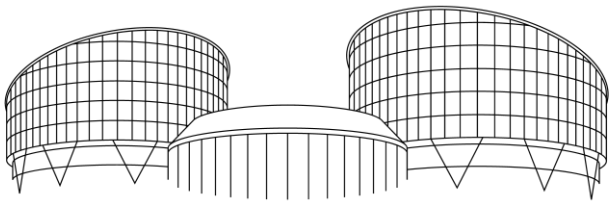

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BORTKEVICH v. RUSSIA

(Application no. 27359/05)

JUDGMENT

STRASBOURG

2 October 2012

FINAL

02/01/2013

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

In the case of Bortkevich 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,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 27359/05) 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 Vladimir Vladimirovich Bortkevich ("the applicant"), on 1 June 2005.

2. The applicant was represented by Ms A. Polozova, 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, *inter alia*, about the conditions of his detention in a temporary detention facility and failure on the part of the domestic courts to secure his participation in the civil proceedings for compensation for the damage resulting from the conditions of his post-conviction detention.

4. On 7 July 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and until his conviction lived in Vologda.

A. Conviction

6. On 26 November 2001 the Vologda City Court convicted the applicant of assault occasioning grave bodily harm and sentenced him to nine years' imprisonment.

7. On 10 January 2002 the Vologda Regional Court upheld the judgment on appeal.

B. Detention in Sokol correctional colony OE-256/4

1. Conditions of detention

8. From 20 January 2002 to 24 June 2004 the applicant was serving his sentence in Sokol correctional colony OE-256/4, Vologda Region (*учреждение ОЕ-256/4*).

9. Following his admission to the correctional colony the applicant claimed not to have been given a full set of prison clothing. Nor was he given personal hygiene items (toothbrush, toothpaste, toilet paper, disposable razors).

10. On 19 March 2002 the applicant was transferred to unit no. 10. Cell no. 17, where the applicant was held, accommodated over fifty inmates, which was more than twice the cell's design capacity.

11. On 15 March 2003 the applicant was transferred to unit no. 11. Reveille in the unit was 4 a.m. and lights-out 8 p.m.

12. On 27 May 2003 the applicant was transferred back to unit no. 10. Cell no. 18, where the applicant was held, accommodated sixty inmates. Among them were six HIV-positive inmates and several inmates suffering from tuberculosis. Due to the lack of regular supply of water the inmates had to use water from a fifty-litre drinking water tank. Both healthy and sick inmates took water from the tank with their own mugs. Both healthy and sick inmates went to the bathhouse at the same time. The applicant lived in constant fear of contamination. The administration of the colony provided the inmates with a brochure, 'Protect yourself' counselling the detainees on safe practices to avoid contamination.

13. The applicant worked in the sewing workshop during the daytime.

14. On 4 April 2004 the applicant complained about a blister on his foot. He stated that he was given an adhesive plaster with an expired date.

15. On 21 April 2004 a telegram arrived for the applicant, informing him of his mother's decease. The telegram was handed to the applicant on 23 April 2004.

16. On 24 May 2004 the applicant submitted a sealed envelope to be sent to the Sokolskiy District Court (Vologda Region). The envelope was not sent to the court immediately but was opened, and three enclosed documents went missing.

2. Complaints to the Prosecutor's Office

17. The applicant complained about the day schedule in unit no. 11 of the OE-256/4 facility. Following the Prosecutor's inquiry into the matter the day schedule was changed to reveille at 5 a.m. and lights-out at 9 p.m.

18. He complained to the Vologda Regional Prosecutor's Office that the OE-256/4 facility did not have adequate medical services, and that medication supplied was date-expired. In its replies of 19 September 2003 and 28 September 2004 the Prosecutor's Office informed the applicant that inquiries had been made about his allegations and that they had not been confirmed. It was established that on 29 January and 22 and 24 March 2004 the applicant had complained of pain in his right foot, that dried blisters were discovered on examination, and that the applicant was advised on the required treatment.

19. The applicant also submitted a complaint that his correspondence had been interfered with, and that notification of his mother's death had been delayed. In its reply dated 29 September 2004 the Prosecutor's Office confirmed that the actions of the facility's authorities had breached domestic law, and informed the applicant that disciplinary measures had been taken against those responsible.

3. Proceedings for compensation for damage

20. The applicant brought proceedings against the OE-256/4 correctional colony for compensation for damage incurred because of the above-mentioned violations. He sought leave to appear before the court.

21. On 29 August 2005 the Sokolskiy District Court, in the applicant's absence, having heard a representative of the correctional colony, a representative of the Ministry of Finance, witness statements and other evidence, dismissed the action. The relevant part of the judgment read as follows:

> "The court has therefore established that in the period the applicant was serving his sentence in facility OE-256/4 from 2002 to 2004 there had been breaches on the part of the facility's administration as regards the handling of the [applicant's] correspondence, provision of clothing, the day schedule, and late notification of the telegram. At the same time it has not been proved by [the applicant] that as a result of the [above omissions] he had sustained any psychological distress, that his health had deteriorated, or that there had been any serious consequences ...
>
> [The applicant's] assertion that he had sustained psychological distress as a result of his detention in the same premises with HIV- and tuberculosis-infected detainees can not be considered well-founded. HIV-positive prisoners... are detained in the same areas as other detainees, in accordance with Article 101 of the Penal Code. Those infected with active tuberculosis are detained in specialised facilities. Those being treated for tuberculosis and those in remission serve their sentences in the same areas, therefore their presence on the same premises as the applicant had not created a risk to his health. ...

> It was established at the court hearing and following previous inspections conducted by the Vologda Regional Prosecutor's Office that the medical unit of the OE-256/4 facility had provided the applicant with the necessary medical assistance. It had not been established as fact that the applicant had been treated with date-expired medicine or had sustained any harm as a result.
>
> As to the applicant's claims of overcrowding, it has not been established that during his time in the OE-256/4 facility the number of detainees exceeded the design capacity of the colony's premises, including cells 17 and 18.
>
> Regard being had to the above, the court concludes that the applicant did not experience physical or psychological distress through the fault of the OE-256/4 facility authorities which would attract compensation under Article 151 of the Civil Code and the European Convention on Human Rights. ..."

22. The applicant lodged an appeal, complaining, among other things, that the District Court had not granted him leave to appear. The applicant asked to be taken to the appeal hearing.

23. On 9 November 2005 the Vologda Regional Court, in the applicant's absence, upheld the judgment on appeal.

4. Ill-treatment and investigation thereof

24. On 31 March 2004 the applicant, among other detainees, was subjected to a strip-search. During the search the facility's director for security S. administered three blows to the side of the applicant's back, the last one knocking the applicant down.

25. Following the applicant's repeated requests, on 25 October 2004 the Vologda prosecutor in charge of supervision of compliance with laws in penal institutions opened a criminal investigation in connection with an offence under Article 286 § 3 of the Criminal Code (abuse of power involving the use of violence). The applicant was granted victim status in those criminal proceedings.

26. By a final judgment of the Vologda Regional Court of 17 May 2005 S. was found guilty of abuse of power and sentenced to two years and six months' imprisonment. He was obliged to pay the applicant 3,000 Russian roubles (RUB) in compensation for non-pecuniary damage.

C. Conditions of the applicant's detention in the Sokol temporary detention wing

27. On 4 February, 9-11 March, 23-25 March, 28 March and 5-6 April 2005 the applicant was taken to, and held in, the temporary detention wing at Sokol police station, Vologda Region *(ИВС Сокольского ГОВД)* to appear at the trial of S.

1. The Government's account

28. The temporary detention wing had nine cells: cell no. 1, measuring 22.7 sq. m, cell no. 2, measuring 14 sq. m, cell no. 3, measuring 17.4 sq. m, cell no. 4, measuring 17.2 sq. m, cell no. 5, measuring 7.1 sq. m, cell no. 6, measuring 7 sq. m, cell no. 7, measuring 7 sq. m, cell no. 8, measuring 15.4 sq. m, and cell no. 9, measuring 6.9 sq. m. The Government were unable to provide information as to the particular cells where the applicant had been detained during his stay.

29. All cells were equipped with artificial lighting consisting of two 150-watt lamps. They were also equipped with natural extract-and-input ventilation. All cells were heated by a central city heating system. The average temperature in the cells in winter was above 18 degrees Celsius.

30. The cells were equipped with lavatories, separated from the living area by a partition and thus enabling the detainees to answer the calls of nature in privacy.

31. The cells were equipped with individual sleeping places. During his stay the applicant was provided with bedding.

32. The temporary detention wing had a sanitary inspection room equipped with a shower. All those brought to the facility were obliged to take a shower upon their admission. Their stay never exceeded three days, so no further showers were made available.

33. The detainees were provided with drinking water on demand. They were served hot meals three times a day. The meals were cooked under contract in the catering facilities of the Soldek ZAO. In support of their submissions the Government provided a copy of an agreement between the Sokol police station and the Soldek ZAO dated 3 March 2004. Under that agreement the contractor was obliged to prepare set lunches for detainees (consisting of one first course, three second courses, 600 g of bread, 30 g of sugar and 1 g of tea) by 11.30 a.m. on each working day. The agreement was valid until 31 December 2004 and could be extended for another year if neither party expressed a wish to dissolve the agreement.

34. All cells were equipped with metal dining tables and benches fixed to the floor.

35. The temporary detention wing had its own exercise yard. The applicant was taken outside daily for an hour's exercise.

2. The applicant's account

36. The applicant submitted that on 4 February 2005 he was detained in cell no. 9, which was equipped with four sleeping places. From 9 to 11 March and on 28 March 2005 he was detained in cell no. 6, which was equipped with four sleeping places. From 23 to 25 March 2005 the applicant was detained in cell no. 1, which was equipped with seven sleeping places. On each of those occasions the applicant was detained in the cell alone. The

applicant did not contest the size of the cells as indicated by the Government.

37. Each cell was lit dimly by a 40-watt lamp, situated above the door to the cell and protected by a grid. There was no natural lighting in the cells, as the windows were covered by metal shields. The few holes pierced in the metal shields did not let in much daylight. The window vents were also covered with metal shields and could not be opened.

38. The temperature in the cells never went above 15 degrees Celsius.

39. The lavatories in the cells were squat toilets (hole in the floor). They were not separated from the living area of the cells. A cold-water tap above the toilet was used for flushing the toilet and any other washing.

40. The applicant was given a sleeping place, a mattress, a pillow and a blanket. He was, however, not given other bedding or towels. Neither was he given any personal hygiene items.

41. On no occasion was the applicant provided with an opportunity to have a shower.

42. The applicant had no access to drinking water. He could not boil the tap water because there was no electric kettle in the cells.

43. The applicant submitted that he only had white bread and a cup of tea for breakfast. For lunch he was given soup and a second course (pasta with a slice of sausage or potatoes with a meat cutlet), rye bread and hot water. Dinner consisted of the rest of the cold leftovers of pasta or potatoes, rye bread and hot water. The daily ration did not include any fruit or vegetables (except potatoes). Overall, the food was extremely meagre and monotonous.

44. Although the cells were equipped with dining tables, in the absence of any benches the applicant had to eat sitting on his bed.

45. The applicant claims that, despite his requests, he was never taken for outside exercise.

II. RELEVANT DOMESTIC LAW

A. Statutory requirements for conditions of detention

46. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences (Law no. 103-FZ of 15 July 1995, "the Detention of Suspects Act") provides that suspects and defendants detained pending investigation and trial are held in remand centres (section 8). They may be transferred to temporary detention centres *(ИВС)* if necessary for the purposes of investigation or trial and if transportation between a remand centre and a police station or court-house is not feasible because of the distance involved. This type of detention in a temporary detention centre may not exceed ten days per month (section 13).

47. Detainees should be given free food sufficient to maintain them in good health, in accordance with the standards established by the Government of the Russian Federation (section 22 of the Detention of Suspects Act). Detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should each be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell (section 23).

48. According to the Internal Regulations of Temporary Detention Centres, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996 (in force at the time of the applicant's detention), the living space per detainee should be four square metres (paragraph 3.3 of the Regulations). All cells must be equipped with a table, lavatory bowl, running tap water, shelf for toiletries, drinking water tank, radio and dustbin (paragraph 3.2 of the Regulations). Furthermore, the Regulations made provision for the detainees' right to outdoor exercise for at least one hour per day in a designated exercise area (paragraphs 6.1, 6.40, and 6.43 of the Regulations).

B. Attendance at hearings

49. The Code of Civil Procedure of the Russian Federation provides that individuals may appear in court in person or may act through a representative (Article 48 § 1).

50. The Penal Code provides that convicts may 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 mention any possibility of a convicted person taking part in civil proceedings, either as a plaintiff or a defendant.

51. On several occasions the Constitutional Court has dismissed as inadmissible complaints by detainees whose requests for leave to attend hearings were refused by civil courts. It has reasoned that the relevant provisions of the Code of Civil Procedure and the Penal Code do not, as such, restrict a detainee's access to court. The Constitutional Court has emphasised nonetheless that an imprisoned 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, a hearing should be held at the convict's place of detention, or the court committed to hear the civil case may instruct the court with territorial jurisdiction over the convict's place of detention to obtain his/her submissions or to take any other procedural steps (decisions 478-O of 16 October 2003, 335-O of 14 October 2004, and 94-O of 21 February 2008).

C. Other relevant provisions of the Code of Civil Procedure

52. Under Articles 58 and 184 of the Code of Civil Procedure a court may hold a session elsewhere than in a court-house if, for instance, it is necessary to examine evidence which cannot be brought to the court-house.

53. Article 392 of the Code of Civil Procedure contains a list of situations which may justify the reopening of a case which has already been completed, on account of newly discovered circumstances. A judgment of the European Court of Human Rights finding a violation of the European Convention on Human Rights in a case in respect of which an applicant has lodged a complaint with the Court should be considered a new circumstance warranting a reopening (Article 392 § 4 (4)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained that the conditions of his detention in the temporary detention facility at the police station in Sokol, Vologda Region, had been in breach of Article 3 of the Convention, which provides as follows:

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

55. The Government contested the applicant's allegations and argued that the conditions of the applicant's detention in the temporary detention wing complied with the requirements of Article 3 of the Convention.

56. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-01, ECHR 2001-VIII). When a person is held in detention the State must ensure that he is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering

inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas*, cited above, § 102, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, their cumulative effects must be considered, as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The duration of the detention is also a relevant factor.

57. Turning to the circumstances of the present case, the Court notes that on 4 February, 9-11 March, 23-25 March, 28 March and 5-6 April 2005 the applicant was detained in the temporary detention wing of the police station. The Court further notes from the parties' submissions that the applicant was held alone in cells measuring between 6.9 and 22.7 sq. m (see paragraphs 28 and 36 above). He was at all times provided with an individual sleeping place (see paragraphs 31 and 40 above), had unrestricted access to a toilet and to running water (see paragraphs 30 and 39 above) and received food three times a day (see paragraphs 33 and 43 above). The Court notes the applicant's allegations of poor natural and artificial lighting in the cells, low temperatures in the cells, lack of opportunity to have a shower, bed linen not provided, absence of drinking water tanks in the cells, lack of outdoor exercise and substandard quality of food, all of which is disputed by the Government. However, the Court does not find it necessary to establish the veracity of these allegations as, in any event, it considers that in view of the short duration of the applicant's stays in that facility, which did not exceed three days on any given occasion and amounted to eleven days altogether between February and April 2005, it cannot be said that their cumulative effect could have been such as to attain the minimum level of severity and to amount to inhuman and degrading treatment under Article 3 of the Convention (see, by contrast, *Kantyrev v. Russia*, no. 37213/02, §§ 46-54, 21 June 2007; *Guliyev v. Russia*, no. 24650/02, §§ 36-46, 19 June 2008; *Shilbergs v. Russia*, no. 20075/03, §§ 81-84, 17 December 2009; *Shchebet v. Russia*, no. 16074/07, §§ 84-96, 12 June 2008; *Khristoforov v. Russia*, no. 11336/06, §§ 22-29, 29 April 2010; and *Eldar Imanov and Azhdar Imanov v. Russia*, no. 6887/02, §§ 121-128, 16 December 2010; in which the Court found a violation of Article 3 of the Convention on account of the conditions of the applicants' detention in temporary detention facilities).

58. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

59. The applicant complained about the failure of the domestic court to secure his attendance at the hearing of his civil case on 29 August 2005 in the first instance and on 9 November 2005 on appeal. He relied on

Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public ... hearing ... by [a] ... tribunal ..."

A. Submissions by the parties

60. The Government explained that the courts' refusals to secure the applicant's attendance at the hearings of 29 August and 9 November 2005 had resulted from the absence of a legal norm permitting convicts serving sentences of imprisonment to participate in hearings before civil courts. They further submitted that pursuant to provisions of Chapter 48 of the Code of Civil Procedure the applicant was afforded an opportunity to appoint a representative to stand for his interests in the proceedings. The applicant was advised of this possibility and afforded adequate time to find a representative, to prepare and submit to the court his position on the case, and to exercise his other procedural rights. The applicant was informed of all court hearings and his procedural rights, and supported his claims with relevant evidence, which the domestic court found sufficient for examination of the case on the merits.

61. The applicant submitted that he repeatedly asked the domestic court to secure his attendance at the hearing of his civil case in the first instance and on appeal. In those requests he informed the domestic courts that his financial situation did not allow him to hire a representative. As a result the hearings were held in his absence and he was not afforded an opportunity to participate in the examination of the case on equal grounds with his adversary.

B. The Court's assessment

1. Admissibility

62. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

63. 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 which

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).

64. Article 6 of the Convention does not expressly provide for a right to a hearing to be attended in person; 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 own 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).

65. The Court has previously found a violation of the right to a fair hearing in several cases against Russia, in which Russian courts refused leave to appear in court to imprisoned applicants who had wished to make oral submissions on their civil claims. For instance, in the case of *Kovalev v. Russia* (no. 78145/01, § 37, 10 May 2007), despite the fact that the applicant was represented by his wife, the Court considered it relevant that his claim of ill-treatment by the police had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings". In the case of *Khuzhin and Others v. Russia* (no. 13470/02, §§ 53 et seq., 23 October 2008) the Court found that, by refusing to ensure that imprisoned applicants could attend hearings, and by failing to consider other legal means of ensuring their effective participation in defamation proceedings, the Russian courts had violated the principle of equality of arms. A similar conclusion was reached by the Court in other cases against Russia where the authorities had failed to secure imprisoned applicants' appearances before the civil courts examining their complaints about the conditions of their detention (see, for instance, *Shilbergs*, cited above, §§ 107-113; *Artyomov v. Russia*, cited above, §§ 204-208; and *Roman Karasev v. Russia*, no. 30251/03, §§ 65-70, 25 November 2010), and, in a very recent case, where the imprisoned applicant was not afforded an opportunity to personally argue his civil case concerning termination of his parental rights (see *Karpenko v. Russia*, no. 5605/04, §§ 89-94, 13 March 2012). In the cases cited above, the Court consistently held that given the nature of the applicants' claims, which were, to a significant extent, based on their personal experience, an effective, proper and satisfactory presentation of the case could have only been secured by the applicants' personal attendance at the hearings. The applicants' testimony pertaining to the facts of the case, of which only they

themselves had first-hand knowledge, would have constituted an indispensable part of the plaintiffs' presentation of the case.

66. Turning to the circumstances of the present case, the Court observes that the applicant was excluded from personal participation in the hearing of his civil case by which he challenged the conditions of his detention. The applicant could not meet the cost of any form of representation or legal advice (see paragraph 61 above). The Court will not go into examination of whether the applicant made his financial problems and difficulties in finding a representative sufficiently known to the domestic courts since, in any event, the circumstances in dispute were exclusively within his own personal knowledge and experience.

67. The Court notes the Government's argument that the domestic courts refused the applicant leave to appear in court in view of the absence of a legal provision permitting convicts serving sentences of imprisonment to participate in hearings before civil courts. In this connection, the Court is also mindful of another possibility which was open to the domestic courts as a way of securing the applicant's participation in the proceedings. The District Court could have held an off-site court session at the colony where the applicant was serving his sentence (see paragraph 51 above). It does not appear, however, that this option was ever considered by the domestic court.

68. Having regard to the Court's previous case-law and the circumstances of the present case, the Court finds that by refusing to grant the applicant leave to appear and make oral submissions at the hearing of his civil case, which was largely based on his personal experience, and by failing to consider an alternative solution for him to be heard in person, the domestic courts deprived the applicant of the opportunity to present his case effectively.

69. There has therefore been a violation of Article 6 § 1 of the Convention on account of the authorities' failure to afford the applicant an adequate opportunity to present his case effectively before the civil courts.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. The applicant further complained under Articles 3 about the incident of 31 March 2004 and the conditions of his detention in the correctional colony, under Article 6 about the alleged unfairness of the criminal proceedings against S., under Article 8 about interference with his correspondence on the part of the administration of the correctional colony and late notification of his mother's decease, and under Article 13 about the lack of an effective domestic remedy in relation to his complaint under Article 6.

71. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 150,000 euros (EUR) in compensation for non-pecuniary damage.

74. The Government considered that the applicant's claim was excessive and that if the Court were to find a violation, the finding of such a violation would constitute in itself sufficient just satisfaction.

75. The Court, however, is of the opinion that the applicant must have suffered frustration and a feeling of injustice as a consequence of the courts' refusal to secure his attendance at the hearings. It considers that the non-pecuniary damage suffered by the applicant cannot be adequately compensated for by the finding of a violation alone. In the circumstances of the present case, the Court considers that the applicant should be awarded EUR 1,500 in respect of non-pecuniary damage.

76. The Court further reiterates that when an applicant has suffered an infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, most recently, *Karpenko*, cited above, § 100, with further references). The Court notes, in this connection, that Article 392 of the Russian Code of Civil Procedure provides the basis for the reopening of the proceedings if the Court finds a violation of the Convention (see paragraph 53 above).

B. Costs and expenses

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

C. Default interest

78. 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 complaint concerning the applicant's inability to attend hearings before the civil courts admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the authorities' failure to afford the applicant an adequate opportunity to present his case effectively before the civil courts;

3. *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 1,500 (one thousand five hundred 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;

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

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

Søren Nielsen	Nina Vajić
Registrar	President