, the temperature regimen is under control, inmates are provided with bedding against their signature; [the bedding] is clean and dried, it is sent to cleaners immediately after [inmates] return them; inmates are not provided with dirty bedding...

...conditions of detention in the punishment ward and the special type punishment unit are determined and regulated by the Russian Code on Execution of Sentences and cannot be considered as violating rights of inmates or as a ground for awarding compensation for non-pecuniary damage.”

On 20 April 2009 the Krasnoyarsk Regional Court upheld the judgment on appeal, having endorsed the District Court’s reasoning.

(b) Proceedings concerning the detention in the special type punishment ward and medical assistance

The applicant lodged an action complaining about the conditions of his detention in the special type punishment ward. He described, in detail, the conditions of his detention, complained about a severe limitation of his rights during that lengthy period of his detention and argued that he had not benefited from effective medical care in respect of a long list of his health complaints.

On 9 September 2010 the Achinsk Town Court dismissed the action, having found as follows:

“As it was established in the case, [the applicant], having been convicted on 21 January 2005 by the Achinsk Town Court of aggravated robbery and sentenced to nine years of imprisonment, was serving his sentence in correctional colony no. 43 in the Boguchanskiy District of the Krasnoyarsk Region; by a decision of 17 August 2007 the director of the colony authorised [the applicant’s] transfer to the special type punishment ward ... for twelve months for a violation of the rules governing the service of sentences; on admission to the ward a medical assistant examined the applicant having determined that [he was] “healthy”.

As follows from a record of admission and examination of convicts ... in the special type punishment ward ... presented by the defendant, [the applicant] did not make any complaints to the medical assistant about any injuries which could have resulted from the beating.

As it follows from medical certificates signed by the head of the medical department in the colony and by the medical assistant ... [the applicant] only complained about a pain which related to his chronic illnesses: oedema of a shin – repeated lymphostasis, osteochondrosis, urethritis [and] cystitis. However, he did not make any complaints about unlawful use of physical force and no injuries were discovered on him.

In response to [the applicant’s] complaint to prosecution authorities, the Nizhenpoymenskiy District prosecutor supervising [correctional institutions], in his report of 26 October 2008, recorded a delayed transfer of [the applicant] from the special type punishment ward [to the prison hospital] and delays in providing him with nonconervative medical care in the conditions of the special type punishment ward. In this respect, [the prosecutor] issued the Krasnoyarsk Regional Department for Execution of Sentences with an order for elimination of the discovered defects ... [Disciplinary sanctions were taken] in respect of the colony director, the director of the special type punishment ward, and the head of the medical unit of the correctional colony.

At the same time, the court cannot consider the abovementioned facts to be established as special medical knowledge is required to determine the issue on the

timeliness, necessity and conservativeness of the medical care; in this connection, the court authorised a forensic medical examination to determine whether the staff members of the correctional colony and the punishment ward were responsible for the omissions and to identify whether [the applicant's] state of health deteriorated as a result of the abovementioned 'omissions'. At the same time, both the plaintiff and the defendant were provided with an opportunity to pose questions to the experts before the examination.

According to report no. 526 of 29 July 2010 of the forensic medical examination performed by the Krasnoyarsk Regional Bureau of Forensic Medical Examinations, the experts concluded that during his detention in the special type punishment ward from 5 March to 17 July 2008 [the applicant] made various complaints asking for medical assistance. Symptomatic therapy was timeously provided [to the applicant] in the necessary and full amount according to the diagnosis made, taking into account the date when [the applicant] had been diagnosed with a specific illness and that [the treatment] was provided in an institution which does not specialise [in that field]. The [applicant's] medical documents do not contain any information that [he had] any injuries. It was practically impossible not only to diagnose but to suspect that [the applicant] suffered from deep venous thrombosis of the lower extremities in the conditions of the special type punishment ward which does not satisfy the conditions of the specialised medical institution. The clinical picture demonstrated by [the applicant] corresponded to the subacute stage of the illness which corresponds to the following date of the beginning of the disease: March 2008. A deterioration of [the applicant's] health could have been caused both by the character of a vascular illness and by [the applicant's] failure to follow recommended medical procedures in the conditions of the special type punishment ward. A surgeon [of a clinical tuberculosis hospital] who examined [the applicant] on 9 July 2008 in the special type punishment ward did not establish that his health deteriorated. Therefore, the commission did not establish any instance of belated provision of the medical care to [the applicant] or a failure to provide him with 'conservative treatment' in the abovementioned period.

Taking into account that the members of the expert commission comprising experts from various medical fields reached the conclusions mentioned in the expert report on the basis of every item of evidence collected, including in response to [the applicant's] requests, [and] medical documents, the court has no reason to doubt those conclusions.

Therefore, having found in the court hearing no guilt on the part of the staff members of the special type punishment ward in providing [the applicant] with medical assistance during his detention in that facility, the court cannot accept that part of the [the applicant's] claim for compensation for non-pecuniary damage ...

While assessing other complaints by the applicant regarding his detention in the special type punishment ward in 2007 and 2008 in the conditions [which were] 'inhuman', [amounted to] 'torture or degrading treatment' which ran contrary to conventions on human rights, the court takes into account the following considerations.

...

As follows from the case file materials, [the applicant], who is serving his sentence in correctional colony no. 42 ..., was found guilty of repeated violations of the established order of serving sentences ... and was sentenced to the placement in the special type punishment ward ... for twelve months.

By virtue of Article 82 § 3 of the Russian Code on Execution of Sentences, Rules on Internal Order in Correctional Institutions apply to correctional facilities

Article 14 of the above-mentioned Rules lays down an obligation on convicts serving sentences to comply with laws and those Rules; to follow the order of the day

established in the colony; to submit to medical examinations and other necessary examinations with the aim of timeously identifying infectious diseases, and also to submit to medical examinations to identify cases of alcohol, drug or toxic abuse or of instances of ill-treatment; to wear [uniform] with identification insignia on the sleeves and chest. Chapter XXIII of the Rules sets out specific conditions of detention in special type punishment wards according to which inmates should eat in cells [and] they should only be provided with bedding for the night. When taken outside the cell inmates are provided with seasonal clothes; they have to take turns in performing duty service in the cells of the punishment ward and special type punishment ward.

By virtue of Article 11 § 2 (a) of the Russian Code on Execution of Sentences convicts detained in the special type punishment wards or in solitary confinement have a right to spend 500 roubles per month from their personal account to buy food or essentials ...

[An instruction of the Ministry of Justice] sets out that cells in a special type punishment ward should be equipped with tables and benches corresponding to the number of [detained inmates], a window with a casement situated close to the ceiling, a lavatory pan and a sink.

The character of those regulations in the conditions when an inmate serves a disciplinary penalty cannot amount to inhuman treatment or torture and therefore does not run contrary to the international norms. As follows from the legal position of the European Court of Human Rights expressed in a number of cases, and from Article 3 of the Convention on Human Rights, torture is considered to be ‘inhuman or degrading treatment which causes severe suffering, moral or physical’. International legal norms (Article 5 of the European Convention on Human Rights) also do not exclude a possibility of application of disciplinary sanctions to inmates who committed a violation of internal rules governing the serving of sentences.

At the same time, the court considers that the very fact of [the applicant’s] detention for a violation of the internal rules on the service of sentences in the conditions of the special type punishment ward undoubtedly pursued an aim of changing the established lifestyle of [the applicant], his relations with persons around him and was meant to have a psychological influence on him which interfered with his rights and freedoms and changed the way those rights could have been implemented.

...

It cannot be overlooked that changes in the legal status of a convicted person who was transferred to a special type punishment ward ... have such a character that in certain aspects they are more severe than those applied in colonies with a particularly strict conditions of detention.

Therefore, the court considers manifestly ill-founded [the applicant’s] arguments that ‘the special type punishment ward had fifteen cells which were meant to house four inmates, measured ten square metres and had a window, and six cells which had two sleeping places, measured 7.5 square metres and had two windows 60 centimetres wide and 80 centimetres long, [that] the access to the windows was blocked by a metal net having only made it possible to open or close the window twice a day; [that] in cells nos. 1-4 the windows were also separated from the remaining part of the cell by metal bars installed a metre apart from the walls; [that] a lavatory pan was situated by the door, [that] it was embedded into the floor and was separated from the door by a metal leaf, as a result [the applicant] had to relieve himself in front of the entire cell; [that] tables and chairs were replaced by metal plates from which metal screws were sticking making it uncomfortable to sit or eat; [that] cupboards, mirrors or sockets were missing; [that] the right to buy food or items of personal use was limited by the right to spend 550 roubles; [that] the cell was under permanent video surveillance; [that] the mattress filling became hard in view of the long period of use making it uncomfortable to sleep; [that] fresh vegetables were not provided; [that] the

administration forced [inmates] to take duty service in the cell having provided an armband saying ‘On duty’ violated his rights and amounted to ‘inhuman’ treatment which should be compensated with an award of damages.

The court also cannot take into account the [applicant’s] arguments that he was detained in ‘inhuman’ conditions, in stuffy cells, that he was beaten up for “any disobedience”, that he was wearing a worn-off uniform, that he used torn-off towels, that he wore summer shoes when taking walks in winter, that he was forced to listen to music in the corridor from the early rise till the night, that he had to take a shower once a week during 15 minutes, and that he had to sleep on a hard mattress with a poor filling, as [the applicant] could not support his submissions; [the submissions] have a subjectively estimated character related to his moral sufferings which do not, in general, allow the court to assess their level; at the same time the court did not establish that [the applicant] suffered or that the administration of the facility behaved unacceptably towards him.

The respondent provided [the court] with a video recording of cells nos. 4 and 6 and of a shower room of the special type punishment ward of the correctional colony. Having studied it, the court does not establish any violations of the requirements of Order no. 130-dsp of 2 June 2003 of the Russian Ministry of Justice ‘On Adoption of Instruction on Construction of Correctional and Specialised Institutions of the System for Execution of Sentences’.

On 21 February 2011 the Krasnoyarsk Regional Court quashed the judgment and sent the case for reconsideration, having noted that the applicant had not been properly summoned to the hearing before the Town Court.

On 9 March 2011 the Achinsk Town Court scheduled a preliminary hearing and dismissed the applicant’s leave to appear, having noted that the civil procedural law did not provide for a possibility to transport a detainee to the court house to participate in a civil case. The Town Court also invited the applicant to appoint the representative and to submit evidence in support of his allegations, as well as to present a list of witnesses.

The applicant again asked the Town Court to ensure his presence and filed a number of motions regarding collection of evidence. In particular, he asked to summon a number of witnesses, including inmates and medical experts, to request logs from the colony, copies of detainees’ complaints to the prosecution office, his medical file, and so on.

On 28 April 2011 the Town Court again dismissed the applicant’s claim in full. The judgment, otherwise identical in wording to that of 9 September 2010, contained the following additional paragraphs:

“At the present time [the court] received and joined to the case file a statement by Mr R., an inmate serving his sentence in correctional colony no. 42, who confirms ‘[the applicant’s] statements about torture, degrading treatment and appalling conditions of detention’, and also that those ‘torture and humiliation’ exhibited in the following: from 27 September 2007 to 27 March 2008 he, that is Mr R., had been subjected to beating and humiliation by the administration of the special type punishment ward, that four inmates had been detained in cells measuring ten square metres, that there had been no sockets and cupboards, that it had been stuffy [in the cells], that he had been taken to recreation walk in kersey boots while it had been 50 degrees Celsius outside, that loud music had played from the rise till the late night, that inmates had been taken to a shower room once a week for 15 minute [and] that the amount of water had been limited; that no fresh vegetables had been provided; that towels had been dirty.

However, the court cannot accept the statement by inmate R. in support of the claims made by [the applicant] as the issue of compensation of non-pecuniary damage, of moral and physical sufferings is subjectively objective, the court is therefore under an obligation to assess those circumstances directly in respect of [the applicant].”

On 7 September 2011 the Krasnoyarsk Regional Court upheld the judgment, having endorsed the Town Court’s reasoning.

(c) Proceedings concerning conditions of detention and quality of medical services in the prison hospital

In June 2008 the applicant lodged a tort action with the Zheleznodorozhniy District Court, seeking compensation for damage caused by poor conditions of detention in the prison hospital and ineffective medical care. He also sought leave to appear.

In November 2008 the presiding judge informed the applicant that his leave could not be granted in view of a lack of a procedural obligation to transport a convicted inmate to a civil case in which he or she was a party. The presiding judge also authorised a forensic medical examination of the applicant.

The conclusions laid down by the experts in their report no. 424 of 29 June 2009 were as follows:

“1. On 13 May 2008 [the applicant] was admitted to [the prison hospital], having been diagnosed with an acute condition of deep vein thrombosis of the lower extremities ...

2. The in-patient treatment provided to [the applicant] in [the prison hospital] corresponded to the general standards (anticoagulants, disaggregants, spasmolytics, microangio-dilatators, anti-inflammatory therapy). That treatment is recommended for patients suffering from deep vein thrombosis. Moreover, a protective regime with limited physical activities, including daily walks, is recommended.

3. That illness ... does not call for an urgent surgery.

4. 5. [The applicant] was released from the hospital on 3 June 2008 following the improvement in the local status, his diagnosis was as follows: acute condition of deep vein thrombosis of the left shin, of the left iliac vein, in the stage of fading ...

As follows from notes made in medical history no. 1719, [the applicant] did not require further inpatient treatment. All necessary recommendations for further medical care of [the applicant] on the conditions of outpatient treatment were given in the epicrisis upon release.

5. 6. On 3 November 2008 [the applicant] arrived at the [prison hospital] with the following diagnosis: postthrombophlebitic illness of the left lower extremity ... He was released with a recommendation to continue outpatient treatment.

6. 7. The deterioration of [the applicant’s] health and his re-admission to the hospital could have been caused either by the nature of the course of his illness or as a result of a failure to follow up the recommendations of prophylactic and medical measures outside the hospital after his first release from it.

7. 8. As follows from the presented medical documents, [the applicant] suffered from the following illnesses (apart from the one indicated above): osteochondrosis of the thoracic and lumbar spine with hernias of nucleus pulposus, nephroptosis of the right kidney of the first degree. The hernias of nucleus pulposus are caused by congenital dysplasia of the spine and do not require active treatment. The

abovementioned illnesses are chronic, should be treated in complex on the condition of outpatient treatment; however, an acute state of an illness should be treated outside or in a hospital. An attending doctor should determine the quantity and dates of the treatment.

8 (9). The results of the clinical laboratory examinations and the general status described in the medical history ... show that [the applicant] did not require urgent surgical treatment in a hospital.

A recommended elastic compression of the [left leg] (with elastic bandage or stockings ...); chemotherapy regimen ([names of medicines]) twice a year for two months, [and] limitation of physical activity were well-founded and necessary.”

Having received the expert report, on 14 September 2009 the Zheleznodorozhniy District Court resumed the proceedings, scheduled the first hearing for 15 October 2009 and again dismissed the applicant’s leave to appear given the absence of a legal norm allowing the transport of convicts to civil court hearings.

On 23 November 2009 the Zheleznodorozhniy District Court dismissed the applicant’s claim in full, having considered that the treatment provided to the applicant in the prison hospital had been adequate and successful given a significant improvement of his condition. The District Court also pointed out that a further deterioration of the applicant’s health had resulted either from a failure to comply with the hospital’s recommendations following the applicant’s transfer to the correctional colony or had been the natural course of his chronic illnesses. The applicant was not brought to the hearing, while the representatives of the prison hospital and of the Federal Treasury attended.

That decision was upheld on appeal by the Krasnoyarsk Regional Court on 17 March 2010. The Regional Court, which conducted a hearing in the applicant’s absence, concluded that the District Court’s decisions, both as regards the applicant’s procedural rights and the merits of the case were lawful and substantiated. The interests of the prison hospital were represented at the hearing by a prosecutor.

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that the conditions of his detention in the punishment ward and in the special type punishment ward, as well as in the prison hospital, had been appalling and inhuman; that he had been beaten up in the special type punishment ward of the correctional colony at least on two occasions and that he had not received adequate medical treatment in the course of his detention, including during his stay in the prison hospital.

2. The applicant further complained under Article 6 of the Convention that the tort proceedings to which he had been a party had been unfair, in that the courts had violated his procedural rights, including the right to present his case in person, that they had misinterpreted the law, had incorrectly assessed the facts and had disregarded his arguments. He also complained that the proceedings against the hospital had been unacceptably long.

3. Finally, the applicant complained under Articles 4, 8, 9, 13, 14 and 34 of the Convention that the colony administration had forced him to work, including to clean the colony territory, that they had read his letters, that he had been offered to be a snitch, that he had had no effective remedy to complain about any of his grievances; that he had been discriminated against on the basis of the fact that he was a convict; and that the colony administration only accepted correspondence once a week without registering it.

QUESTIONS TO THE PARTIES

1. Was there a violation of Article 3 of the Convention on account of the applicant's conditions of detention in the punishment ward, in the special type punishment ward and in the prison hospital? The Government are requested to comment on the specific grievances raised by the applicant and support their submissions with documentary evidence, including ward population registers, floor plans, colour photographs of the sanitary facilities, etc., as well as video recordings of the facilities (including those which were observed by the courts in the tort proceedings initiated by the applicant), reports from supervising prosecutors or regional ombudspersons concerning the conditions of detention in those facilities.

2. Did the applicant have at his disposal an effective domestic remedy for the complaint under Article 3 about the conditions of his detention in the three facilities listed above, as required by Article 13 of the Convention?

3. The Government are invited to submit a typed copy of the applicant's entire medical history and other relevant reports which describe the state of his health from the early months of his detention until the present moment. The Government are requested to pay specific attention to the applicant's allegations that the medical file had been preserved in its initial and complete form when sent to the Nizhnepoymenskiy District Prosecutor.

4. Have the Government met their obligation to ensure that that applicant's health and well-being are being adequately secured by, among other things, providing him with the requisite medical assistance (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V), as required by Article 3 of the Convention, in the present case?

5. As regards the applicant's submissions that he was ill-treated by warders of the special type punishment ward at least on two occasions, on 5 March and 9 April 2008, has he been subjected to torture or inhuman or degrading treatment in breach of Article 3 of the Convention? Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

6. The Government are asked to produce the complete investigation file pertaining to the events in question, including the applicant's written statements which served as the basis for the investigators' decisions.

7. As regards the two sets of the tort proceedings (see Section 3 (b) and (c)), did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, was he afforded an opportunity to attend hearings in those proceedings? Having regard to the fact that the applicant's adversary was present at the hearings and made submissions, has there been an infringement of the applicant's right to equality of arms enshrined in Article 6 § 1 of the Convention?