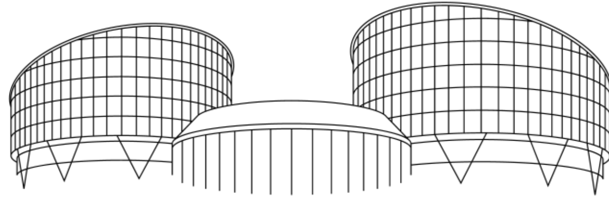

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BORIS POPOV v. RUSSIA

(Application no. 23284/04)

JUDGMENT

STRASBOURG

28 October 2010

FINAL

28/01/2011

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

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Boris Popov v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 7 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 23284/04) 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 Boris Aleksandrovich Popov ("the applicant"), on 19 May 2004.

2. The applicant, who had been granted legal aid, was represented by Ms M. Misakyan, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk and subsequently by Mr G. Matyushkin, the former and current Representatives of the Russian Federation at the European Court of Human Rights.

3. On 3 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

5. On 27 August 2009 the President of the First Section decided that the parties should submit further observations under Rule 54 § 2 (c) of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1975 and is serving a sentence of imprisonment in the Tomsk Region.

A. Arrest and detention in November 2001

7. During the night of 4 to 5 November 2001 there was a theft from an administrative building in the village of Pospelikha, Altay Region. A fax machine, an electric kettle, a wristwatch and a desk clock were stolen. On 6 November 2001 the authorities opened a criminal inquiry and arrested a Mr A. During his interview, from 6 to 6.30 p.m., he admitted the theft and named the applicant as his accomplice. A search was carried out in the applicant's house; several compact discs, a radio receiver and a telephone set were seized.

8. It appears that at about 6 p.m. on the same evening the applicant was arrested at his home by two officers from the Pospelikha district police station in the Altay Region. The applicant was taken to the police station and placed in the temporary detention centre. At an unspecified time on the same day Mr S., an investigator with the Pospelikha district police, notified the Pospelikha district prosecutor of the applicant's arrest. The notification had no reference number and no indication of the hour.

9. According to the applicant, at 11 a.m. on 7 November 2001 he swallowed an open safety pin in order to protest against his allegedly unlawful arrest. He was taken to a public hospital for an X-ray examination, which confirmed the presence of a safety pin in his stomach. At about noon the applicant was brought back to the police station. Policemen stripped him down to his underwear and handcuffed both his hands to the bars in the lobby of the detention centre. At 7 p.m. he was given a chair. During the night he was allowed to sleep on the floor. He remained handcuffed, was given some water and tea but no food. The applicant was interviewed by an investigator on the morning of 8 November 2001. At 2 p.m. he felt sick and was examined by paramedics. At 5 p.m. the applicant was released.

10. According to the Government, at 8 p.m. on 7 November 2001 the applicant swallowed an open safety pin. After he had been examined at the hospital, he was brought back to the police station. He threatened to slit his veins. He was taken out of the cell, inspected and handcuffed with one hand to metal bars. He remained under the supervision of the on-duty officer. At night the applicant was given a mattress and bedding. The handcuffs were regularly moved from one hand to the other. The applicant was taken to a toilet, at his request, and was given water and tea. On the morning of

8 November 2001 investigator S. interviewed the applicant. At or around 1 p.m. the applicant alleged that he felt sick because he had swallowed a razor blade. He was examined by paramedics, who found that the complaint was false.

11. On 9 November 2001 Mr A. was interviewed again and stated that he had committed the theft alone. It does not appear that the applicant was subsequently prosecuted for the theft committed during the night of 4 to 5 November 2001. It appears, however, that he was sentenced to a prison term in relation to other criminal offences.

12. As can be seen from an undated certificate issued by the Prosecutor's Office of the Pospelikha District, the arrested persons' register and the arrest notification register for 2001 did not contain any information that the applicant had been arrested between 6 and 8 November 2001 under Article 122 of the RSFSR Code of Criminal Procedure.

B. Civil claims for damages

13. In February 2003 the applicant sued the Pospelikha district police station for compensation in respect of non-pecuniary damage caused by his allegedly unlawful detention and handcuffing on 7 and 8 November 2001. By a judgment of 3 April 2003 the Pospelikha District Court dismissed his claim. The applicant was neither present nor represented at the hearing. On 23 July 2003 the Altay Regional Court quashed the judgment on the ground that the applicant's attendance had not been secured, and remitted the matter for a fresh examination. The Ministry of Finance joined the resumed proceedings as a co-defendant.

14. By a judgment of 22 September 2003 the District Court dismissed the applicant's claim. On the basis of testimony by investigator S., it found that the applicant had been lawfully detained from 6 to 8 November 2001 with a view to dispelling or confirming the suspicion of his involvement in the theft. The District Court further found that the use of handcuffs had also been lawful and justified. In so finding, it took statements from witnesses: another detainee, Mr Z., and two on-duty officers, Po. and Mr Pu. They stated that the applicant had been verbally abusive and had shouted, banged at the door, incited to mass disorder and threatened to slit his veins with a razor blade. He had been handcuffed to prevent mass disorder and self-harm. While handcuffed, he had been given food and drink and a mattress to sleep on during the night, and had also been allowed to use the toilet. The District Court found that the use of handcuffs from 8 p.m. on 7 November to 1 p.m. on 8 November 2001 had been compatible with the requirements of section 45 of the Custody Act for the prevention of mass disorder or attempts to inflict self-harm (see paragraph 41 below). In the District Court's view, the application of handcuffs had not impaired the applicant's rights, inflicted physical suffering or diminished his honour or dignity.

15. On 10 December 2003 the Altay Regional Court upheld the judgment. It noted that the applicant's deprivation of liberty had been in compliance with Russian law and the Convention because he had been lawfully arrested for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense.

C. Criminal complaint against police officers

16. In the meantime, in September 2003 the applicant had asked the Altay regional prosecutor to open a criminal case against the police officers who had been allegedly responsible for his unlawful detention and handcuffing.

17. On 29 September 2003 Mr M., an investigator with the Pospelikha district prosecutor's office, refused to institute criminal proceedings. He noted that the Pospelikha district police station possessed no documents or records concerning the applicant's arrest in November 2001. He took a statement from investigator S., who denied that he had ever detained the applicant as a suspect. On the strength of that evidence the investigator concluded that the applicant had not been arrested or detained at the police station from 6 to 8 November 2001.

18. On 23 October 2003 the Pospelikha district prosecutor annulled Mr M.'s decision and asked his deputy, Mr Ch., to resume the inquiry.

19. By a decision of 4 November 2003 Ch. refused to institute criminal proceedings in respect of the applicant's allegations. He had not interviewed the applicant in person but instead quoted his statements to the District Court. He had interviewed investigator S., who had retracted his earlier statement and stated that he had apprehended the applicant as a suspect. A record of the arrest had been properly compiled, but after the applicant's release, he had taken it away from the police station with a view to putting it in the file but had subsequently mislaid it. Mr Ch. also interviewed the director and deputy director of the temporary detention centre, who claimed that the record of the arrest had been properly drafted and that the handcuffs had been applied to prevent self-harm. Two on-duty officers testified in the same vein. Relying on those statements and the findings of the District Court in the civil proceedings (see paragraph 14 above), Mr Ch. determined that the use of handcuffs had been lawful and justified.

20. By a judgment of 11 February 2004 the District Court upheld Ch.'s decision by way of judicial review. It found that the inquiry had been thorough and complete and that sufficient evidence of the lawfulness and reasonableness of the applicant's arrest and handcuffing had been collected. The District Court took note of the certificate from the head of the district police station showing that the record of the arrest and the detention registers for November 2001 had been destroyed after one year's storage. The District Court held in that connection that the “documents had been

wrongly destroyed before the expiry of the correct retention period" but that there was no proof of malice on the part of the public officials. In the District Court's view, Ch. had not been required to hear the applicant in person because he had set out his allegations in sufficient detail. Nor had he been required to examine further witnesses, including other detainees, because the statements by police officers had been sufficient. Lastly, the District Court dismissed as insignificant the applicant's argument that the use of handcuffs had not been recorded in any reports, as required by domestic law.

21. On 30 September 2004 the Regional Court upheld the judgment.

D. Restrictions concerning the applicant's correspondence

1. Correspondence between the applicant and the Court

22. By a letter of 7 September 2007 the Court informed the applicant that the present application had been communicated to the respondent Government. This letter was received at Rubtsovsk remand centre no. 22/4 on 29 October 2007 and was handed over to the applicant on an unspecified date. By a letter of 28 November 2007 the applicant was invited to submit before 30 January 2008 his comments on the Government's observations. This letter was received at the detention facility on 18 December 2007 and was handed over to him on or around 28 January 2008. By a letter of 8 January 2008 the applicant was provided with a copy of the English translation of the Government's observations. This letter was received at the detention facility on 17 January 2008 and was handed over to the applicant on 11 February 2008. The delays were due to the applicant's transfers between several detention facilities. All three letters were monitored and stamped by the prison staff.

23. It appears that on 20 May 2008 the detention facility dispatched a letter from the applicant to the Court. However, the letter was returned to the detention facility by the Russian Postal Service with a requirement to add stamp value and remove sellotape from the envelope. In October 2008 the Tayga Town Court of the Kemerovo Region held that the refusal to dispatch the letter for lack of funds was unlawful.

24. On 29 July, 28 August and 11 September 2009 the applicant's representative brought a number of complaints before the Court in relation to various restrictions concerning the correspondence between the applicant and the Court, as well as between the applicant and his representative before the Court (see below).

25. As can be seen from a certificate issued by the administration of colony no. 2 in the Tomsk Region, submitted by the Government, between August 2007 and September 2009 the applicant submitted a number of letters for dispatch to the Court. The register of outgoing correspondence

contained various entries such as “complaint”, “petition”, “additional complaint”, “request concerning the course of proceedings”, “request concerning receipt of the previous letter”, “request concerning the list of previously submitted documents”, “complaint concerning a violation of his rights”. It appears that the entries for the letters submitted for dispatch in 2009 were marked as “sealed envelope” without any further indication of the contents.

2. Correspondence between the applicant and his representative before the Court

26. On 29 January 2008 the International Protection Centre, a non-governmental organisation in Moscow, received a letter from the applicant enclosing an authority form for Ms Misakyan to represent him in the proceedings before the Court.

27. On 2 and 11 September, 16 October and 11 December 2008 and 12 March 2009 the applicant sent letters to Ms Misakyan at the address of the International Protection Centre. The letters were accompanied by covering notes by the facility administration, summarising their contents. On 6 June 2009 Ms Misakyan sent a letter to the applicant, who was then being held in prison hospital no. 1 in the Tomsk Region. The letter was monitored and stamped by the facility administration on 15 June 2009; the stamp was placed directly above the text of the letter. In the meantime, on 8 June 2009 the International Protection Centre had received a letter from the applicant, the envelope of which carries a stamp indicating that the letter had been inspected by a correspondence officer.

28. As can be seen from a certificate issued by the administration of colony no. 2 in the Tomsk Region, produced by the Government, in 2008 and 2009 the applicant submitted a number of letters for dispatch to Ms Misakyan at the address of the International Protection Centre. The register of outgoing correspondence contained various entries such as “request for legal assistance”, “complaint concerning the proceedings before the European Court”, “complaint”, “ letter – replies to questions from the European Court”, “request concerning legal assistance”, “request concerning samples of documents”, “request concerning translation”, and “personal letter”.

29. On 14 September 2009 the applicant's representative wrote to the administration of Tomsk prison no. 2 indicating that she was representing the applicant before the Court and that her correspondence with him should be treated as privileged and confidential.

30. On 5 October 2009 the applicant's representative sent a letter to the applicant by registered mail, indicating on the envelope “from advocate Misakyan”. This letter was returned to her with a note “not required because of the time-limit since 8 December 2009”.

31. In November and December 2009 the applicant submitted for dispatch three letters addressed to Ms Misakyan. The administration of the detention facilities dispatched these letters with notes indicating the number of pages in the correspondence. One of the notes was addressed to the International Protection Centre; the other two notes also indicated that the letters were addressed to "advocate Misakyan".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Arrest and detention of suspects

32. Article 122 of the RSFSR Code of Criminal Procedure (RSFSR CCrP) allowed the arrest of a suspect (i) at the time of the offence or immediately thereafter; (ii) if eyewitnesses pointed to him as the perpetrator of the crime; or (iii) if the suspect bore or was in possession of evident traces of the crime or if such traces were found on his clothes or at his home. A record of the arrest was to be drawn up with an indication of the legal basis and the reasons for the arrest, its time and place, and a statement by the arrested person. A prosecutor was to be informed within twenty-four hours. After the receipt of the notification the prosecutor had forty-eight hours to authorise the arrested person's placement in custody or to order his release.

33. The arrested or detained suspect should be interviewed immediately or, if this was impossible, within twenty-four hours (Article 124).

34. Article 1069 of the Civil Code provides that damage caused by unlawful actions or inaction on the part of a public authority or a public official should be compensated. Article 1070 § 1 of the Code provided, at the time, that damage caused by unlawful prosecution or unlawful placement in custody should be compensated for in full by the State, irrespective of any fault by public officials. Article 1070 § 2 provides that other damage caused by unlawful activity on the part of the investigative authorities or the prosecutor's office should be compensated for under the rules laid down in Article 1069.

B. Detainees' correspondence

35. Article 23 § 2 of the Russian Constitution protects the confidentiality of correspondence and communications and allows restrictions on them only on the basis of a court order. Article 55 § 3 provides that rights and freedoms may be limited by a federal law in so far as is necessary for protecting the constitutional regime, morals, health, the rights and legitimate interests of others, and for ensuring national defence and security. The Constitutional Court has held that the above limitations could be imposed in

relation to the deprivation of liberty of convicted persons and concomitant restrictions (decisions of 16 October 2003 and 17 October 2006).

36. Article 91 of the Code of Execution of Sentences provides that the incoming and outgoing correspondence of a convicted prisoner may be inspected. However, a convicted prisoner's correspondence with a court, a prosecutor's office, a public authority supervising detention facilities, a federal or regional ombudsman and the European Court of Human Rights should not be monitored. Convicted prisoners' correspondence with their defence counsel or other persons providing legal advice on legal grounds should not be monitored, except if the prison administration has confirmed information that the correspondence contains information aimed at criminal activity. In such situations the prison administration should issue a reasoned decision on monitoring the correspondence. In addition, under Rule 50 of the Internal Prison Regulations adopted by the Federal Ministry of Justice on 3 November 2005 (decree no. 205), outgoing correspondence should be put in a mailbox or handed over to the prison staff in an unsealed envelope, except if such correspondence is privileged.

37. The Supreme Court of Russia has examined the legality of the above legislation and held that it was aimed at "protecting the rights and legitimate interests of other persons" and did not violate the requirements of Article 8 § 2 of the Convention, which, in turn, referred to "public safety" and "the protection of the rights and freedoms of others". The court also held that the censorship rule was "nothing but" a way of exercising the right and thus could not be a violation of the right to correspondence; in any event, the censorship regime was subject to "constant control and supervision" (see decisions of 13 June and 5 September 2006).

38. On 26 December 2006 the Federal Ministry of Justice adopted Administrative Rules on the examination of detainees' complaints to public authorities (decree no. 383). The Rules provide that stationery and postal costs are to be paid in compliance with federal legislation (Rule 11). Correspondence addressed to a prosecutor, a court or a public authority supervising detention facilities, the federal or regional ombudsman or the European Court of Human Rights should not be inspected. Such correspondence should be dispatched to the addressee within one day in a sealed envelope (Rule 17). Correspondence addressed to other public authorities, non-governmental organisations or defence counsel should be dispatched within three days (Rule 18). Replies to "suggestions, applications and complaints" should be handed over to the detainee within three days of their receipt; the detainee should sign the record; and the correspondence may be included in the detainee's prison file (Rule 19). Since May 2009 such incoming correspondence is read out instead of being handed over to the detainee, and is compulsorily included in the prisoner's file; the detainee may purchase a copy of the correspondence for his personal use. Rule 54 of the Rules provides that in order to ensure the right

of petition to the Court the prison administration should inform the detainee of the "procedure for making such applications" and provide him with an application form, the instructions for applications and the European Court's postal address.

39. Under section 20 of the Custody Act, persons detained on remand (suspects and accused) can only correspond through the intermediary of the detention facilities; detainees should pay for their own correspondence. The correspondence is inspected. If the correspondence contains information which may obstruct the criminal proceedings or support a criminal activity, such correspondence should not be dispatched or handed over to the detainee to whom it is addressed. The dispatch of outgoing correspondence or the handing over of incoming correspondence should be carried out within three days or as soon as it has been translated into Russian. If the detainee has left the detention facilities, the correspondence should be forwarded to the new address within three days. Under section 21 of the Custody Act, a detainee (suspect or accused) should dispatch his correspondence to State or municipal authorities and non-governmental organisations through the intermediary of detention facilities. Correspondence addressed to a prosecutor, a court, the federal or regional ombudsman or the European Court of Human Rights should not be monitored. Correspondence to other public authorities, non-governmental organisations or defence counsel should be examined by the administration of the detention facility and dispatched within three days.

C. Other relevant legislation

40. Article 49 of the 2001 Code of Criminal Procedure defines "defence counsel" as a person who represents a suspect or defendant in criminal proceedings and provides him with legal advice. It also specifies that in order to act as defence counsel, an advocate should produce his certificate to practise law and an order from his law firm authorising representation of the person concerned.

41. Section 45 of the 1995 Custody Act provides that handcuffs may be used on a suspect or accused to put an end to his unlawful resistance, and to prevent him from escaping or from causing damage to others or himself.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

42. The Council of Europe Committee of Ministers adopted Recommendation Rec(2006)2 to member States on the European Prison Rules, the relevant parts of which read as follows:

> "23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

23.3 Where there is a recognised scheme of free legal aid the authorities shall bring it to the attention of all prisoners.

23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.

23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings...

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted."

43. The 1996 European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights reads as follows:

Article 3

"The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Court.

As regards persons under detention, the exercise of this right shall in particular imply that:

... such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Court, or any proceedings resulting therefrom.

In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health."

The Russian Federation is not a party to this Agreement.

IV. RESERVATION BY THE RUSSIAN FEDERATION

44. The instrument of ratification of the Convention deposited by the Russian Federation on 5 May 1998 contained the following reservation:

> "In accordance with Article 64 of the Convention, the Russian Federation declares that the provisions of Article 5 paragraphs 3 and 4 shall not prevent ... the temporary application, sanctioned by the second paragraph of point 6 of Section Two of the 1993 Constitution of the Russian Federation, of the procedure for the arrest, holding in custody and detention of persons suspected of having committed a criminal offence, established by Article 11 paragraph 1, Article 89 paragraph 1, Articles 90, 92, 96, 96-1, 96-2, 97, 101 and 122 of the RSFSR Code of Criminal Procedure of 27 October 1960, with subsequent amendments and additions..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant alleged that the use of handcuffs on him on 7 and 8 November 2001 had violated Article 3 of the Convention, which reads as follows:

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

A. Admissibility

46. The Government alleged that there was no evidence that the applicant had complied with the six-month rule under Article 35 § 1 of the Convention as regards his complaint concerning the handcuffing, as well as the complaint concerning his arrest and detention.

47. The Court observes that these complaints were first raised by the applicant in his letter dated 19 May 2004, whereas the relevant final decision was taken on 10 December 2003. He reiterated his complaints in the application form on 19 July 2004 and his subsequent correspondence. The Government's objection is therefore dismissed.

48. The Court considers that the complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

49. The Government submitted that the handcuffing had been aimed at protecting the applicant, in particular from any further attempt at self-mutilation. The handcuffing had been connected with a lawful arrest and detention and thus as such did not run counter to the requirements of Article 3 of the Convention, in particular given the appropriate conditions of the applicant's detention (see paragraph 10 above).

50. The applicant submitted that he had had no information about the accusation against him and saw the swallowing of a safety pin and a threat to slit his veins as the only possible way of attracting the attention of the competent authorities beyond the control of police officers. The guards had not made any reports on the relevant days about his behaviour. Handcuffing was unlawful under the Custody Act as a means of putting an end to mass disorder. There had been no valid reason for using handcuffs on him. His requests for information on the reasons for his arrest had not amounted to provocative behaviour. The prison staff's actions had amounted to inhuman and degrading treatment (see paragraph 9 above). They could instead have carried out a body search and then locked him in solitary confinement.

2. The Court's assessment

51. The Court has consistently held that, in accordance with Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Kudła* [GC], cited above, § 91, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

52. Handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with a lawful detention and does not entail the use of force or public exposure exceeding what is reasonably considered necessary. In this regard, it is

important to consider, for instance, the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII; see also *Mouisel v. France*, no. 67263/01, § 47, ECHR 2002-IX, and *Henaf v. France*, no. 65436/01, § 49, ECHR 2003-XI).

53. Turning to the circumstances of the case, while the question of the lawfulness of the applicant's arrest and detention raises issues under Article 5 of the Convention (see below), it should be noted that the Custody Act did not authorise the use of handcuffs for putting an end to mass disorder. Hence, the only valid reason for using handcuffs could have been the need to prevent self-harm (see paragraph 41 above). Indeed, after the applicant had swallowed a safety pin and uttered threats of further self-mutilation, the prison staff could legitimately have considered measures to secure his health and well-being. The Court reiterates in that connection that the authorities are under a duty to protect persons in custody and that it is incumbent on the State to account for any injuries suffered during such periods (see, among other authorities, *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV).

54. The Court observes that after the applicant had swallowed a pin, he was provided with medical assistance. There is no indication that this assistance was not adequate. Importantly, the decision to apply handcuffs proved to be justified in view of the applicant's reiterated threats of self-mutilation. Lastly, it is noted that having been informed of the events underlying this complaint nearly two years later, the national authorities carried out a number of investigative measures in order to establish the relevant facts, in so far as it remained practicable at the time.

55. In view of the above considerations, the Court considers that the decision of the national authorities to apply handcuffs to the applicant was not incompatible with respect for human dignity, and concludes that he was not subjected to degrading treatment. The remaining allegations made by him, in particular relating to the material conditions of his detention, were not substantiated.

56. There has therefore been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

57. The applicant complained that he had been deprived of his liberty from 6 to 8 November 2001 in breach of Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ..."

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...”

A. Admissibility

58. The Government argued that the grievances had been submitted out of time.

59. The Court has already found that the applicant's grievances were submitted within the six-month time-limit under Article 35 § 1 of the Convention (see paragraph 47 above).

60. The Court also considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

61. The Government submitted that the applicant's arrest had been lawful and justified under Article 122 of the Code of Criminal Procedure (CCrP) on account of A.'s statement and the evidence seized at the applicant's home. The reasonable suspicion against him concerned an offence falling within the scope of Article 122 of the CCrP and was thus covered by Article 5 § 1 (c) of the Convention. A record of his arrest had been drawn up and the prosecutor had been notified. The duration of the applicant's detention had complied with the requirements of the CCrP. The Government indicated that the registers of arrested persons kept by the police station and the detention centre had been destroyed in November 2002 after the expiry of the retention period. As investigator S. had explained in 2007, the record of the applicant's arrest had been lost. There had been no malice or bad faith on S.'s part. The applicant should not have waited for nearly two years before bringing proceedings in the national courts; he had thus made it difficult, if not impossible, to establish the relevant circumstances.

62. The applicant argued that there had been no reasonable suspicion against him. When naming the applicant as his accomplice, Mr A. could not be trusted as he was an interested party in criminal proceedings rather than an independent eyewitness. Besides, the applicant had been arrested before A.'s incriminating statement and had been released before A.'s retraction. Accordingly, A.'s testimony did not furnish a sufficient basis for the applicant's arrest and detention. In any event, until his release on

8 November 2001 the applicant had not been formally accused of any criminal offence. He had never been interviewed as a suspect within twenty-four hours, in breach of the CCrP (see paragraph 32 above). In fact, the record of the interview referred to him as a "witness". Moreover, no record of his arrest had been drawn up to confirm the lawfulness of his arrest, detention and release. In the absence of such a record, it could not be established that the applicant's deprivation of liberty had been based on relevant and sufficient reasons. Lastly, the notification to the prosecutor had not been issued at the relevant time but had, most likely, been forged in 2003. The version of events concerning the loss of documents by the investigator had not been aired during the court proceedings in 2003 but had first been put forward in 2007.

2. *The Court's assessment*

(a) Establishment of the relevant facts

63. The Court observes that the national authorities first attempted to argue that the applicant had not been arrested (see paragraphs 12 and 17 above). However, after their retraction the criminal inquiry and the courts in civil proceedings found, with reference to depositions by public officials, that the applicant's presence in the police station and the temporary detention centre from 6 to 8 November 2001 had been covered by Article 122 of the Code of Criminal Procedure, concerning persons suspected of having committed a criminal offence.

64. It is not in dispute that the applicant was deprived of his liberty at about 6 p.m. on 6 November 2001 (see paragraph 8 above). However, as regards the time of release, the Government submitted that the applicant had been released at around 1 p.m. on that day. The applicant insisted that he had been released at 5 p.m.

65. The Court reiterates that Convention proceedings, such as those arising from the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

66. As regards the record of the applicant's arrest, the applicant alleged that it had never existed. The national court established that the record and the register of arrested persons kept by the detention centre had been destroyed before the expiry of the retention period (see paragraph 20 above). The Government stated, with reference to investigator S.'s

deposition, that he had misplaced or lost the record. The Government also contended that the registers of arrested persons kept by the police station and the detention centre had been destroyed in November 2002 after the expiry of the retention period.

67. In view of the above considerations, and in the absence of appropriate documentary evidence, which is imputable to the national authorities, the Court accepts that the applicant was released at around 5 p.m. on 8 November 2001.

(b) Assessment of the period of detention

68. The Court reiterates that Article 5 § 1 of the Convention requires in the first place that detention be "lawful", which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see, as a recent authority, *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010-...).

69. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. However, since under Article 5 § 1 of the Convention failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006, and *Shteyn (Stein) v. Russia*, no. 23691/06, §§ 89 and 94, 18 June 2009).

70. Defects in a detention order do not necessarily render the underlying detention as such "unlawful" for the purposes of Article 5 § 1; the Court has to examine whether the flaw in the order against an applicant amounted to a "gross and obvious irregularity" such as to render the underlying period of detention unlawful (see *Mooren v. Germany* [GC], no. 11364/03, § 84, ECHR 2009-..., and *Kolevi v. Bulgaria*, no. 1108/02, § 177, 5 November 2009).

71. The Court observes, and the parties are in agreement, that the applicant's arrest and detention fell within the ambit of Article 5 § 1 (c) of the Convention, that is, that he was deprived of his liberty "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence". The Court is satisfied that the suspicion against the applicant was "reasonable" in the circumstances of the case. There is no indication that any substantive provisions of national law were breached.

72. At the same time, the Court notes that the CCrP required the drawing up of a record of an arrest and its notification to the prosecutor. The Court reiterates in that connection that Russia entered a reservation in respect of Article 5 §§ 3 and 4. The reservation referred, among other things, to the provisions of the Code, under which a person could be detained further to a decision by the investigative authorities without there being any requirement for judicial supervision of the detention. The Court has examined the validity of the reservation and found it to be compatible with the requirements of Article 57 of the Convention (see *Labzov v. Russia* (dec.), no. 62208/00, 28 February 2002; see also paragraph 44 above). In view of the above, the applicant was not brought before "a judge or other officer authorised by law to exercise judicial power". In this context, compliance with the formal requirements of national law was particularly important.

73. The national courts in two sets of proceedings (concerning the judicial review of the refusals to prosecute public officials and in a civil case) held, on the basis of testimonies by the investigator and officers at the police station and the detention centre, that the applicant's arrest and detention were lawful.

74. However, the absence of a record of arrest and detention with indication of a number of details such as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006-III). In the Court's view, the loss of record or its unlawful destruction are capable of depriving an applicant of an opportunity to usefully challenge his arrest and detention. In this respect the Court has not overlooked the fact that the applicant chose to bring his grievance before the courts only one year and a half after the events. While he did so within the statutory time-limits, it appears that the retention periods in respect of the official documents, which were relevant to his claims, were shorter than the above-mentioned time-limits for a court action. The observance of the above retention periods was incumbent on the national authorities.

75. It follows that the unavailability of the record of arrest is imputable to the national authorities. The Court also notes that the applicant was not interviewed immediately or within twenty-four hours, as required by the CCrP (see paragraph 33 above). Nor is there any indication of any formal decision concerning the applicant's release. Lastly, there is insufficient proof that the above-mentioned notification to the prosecutor was issued in compliance with the relevant requirements of the Code (see paragraph 8 above).

76. In the Court's view, taken cumulatively, the above circumstances disclose insufficient procedural safeguards against arbitrariness, which

render the applicant's arrest and detention from 6 to 8 November 2001 incompatible with the requirements of Article 5 § 1 of the Convention. Thus, the Court is not satisfied that the applicant was deprived of his liberty "in accordance with a procedure prescribed by law".

77. There has therefore been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

78. The applicant also complained that the refusal of compensation for his unlawful arrest and detention from 6 to 8 November 2001 violated Article 5 § 5, which reads as follows:

> "... Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

79. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1-4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X; *Pantea v. Romania*, no. 33343/96, § 262, ECHR 2003-VI; and *Fedotov v. Russia*, no. 5140/02, § 83, 25 October 2005).

80. The Court notes that it has found a violation of Article 5 § 1 of the Convention. It follows that the complaint under Article 5 § 5 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

81. The Government submitted that the applicant had lodged a civil action for compensation in respect of the non-pecuniary damage caused by his allegedly unlawful arrest and detention. The national courts had examined the case and concluded that the deprivation of liberty had been lawful. The applicant had been involved in the court proceedings. Besides, the applicant should have sued Mr A. and sought his criminal prosecution for false accusation.

82. The applicant maintained his complaint.

83. The Court observes, firstly, that the Government did not submit any argument as to how a civil or criminal action against A. would have enforced the applicant's right to compensation within the meaning of Article 5 § 5 of the Convention.

84. Secondly, in the light of the information before it the Court notes that compensation for the damage sustained as a result of arrest and detention could be awarded if such measures were found to be unlawful under Russian law (see paragraph 34 above; see also *Shilyayev v. Russia*, no. 9647/02, § 21, 6 October 2005, and *Nolan and K. v. Russia*, no. 2512/04, § 104, 12 February 2009). Indeed, the applicant tried to obtain compensation through this domestic remedy. It was not suggested that he failed to comply with any formal or procedural requirements (see *Francisco v. France* (dec.), no. 38945/97, 29 August 2000; see also, *mutatis mutandis*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, §§ 107-110, ECHR 2001-V (extracts), and *A.D. and O.D. v. the United Kingdom*, no. 28680/06, §§ 102-104, 16 March 2010). The national courts at two levels of jurisdiction examined the claims on the merits but found that the applicant's arrest and detention had been lawful as a matter of Russian law and, as noted by the appeal court, under Article 5 § 1 (c) of the Convention (see paragraph 15 above).

85. The Court reiterates in that connection that the national authorities, including courts, are expected to interpret and apply national law in the light of the Convention, as interpreted by the Court. Having examined the applicant's grievance under Article 5 § 1 of the Convention, the Court has found, *inter alia*, that the unavailability of the record was imputable to the national authorities in the present case. The Court has concluded that there was a violation of Article 5 § 1 in that the applicant's arrest and detention were not "in accordance with a procedure prescribed by law" and did not afford sufficient procedural guarantees against arbitrariness.

86. By failing to apply the above standards, the national courts did not enforce the applicant's right to compensation (see, by comparison, *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A, and *Houtman and Meeus v. Belgium*, no. 22945/07, §§ 45-47, 17 March 2009).

87. There has therefore been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATIONS CONCERNING CENSORSHIP OF CORRESPONDENCE

88. The applicant complained that his correspondence had been inspected by the prison staff. The Court has examined this complaint under Article 8 of the Convention (see *Valašinas v. Lithuania*, no. 44558/98, § 126, ECHR 2001-VIII; *Klyakhin v. Russia*, no. 46082/99, § 108,

30 November 2004; and *Anatoliy Tarasov v. Russia*, no. 3950/02, § 50, 18 February 2010).

89. Article 8 reads as follows:

> "1. Everyone has the right to respect for ... his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

90. The applicant complained about the inspection of correspondence from the Court by the staff of the detention facilities from 2004 onwards; the inspection and photocopying of his letters to the Court; the insertion of copies of them into his detainee's file; and their dispatch accompanied by notes summarising the letters' contents. The applicant also complained about the inspection of his correspondence with his representative before the Court, Ms Misakyan.

91. The Government submitted that the applicant's correspondence with the Court had not been monitored. The inspection of his correspondence sent to the address of the International Protection Centre had been lawful under Article 91 of the Code of Execution of Sentences. The prison authorities had not been provided with a copy of the authority form allowing Ms Misakyan to represent the applicant in the proceedings before the Court or a document confirming that she was an "advocate", as required by Article 49 of the Code of Criminal Procedure.

B. The Court's assessment

1. Admissibility

92. The Court observes that the Government did not plead that the applicant had been required to make use of any domestic remedies in relation to his grievances. By virtue of the six-month rule under Article 35 § 1 of the Convention, the Court has jurisdiction in relation to any acts or omissions on the part of the prison authorities that occurred no earlier than six months before the date(s) when the relevant complaints were first raised before the Court.

93. As to his letters to the Court, the applicant did not argue that the grievance disclosed any "continuing situation" affecting the application of the six-month rule. Nor did he specify when he had first become aware of the monitoring of his letters before their dispatch to the Court. The Court

observes that in any event the alleged interference mostly concerns the years 2007 and 2008 (see paragraph 25 above), whereas the complaint was not lodged until 28 August 2009 (see paragraph 24 above). There is not a sufficient factual basis for considering that any letters were inspected in 2009. In view of the above, it has not been shown that the applicant complied with the six-month rule. Thus, the Court considers that this part of the application has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

94. As to the letters from the Court, it is noted that the complaint concerns three letters and was lodged with the Court on 29 July 2009 (see paragraph 24 above). However, the applicant had become aware of the most recent of the alleged interferences no later than on 11 February 2008 (see paragraph 22 above). Moreover, there is not a sufficient factual basis for considering that any subsequent letters were inspected. It follows that this part of the application has also been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

95. As to the correspondence between the applicant and Ms Misakyan, the Court observes, by contrast, that the alleged inspection of the correspondence has taken place over a period lasting since 2008 and that at least three letters were inspected until in mid-2009 (see paragraphs 27 and 28 above). The Court thus accepts that the applicant has complied with the six-month rule.

96. The Court concludes therefore that the complaint concerning the inspection of the correspondence between the applicant and Ms Misakyan is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. Merits

97. The Court observes, and it is not in dispute between the parties, that Ms Misakyan's letters to the applicant were inspected after their receipt and that the applicant's letters to her were inspected before their dispatch. In the Court's view, the inspection amounted to an "interference" under Article 8 of the Convention.

98. Such an interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and is "necessary in a democratic society" in order to achieve them (see, among other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, § 84, Series A no. 61, and *Savenkovas v. Lithuania*, no. 871/02, § 95, 18 November 2008).

99. The Government argued that the prison authorities had not been made aware that Ms Misakyan was representing the applicant before the Court. She should have produced proof of her "advocate" status or, at least, submitted an order from a law firm designating her or an authority form,

which was also required in proceedings before the Court. Thus, the interference was in accordance with Article 91 of the Code of Execution of Sentences (CES) and the Internal Prison Regulations, authorising the inspection of the incoming and outgoing correspondence of a convicted prisoner (see paragraph 36 above). The applicant contended that the matter fell within the scope of the exception to the above rule, concerning a convicted person's correspondence with his "defence counsel or another person providing legal advice on a lawful basis". The applicant submitted that it followed from the contents of Ms Misakyan's letters in 2008 and 2009 that she was acting as his representative in contentious proceedings before the Court. Later on, after the prison administration had been made aware of her advocate status and that she represented the applicant, the inspection of correspondence was continued (see paragraphs 29 - 31 above).

100. The Court observes that Article 91 of the CES made a distinction between ordinary, privileged mail of a convicted prisoner and his correspondence with a person providing legal assistance (see, by comparison, *Moiseyev v. Russia*, no. 62936/00, § 266, 9 October 2008, concerning censorship of detainees' correspondence under the Custody Act). However, it does not transpire from the available material that the prison authorities were made aware of the legal relationship between the applicant and Misakyan before September 2009 (see paragraph 27-30 above). The Court observes, however, that the Government itself interpreted the notion of "defence counsel" with reference to Article 49 of the Code of Criminal Procedure, which had no application in the legal relationship between an applicant and his representative before this Court.

101. At the same time, in the Court's view, it cannot be ruled out that Ms Misakyan could be "another person providing legal advice on a lawful basis" mentioned in Article 91 of the CES. Indeed, it was the applicant's own submission that the correspondence in question fell within the scope of this heading of the exception to the rule. Thus, had Ms Misakyan submitted an authority form and/or provided a documentary proof of her advocate status, her correspondence with the applicant would have been treated, as a matter of law, as privileged.

102. Thus, concerning the monitoring of the letters, falling within the scope of the present application, the Court concludes that there is not sufficient evidence to consider that such correspondence fell within the ambit of the exception to the general rule under Article 91 of the CES.

103. The Court accepts that the general rule under Article 91 of the Code applied in the present case and served as the legal basis for monitoring of the correspondence. It is also noted that the parties did not submit that any other legislation regulated this matter at domestic level. Thus, the interference in the present case was in accordance with the "law".

104. At the same time, the Court cannot but note that the respondent Government did not refer to any legitimate aim within the meaning of

Article 8 § 2 of the Convention. Nor did they put forward any argument to justify the routine monitoring of the correspondence or to show that sufficient safeguards were in place.

105. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" regard may be had to the State's margin of appreciation (see, amongst other authorities, *Dickson v. the United Kingdom* [GC], no. 44362/04, § 77, ECHR 2007-...). While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention.

106. In assessing whether an interference with the exercise of the right of a convicted prisoner to respect for his correspondence was "necessary" for one of the aims set out in Article 8 § 2, regard has to be paid to the ordinary and reasonable requirements of imprisonment. Some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention (see *Szuluk v. the United Kingdom*, no. 36936/05, § 46, ECHR 2009-..., with further references).

107. The monitoring measure under the rule of Article 91 of the CES was not limited as to its length or scope. This provision did not specify the manner of its exercise. No reasons were required to warrant its application. The CES made no provision for an independent review of the scope and duration of monitoring measures (see *Enea v. Italy* [GC], no. 74912/01, §§ 141-143, ECHR 2009-..., and *Onoufriou v. Cyprus*, no. 24407/04, §§ 109-113, 7 January 2010).

108. In so far as convicted detainees are concerned, the Court does not discern any justification for routinely inspecting the correspondence in the present case (see also paragraphs 42 and 43 above). Indeed, there was no question of security risks or collusion between the applicant and his correspondent, for instance in relation to any pending proceedings at national level, or of any criminal activity or conduct (see also *Alekseyenko v. Russia*, no. 74266/01, § 88, 8 January 2009).

109. It follows from the above considerations that the provisions of Russian law failed to afford a measure of legal protection against arbitrary interference by public authorities with the applicant's right to respect for his correspondence.

110. Moreover, it should be noted that it transpires from the available material that in late 2009 the prison administration treated Ms Misakyan as an "advocate". However, the correspondence was still subject to monitoring (see paragraph 31 above).

111. The Court has developed quite stringent standards as regards the confidentiality of prisoners' legal correspondence. In *Petrov v. Bulgaria* (no.

15197/02, § 43, 22 May 2008) the Court enunciated its principles as regards legal correspondence in the prison context as follows:

> "...correspondence with lawyers ... is in principle privileged under Article 8 of the Convention and its routine scrutiny is not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client... The prison authorities may open a letter from a lawyer to a prisoner solely when they have reasonable cause to believe that it contains an illicit enclosure which the normal means of detection have failed to disclose. The letter should, however, only be opened and should not be read. Suitable guarantees preventing the reading of the letter should be provided, such as opening the letter in the presence of the prisoner. The reading of a prisoner's mail to and from a lawyer, on the other hand, should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances but it presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication is being abused ..."

112. The Court considers in that connection that, as a rule, correspondence between an actual or prospective applicant and his or her representative before the Court should be privileged (see also references to the relevant Council of Europe documents in paragraphs 42 and 43 above, and *Campbell v. the United Kingdom*, 25 March 1992, §§ 49 and 50, Series A no. 233).

113. The Court has found in a number of cases concerning the right of application under Article 34 of the Convention that measures limiting the applicant's contacts with his representative may constitute interference with the exercise of the applicant's right of individual petition (see, for example, *Shtukaturov v. Russia*, no. 44009/05, § 140, 27 March 2008, and *Zakharkin v. Russia*, no. 1555/04, §§ 157-160, 10 June 2010). The Court has, however, accepted that compliance by a representative with certain formal requirements might be necessary before obtaining access to a detainee, for instance for security reasons or in order to prevent collusion or perversion of the course of the investigation or justice (see *Melnikov v. Russia*, no. 23610/03, § 96, 14 January 2010).

114. Having become aware in late 2009 that Ms Misakyan was an advocate and/or represented the applicant in contentious proceedings before the Court, the prison administration should have specified which documentary proof, if any, was required or sufficient for obtaining the privileged status for the subsequent correspondence between the applicant and Ms Misakyan.

115. There has therefore been a violation of Article 8 of the Convention on account of the inspection of the correspondence between the applicant and Ms Misakyan.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

116. The applicant also complained under Article 34 of the Convention about the delays in handing over the Court's letters to him, preventing him from complying with the time-limits set by the Court; the prison staff's refusals to dispatch his letters to the Court; the non-delivery of one letter in 2009 and pressure allegedly put on him. He also complained under Article 5 of the Convention that he had not been informed of any charges against him after the arrest; that he had not been brought before a judge for a review of his detention. He alleged under Article 6 of the Convention that the civil proceedings had been excessively long and unfair, in particular because the courts had not summoned his witnesses. The applicant complained under Article 8 of the Convention that the search of his home had been unlawful. Lastly, the applicant complained under Articles 13 and 14 of the Convention of the absence of effective remedies and of discrimination against him.

117. The Court has examined the remaining 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 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

120. The Government contested this claim.

121. Having regard to the nature of the violations found and making an assessment on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

122. The applicant claimed reimbursement of his costs and expenses, leaving the amount to be awarded to the Court's discretion.

123. The Government contested the claim.

124. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that that the applicant was granted legal aid under Rule 92 of the Rules of Court. In the absence of any specific claim and any documentary proof, the Court dismisses the claim under this head.

C. Default interest

125. The Court considers it appropriate that the default interest 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* admissible the complaints concerning the applicant's handcuffing, the lawfulness of his detention, the lack of an enforceable right to compensation and the right to respect for correspondence with his representative;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

6. *Holds* that there has been a violation of Article 8 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four 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;

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

Done in English, and notified in writing on 28 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President