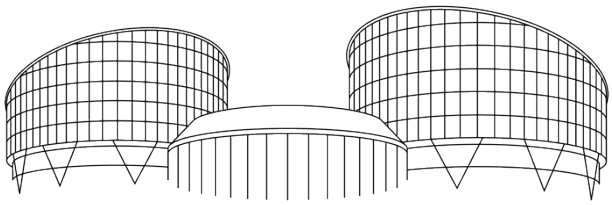

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BERESNEV v. RUSSIA

(Application no. 37975/02)

JUDGMENT

STRASBOURG

18 April 2013

FINAL

18/07/2013

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

In the case of Beresnev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 26 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 37975/02) 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 Sergeyevich Beresnev ("the applicant"), on 5 October 2002.

2. The Russian Government ("the Government") were represented by their Agent, Mr V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that the conditions of his detention in the remand prison had been inhuman and degrading, that he had been beaten in the correctional colony and there had been no effective investigations of those events, and that he had been unable to participate effectively in the civil proceedings he had brought against the colony administration.

4. On 17 January 2008 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 1979 and lived until his arrest in the village of Kosmedemyanskiy, Kaliningrad Region. On 20 December 1999 the Kaliningrad Regional Court ("the Regional Court") convicted the applicant of aggravated disruption of order in a detention facility and sentenced him to fourteen years' imprisonment. According to the last available information from the applicant he continued to serve his prison sentence in a correctional colony in the village of Slavyanovka, Kaliningrad Region.

A. The conditions of the applicant's detention in remand prison IZ-39/1 and subsequent proceedings

6. From 23 December 1999 to 26 June 2000 the applicant was detained in Kaliningrad remand prison IZ-39/1 awaiting transportation to Moscow, where he was to attend the hearing of his criminal case in the court of appeal. According to the applicant, the conditions of detention there were appalling, as the cells were overcrowded and dirty and without a minimum of comfort. After 26 June 2000 the applicant was transported to an investigation facility in Smolensk, and thereafter to investigation facility IZ-48/3 in Moscow. He alleges that the conditions of detention in both facilities were similar to those in remand prison IZ-39/1.

7. On 13 January 2003 the applicant lodged a tort action against the administration of remand prison IZ-39/1. The applicant claimed 80,000 Russian roubles (RUB) in compensation for non-pecuniary damage caused by the conditions of his detention in the facility from 23 December 1999 to 26 June 2000. At some point the applicant also asked the court to summon as witnesses the inmates who had been detained with him in the cell. He also sought leave to appear before the court in person.

8. According to the Government, on 10 March 2003 the Kaliningrad Tsentralniy District Court informed the applicant about his right to appoint a representative for the proceedings. The court explained that given the applicant's status as a convict the court had no power to order his dispatch to the hearing. The applicant in reply notified the court that he could not afford to be represented.

9. On 27 March 2003 the Tsentralniy District Court held a hearing in the applicant's absence. The case was adjourned; the applicant was informed again that it would not be possible for him to attend in person and that he could appoint a representative.

10. On 22 April 2003, the Tsentralniy District Court held a hearing in the applicant's absence and dismissed his claim. The representatives of the

defendants were present and heard. The witnesses were not summoned. The court found that the applicant had failed to provide evidence to prove that his rights had been violated in IZ-39/1 or that the authorities had been responsible for any "mental anguish or other damage" allegedly caused to him. The court held, *inter alia,* that it was not the fault of the authorities that the cells in the facility had been overcrowded.

11. On 22 May 2003 the applicant requested the Tsentralniy District Court to give him access to the case file. He did not receive a reply to his request.

12. On 30 July 2003 the Regional Court, acting on an appeal, upheld the judgment of 22 April 2003. The applicant was not present.

B. The loss of the applicant's belongings and subsequent proceedings

13. On 12 October 2000 the applicant was transferred to the penal establishment OM-216/13 ("the colony") in the village of Slavyanovka, Bagrationovskiy District, Kaliningrad Region. Upon his arrival, the colony administration seized for inspection the applicant's personal documents, letters and photographs. The applicant alleged that the administration had then lost them. Administrative complaints of negligence on the part of the administration were to no avail.

14. On 16 October 2001 (or, according to the Government, 23 October 2001) the applicant brought an action for damages against the colony administration and the Ministry of Finance in connection with the loss of his personal archive. The applicant claimed RUB 6,000 in compensation for pecuniary and non-pecuniary damage.

15. On 15 November 2001 the Bagrationovskiy District Court, Kaliningrad Region ("the District Court") set a date for the hearing and ordered the defendants to produce written observations in reply to the applicant's statement of claim, requested the applicant's personal file from the colony, and summoned a witness, a colony officer.

16. By a letter of 21 November 2001 the court notified the applicant of the date of the forthcoming hearing and asked him whether he agreed that the case could be heard in his absence. The District Court explained to the applicant that there was no possibility in law for a detainee to be transported to court other than in exceptional circumstances. The applicant replied, insisting on attending the proceedings in person.

17. The first hearing was held in the applicant's absence on 14 December 2001. A representative of the colony was present. The court ordered the hearing to be adjourned until 30 January 2002. On 14 January 2002 (according to the Government on 9 January 2002) the court sent a letter to the applicant explaining to him that the law, in particular Article 77 of the Code of Execution of Sentences, did not permit convicts to attend

civil proceedings in person, and advising him to instruct a representative to attend the hearing on his behalf.

18. The applicant replied that he did not have a representative and that he insisted on attending in person.

19. The second hearing was held on 30 January 2002, again in the absence of the applicant and in the presence of the representatives of the defendants. After hearing the defendants' representatives, examining documents and hearing oral testimony from the only witness present (a staff member of the colony) the District Court found against the applicant. The court concluded that the applicant had received his documents back and had burned them afterwards. The judgment also referred to a statement signed by the applicant that he had received his possessions.

20. On 13 February 2002 the applicant appealed against the judgment. He alleged that the court had wrongfully interpreted the facts of the case because of his absence from the hearings. He also requested leave to appear before the appeal court.

21. Following two hearings, on 29 May and 17 July 2002, held in the applicant's absence, the Regional Court upheld the judgment of 30 January 2002. The court held that there was no possibility in law for the applicant to be transported to the hearing, and that the judgment at issue was lawful.

C. Ill-treatment in colony OM-216/13

1. The events of 23 October 2001 and subsequent proceedings

(a) Alleged beatings

(i) The applicant's description of the events

22. At the material time the applicant was serving a prison sentence in correctional colony OM-216/13. In October 2001 a group of officers of a special-purpose unit of the Kaliningrad Regional Directorate for Execution of Sentences (UIN) arrived at the colony for the purpose of performing "regime [enforcement] operations". Searches of the living quarters of the colony conducted by the officers of the unit revealed the presence of "prohibited items" there.

23. On 23 October 2001 several UIN officers entered the cell where the applicant was detained and ordered him to leave the cell. He was told that he had to move to another building of the colony. The applicant and his inmates were taken to the entrance door, where they saw two rows of officers wearing balaclava masks. The applicant was told to run between the rows to a car. While the applicant was running, he received several blows with rubber truncheons. The officers also kicked him and set a dog on him.

24. The ride to the other building took several minutes. When getting out of the car the applicant fell to his knees. On his way back from the car to the colony the applicant and other inmates again passed through the rows of masked officers. The applicant was hit several times with rubber truncheons and kicked.

25. The applicant submitted that inmates Mr Artyomov, Mr Sk., Mr T., Mr G., Mr Ks., Mr Gr. and Mr M. had been subjected to the same treatment on the way to and from the car. A detailed description of the same events by Mr Artyomov can be found in the Court's judgment in the case of *Artyomov v. Russia* (no. 14146/02, §§ 36 et seq., 27 May 2010).

26. The applicant, with several other inmates (Mr Artyomov, Mr T. and Mr M.), was chased to one of the colony courtyards. They were lined up with their hands against the wall and their legs apart. Then several guards in balaclava masks approached the inmates and started beating them. An officer kicked the applicant and hit his legs with rubber truncheons. The applicant was also hit several times on the backs of his knees. The officers said that if the inmates did not stop writing complaints and behaving badly, the next time they would be beaten more severely.

27. Thereafter the applicant and other inmates were ordered to run "through the corridor" to their cell. While the applicant was running, he was hit several times on the back and humiliated verbally. According to the applicant, in that incident he received no fewer than twenty blows.

28. During the next week the applicant repeatedly requested to see a doctor. On 2 November 2001 Mr G., the colony doctor, visited him. The applicant told him about the beatings on 23 October 2001. He also showed the doctor his right knee, which was swollen and bruised. The doctor wrote in the applicant's medical record that the applicant had fallen out of a car.

(ii) The Government's description

29. The Government denied that physical force had been used on the applicant, with reference to the findings of the domestic inquiry (see below).

(b) The investigation of the events of 23 October 2001

30. Shortly after the incident the applicant sent a number of complaints of ill-treatment to various State officials, including the Prosecutor's Office of the Kaliningrad Region.

31. On 27 November 2001, 29 April and 10 June 2002 and 30 January 2003 the Prosecutor's Office of the Kaliningrad Region rejected the applicant's complaints about the events of 23 October 2001 as unsubstantiated.

32. On 5 June 2003 the applicant lodged a request with the Regional Prosecutor's Office seeking for criminal proceedings to be instituted on account of the incident of 23 October 2001. According to the Government,

on 4 August 2003 the applicant lodged a similar complaint with the office of the prosecutor in charge of the supervision of penal institutions.

33. On 6 August 2003 Mr K., the prosecutor, took a decision not to institute criminal proceedings. The applicant received a copy of that decision on 11 August 2003. The prosecutor concluded that the applicant had not been subjected to violence. That conclusion was based on written submissions from officials of the colony and officers of the UIN, who denied that there had been any beatings or that physical force or "special-purpose hardware" (a term designating items including rubber truncheons, handcuffs, and pepper gas) had been used, and a report by the colony doctor, who testified that the applicant had not requested medical aid on that day. It also referred to the preliminary inquiry carried out at the request of other inmates (Mr Artyomov and Mr Gr.).

34. The applicant lodged several more complaints with the Office of the Prosecutor, but to no avail.

(c) Court proceedings concerning the prosecutor's refusal to open a case

35. On 14 August 2003 the applicant lodged a complaint challenging the decision of 6 August 2003 not to institute criminal proceedings. He submitted that the investigation had been incomplete and requested the court to ensure his presence at the hearings. He also asked for free legal assistance and for the opportunity to meet his lawyer before the hearing.

36. On 29 September 2003 the first-instance court rejected the applicant's complaint as unfounded. The hearing was attended by the prosecutor, Mr K., and by counsel, Mr D., who was apparently acting on behalf of the applicant and had been appointed by the authorities. On 18 November 2003 the judgment was upheld on appeal. The applicant was notified of that decision in writing on 5 December 2003.

2. The events of 21 January 2002 and subsequent proceedings

(a) Alleged beatings

37. On 18 January 2002 approximately 260 inmates of the colony went on hunger strike. Approximately forty inmates performed acts of self-mutilation. Three days later a group of officers of a special-purpose unit of the Kaliningrad Regional Directorate for Execution of Sentences arrived at the colony to give assistance in "performing searches in the living quarters of the colony" as the hunger strike and self-mutilations continued. The applicant joined the collective hunger strike in protest against various alleged violations of his rights.

(i) The applicant's description of the events

38. On 21 January 2002, at around 3 p.m., the applicant heard noises in the corridor as if the guards were opening the adjacent cells and sending the inmates out. He then heard blows and groans interspersed by the question: "Why do you refuse to eat?" This continued for the next two hours.

39. At 5 p.m. the guardians opened the applicant's cell and ordered him and the other inmates to step out into the corridor. Then men in black balaclava masks immobilised the applicant, face to the wall, the hands against the wall and legs apart. Two or three of them then started beating him with their fists, feet and truncheons. Between the blows they asked the applicant why he was refusing to eat. When the applicant turned his head towards the person who had asked him questions, he received a blow and was ordered to look only at the wall. The beating continued until the applicant fell down. He was then forced to stand up and the blows went on until the applicant collapsed again. This was repeated several times.

40. One of the men then told the applicant that he and all the others who had gone on hunger strike had provoked the administration to undertake this operation and that the prison authority would "break the applicant down" and force him to eat just like it had done to others. The next time, the man continued, they would kill him and disguise his murder as suicide. Thereafter the applicant was told to go back to his cell and to accept food from then on.

41. When the applicant got up and went towards the cell, one of the prison officials approached him with the question: "Whom did you try to sue in court?" The applicant replied that he had sued the prison administration. The beating then resumed. The applicant fell down and one of the masked men started jumping on the applicant's stomach. Some time later the applicant was thrown back into the cell.

42. The applicant submitted that all his cellmates, in particular Mr Artyomov, Mr Gr., Mr G., Mr Ks. and Mr T., had been subjected to the same treatment. Mr Artyomov's description of the events of 21 January 2002, as well as the Government's account thereof, can be found in the case of *Artyomov*, cited above, §§ 46 et seq.

43. The applicant also stated that he had scratches and bruises all over his body. He alleged that in that incident he had received no fewer than thirty blows.

44. Shortly after the incident the applicant received aid from a medical assistant. The latter however refused to document the bruises and other injuries on the applicant and his cellmates.

(ii) The Government's description of the events

45. The Government denied that physical force had been used in respect of the applicant, with reference to the findings of the domestic inquiry (see below).

(b) The investigation of the events of 21 January 2002

46. In the following months the applicant sent a number of complaints of ill-treatment to various State officials, including the Kaliningrad Regional Prosecutor's Office.

47. In March 2002 the applicant was informed that one of his complaints had been forwarded to Mr K., the prosecutor.

48. On an unspecified date the applicant was notified that his complaint had been rejected. In the reply of 25 March 2002, simultaneously addressed to the applicant and to a number of other detainees who had made similar claims, Mr K. stated that an inquiry had been conducted with regard to their allegations and that these allegations had proved to be unsubstantiated. The letter admitted, however, that on 21 January 2002 a special forces unit of the Ministry of Justice had taken part in searches of the cells in the prison where the applicant was an inmate.

49. On 21 October 2002 the applicant lodged a request with the Regional Prosecutor's Office seeking the institution of criminal proceedings in respect of the incident of 21 January 2002. The applicant contended in particular that the inquiry by the prosecutor Mr K. had been ineffective. He described the events of that day once again and referred to his cellmates as possible witnesses. On 15 November 2002 the applicant requested the investigating authorities to question additional witnesses.

50. In response the applicant was informed that on 6 and 25 November 2002 his requests had been forwarded to the prosecutor Mr K.

51. On 20 November 2002 Mr M., an investigator from the prosecutor's office supervising the penal institutions of the Kaliningrad Region, decided not to institute criminal proceedings in respect of the applicant's complaint. The applicant received a copy of that decision on 4 December 2002. The decision stated, *inter alia*:

> "[A] preliminary examination of the case has nevertheless revealed that the convicts referred to by [the applicant] are giving completely contradictory evidence. Thus, the convict Mr A. asserted that at 4 p.m. on 21 January 2002 he had seen in the corridor ... an officer of the UIN [special forces of the Department of Execution of Penalties] who was giving [the applicant] a kick (Mr A. did not remember with which foot) on the right leg. [The applicant] then collapsed. The officer went on beating [the applicant], delivering at least three blows to his body. Then another agent of UIN came along and started bouncing on the prone body of [the applicant]. Then they lifted [the applicant] and dragged him into the cell.
>
> The convict Mr. G. gave the evidence that on 21 January the events had taken place at around 10 a.m. He saw [the applicant] being continuously beaten by three agents of the UIN and other officers passing by. [The applicant] collapsed under the blows, stood up, and the kicking and beating with fists and rubber truncheons went on. They gave him at least ten blows with fists to the back, against the liver and the sides of the trunk, and ten blows with the rubber truncheons to the back and legs. The applicant] then collapsed and they started bouncing on him.

> The convict Mr T. gave the evidence that the events had taken place on 21 January 2002 at noon. He saw different UIN officers (the convict was unable to specify how many there were) hitting and kicking [the applicant], delivering at least ten blows.
>
> The convict Mr M. gave evidence that at 2 p.m. on 21 January 2002 he had been in his cell and had heard groans and the sound of blows coming from the corridor ... Mr M. stated that he had heard from his cell [the applicant] being badly beaten, and also stated that the guards had forced him to withdraw his complaints and other court actions against [the administration of the penal establishment IK-13]. The beating lasted for twenty minutes."

The decision continued:

> "... given the inconsistencies in the submissions of the convicts, the possibility that they have conspired to give evidence discrediting UIN officers cannot be ruled out. At the same time, the Prison Administration refers very negatively to [the applicant], as being persistently disruptive of prison regulations. He is also hostile towards other prisoners' taking part in extracurricular activities, and sticks to criminals' rules and traditions. Between 2 November 2000 and 15 October 2002 [the applicant] was subjected to various disciplinary penalties fifty-three times."

The investigator concluded that there was no need to open a criminal investigation. The applicant's request for criminal proceedings to be instituted was thus rejected.

(c) The court proceedings concerning the prosecutor's refusal to investigate the events of 21 January 2002

52. On 18 December 2002 the applicant lodged a complaint with the Tsentralniy District Court challenging the decision of 20 November 2002. He submitted that the investigation had been incomplete and requested the court to appoint a lawyer to represent him and to secure the attendance of witnesses at the court hearings.

53. By a letter of 16 January 2003 the court informed the applicant that the hearing in his case would take place on 10 February 2003. The court refused to summon witnesses and or to allow the applicant to attend the hearing personally, but agreed to appoint a lawyer for the applicant.

54. On 23 January 2003 the applicant sent a letter to the court in which he insisted on attending in person.

55. By a letter of 4 February 2003 the court rejected the applicant's request to attend in person and agreed to set up a meeting with a lawyer for the applicant.

56. On an unspecified date the court adjourned the hearing of 10 February 2003 until 17 March 2003. The applicant submits that he has never had a meeting with a lawyer.

57. On 17 March 2003 the first-instance court rejected the applicant's complaint as unfounded. The hearing was attended by the prosecutor, Mr K., and an appointed counsel who was apparently acting on behalf of the applicant. On 22 April 2003 the decision of 17 March 2003 was upheld on appeal. The applicant was notified of this decision on 12 June 2003.

3. Proceedings for compensation for damage caused by the beatings

On 4 February 2002 the applicant brought an action for damages against colony OM-216/13. He complained about the beatings on 21 January 2002. In 2002-03 the applicant submitted several procedural requests. He sought to appear in person at court, for witnesses to be summoned on his behalf, and for certain documents to be obtained from the prosecutor's office. The applicant also made an unsuccessful attempt to seek the withdrawal of the judge in his case.

58. On 26 April 2004 the Bagrationovskiy District Court, Kaliningrad Region, dismissed his tort claim. The court heard the applicant, his cellmates and prison guards, and based its judgment on the prosecutor's decision of 20 November 2003 not to institute criminal proceedings and the courts' judgments of 17 March and 22 April 2003 upholding that decision.

59. The applicant appealed and requested to attend the appeal hearings in person. On 13 October 2004 the Kaliningrad Regional Court, in the applicant's absence, upheld the judgment of 26 April 2004.

D. Alleged interference with the applicant's correspondence

60. By a letter of 4 January 2003 the applicant informed the Registry that on 3 December 2003 the administration of the colony had refused to send the applicant's letter to the Court at the colony's expense.

61. He also contended that some of his correspondence was not being sent out at all, whereas other letters had been sent out with substantial delays. The applicant did not refer to any particular letters.

II. RELEVANT DOMESTIC LAW

62. For relevant domestic law and practice see *Artyomov*, cited above, §§ 83 et seq.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION

63. The applicant complained under Article 3 of the Convention about the conditions of detention in remand prison IZ-39/1 from 23 December 1999 to 26 June 2000. Article 3 reads as follows:

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

A. Submissions by the parties

64. The Government disputed the applicant's description of the conditions of detention in remand prison IZ-39/1.

65. The Government further described various legal avenues which were available to the applicant in connection with his complaint about conditions of detention. Alternatively, they claimed that the application in this part had been submitted outside the time-limit provided by Article 35 of the Convention. Thus, the application was introduced on 5 October 2002, whereas the applicant complained about the period of his detention which had ended on 26 June 2000. The Government maintained that it would be wrong to calculate the six-month time-limit from the date of the final decision in the applicant's civil proceedings against the colony administration, since the Court has found in a number of previous cases that in the Russian legal system tort proceedings cannot be considered an "effective remedy" within the meaning of Article 35.

66. The applicant insisted that his description of the conditions in remand prison IZ-39/1 had been accurate. The applicant also argued that although he had raised the issue of conditions of detention with various administrative bodies his complaints had been unsuccessful. He concluded that he had no effective remedies to complain about that situation. As to the civil proceedings against the remand prison administration, the applicant maintained that they had been brought within the statutory time-limits established for such types of claim under Russian law. He concluded that the date of the final judgment in those proceedings (30 July 2003) must be the date taken for calculation of the six-month time-limit set in Article 35 of the Convention.

B. The Court's assessment

67. The Court considers it appropriate first to determine whether the applicant has complied with the admissibility requirements defined in Article 35 § 1 of the Convention, which stipulates:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

68. The Court observes that in the case of *Artyomov*, cited above, it examined an identical situation and similar arguments by the parties (see §§ 101 et seq.). Mr Artyomov, like the applicant in the present case, complained about the conditions of detention in the remand prison. His

detention in that prison ended more than six months before the introduction of his application to the Court. After receiving from the Court a letter explaining the requirement for exhaustion of domestic remedies under Article 35 of the Convention, Mr Artyomov, as well as the applicant in the present case, lodged a civil action seeking damages for the allegedly inadequate conditions of his detention. The civil actions brought by both applicants resulted in judgments of the Kaliningrad Regional Court rejecting the tort claims as unsubstantiated. The question was whether such judgments could be considered a "final decision" within the meaning of Article 35 of the Convention.

69. In *Artyomov* the Court answered that question in the negative (see §§ 110 et seq.). The Court concluded that the tort action brought by the applicant was not a remedy within the meaning of Article 35 § 1 of the Convention and cannot be taken into account for the purpose of the six-month rule. The Court further noted that the applicant's first civil action was lodged with a serious delay after the end of the impugned period of detention. The Court reasoned as follows (§§ 116):

> "[T]he Court sees no reason which could have forced the applicant to choose to wait for so long before applying to a domestic court, save for his own belief that such an action would be meaningless. It appears that he only decided to sue the detention facility after he had received the first letter from the Court by which he had been notified of the admissibility criteria .... The Court also does not lose sight of the applicant's assertion that he had been aware all along that there were no effective domestic remedies for his complaints about the conditions of his detention."

70. In view of these elements, the Court concluded that that the complaint about conditions of detention had been introduced by Mr Artyomov at least sixteen months out of time.

71. The Court observes that the applicant's situation and arguments in the present case are identical. The impugned period of detention ended on 26 June 2000, the application was introduced by him on 5 October 2002, and the civil proceedings were initiated only on 13 January 2003. The Court concludes that the applicant must have realised the ineffectiveness of a tort action as a remedy, and that the six-month time-limit is to be calculated from 26 June 2000.

72. It follows that this complaint is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 3 ON ACCOUNT OF THE EVENTS OF 23 OCTOBER 2001 AND 21 JANUARY 2002

73. The applicant complained that on 23 October 2001 and 21 January 2002 he had been beaten and humiliated by officers of the special-purpose unit of UIN. He also complained, referring to Article 13 of the Convention,

that the authorities had failed to effectively investigate the events of 23 October 2001 and 21 January 2002. The Court will examine this complaint from the standpoint of the State's substantive and procedural obligations flowing from Article 3, cited above.

A. Submissions by the parties

74. The Government contested the applicant's description of the events. They indicated that an inquiry into the applicant's allegations had not confirmed the applicant's allegations of beatings, that all prison officials had consistently denied it, and that the conclusions of that inquiry had been examined and confirmed by the courts as reliable. Law-enforcement officials are aware of criminal and other liability for making false statements; their written statements bear their signatures and official stamps, so they should be trusted. By contrast, the applicant did not submit evidence in support of his allegations. The testimony of Mr Artyomov must not be taken into account, since he was not detained in the same cell. Thus, the applicant's allegations were not proven beyond reasonable doubt.

75. The Government were unable to produce the documents of the inquiries. According to the Government, pursuant to the rules in force, the documents of the inquiry had been destroyed on 28 November 2007.

76. The Government further argued that, as far as the first episode of the alleged beatings is concerned (that is of 23 October 2001), the applicant complained to the prosecution authorities only on 4 August 2003, more than two years after the events complained of. The applicant's complaint about the second episode (that of 21 January 2001) was also lodged "with a significant delay". In such circumstances the efficiency of any investigation or inquiry was seriously undermined, for which the applicant was responsible. They concluded that the applicant had failed to exhaust domestic remedies.

77. The Government further claimed that the applicant had had effective domestic remedies at his disposal. Thus, he had had the opportunity to complain to the prison administration about alleged violations of his rights. He had never lodged such administrative complaints.

78. The applicant claimed that his account of the events was accurate. In his words, domestic inquiries into his allegations had been perfunctory and their conclusions were therefore unreliable. In his written complaints to the domestic authorities the applicant had described in detail how he had been beaten, when and by whom. However, the prosecution failed to question witnesses suggested by him. Some of the inmates who had testified about those events confirmed the applicant's account, but the prosecution and the court disregarded their statements.

79. The applicant maintained that in 2002-03 he had repeatedly complained about the beatings of 23 October 2001 and 21 January 2002,

that he had sent his complaints to various State bodies and officials, including prosecutors, and that his request for criminal proceedings to be instituted dated 4 August 2003 was far from his first request of this kind.

80. The applicant complained that he had been unable to attend the court proceedings in which his tort complaint concerning the alleged beatings had been reviewed. The applicant confirmed that the authorities had appointed a lawyer for him for one of the hearings. However, he met that lawyer for the first time when the hearing was about to start (about twenty minutes before the start).

B. Admissibility

81. The Court takes note of the Government's non-exhaustion plea. It observes that it is closely linked to the substance of the applicant's complaint under Article 13, namely that he had no effective remedy to complain about the beatings in the colony. This objection must therefore be joined to the merits of the case.

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

C. Merits

1. General principles

83. The general principles of the Court's case-law in the field of Article 3 of the Convention, especially those concerning the establishment of the facts in cases where ill-treatment is alleged and the positive obligation of the State to secure effective investigation of allegations of ill-treatment were summarised by the Court in the *Artyomov* judgment (see paragraphs 143 et seq. and 174 et seq., with further references).

2. Whether the applicant had an effective remedy

84. Turning to the present case, the Court observes that an administrative complaint to the prison administration about the actions of officers of the special-purpose unit does not appear to be an "effective remedy" in the circumstances. It is not disputed by the Government that the "special unit" got involved in the establishment of order in the colony at the request of its administration. The "special unit" belonged to the same management system of the Federal Service of Execution of Sentences (FSIN) as the colony itself, and must have acted with the full acquiescence of the colony administration. To suggest that the detainees who had suffered

from the use of force by the officers of that unit must have complained to the colony administration would be contrary to the legal principle *nemo iudex in causa sua.*

85. By contrast, both parties to the case seem to agree that a criminal-law complaint by the alleged victim was an adequate remedy in respect of the applicant's allegations of beatings, at least in principle. The question is whether that remedy, existing in theory, was efficient in practice, and, if not, whether this was the applicant's fault or that of the authorities.

86. The Government claimed that the efficiency of that measure was undermined by the belated submission by the applicant of the criminal-law complaint about the beatings. The Government, however, did not comment on the applicant's assertion (see paragraph 30 above) that before lodging a formal complaint with the office of the Regional Prosecutor in 2003 he had written numerous letters to the prosecution authorities complaining about the events of 23 October 2001 and 21 January 2002, and that he had received replies to those letters. Those written replies can be found in the materials of the case submitted by the applicant and the Government.

87. The Court further reiterates its findings in the case of *Artyomov* (§§ 48-49) where it held, on the basis of the parties' submissions and in view of the materials available to it, that soon after the events of 23 October 2002 and 21 January 2003 a number of convicts had lodged several complaints with the prosecution, and that on 20 March 2002 the Kaliningrad Regional Prosecutor refused to institute criminal proceedings in respect of the events, finding no *prima facie* case of ill-treatment. It follows that the prosecuting authorities were aware of the events in the colony as early as March 2002. It is thus immaterial when the applicant lodged a formal criminal-law complaint in his own name.

88. The Court concludes that the applicant cannot be blamed for inefficiency on the part of the criminal investigation. The next question is whether that remedy (a criminal-law complaint leading to a criminal investigation) was effective in practice, and to what extent the Government can be held responsible for any ineffectiveness of that remedy.

89. The Court observes that the Government did not produce the materials of the investigation ("the inquiry") in respect of the events of 23 October 2002 and 21 January 2003, claiming that they had been destroyed on 28 November 2007. The Court reiterates that in the case of *Artyomov*, concerning the same events, communicated to the Government on 13 October 2005, the Government also failed to produce the case file. The Court in that case observed as follows (§ 90):

> "The Court further notes that in order to be able to assess the merits of the applicant's ill-treatment complaint and in view of the nature of the allegations, it asked the Government to submit a copy of the complete investigation file relating to the proceedings against the officers of the special-purpose unit. The Government, without giving any reasons, failed to provide the Court with the materials sought, limiting themselves to submitting copies of certain reports and decisions of domestic

> authorities which were already in the Court's possession. In these circumstances, the Court is prepared to draw inferences from the Government's conduct, as well as from the failure of the domestic authorities to carry out a medical examination of the applicant in the aftermath of the events on 23 October 2001."

90. It is unclear whether the case file allegedly destroyed in 2007 was the same as the one requested by the Court in 2005 within the proceedings in the case of *Artyomov*. If it was the same one, its destruction amounts to a patent breach of the Government's duty to cooperate with the Court in the conduct of the proceedings.

91. If the materials related to the applicant's case were kept separately from those related to Mr Artyomov, their destruction was still incomprehensible. In view of the Court's request for the materials in the case of Mr Artyomov, it was self-evident that materials related to the applicant's case were of great importance for the establishment of the facts of the case. Nevertheless, the authorities destroyed them.

92. It is difficult to say whether the destruction of those materials was simple carelessness or a deliberate attempt to impede the proceedings before the Court. Be that as it may, the Court will have to decide on the basis of the documents available to it, and make such inferences from the Government's failure to submit the case file as the Court deems fit.

93. The Court observes that the applicant was unable to produce medical certificates which would corroborate his account. The applicant argued that medical personnel of the colony had either refused to attribute the injuries to the beatings or had refused to document the injuries outright (see paragraphs 28 and 44 above).

94. In the light of the overall context of the case the Court considers that the absence of supporting medical evidence is not decisive. The applicant's account of the beatings was corroborated by the testimony of Mr Artyomov. Furthermore, it appears from the materials of the case that a number of inmates had reported ill-treatment to the prosecution authorities in similar terms. The Court also reiterates its findings in *Artyomov,* in which it held that the use of force by officers of the special-purpose unit had amounted to an arguable claim of ill-treatment, and that State officials were under an obligation to carry out an effective investigation (§ 176). The Court does not see any reason to hold otherwise in the present case.

95. The Court further observes that in *Artyomov* it has identified a number of flaws in the domestic proceedings. Thus, the Court criticised the investigating authorities for their failure to conduct an independent medical examination of Mr Artyomov (§ 178), for protraction of the investigation (§ 179), for lack of thoroughness and inability of Mr Artyomov to participate in the investigation (§ 180), and for a selective approach to the assessment of evidence (§§ 181-182). The Court also noted the superficial character of the ensuing court proceedings in which the refusals of the prosecution to proceed with the case were reviewed (§ 183). All those

elements led the Court to conclude that the criminal investigation of the events of 23 October 2001 and 21 January 2003 had been ineffective. The question is to what extent the Court's findings in *Artyomov* are applicable to the present case.

96. The Court considers that both cases concern the same criminal investigation of the events of 23 October 2001 and 21 January 2002. However, the domestic decisions not to proceed with the criminal-law complaints were not the same. Thus, in *Artyomov* the impugned decisions were taken on 20 March 2002 (§ 49) and on 9 July 2003 (§ 53). In the applicants' case those decisions were taken on 20 November 2002 (see paragraph 51 above) and on 6 August 2003 (see paragraph 33 above). Further, Mr Artyomov's complaint also concerned an episode of 7 November 2001. The applicant did not refer to that episode.

97. Despite those differences, there is no evidence that the decisions in the present case and in the *Artyomov* case were based on different criminal investigations, or that the authorities' examination of the criminal-law complaint by the applicant was more thorough and procedurally fair. In the present case the Government did not adduce any legal argument and did not refer to any fact which might affect the validity of the Court's conclusions in *Artyomov* concerning the ineffectiveness of the investigation of the events of 23 October 2001 and 21 January 2002.

98. In addition, the Court reiterates that "failure to open a criminal case in a situation where an individual has been injured in police custody is a serious breach of domestic procedural rules capable of undermining the validity of any evidence that has been collected (see *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 94-96, 24 January 2008; and *Buntov v. Russia*, no. 27026/10, § 132, 5 June 2012). In the present case, despite the seriousness of the complaints by the applicant and other inmates, the prosecution limited its examination of the case to a "preliminary inquiry", without opening a full-blown "criminal investigation", which gives the alleged victim more rights and guarantees a better quality of evidence (see the analysis of the position of the victim and witnesses within an "inquiry" in *Buntov*, cited above, §§ 126 and seq.).

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

3. Whether the applicant was subjected to ill-treatment

100. The Court will now turn to the examination of the substance of the applicant's complaint under Article 3 about the alleged beatings in the colony.

(a) The events of 23 October 2001

101. The Court reiterates that in *Artyomov* it found that the applicant in that case had been hit at least once with a rubber truncheon by officers of the special-purpose unit on 23 October 2001. In reaching that conclusion the Court based its reasoning on a number of factual elements (see paragraph 154), in particular the fact that the applicant had been confined to bed for three days after the events, a statement by one of the officers to the effect that the applicant had been hit with a rubber truncheon, and a statement by one of the inmates, Mr T. In addition, the Court attached particular weight to the Government's failure to produce the materials from the criminal investigation (§ 155), their failure to submit the applicant to an independent medical examination after the events complained of (see paragraphs 150-53), and the consistency of the applicants' allegations of ill-treatment (see paragraph 155). The Court further found that "the use of force was intentional, retaliatory in nature and aimed at debasing the applicant and forcing him into submission. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering" (see paragraph 156).

102. In view of its findings in *Artyomov* the Court finds it established that on 23 October 2001 the UIN special-purpose unit entered the territory of correctional colony OM-216/13 and conducted a "security operation" there. The reasons for that operation, as well as the exact instructions given to the officers of the unit, remain unclear. It is certain, however, that the operation did not target any particular convict but rather the entire colony population, or at least a large group of convicts known as habitual offenders against prison rules. It was therefore a sort of "show of force" by the colony administration to the prison population. Furthermore, everything suggests that the operation must have been planned in advance: it "was not a random operation which might have given rise to unexpected developments to which the officers of the special-purpose unit might have been called upon to react without prior preparation" (see *Artyomov*, § 170). During that operation the officers of the unit used physical force and truncheons against those convicts, and, at least as far as Mr Artyomov was concerned, such treatment was not justified by his behaviour and was, by all appearances, a form of retaliation.

103. It is difficult to say whether the applicant in the present case received blows or kicks, or was verbally abused or harassed in other ways. Thus, the Government denied using rubber truncheons or any other physical force against the applicant during the operation of 23 October 2001. However, he was amongst those convicts who were, as a group, exposed to such treatment. This adds credibility to his words.

104. The Court further observes that several days after the operation a colony doctor recorded that the applicant had an injured knee. Again, it is difficult to ascertain whether the applicant received that injury as a result of

the use of force by officers of the special-purpose unit during the operation of 23 October 2001. The Court would state in this connection that at the time the application was communicated the Court expressly asked the Government for "copies of medical documents showing the state of the applicant's health in October 2001 and January 2002". The Government failed to provide such documents, although they must have had them in their possession. The Court infers from this that the knee injury recorded on 2 November 2001 must have been somehow related to the use of force against the applicant on 23 October 2001.

105. Similarly, the Government's failure to produce medical records implies that the applicant did not receive an independent medical examination following the events of 23 October 2001. This is yet another factor in favour of the applicant's account.

106. The Court also notes that the applicant provided a graphic and detailed description of the ill-treatment to which he had allegedly been subjected, and indicated its place, time and duration; the Court emphasises that the applicant's account is internally consistent and does not differ from that of Mr Artyomov in any significant respect. The fact that Mr Artyomov was detained in a different cell from the applicant does not affect the Court's conclusions since, as can be seen from the applicant's and Mr Artyomov's descriptions, ill-treatment mostly took place in the general areas of the colony.

107. In such circumstances the Court is prepared to accept that the applicant, along with several other convicts, was subjected to physical violence by the officers of the special-purpose unit during the operation of 23 October 2001. All the evidence indicates that during that operation physical violence was accompanied by verbal assaults and psychological harassment of the convicts (line-ups, presence of masked officers, dogs, and so on) which must have exceeded the ordinary level of psychological discomfort inherent in life in prison. The Court observes that the applicant was a relatively young and healthy man with a criminal past and prison experience. However, even taking those factors into account, the Court considers that the treatment he was subjected to on 23 October 2001 must have caused him pain and humiliation of an intensity such as to reach the "minimal threshold of severity" and that it had brought the situation within the ambit of Article 3.

108. In the present case there is no evidence that the applicant attacked prison staff or other prisoners verbally or physically, or that there were other compelling reasons for the use of force against him (see *Sharomov v. Russia*, no. 8927/02, § 29, 15 January 2009). The Court reiterates that it has already been confronted with cases in which physical force was used against convicts in colonies "as a form of reprisal or corporal punishment" (see *Dedovskiy and Others v. Russia*, no. 7178/03, §§75 and 83, ECHR 2008 (extracts)). The Court does not see that there was any excuse for the

use of violence against the applicant in the present case. It finds that, similarly to the case of *Artyomov*, in the present case "the use of force was intentional, retaliatory in nature and aimed at debasing the applicant and forcing him into submission" and that it led to at least one identifiable injury (that to the knee). The Court concludes that on 23 October 2001 the applicant was subjected to torture. There was thus a violation of Article 3 of the Convention arising from this episode.

(b) Events of 21 January 2002

109. The Court observes that on 21 January 2002 officers from the special-purpose unit again conducted a "security operation" in the colony, and that rubber truncheons had been used against at least one of the convicts, namely Mr Artyomov, in response to "disobedience" (see *Artyomov*, § 166).

110. The applicant was amongst the convicts targeted by that operation. However, the Government denied that physical force had been used against him, claiming that the applicant, unlike Mr Artyomov, had not shown any disobedience and therefore there had been no reason to use force against him. Furthermore, whereas after the episode of 23 October 2001 the doctors recorded that the applicant had an injured knee, no medical record exists in respect of the episode of 21 January 2002.

111. Thus, the evidentiary basis for the Court's findings of fact in respect of this second episode is somewhat weaker. That being said, there are sufficient elements supporting the applicant's allegations that he had suffered ill-treatment. These are: (1) the reasons for the operation, its scale and the intimidating and "heavy-handed" character of the intervention of the special forces; (2) the fact that physical violence was used against some of the convicts indiscriminately; (3) the fact that the applicant was amongst those convicts who were targeted by the operation, so that there was a high likelihood that he did not escape the beatings, (4) the consistency and detailed character of the applicant's description, (5) the authorities' failure to submit the applicant to an independent medical examination following the events, (6) their failure to produce the materials of the domestic criminal investigation of the applicant's complaint or the complaints of other inmates, and (7) their failure to produce the applicant's medical history or other medical documents related to the period in the aftermath of the special operation of 21 January 2002. These elements are sufficient for the Court to conclude that some sort of physical and mental violence must have been applied against the applicant on that day, and that it was not an immediate reaction to his unruly and violent behaviour, but rather part of a strategy of intimidation put in place by the colony administration.

112. The evidence in the Court's possession is insufficient to conclude that the applicant was subjected to treatment amounting to "torture". The Court thus concludes that on 21 January 2002 the applicant was subjected to

"inhuman and degrading treatment or punishment". There was therefore a violation of Article 3 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

113. The applicant further complained he had not been able to attend in person the civil proceedings he initiated against the colony administration. He complained of a breach of the principle of equality of arms in those proceedings. He relied on Article 6 of the Convention, which reads, in so far as relevant, 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

114. The Government argued that the proceedings in the applicant's civil cases had been respectful of the principle of equality of arms. First, the courts had duly considered all the applicant's arguments contained in his written submissions. Second, the court obtained the applicant's personal file from the colony and examined a witness, a colony official. Third, the applicant received all court documents, including the transcripts of the hearings and the documents submitted by the defendants. The applicant's absence had been objectively justified by the fact that he had been serving his prison sentence in a correctional colony and that it had been impossible to transport him to the hearings. He was informed of his procedural rights, including the right to be represented, of which he did not make use.

115. The applicant maintained his complaints.

B. Admissibility

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

C. Merits

117. The Court observes that the applicant was not brought to the hearings of 14 December 2001, 30 January, 29 May and 17 July 2002 (in the civil proceedings concerning the alleged loss of his documents and belongings, see paragraph 14 et seq. above), and 27 March, 22 April and 30 July 2003 (concerning the conditions of detention in the remand prison, see paragraphs 7 et seq. above). The applicant was absent from the hearings

at both levels of jurisdiction; he was unrepresented and, apparently, could not afford a lawyer. His opponents were, by contrast, present and made oral submissions.

118. The Government claimed that the law did not provide for the transportation of convicts to a court in civil proceedings. The Court is aware of the logistical problems and security issues which the transportation of a convict may involve. That being said, the Court notes that in the present case the applicant was detained in Kaliningrad Region and that the courts which examined his claims were located there, as were the defendants.

119. The Court reiterates its findings in the case of *Skorobogatykh v. Russia*, no. 4871/03, 22 December 2009, which concerned a similar complaint, from a convict serving a sentence in the Kaliningrad region, who was not allowed to attend the hearings in his civil case:

> "63. ... [T]he Court accepts ... the domestic courts had acted in strict compliance with applicable rules of civil procedure when considering the applicant's action for damages. They duly advised him of his rights, including the right to be represented ... Nevertheless, in the circumstances the Court is not convinced that the representative's appearance before the court could have secured the effective, proper and satisfactory presentation of the applicant's case.
>
> 64. The Court observes that the applicant's claims were, to a major extent, based on his personal experience. The Court considers that his testimony describing the conditions of his detention, of which only the applicant himself had first-hand knowledge, would have constituted an indispensable part of the plaintiff's presentation of the case ... Only the applicant could, by testifying in person, substantiate his claims and answer the judges' questions, if any.
>
> 65. The Court also notes that the domestic courts refused the applicant leave to appear, relying on the absence of a legal norm requiring his presence. 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 a session in the correctional institution where the applicant was serving his sentence, as the Constitutional Court indicated in its relevant decisions ... However, the domestic courts did not consider such an option."

120. In *Artyomov* the Court analysed a similar situation and observed as follows (§ 204):

> "... [T]he option of legal aid was not open to the applicant ... In such a situation the only possibility for him was to appoint his relative, friend or an acquaintance to represent him in the proceedings. However, as it appears from the domestic courts' judgments, after they had refused the applicant leave to appear, they did not consider the means of securing his effective participation in the proceedings. They merely noted that the applicant was aware of his procedural rights and could have appointed a representative. They did not inquire whether the applicant was able to designate a representative, in particular whether, having regard to the time which he had already spent in detention, he still had a person willing to represent him before domestic courts and, if so, whether he had been able to contact that person and provide him with a power of authority."

121. The present case is almost identical to those of *Skorobogatykh* and *Artyomov*. The applicant was not transported from the colony to the courtroom and was, therefore, unable to present his case orally, in the same conditions as the defendants had been able to do. The question is whether it damaged the principled commitment to "equality of arms" or affected the "fairness" of the proceedings otherwise.

122. The Court observes that within those proceedings the applicant played a double role. First, he was the plaintiff, so was a party to the proceedings. His presence was therefore necessary to enable him to participate directly in the examination of evidence produced by the defendants (including witnesses on their behalf) and take part in the oral arguments.

123. It was theoretically possible for the applicant to find a representative to replace him at the hearing. However, (a) the applicant clearly had no resources to pay for a lawyer, and (b) there is no evidence that the applicant had a friend or a relative who would be ready to represent him.

124. The Court acknowledges that, as a rule, Article 6 § 1 does not guarantee the right to legal aid in civil cases. That being said, the Court notes that the applicant was in a very difficult situation: he was a convict serving a long prison sentence. The Court reiterates in this respect its previous case-law to the effect that Russian law did not exclude providing legal assistance to convicts in such cases (see *Larin v. Russia*, no. 15034/02, §§ 53 et seq., 20 May 2010). Furthermore, as the present case shows, such a possibility existed in practice – a lawyer was appointed by the domestic courts to represent the applicant in his civil case concerning the beatings in the colony (see paragraph 36 above). The applicant claimed that the State-appointed lawyer had not provided him with effective legal assistance, but that is not the question before the Court. What is important is that the possibility of appointing a lawyer did exist at the time but was not explored by the domestic courts.

125. There were alternative methods of securing the applicant's effective participation in the proceedings. The courts (a) could have held a session in the correctional institution (see *Skorobogatykh*, cited above, § 65) or (b) conducted proceedings by video link, which is a known method of conducting proceedings in Russia, at least in criminal cases (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 99, 2 November 2010; *Shugayev v. Russia*, no. 11020/03, § 54, 14 January 2010; and *Shulepov v. Russia*, no. 15435/03, § 13, 26 June 2008). There is no evidence that the courts have ever considered those options.

126. Finally, the Court stresses that applicant was not only a plaintiff but also an important witness in his own case. Both claims by the applicant were based on his personal experience. It was therefore essential for the court to hear the applicant in person and form a first-hand opinion about his

credibility (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007, and *Sokur v. Russia*, no. 23243/03, § 35, 15 October 2009). Again, it could have been done by moving the court session to the colony or by setting up a video link.

127. In these circumstances, the Court finds that in the proceedings concerning the conditions of the applicant's detention in the remand prison and concerning the alleged loss of his documents and other belongings the domestic courts deprived the applicant of the opportunity to present his case effectively. There has therefore been a violation of Article 6 § 1 of the Convention on that account.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

128. The applicant presented a number of other complaints which concerned his detention, alleged interference with his correspondence, and the fairness or otherwise of various proceedings in which he had been involved.

129. In particular, the applicant complained that the colony authorities had refused to send letters to the Court at the colony's expense. He referred to Article 34 of the Convention, which reads as follows:

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

130. The Government denied those allegations. They indicated that the applicant had sent several letters to the Court, and that, in accordance with the usual practice, all of them had been dispatched to the Court at the expense of the colony. The applicant, in reply, maintained that on 3 December 2003 the colony administration had refused to dispatch his letter addressed to the Court at their expense. He had subsequently to send that letter at his own expense. Having examined materials in its possession the Court does not find any proof that the administration refused to bear the postal costs of the applicant's correspondence with the Court. It follows that this complaint is unsubstantiated and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

131. The Court further examined the remainder of the complaints forwarded by the applicant. However, having regard to all the material in its possession, 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 must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The applicant claimed separate amounts for every alleged violation complained of. In so far as the episodes which gave rise to a finding of a violation of the Convention are concerned (see above), the applicant claimed, under the head of non-pecuniary damages, the following amounts:

- EUR 30,000 for the ill-treatment on 23 October 2001;
- EUR 35,000 for the ill-treatment on 21 January 2002;
- EUR 5,000 for the failure to investigate the allegations of ill-treatment;
- EUR 500 for each count of a violation of his right to present his case effectively before the civil courts.

134. The Government argued that the applicant's claims for non-pecuniary damages were excessive.

135. The Court reiterates its findings under Article 41 in *Artyomov*. In that case the Court has found "a combination of particularly grievous violations", in particular, on account of the conditions under which the applicant was detained, lack of effective remedies in this respect, two episodes of ill-treatment of the applicant in the correctional colony, absence of an effective investigation of the allegations of ill-treatment, and the applicant's inability to present his case effectively in the three sets of the civil proceedings. In that case the Court awarded the applicant EUR 54,600 in respect of non-pecuniary damage. In the present case the applicant's complaint about the conditions of detention was declared inadmissible. A violation of Article 6 was found in respect of two sets of civil proceedings, not three as in *Artyomov*. Having regard to this and to the fact that the suffering and frustration of the applicant in the present case must have been considerable, the Court on an equitable basis awards the applicant 45,000 Euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

136. The applicant also claimed EUR 100 for postal expenses incurred before the Court.

137. The Government argued that there was no evidence that such expenses had actually been incurred by the applicant.

138. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred. In the present case, the Court notes that the applicant submitted no evidence (bills, receipts, and so on) in support of that claim. Consequently, the Court rejects the claim for costs and expenses.

C. Default interest rate

139. 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. *Joins to the merits* the Government's non-exhaustion plea concerning the applicant's complaint of ill-treatment in correctional colony OM-216/13 on 23 October 2001 and 21 January 2002 and rejects it;

2. *Declares* the complaint concerning the ineffectiveness of the investigation into the ill-treatment, concerning the ill-treatment as such, and concerning the applicant's inability to participate in the civil proceedings (in which the alleged loss of his belongings and conditions of detention in the remand prison were examined) admissible, and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate the applicant's allegations of ill-treatment;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment of the applicant in the colony on 23 October 2001 and 21 January 2002;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's inability to participate in two sets of civil proceedings concerning the alleged loss of his belongings and concerning the conditions of detention in the remand prison;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 45,000 (forty-five thousand euro), to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

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

Done in English, and notified in writing on 18 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President