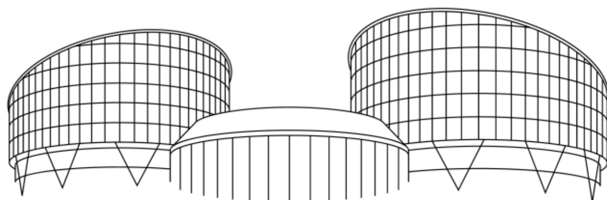

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF SHILBERGS v. RUSSIA

(Application no. 20075/03)

JUDGMENT

STRASBOURG

17 December 2009

FINAL

17/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shilbergs v. Russia**,**

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

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

Having deliberated in private on 26 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 20075/03) 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 Artur Viesturovich Shilbergs ("the applicant"), on 30 May 2003.

2. The applicant, who had been granted legal aid, was represented by Mrs O. Preobrazhenskaya, a lawyer with the International Protection Centre in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in inhuman conditions, that he had been unable to participate effectively in civil proceedings concerning him owing to the domestic courts' failure to ensure his presence, and that he had not been provided with legal aid on appeal in a criminal case.

4. On 12 June 2006 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 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lived until his arrest in the town of Neman in the Kaliningrad Region. He is now serving his prison sentence in the correctional colony in the village of Slavyanovka, Kaliningrad Region.

A. Criminal proceedings against the applicant

6. On 16 August 2001 officers of the Krasnoznamensk town police department arrested the applicant and brought him to the temporary detention unit of the Neman town police department. A police investigator informed the applicant that he had been arrested on suspicion of aggravated robbery and that a prosecutor had authorised his detention on 29 May 2001. The applicant, having been informed of the rights of accused persons, including the right to legal aid, refused legal assistance because he considered himself innocent, and signed a record confirming his refusal. During the subsequent interview the applicant denied the accusations and consistently maintained his innocence.

7. On 28 September 2001 the applicant, who was still unrepresented, had a confrontation interview with a co-accused, Mr P., at which he was assisted by a lawyer. On a number of occasions the applicant unsuccessfully requested the investigating authorities to hold confrontations with other co-defendants, witnesses and victims.

8. On 3 October 2001 the applicant took part in a voice identification parade. The parade was performed in the presence of the applicant's lawyer and two attesting witnesses. The victim was asked to identify the alleged perpetrator by his voice. Two other individuals took part in the parade. The applicant alleged that they had had very strong accents because one of them was of Chechen ethnic origin and the other one was Lithuanian.

9. Two days later the investigator served the applicant and his counsel with the bill of indictment and allowed them to study the case file. On the following day the investigator closed the pre-trial investigation and sent the case to the Neman Town Court for trial.

10. On 12 October 2001 the Town Court remitted the case to the investigating authorities, finding that the applicant had not had sufficient time to study the file. The applicant was granted a month for examination of the file. In June 2002 the Town Court accepted a request from the applicant's counsel, Ms Z., and granted her and the applicant five days to review the file.

11. On 11 June 2002 the prosecutor asked the Neman Town Court to remit the case for an additional pre-trial investigation in order to correct certain procedural defects. The applicant objected and applied for release on his own recognisance. On the same day the Town Court granted the prosecutor's request and dismissed that of the applicant.

12. On 30 July 2002 the Kaliningrad Regional Court quashed the decision of 11 June 2002 in the part concerning the remittance of the case to the investigating authorities, and ordered that the Town Court should commence the trial.

13. A month later the first trial hearing was held. The applicant's lawyer unsuccessfully asked the Town Court to exclude from evidence certain items including the record of the applicant's voice identification parade.

14. On 5 September 2002 the Neman Town Court found the applicant guilty of several counts of aggravated robbery committed within a group of individuals and sentenced him to nine years' imprisonment.

15. The applicant's lawyer, Ms Z., appealed.

16. The Kaliningrad Regional Court fixed the first appeal hearing for 25 February 2003. The applicant's lawyer, Ms Z., failed to appear and the applicant asked for an adjournment. The Kaliningrad Regional Court granted his request and postponed the hearing until 11 March 2003.

17. On 27 February 2003 the applicant, assuming that Ms Z. could no longer participate, asked the Regional Court to appoint another counsel to assist him during the appeal proceedings. The Government submitted that the Regional Court had not responded to the applicant's request, acting in accordance with well-established judicial practice. According to the Government, at the material time the domestic courts erroneously considered that the Russian Code of Criminal Procedure did not require them to appoint legal-aid counsel to represent defendants in appeal proceedings.

18. On 1 April 2003 the Kaliningrad Regional Court upheld the applicant's conviction.

B. Detention in the detention unit of the Neman town police department

1. *Conditions of detention*

19. On 16 August 2001 the applicant was placed in the temporary detention unit of the Neman town police department, where he remained until 24 August 2001. Between 16 August 2001 and 12 November 2002 he was detained in the unit twelve times, the shortest period of his detention lasting two days and the longest one seventeen. The aggregate length of his detention in the unit amounted to three months and thirteen days.

20. In his application form the applicant alleged that he had usually been detained in a cell measuring over nine square metres and accommodating six detainees. In his observations lodged on 1 March 2007, however, he amended his description, insisting that he had been kept in a cell measuring 6.2 square metres which housed up to 5 inmates. The remaining description of the conditions of his detention in the unit did not vary. In particular, the applicant argued that inmates had taken turns to sleep owing to the shortage of sleeping places. No bedding was provided. The cell had a window thirty centimetres wide and forty centimetres long. The cell was lit by a small bulb. In the absence of artificial ventilation in the cell it was hard to breathe owing to the thick smoke and the humidity. The cell was swarming with insects. There was no heating in winter. There was no lavatory pan or wash-bowl. Inmates used a bucket as a lavatory pan. They were allowed to clean the bucket twice a day: early in the morning and at about 6 p.m. There was no shower room in the detention unit. Inmates were provided with food once a day. In addition, in the morning they were given hot water and in the evening sweet tea. The detention unit did not have a recreation yard and inmates were therefore confined to their cells day and night.

2. Proceedings seeking compensation for damage

21. On 24 June 2003 the applicant brought an action in tort against the management of the Neman town detention unit and the Kaliningrad Regional Department of the Federal Treasury. He claimed that the conditions of his detention in the unit had been inhuman and had led to a serious deterioration of his health. He also sought leave to appear before the Town Court.

22. On 20 August 2003 the Neman Town Court ordered that the applicant should be brought to the hearing fixed for 4 September 2003, finding that "it was necessary to hear him in person as the plaintiff".

23. According to the Government, the management of the correctional colony where the applicant was detained at the material time refused to comply with the order of 20 August 2003 because domestic law did not lay down a procedure for transferring convicted prisoners to ensure their participation in civil cases. The management informed the applicant that domestic law did not oblige the authorities to ensure his presence at the hearing.

24. On 3 October 2003 the applicant received a letter from the Neman Town Court. He was informed that a hearing was listed for 24 September 2003 and that it would be held in his absence because the colony management had not brought him to the Neman Town Court.

25. On 29 December 2003 the Neman Town Court ordered a forensic medical examination of the applicant. On completion of the examination, on 12 March 2004, the applicant was served with a copy of the expert report and informed that the hearing had been fixed for 18 March 2004.

26. On 6 April 2004 the Neman Town Court partly allowed the applicant's action and awarded him 1,500 Russian roubles (RUB, approximately 43 euros) in compensation for non-pecuniary damage. The Town Court held, in so far as relevant, as follows:

> "[The applicant's] argument that his right to the established norm of four square metres of personal space was violated has been amply proven.
>
> The... witnesses confirmed that the detention unit has four cells... Cells nos. 1 and 2 each measure 6 sq. m, cell no. 4 measures 9.8 sq. m and cell no. 3 measures 10.3 sq. m. [The applicant] was detained in cell no. 4: from 20 to 24 August 2001 6 to 7 inmates were detained there, from 3 to 13 September 2001 5 to 7 detainees; from 27 September to 14 October 2001 4 to 6 inmates; from 13 to 18 November 4 to 5 inmates; and from 22 March to 4 April 2002 seven individuals were kept [in that cell]. From May 2002 onwards [the applicant] was detained alone in cells nos. 2 and 3. The registration log, listing the number of persons detained in the unit in specific cells, fully corroborates this account.
>
> [The applicant's] allegation concerning insufficient lighting was confirmed. The single small window, which is situated right below the ceiling and is covered by two metal sheets with small perforated holes between which a fine metal net is suspended, gives no light. A bulb is situated outside the cell and provides insufficient lighting. The head of the temporary detention unit, Mr L., attempted to carry out renovations in 2001 and artificial lighting was installed in the cells; however, a commission arrived and found that the bulbs had been installed incorrectly, and everything was returned to its previous place...
>
> [The applicant's] submission pertaining to the absence of artificial ventilation in the cells and the presence of high humidity levels was also proven. The small window covered with metal sheets with a metal net between them barred access to fresh air; in autumn, winter and spring it was even covered with felt cloth.
>
> The allegation concerning the lack of a lavatory pan and water supply system in the cell was also confirmed. They are not installed in the cells; [inmates] were taken out of the cells twice in twenty-four hours, at 6.00 a.m. and 6.00 p.m.; at those times they could also wash their faces; for the rest of the day or night they used a special bucket as [a lavatory pan]. As to [the applicant] he was frequently taken to the toilet for whatever purpose was required.
>
> [The applicant's] argument concerning the scarcity of food was not refuted. Food was provided in the detention unit once a day. In the morning and evening inmates received tea; lunch was brought in from the municipal cafeteria "Hope" in the afternoon; [lunch] consisted of two courses based on a given sum per inmate. The abovementioned witnesses did not dispute that food had been provided once a day...
>
> The sanitary conditions in the detention unit do not comply with sanitary norms. The record of a sanitary inspection of the cells in the detention unit carried out in 2000-02 was destroyed. However, as is clear from [eight] letters sent by the Neman town temporary detention unit to the Head of the Neman district council and the Neman district sanitary inspector [in 1998, 2001 and 2002], the sanitary conditions did not meet personal hygiene standards. The temporary detention unit did not have a contract ... for cleaning of the premises.

[The applicant's] argument about the violation of his right to a daily walk was not refuted. Inmates were not allowed outdoor exercise in the detention unit as it does not have a recreation yard.

[The applicant's] allegation pertaining to a violation of his right to bathe was fully proven. The detention unit does not have a shower room; persons detained in the temporary detention unit cannot take a shower and there is no provision for such a possibility, as individuals cannot be detained in the detention unit for more than ten days; there is no hot water [in the detention unit].

The court considers manifestly ill-founded [the applicant's] submissions concerning insufficient medical assistance. Medical assistance is provided on request to persons detained in the temporary detention unit: either an ambulance is called or inmates are taken to a doctor. The detention unit has a log recording the initial questioning, examination and provision of medical assistance to individuals detained in the Neman town temporary detention unit. [The applicant] requested medical assistance as follows: twice on 9 October 2001, a body temperature of 37.7 degrees was recorded and a doctor diagnosed him with bronchitis; on 2 February 2002 his blood pressure was taken and treatment was prescribed; on 15 February 2002 a fake incident was recorded; however, medical assistance was subsequently provided and he was sent for examination by a physician; on 18 May 2002 he was diagnosed with an acute ulcer and treatment was prescribed; on 20 May 2002 medical assistance was provided on two occasions and treatment was prescribed; on 9 June 2002 medical assistance was provided; on 23 August 2002 he was examined but no medical assistance was needed.

The [applicant's] allegation concerning his detention in the unit for more than ten days was confirmed. By virtue of Article 96 § 2 of the RSFSR Code of Criminal Procedure, in force at the time [the applicant] was detained, suspects and accused persons could be placed in temporary detention units ... for no longer than ten days within a given month. The ten-day time-limit for detention in the temporary detention unit was breached twice... He was detained for 17 days from 27 September to 14 October 2001 and for 15 days from 24 August to 8 September 2002. As a result, in September 2001 he stayed in the detention unit for 15 days; in October 2001 [he stayed] for 24 days and in March 2002 for 14 days.

[The applicant's] allegations pertaining to lack of an individual sleeping place and extreme cold in winter in the cell were proven. All witnesses confirmed that [the applicant] had not had an individual sleeping place and that there had been insufficient heating in winter in the cells. The witnesses disputed [the applicant's] allegation that he had not been provided with a mattress and pillow; [the witnesses] explained that he had always been provided with a mattress and pillow and had had his own blanket.

...

Accordingly, the court concludes that [the applicant's] right to be detained in the temporary detention unit in accordance with the established rules and regulations was breached and that he sustained physical and mental suffering.

...

[The applicant's] argument that his health was damaged as a result of the poor conditions of his detention in the Neman town detention unit is not proven.

As is clear from the report of the forensic medical examination performed by the Health Department of the Kaliningrad Region, it is impossible to establish a direct causal link between [the applicant's] detention in the Neman town temporary detention unit and his illnesses.

In determining the amount of compensation for non-pecuniary damage the court has taken into account the degree of liability of the persons responsible, the insufficiency of funds and the level of physical and mental suffering of [the applicant], and considers it necessary to award 1,500 roubles in compensation."

27. On 26 April 2004 the applicant lodged a statement of appeal. He complained, in particular, that the Town Court had not ensured his presence at the hearings. He also sought leave to appear before the appeal court.

28. On 16 June 2004 the Kaliningrad Regional Court upheld the judgment of 6 April 2004, endorsing the Town Court's reasoning and noting that the applicant's presence at the hearings, before either the Town Court or the Regional Court, was not required.

C. Detention in facility no. IZ-39/1 in Kaliningrad

1. Conditions of detention

29. From 24 August 2001 to 17 April 2003, save for short periods when the applicant was transferred to the Neman town temporary detention unit, he was detained in Kaliningrad no. IZ-39/1 detention facility. According to the applicant, that detention facility was built in 1929 and no renovation work on the cells had been carried out since.

30. The Government, relying on a certificate issued on 16 August 2006 by the director of facility no. IZ-39/1, submitted that during the period in question the applicant had been detained in fourteen different cells, measuring from 7.7 to 18.5 sq. m. The smallest cell had two sleeping places and the largest one had six. The Government further noted that the applicant had had an individual sleeping place at all times as the number of inmates per cell had always corresponded to the number of sleeping places.

31. Citing the information provided by the director of the facility, the Government further submitted that the cells received natural light and ventilation through a large window which was double-glazed and measured 1.2 sq. m. The windows had a casement. Inmates could request warders to open the casement to admit fresh air. The windows were covered by thick bars with so-called "eyelashes", that is, slanted plates approximately two centimetres apart welded to a metal screen, which gave no access to natural air or light. In compliance with the recommendations of the Russian Ministry of Justice issued on 25 November 2002, the latter construction was removed from the windows on an unspecified date. Subsequently, the windows were covered with latticed partitions to ensure "sound and visual insulation". The cells had ventilation shafts. The cells were equipped with

lamps which functioned day and night. Each cell was equipped with a lavatory pan, a sink and a tap for running water. The pan was separated from the living area by a one-metre-high partition. Inmates were allowed to take a shower once in ten days. Each inmate was given at least fifteen minutes to take a shower. The cells were disinfected. The Government, relying on the information provided by the director of the facility, further stated that the applicant was given food "in accordance with the established norms". According to the Government, detainees including the applicant were provided with medical assistance. They had regular medical check-ups, including X-ray examinations, blood tests, and so on. On his admission to the facility the applicant was diagnosed with a skin rash and treatment was prescribed. In February, March and November 2002 and March 2003 the applicant underwent treatment for his acute ulcer. The Government furnished a copy of the applicant's medical record and medical certificates.

32. The applicant did not contest the cell measurements. However, he insisted that the cells had been severely overcrowded and that he had had less than two square metres of living space. Citing statements by inmates who had been detained in facility no. IZ-39/1, he stressed that the smallest cell in which he had been detained had had six sleeping places and the largest one had had twelve bunks. Inmates had to take turns to sleep. They were not provided with bedding. The applicant further submitted that the sanitary conditions had been appalling. The cells were infested with insects but the management did not provide any insecticide. Walls in the cells were covered with thick layer of mould. Pieces of plaster fell from the walls. Relying on colour photographs of the cells, the applicant submitted that the windows were covered with metal blinds which blocked access to natural light and air. In certain cells the windows were not glazed and inmates used plastic film or blankets to cover them in winter. It was impossible to take a shower as inmates were given only fifteen minutes and two to three men had to use one shower head at the same time. That situation was further aggravated by the fact that inmates could only take a shower once every two weeks. Inmates had to wash and dry their laundry indoors, creating excessive humidity in the cells. They were also allowed to smoke in the cells. The lavatory pan was separated from the living area by a small partition. At no time did inmates have complete privacy. No toiletries were provided. The food was of poor quality and in scarce supply. The applicant further argued that medical assistance had been unavailable.

2. *Proceedings seeking compensation for damage*

33. In June 2003 the applicant brought an action before the Tsentralniy District Court of Kaliningrad against the facility management and the Federal Treasury, seeking compensation for damage. In particular, he claimed that the conditions of his detention in facility no. IZ-39/1 had been appalling. He also sought leave to appear before the District Court.

34. On 14 July 2003 the Tsentralniy District Court decided to stay the proceedings and asked the applicant to produce evidence. That decision was quashed on appeal by the Kaliningrad Regional Court and the case was sent back to the District Court for an examination on the merits.

35. On 30 September 2003 the applicant received a letter dated 1 September 2003 from the District Court, informing him that a preliminary hearing had been fixed for 8 September 2003, and that he had the right to appoint a representative or ask the District Court to adjudicate the action in his absence. The applicant was also informed that his presence at hearings was not mandatory under Russian law.

36. On 24 September 2003 the applicant received a letter from the District Court, sent on 19 September 2003. He was informed of the first hearing listed for 20 October 2003. The remaining text of the letter was identical to the letter of 1 September 2003.

37. The applicant wrote to the District Court seeking leave to appear. He explained that he could not appoint a lawyer as he had no funds to pay for his services.

38. On 24 November 2003 the Tsentralniy District Court, in the applicant's absence, dismissed the action as unsubstantiated. The District Court held, in particular, as follows:

> "...[it was] established that [the applicant], when in the detention facility, had been held in cells which were designed [to house] six detainees..., in particular in cell no. 16 measuring 7.9 sq. m..., in cell no. 45 measuring 8 sq. m..., in cell no. 57 measuring 7.8 sq. m ... and in cell no. 54 measuring 7.7 sq. m... There are no data on the number of inmates in those cells.
>
> ... cells had central heating, water supply, a sewerage system, natural and artificial lighting and artificial ventilation. There were two-tier bunks with bedding in the cells. The lighting in the cells emitted 50-75 lux, and the temperature in the cells satisfied the sanitary requirements and was 18 degrees Celsius above zero... At the material time and at present repair work was/is being performed in cells... Spot-checks of the sanitary conditions in the cells were carried out and no serious violations were established. Detainees clean up their cells once a day (in the mornings)... Medical staff monitored sanitary conditions in cells...
>
> The cells where the applicant was detained had a lavatory pan and a tap. ... the cells had cell furniture. The walls of the cells were smoothly plastered and painted. Metal plates on the windows were installed in accordance with the requirements... Inmates were given no less than fifteen minutes to take a shower... If necessary, following a written request, a detainee could be granted additional opportunities to take a shower.
>
> ... Detainees were provided with food in accordance with the norms established by the Government of the Russian Federation..."

39. On 11 December 2003 the applicant informed the District Court that he wished to appeal against the judgment of 24 November 2003. He asked for a copy of the defendant's counterclaim and copies of other documents submitted to the District Court by the defendant. According to the applicant,

the request received no response. The Government, relying on copies of registration logs of incoming and outgoing mail in the correctional colony in which the applicant had been detained at the material time and copies of the applicant's handwritten notes confirming receipt of the documents, submitted that the applicant had been served with copies of all documents requested by him from the District Court.

40. On 16 December 2003 the applicant lodged his statement of appeal, complaining, *inter alia,* that the District Court had failed to ensure his presence at the hearings despite his requests to that effect and that he had had no opportunity to appoint a representative. He further argued that he had not been able to study the materials presented to the District Court by the defendant as he had not been served with them. The applicant also sought leave to appear before the appeal court and asked to be provided with legal assistance.

41. On 10 March 2004 the Kaliningrad Regional Court upheld the judgment of 24 November 2003, endorsing the District Court's reasoning. The applicant was neither present nor represented.

D. Publication in the press and defamation action

42. On 21 August 2001 a local newspaper, "Komsomolskaya Pravda v Kaliningrade", published an article entitled "Cranberry Drink" (*"Кисель из Клюквы"*). The article concerned the killing of a prominent mafia leader in the town of Neman. The reporter described how police officers had chased a stolen car in which the "driver-thief" and the mafia leader were travelling. The parts of the article which concerned the applicant read as follows:

> "During questioning the driver-thief Artur Shilbergis [*the applicant's last name was misspelled*] confessed that his accomplice [the mafia leader] had most probably "been using drugs" and had not understood anything.
>
> The background to that car theft is the following. On 11 May this year three unknown persons in masks broke into the flat of a businessman in Neman. [They] stole 1,800 [US] dollars. Investigators identified the thieves. Mr M. organised the assault, his young girlfriend S. was on guard and three locals committed the robbery. But only one of the five bandits was arrested – Mr Pr. He gave useful statements and a prosecutor let him go on a written undertaking. Right away Mr Pr. began to receive threats prompting him to change his testimony.
>
> On that fateful day Mr M. and the second robber Artur Shilbergis came to Mr Pr.'s home. [They] began banging on the door. The man did not open.
>
> But it appears that Mr Pr. forgot to close the door of his car. The engine roared, and when the man ran out into the street, there was no trace of his friends."

43. On 2 June 2003 the applicant brought a defamation action against the newspaper. He complained that the Neman town police department had provided the newspaper with information concerning his arrest, that he had

been called "a robber", "a bandit" and "a rapist" in the article and that the reporter, in violation of Article 6 § 2 of the Convention, had informed the public that the applicant had robbed a businessman in Neman. The applicant also sought leave to appear.

44. On 24 October 2003 the Leninskiy District Court of Kaliningrad dismissed the applicant's action. The applicant was neither present nor represented, although a representative of the defendant attended.

45. The applicant appealed and sought leave to appear.

46. On 14 January 2004 the Kaliningrad Regional Court quashed the judgment of 24 October 2003 and remitted the case for fresh examination. The applicant was not present.

47. The applicant again requested the District Court to ensure his presence at the hearing.

48. On 20 October 2004 the Oktyabrskiy District Court of Kaliningrad, in the applicant's absence, dismissed his action, finding that the information published in the article had been correct and corroborated by the findings of the trial court which had convicted the applicant of aggravated car theft on 16 November 2001. The reporter had not accused the applicant of any crime; he had merely described the circumstances that had led to the institution of criminal proceedings against the applicant. Furthermore, the District Court stressed that the reporter had never called the applicant "a rapist", "a bandit" or "a robber".

49. The applicant appealed, complaining, in particular, that he had not been able to attend any of the hearings before the District Court. He also sought leave to appear before the appeal court.

50. On 2 March 2005 the Kaliningrad Regional Court upheld the judgment of 20 October 2004, accepting the District Court's reasoning. The applicant was neither present nor represented, while the newspaper's representative attended the hearing. With regard to the applicant's complaint about his absence from the hearings, the Regional Court held as follows:

> "In the statement of appeal [the applicant] asks the court to quash the judgment because the [District] court violated his right to "a fair trial" as guaranteed by paragraph 1 of Article 6 of the European Convention, by adjudicating his action in his absence although he had sought leave to appear...
>
> The arguments concerning the violation by the court of the plaintiff's right to personal attendance at the hearings, as guaranteed by Article 6 § 1 of the European Convention, cannot be accepted as valid because this right applies to criminal cases. As to civil cases, this right is applicable only to cases of a particular type when it is impossible to adjudicate the action in the parties' absence. In other cases the Convention does not guarantee the right to personal participation in the adjudication of a civil action. In the present case, the plaintiff's personal participation in the adjudication of the action by the court was not necessary, as the subject-matter of the dispute was a newspaper publication and not something directly related to the plaintiff's personality.

> Moreover, the Russian law in force does not require that plaintiffs who are serving a prison sentence should be brought to hearings for adjudication of their actions."

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

51. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy the sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

B. Civil-law remedies against illegal acts by public officials

52. Article 1064 § 1 of the Civil Code of the Russian Federation provides that damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. Pursuant to Article 1069, State agencies and State officials shall be liable for damage caused to an individual by their unlawful actions or failure to act. Such damage is to be compensated at the expense of the federal or regional treasury. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespective of any award for pecuniary damage.

C. Provisions on attendance at hearings

53. The Code of Civil Procedure of the Russian Federation provides that individuals may appear before a court in person or act through a representative (Article 48 § 1). The court may appoint an advocate to represent a defendant whose place of residence is not known (Article 50). The Advocates Act (Law no. 63-FZ of 31 May 2002) provides that free legal assistance may be provided to indigent plaintiffs in civil disputes concerning alimony or pension payments or claims concerning damage to health (section 26 § 1).

54. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their

participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77 § 1). The Code does not mention any possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or a defendant.

55. On several occasions the Constitutional Court has examined complaints by convicted persons whose requests for leave to appear in civil proceedings were refused by the courts. It has consistently declared the complaints inadmissible, finding that the impugned provisions of the Code of Civil Procedure and the Penitentiary Code did not, as such, restrict the convicted person's access to court. It has emphasised, nonetheless, that the convicted person should be able to make submissions to the civil court, either through a representative or in any other way provided by law. If necessary, the hearing may be held at the location where the convicted person is serving his or her sentence, or the court hearing the case may instruct the court with territorial jurisdiction over the correctional colony to obtain the applicant's submissions or carry out any other procedural steps (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004 and no. 94-O of 21 February 2008).

56. By virtue of Articles 58 and 184 of the Code of Civil Procedure, a court may hold a session outside the courthouse if, for instance, it is necessary to examine evidence which cannot be brought to the courthouse.

D. Provisions on participation of counsel in criminal cases

57. Article 51 of the Code of Criminal Procedure of the Russian Federation, in so far as relevant, reads as follows:

> "1. Participation of legal counsel in the criminal proceedings is mandatory if:
>
> (1) the suspect or the accused has not waived the right to legal representation in accordance with Article 52 of this Code;
>
> (2) the suspect or the accused is a minor;
>
> (3) the suspect or the accused cannot exercise his right of defence by himself owing to a physical or mental handicap;
>
> (3.1) the court proceedings are to be conducted [in the absence of the accused] in accordance with Article 247 § 5 of this Code;
>
> (4) the suspect or the accused does not speak the language in which the proceedings are conducted;
>
> (5) the suspect or the accused faces serious charges carrying a term of imprisonment exceeding fifteen years, life imprisonment or the death penalty;
>
> (6) the criminal case falls to be examined in a jury trial;

(7) the accused has filed a request for the proceedings to be conducted [without a hearing] under Chapter 40 of this Code;

...

3. In the circumstances provided for by paragraph 1 above, unless counsel is appointed by the suspect or the accused or his lawful representative, or other persons at the request or with the consent of the suspect or the accused, it is incumbent on the investigator, the prosecutor or the court to ensure the participation of legal counsel in the proceedings."

58. Article 52 of the Code provides that a suspect or an accused may refuse legal assistance at any stage of the criminal proceedings. Such a waiver may only be accepted if made on the initiative of the suspect or the accused. The waiver must be filed in writing and must be recorded in the official minutes of the relevant procedural act. The refusal of legal assistance does not deprive the suspect or accused of the right to ask to be assisted by counsel during further procedural steps in the criminal case. The admission of a lawyer may not lead to the repetition of the procedural steps which have already been performed by that time.

59. Article 373 of the Code provides that the appeal court examines appeals with a view to verifying the lawfulness, validity and fairness of judgments. Under Article 377 §§ 4 and 5 of the Code, the appeal court may directly examine evidence, including additional material submitted by the parties.

60. Article 376 of the Code provides that on receipt of the criminal case and the statements of appeal, the judge fixes the date, time and place of the hearing. The parties must be informed of the date, time and place of the hearing no later than fourteen days before the scheduled hearing. The court determines whether the prisoner should be summoned to the hearing. If the prisoner has expressed the wish to be present at the examination of his appeal, he has the right to participate in person or to state his case via video link. The manner of his participation in the hearing is to be determined by the court.

61. Examining the compatibility of Article 51 of the Code of Criminal Procedure with the Constitution, the Constitutional Court ruled as follows (decision no. 497-O of 18 December 2003):

"Article 51 § 1 of the Code of Criminal Procedure, which describes the circumstances in which the participation of defence counsel is mandatory, does not contain any indication that its requirements are not applicable in appeal proceedings or that the prisoner's right to legal assistance in such proceedings may be restricted."

That position was subsequently confirmed and developed in seven decisions delivered by the Constitutional Court on 8 February 2007. The court found that free legal assistance for the purpose of appellate proceedings should be provided on the same basis as during the earlier stages of the proceedings and was mandatory in the situations listed in

Article 51. It further underlined the obligation of the courts to secure the participation of defence counsel in appeal proceedings.

III. RELEVANT INTERNATIONAL DOCUMENTS

General conditions of detention

62. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

> "b. temporary holding facilities for criminal suspects (IVS)
>
> 26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.
>
> The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.
>
> ...
>
> 45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.
>
> When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.
>
> ...
>
> The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report

on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private "because they know that all complaints usually pass through the colony's administration".

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION IN THE DETENTION UNIT OF THE NEMAN TOWN POLICE DEPARTMENT

63. The applicant complained that the conditions of his detention in the detention unit of the Neman town police department had been in breach of 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. Submissions by the parties

64. The Government commented on the conditions of the applicant's detention. In particular, they submitted that, in violation of the domestic requirements, the applicant had usually been afforded less than four square metres of personal space during his detention in the unit. At the same time the Government, citing the court's judgment in the case of *Kemmache v. France (no. 3)* (24 November 1994, Series A no. 296-C), argued that the applicant could no longer claim to be a victim of the violation of his rights

under Article 3 of the Convention, as the domestic courts had acknowledged the violation and had redressed it by allowing the applicant's action against the facility management and awarding him compensation for non-pecuniary damage.

65. The applicant insisted that the conditions of his detention had been inhuman and degrading. He further argued that, despite the fact that the domestic courts had acknowledged the violation of his rights, he had not lost his "victim" status, as the compensation of RUB 1,500 for more than three months of detention in appalling conditions could hardly be considered adequate redress.

B. The Court's assessment

1. Admissibility

(a) The Government's objection concerning the applicant's lack of "victim status"

66. The Court notes the Government's argument that in the light of the domestic courts' ruling awarding the applicant compensation for non-pecuniary damage caused as a result of his detention in the Neman town detention unit, he could no longer claim to be a victim of a violation of Article 3 of the Convention within the meaning of Article 34 of the Convention. In this respect, the Court reiterates that Article 34 of the Convention, in its relevant part, provides:

> "The Court may receive applications from any person ... 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. ...."

(i) Principles established under the Court's case-law

67. The Court summarised the principles governing the assessment of an applicant's victim status in paragraphs 178-192 of its judgment in the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V). In so far as relevant to the case under consideration, they are:

(a) in accordance with the subsidiarity principle, it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention;

(b) a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention;

(c) the applicant's ability to claim to be a victim will depend on the redress which the domestic remedy will have given him or her;

(d) the principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance. In that connection, it should be reiterated that the Convention is intended to guarantee not theoretical or illusory rights but rights that are practical and effective.

(ii) Application of the foregoing principles

68. It follows from the foregoing principles that the Court must verify whether the authorities acknowledged, at least in substance, that there had been a violation of a right protected by the Convention, and whether the redress can be considered appropriate and sufficient (see *Scordino (no. 1),* cited above, § 193).

(α) The finding of a violation

69. The Court does not lose sight of the fact that the domestic courts did not expressly acknowledge that the treatment to which the applicant had been subjected as a result of his detention in the Neman town temporary detention unit had been in breach of Article 3 of the Convention. They found that various aspects of the applicant's detention, having been in breach of the domestic legal requirements, had caused the applicant "physical and mental suffering" (see paragraph 26 above). However, the Court is prepared to accept that by awarding the applicant compensation the Russian courts in substance acknowledged that he had been subjected to ill-treatment contrary to the guarantees of Article 3 of the Convention.

(β) The characteristics of the redress

70. The next issue which needs to be determined by the Court is whether the compensation awarded to the applicant amounted to sufficient redress.

71. On this point, the Court notes that the applicant's claims against the detention unit management and the Treasury were allowed in part. The domestic courts awarded him RUB 1,500, noting that in assessing the amount of the compensation they had taken into account various aspects, including the responsibility of the unit management for the suffering caused to the applicant and the insufficiency of funds which had prevented the management from providing the applicant with appropriate conditions of detention. It may thus be concluded that the applicant received at least partial compensation for the treatment he had suffered.

72. In this connection the Court reiterates that the question whether the applicant received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. The Court has already had occasion to indicate that an

applicant's victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 93, ECHR 2006-V, with further references). Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These include also the value of the award judged in the light of the ordinary living standards and the general level of incomes in the State concerned and the fact that the remedy in the national system is closer and more accessible than an application to the Court (see *Scordino*, cited above, §§ 206 and 268, and *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004, with further references).

73. Turning to the facts of the present case, the Court observes that it is unable to conclude whether the amount of compensation awarded to the applicant could have been considered sufficient in domestic terms. The parties did not produce any relevant information in this regard. However, the Court's task in the present case is not to review the general practice of the domestic courts in awarding compensation for inhuman conditions of detention and not to set certain monetary figures which would satisfy the requirements of "adequate and sufficient redress" but to determine, in the circumstances of the case, whether the amount of compensation awarded to the applicant was such as to deprive him of "victim status" in view of his complaint under Article 3 of the Convention pertaining to his detention in the Neman town temporary detention unit.

74. In this connection the Court considers that the duration of the applicant's detention in the Neman town detention unit and the reasons given by the domestic courts in making an award in respect of that detention are among the factors to be taken into account in assessing whether the domestic award could be considered as adequate and sufficient redress (see, *mutatis mutandis, Staykov v. Bulgaria*, no. 49438/99, §§ 91-93, 12 October 2006).

75. The Court observes, and it was not disputed by the parties, that the aggregate length of the applicant's detention in the Neman town detention unit amounted to three months and thirteen days. It further notes that on 6 April 2004 the Neman Town Court took into account a number of factors in making an award of RUB 1,500. Those factors were: the duration of the applicant's detention, "the level of physical and mental suffering" endured by him, the degree of responsibility of the unit management for the suffering caused to the applicant and the lack of financial resources.

76. The Court is mindful that the task of making an estimate of damages to be awarded is a difficult one. It is especially difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in terms of money. The Court does not doubt that the domestic courts in the present case, with every desire

to be just and eminently reasonable, attempted to assess the cumulative effect which the conditions of detention had had on the applicant's well-being (see, *mutatis mutandis*, *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II) and to determine the level of physical suffering, emotional distress, anxiety or other harmful effects sustained by the applicant by reason of his detention in those conditions (see *Nardone v. Italy* (dec.), no. 34368/02, 25 November 2004). However, the Court cannot overlook the fact that the amount of RUB 1,500 awarded for more than three months of detention, that is, a rate of RUB 14.5 per day, was substantially lower than what it generally awards in comparable Russian cases (see, for example, *Labzov v. Russia*, no. 62208/00, 16 June 2005, and *Kantyrev v. Russia*, no. 37213/02, 21 June 2007).

77. In this connection the Court reiterates that, while emphasising the importance of a reasonable amount of just satisfaction being offered by the domestic system for the remedy in question to be considered effective under the Convention, it has held on a number of occasions that a wider margin of appreciation is left to the domestic courts in assessing the amount of compensation to be paid in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases (see *Cocchiarella*, cited above, § 80, and the finding in paragraph 72 above). However, the Court has also stressed that when awarding compensation for non-pecuniary damage the domestic courts have to justify their decision by giving sufficient reasons (see *Scordino (no. 1),* cited above, § 204).

78. In this regard the Court observes that the town and regional courts did not rely on any factors other than the degree of responsibility of the management and its lack of financial resources as reasons justifying the reduced compensation. The Court accepts that, applying the compensatory principle, national courts might make an award taking into account the motives and conduct of the defendant and making due allowance for the circumstances in which the wrong was committed. However, it reiterates its finding made in a number of cases that financial or logistical difficulties, as well as the lack of a positive intention to humiliate or debase the applicant, may not be cited by the domestic authorities as circumstances relieving them of their obligation to organise the State's penitentiary system in such a way as to ensure respect for the dignity of detainees (see, among other authorities, *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006). The same logic applies to domestic courts' reasoning in awarding damages when entertaining actions against a State in respect of its tortious conduct. The Court finds it anomalous for the domestic courts to decrease the amount of compensation to be paid to the applicant for a wrong committed by the State by referring to the latter's lack of funds. It considers that in circumstances such as those under consideration the means available to the State should

not be accepted as mitigating its conduct, and are thus irrelevant in assessing damages under the compensatory criterion. Furthermore, the Court is of the opinion that the domestic courts, as the custodians of individual rights and freedoms, should have felt it their duty to mark their disapproval of the State's wrongful conduct to the extent of awarding an adequate and sufficient quantum of damages to the applicant, taking into account the fundamental importance of the right of which they had found a breach in the present case, even if they considered that breach to have been an inadvertent rather than an intended consequence of the State's conduct. As a corollary this would have conveyed the message that the State may not set individual rights and freedoms at nought or circumvent them with impunity.

79. In conclusion, taking into account the absence of a reasonable relation of proportionality between the amount of compensation awarded to the applicant and the circumstances of the case and the domestic courts' reasoning in making the award, the Court considers that the redress was insufficient and manifestly unreasonable having regard to the Court's case-law (see paragraph 75 above). As the second condition – appropriate and sufficient redress – has not been fulfilled, the Court finds that the applicant in the instant case may still claim to be a "victim" of a breach of his rights under Article 3 of the Convention on account of his detention in the Neman town detention unit. Accordingly, this objection by the Government must be dismissed.

(b) Other grounds for declaring this complaint inadmissible

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

2. Merits

81. The Court reiterates that the applicant was detained at the Neman town detention unit twelve times over a period of fifteen months between 16 August 2001 and 12 November 2002; the aggregate period of his detention amounted to three months and thirteen days (see paragraph 19 above).

82. The Court further observes that in the proceedings seeking compensation for damage, the domestic courts found that the applicant's "right to be detained in the temporary detention unit in accordance with the established rules and regulations [had been] breached" and that he had sustained "physical and mental suffering" as result of his detention in the Neman town detention unit. In particular, they found that he had been held in poor sanitary conditions in insufficiently lit, damp, stuffy and overcrowded cells to which he was confined for 24 hours a day, usually

with four to seven other individuals, that he had had limited access to a toilet and no access to bathing or any other facilities in order to maintain even basic hygiene, that he had been given food only once a day and that he had not had an individual sleeping place (see paragraph 26 above). The Government did not dispute the findings of the domestic courts.

83. In these circumstances, the Court considers that the distress and hardship endured by the applicant exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 (see, for similar reasoning, *Kantyrev*, cited above, §§ 52-53, and *Guliyev v. Russia*, no. 24650/02, § 43, 19 June 2008).

84. Accordingly, there has been a violation of Article 3 of the Convention on account of the applicant's detention in the Neman town detention unit, which the Court considers to be inhuman and degrading within the meaning of this provision.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION IN FACILITY NO. IZ-39/1 IN KALININGRAD

85. The applicant complained that his detention from 24 August 2001 to 17 April 2003 in detention facility no. IZ-39/1 in Kaliningrad, in appalling conditions, had been in breach of Article 3 of the Convention. Article 3 is cited above.

A. Submissions by the parties

86. The Government, citing the information provided by the director of facility no. IZ-39/1, submitted that the applicant had at all times been provided with an individual sleeping place as the number of detainees in the cell had corresponded to the number of bunks. They further contended that the remaining aspects of the applicant's conditions of detention (bedding, compliance with sanitary norms, lighting, etc.) had been satisfactory.

87. The applicant insisted that his detention in overcrowded cells had been unbearable. It was further exacerbated by unsatisfactory sanitary conditions, inability to take a shower regularly, insufficient lighting, etc. He stressed that he had raised the issue of the appalling conditions of detention before various domestic authorities. The complaints had been to no avail.

B. The Court's assessment

1. Admissibility

88. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

89. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-39/1 in Kaliningrad. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government did not dispute.

90. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The main characteristic which the parties did agree upon was the size of the fourteen cells in which the applicant had been detained. The applicant claimed that the number of detainees in the cells had considerably exceeded their design capacity. The Government disagreed.

91. The Court notes that the Government, in their plea concerning the number of detainees, relied on certificates issued by the facility director more than three years after the applicant's detention in that facility had come to an end. According to the findings of the Tsentralniy District Court of 24 November 2003, the accuracy of which was never challenged by the Government, there were no data available on the number of inmates detained together with the applicant (see paragraph 38 above). Despite this fact the Government, without giving any explanation, submitted that the number of inmates had not exceeded the number of sleeping places. In this connection the Court observes that the Government did not refer to any source of information which would have allowed that assertion to be verified. It was open to the Government to submit copies of registration logs showing the names of the inmates detained with the applicant. However, no such documents were presented. In this connection the Court notes that on several previous occasions when the Government have failed to submit original records, the Court has held that documents prepared after a considerable period of time cannot be viewed as sufficiently reliable given the length of time that has elapsed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009). The Court is of the view that these considerations hold true in the present case. The certificates prepared by the Russian authorities more than three years after the events in question cannot be regarded as sufficiently reliable sources of data. The Court is therefore not convinced by the Government's submission.

92. In this connection 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).

93. Having regard to the principle cited above, together with the fact that the Government did not submit any convincing relevant information, and taking into account the domestic courts' findings pertaining to the applicant's action in tort (see paragraph 38 above), the Court will examine the issue concerning the number of inmates in the cells in facility no. IZ-39/1 on the basis of the applicant's submissions.

94. According to the applicant, he was usually afforded less than two square metres of personal space throughout his detention. In this connection the Court considers it necessary to note that despite the fact that the Tsentralniy District Court was unable to establish the exact number of inmates detained together with the applicant, its findings in relation to the number of sleeping places in the smaller cells in which the applicant had been detained nevertheless support the latter's assertion of a lack of personal space (see paragraph 38 above, when the District Court confirmed that the cells, measuring up to 8 square metres, had six sleeping places). The Court thus observes that even the domestic standard of a minimum of four square metres per detainee (see paragraph 51 above) was not met.

95. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

96. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court reiterates that it recently found a violation of Article 3 on account of an applicant's detention in overcrowded conditions in the same detention facility (see *Mayzit*, cited above, §§ 34-43).

97. The Court notes that the applicant's situation resulting from insufficient personal space was further exacerbated by the fact that he was not allowed to shower more than once every ten days during the entire period of his detention. Furthermore, the cells in which the applicant was held had no window in the proper sense of the word. At least until the end of 2002 they were covered with a layer of thick bars with so-called "eyelashes" and subsequently with latticed partitions to ensure, as the Government put it, "sound and visual insulation". Both arrangements cut off fresh air and also significantly reduced the amount of daylight that could penetrate the cells. The colour photographs of the two cells in which the applicant was detained in 2001 and 2002 support the applicant's submissions to that effect.

98. The Court observes that in the present case there is no indication that there was a positive intention to humiliate or debase the applicant. However, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates in these unsatisfactory conditions was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

99. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in facility no. IZ-39/1 in Kaliningrad.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ABSENCE FROM THE HEARINGS IN HIS CIVIL CASES

100. The applicant complained that the courts had refused to secure his attendance at the hearings in the two sets of proceedings concerning the conditions of his detention and in the proceedings pertaining to his defamation action. In addition, the applicant argued that he had not been served with copies of various documents presented by the defendant to the Tsentralniy District Court in the proceedings concerning his detention in facility no. IZ-39/1. He relied on Article 6 § 1, which provides, 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

101. The Government argued that 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 due to the absence of an established legal procedure for the transfer of detainees to hearings in civil cases. However, he had been informed of his procedural rights including the right to be represented, of which he did not make use.

102. The applicant averred that he had not been brought to the hearings because Russian law on civil procedure did not guarantee such a right. He further stated that he had been unable to appoint counsel because he had limited financial resources. At the same time Russian law did not provide for free legal aid in similar cases.

B. The Court's assessment

1. *Admissibility*

103. The Court considers that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. *Merits*

(a) Absence from the hearings

104. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). The Court has previously found a violation of the right to a "public and fair hearing" in a case where a Russian court, after having refused leave to appear to the imprisoned applicants, who had wished to make oral submissions on their defamation claim, failed to consider other legal possibilities for securing their effective participation in the proceedings (see *Khuzhin and Others v. Russia*, no. 13470/02, §§ 53 et seq., 23 October 2008). It also found a violation of Article 6 in a case where a Russian court refused leave to appear to an imprisoned applicant who had

wished to make oral submissions on his claim that he had been ill-treated by the police. Despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

105. The Court observes that the Russian Code of Civil Procedure provides for the plaintiff's right to appear in person before a civil court hearing his claim (see paragraph 53). However, neither the Code of Civil Procedure nor the Penitentiary Code makes special provision for the exercise of that right by individuals who are in custody, whether they are in pre-trial detention or are serving a sentence. In the present case the applicant's requests for leave to appear were denied precisely on the ground that the domestic law did not make provision for convicted persons to be brought from correctional colonies to the place where their civil claim was being heard. The Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

106. The issue of the exercise of procedural rights by detainees in civil proceedings has been examined on several occasions by the Russian Constitutional Court, which has identified several ways in which their rights can be secured (see paragraph 55 above). It has consistently emphasised representation as an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting convicted persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the plaintiff's personal experiences, as in the above-mentioned *Kovalev* case, representation of the detainee by an advocate would not be in breach of the principle of equality of arms.

107. In the instant case, given the nature of his claims in relation to the conditions of his detention in the Neman town temporary detention unit (see paragraphs 26 and 28 above) and facility no. IZ-39/1 (see paragraphs 38 and 41) and to the defamation action (see paragraphs 48 and 50 above), the applicant sought leave to appear before the civil courts, which was refused him. The courts examined the applicant's civil claims, finding that his attendance was not required.

108. The Court reiterates, and the Government did not argue otherwise, that the applicant insisted that he wished to be present at the hearings, arguing, among other things, that he did not have the means to pay for a

lawyer. The Court observes that the option of legal aid was not open to the applicant (see paragraph 53 above). In such a situation the only possibility for him was to appoint a relative, friend or acquaintance to represent him in the proceedings. However, as is clear from the domestic courts' judgments, after the courts had refused the applicant leave to appear they did not consider how to secure his effective participation in the proceedings. They did not inquire whether the applicant was able to designate a representative and 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 the domestic courts and, if so, whether he had been able to contact that person and give him authority to act. Moreover, it appears that on a number of occasions in the three sets of proceedings the applicant did not learn that he had been refused leave to attend the hearing until after the hearing had taken place (see paragraphs 24 and 35 above) or until he received a copy of the judgment in which his claim was dismissed on the merits (see paragraphs 26, 28, 38, 41, 48 and 50 above). Hence, the applicant was obviously unable to decide on a further course of action for the defence of his rights until such time as the decision refusing him leave to appear was communicated to him (see *Khuzhin and Others v. Russia*, no. 13470/02, § 107, 23 October 2008). The appeal courts did nothing to remedy that situation.

109. The Court further reiterates that the domestic courts refused the applicant leave to appear, relying on the absence of any 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. They could have held a session in the applicant's correctional colony (see paragraph 56 above). The Court finds it inexplicable that in none of the three sets of proceedings did the domestic courts even consider that option.

110. The Court is therefore bound to conclude that the fact that the applicant's civil claims were heard without his being present or represented deprived him of the opportunity to present his case effectively before the courts (see, *mutatis mutandis, Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, § 22, 5 October 2006).

111. Having made this finding, the Court still considers it necessary to address the other aspect referred to, pertaining to the nature of the applicant's claims in the two sets of proceedings concerning the conditions of his detention. The Court does not lose sight of the fact that the applicant's claims in those two sets of proceedings were, to a large extent, based on his personal experience. In such circumstances, the Court is not convinced that even the representative's appearance before the courts could have secured the effective, proper and satisfactory presentation of the applicant's case. The Court finds that the applicant's 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 (see *Kovalev*, cited above, § 37, and, by contrast, *Kozlov v. Russia*, no. 30782/03, 17 September 2009). Only the applicant himself could describe the conditions and answer the judges' questions, if any. The Court's finding to this effect is supported by the Neman Town Court's decision of 20 August 2003 authorising the applicant's transfer to the courthouse (see paragraph 22 above). In particular, the Town Court reasoned that it was necessary to hear evidence from the applicant in person. However, the Court considers it odd that despite a direct order from the Town Court requiring the applicant to be brought to the hearing, the management of the correctional colony refused to comply, relying on their own assessment of the domestic legal norms (see paragraph 23 above). Even more striking is the fact that following the colony management's refusal to ensure the applicant's presence, the Town Court, having failed to take any steps to discipline the management, cited its refusal in response to the applicant's subsequent request to be brought to a hearing (see paragraph 24 above).

112. In conclusion, the Court finds that the principle of equality of arms was not observed in the three sets of civil proceedings under consideration, owing to the domestic courts' repeated refusal to secure the applicant's attendance at the proceedings concerning the conditions of his detention and their failure to ensure the effective representation of his interests in the proceedings pertaining to the defamation action.

113. There has therefore been a violation of Article 6 § 1 of the Convention.

(b) Failure to serve documents on the applicant

114. In addition, the parties disputed whether the applicant had been served with copies of materials presented by the defendant to the Tsentralniy District Court in the proceedings concerning the conditions of detention in facility no. IZ-39/1. In this connection the Court reiterates its finding that the fairness of that set of civil proceedings was undermined by the applicant's absence from the hearings before the domestic courts (see paragraph 112 above). The Court therefore considers it unnecessary to examine separately whether the fairness of the proceedings was also breached by the domestic courts' alleged failure to communicate to the applicant the complete set of documents submitted by the defendant (see *Komanický v. Slovakia*, no. 32106/96, § 56, 4 June 2002, and *Vladimir Romanov v. Russia*, no. 41461/02, § 107, 24 July 2008).

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE ABSENCE OF LEGAL ASSISTANCE ON APPEAL IN THE APPLICANT'S CRIMINAL CASE

115. The applicant complained that his defence rights had been violated by the appeal court which had heard the criminal case against him as it had failed to appoint legal-aid counsel to represent him. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

A. Submissions by the parties

116. The Government submitted that in February 2003 the applicant had asked the Kaliningrad Regional Court to appoint legal-aid counsel to represent him in the appeal proceedings. The request was not examined as the Regional Court believed that the Russian Code of Criminal Procedure did not provide for mandatory legal representation for defendants at the appeal stage. The Government stressed that the Regional Court's approach had been based on well-established judicial practice. However, they further submitted that the Constitutional Court of the Russian Federation, in its decision of 18 December 2003, had criticised that interpretation of the domestic legal norms as being erroneous. Following that decision by the Constitutional Court, the failure of an appeal court to guarantee the defendant's right to legal assistance constituted grounds for the institution of supervisory-review proceedings. The Government drew the Court's attention to the fact that the applicant had never filed a supervisory-review application.

117. The applicant submitted that he should have been provided with the assistance of legal-aid counsel during the appeal proceedings as the case had been a complex one and since he had no legal training or background he had been unable to represent his interests effectively, whereas the prosecution had been represented by professional lawyers who were experts in the field of criminal law.

B. The Court's assessment

1. Admissibility

118. The Court takes note of the Government's submission that the applicant had not sought the institution of supervisory-review proceedings with a view to remedying the defects which occurred at the appeal stage. In so far as the Government's objection can be understood as an allegation that the applicant failed to exhaust domestic remedies, the Court notes that it has already found in a number of cases against Russia that supervisory-review proceedings are not an effective remedy for the purpose of Article 35 § 1 of the Convention (see *Gusinskiy v. Russia* (dec.), no. 70276/01, 22 May 2003; *Berdzenishvili v. Russia* (dec.), no. 1697/03, 29 January 2004; and, more recently, *Sutyagin v. Russia* (dec.), no. 30024/02, 8 July 2008). In addition, the Court does not lose sight of the fact that, apart from a passing reference to the possibility of lodging a supervisory-review application, the Government did not provide the Court with any evidence (copies of judgments, etc.) confirming the existence of automatic review of final convictions in cases where legal assistance was denied to defendants at the appeal stage. In the circumstances, the Court rejects the Government's non-exhaustion objection.

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

2. Merits

120. The Court reiterates that sub-paragraph (c) of paragraph 3 of Article 6 attaches two conditions to an accused's right to receive legal aid. The first, "lack of sufficient means to pay for legal assistance", is not in dispute in the present case. The only issue before the Court is therefore whether the "interests of justice" required that the applicant be granted such assistance free.

121. The Court observes that a similar situation has already been examined in another case against Russia in which the applicant, who had been convicted of murder and sentenced to thirteen years' imprisonment, complained of his inability to obtain legal representation during the appeal proceedings in the criminal case against him (see *Shulepov v. Russia*, no. 15435/03, §§ 34-39, 26 June 2008). In that case, the Court, taking into account three factors – (a) the fact that the jurisdiction of appeal courts in Russia extended to both legal and factual issues and that they were thus empowered to fully review the case and to consider additional arguments which had not been examined in the first-instance proceedings, (b) the seriousness of the charges against the applicant and (c) the severity of the

sentence which he had faced – found that the assistance of a legal-aid lawyer at that stage was essential for the applicant, as "the former could have effectively drawn the appeal court's attention to any substantial argument in the applicant's favour, which could have influenced the court's decision". In addition, the Court, finding that the interests of justice demanded that, in order to receive a fair hearing, the applicant should have benefited from legal representation at the appeal hearing, held as follows:

> "37. The Court further notes that according to the Russian Code of Criminal Proceedings, as interpreted by the Russian Constitutional Court, the onus of appointing a legal aid lawyer rested upon the relevant authority at each stage of the proceedings.
>
> 38. Thus it was incumbent on the judicial authorities to appoint a lawyer for the applicant to ensure that the latter received the effective benefit of his rights, notwithstanding the fact that he had failed to request this explicitly. In this respect the Court notes that the applicant never unequivocally waived his defence rights. However, no attempt whatsoever had been made to appoint a lawyer or to adjourn the appeal hearing in order to secure the presence of a lawyer later.
>
> 39. In view of the above considerations the Court finds that the proceedings before the Sverdlovsk Regional Court did not comply with the requirements of fairness. There has, therefore, been a breach of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention."

122. The Court considers that its reasoning in the case of *Shulepov v. Russia* (cited above) is fully applicable to the circumstances of the present case. The Court takes cognisance of the wide powers that the Kaliningrad Regional Court, acting on appeal, had over the applicant's case, including the power to dispose of his appeal. It also observes that the Regional Court's decision was final. The Court further accepts the applicant's assertion that the legal issues in his criminal case were of particular complexity, involving determination of the constituent elements of a number of aggravated criminal offences, assessment of the degree of liability of several co-defendants, including their level of personal culpability, establishment of a variety of mitigating and aggravating circumstances and examination of the negative of the defences raised. The Court also attributes particular weight to the fact that the applicant did not himself formulate the grounds for his appeal (see paragraph 15 above). The Court is therefore of the view that without the services of a legal practitioner the applicant was not in a position to articulate the arguments raised in the appeal statement and could not competently address the court on the legal issues involved, and thus was unable to defend himself effectively (see *Maxwell v. the United Kingdom*, 28 October 1994, § 38, Series A no. 300-C, with further references). Of even greater relevance, however, is the fact that the applicant had been sentenced to nine years' imprisonment. For the applicant therefore the issue at stake was an extremely important one (ibid., § 38).

123. In sum, given the nature of the proceedings, the wide powers of the Kaliningrad Regional Court, the limited capacity of an unrepresented appellant to present a legal argument and, above all, the importance of the issue at stake in view of the severity of the sentence, the Court considers that the interests of justice required that the applicant be granted legal aid for representation at the hearing of his appeal. The Court also does not lose sight of the Government's submission that the Russian Constitutional Court characterised as erroneous the appeal courts' practice of denying legal assistance to defendants.

124. The Court therefore finds that there has been a violation of Article 6 § 1 in conjunction of Article 6 § 3 (c) of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

125. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant claimed 10,500 euros (EUR) in respect of non-pecuniary damage.

128. The Government submitted that the applicant had received "full reparation" at the domestic level in respect of his complaints related to his detention in the Neman town detention unit. The domestic courts had allowed his action and awarded him RUB 1,500. They further submitted that, in any event, the applicant's claims were manifestly ill-founded.

129. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that it has found a combination of particularly grievous violations in the present

case. The Court accepts that the applicant suffered humiliation and distress on account of the inhuman and degrading conditions of his detention in the Neman town detention unit and detention facility no. IZ-39/1 in Kaliningrad. In addition, he was unable to present his case effectively in the three sets of civil proceedings and did not benefit from legal assistance in the appeal proceedings in his criminal case. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant the sum claimed in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

130. The applicant also asked the Court to award any sum it considered sufficient for the costs and expenses incurred before the domestic courts and those incurred in the Strasbourg proceedings.

131. The Government did not comment.

132. 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. In the present case, the applicant did not indicate the amount of costs and expenses claimed and did not provide any evidence (receipts, vouchers, etc.) on the basis of which the Court could assess the quantum of the expenses incurred. The Court therefore makes no award under this head.

C. Default interest

133. 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* the complaints concerning the conditions of the applicant's detention in the Neman town temporary detention facility and detention facility no. IZ 39/1 in Kaliningrad, the breach of the equality-of-arms principle in the three sets of civil proceedings to which the applicant was a party and the absence of legal assistance in the appeal proceedings in the criminal case against him admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Neman town detention facility;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in detention facility no. IZ-39/1 in Kaliningrad;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the three sets of civil proceedings on account of the domestic courts' failure to secure the applicant's attendance or to ensure the effective representation of his interests;

5. *Holds* that there is no need to examine separately the complaint under Article 6 § 1 of the Convention pertaining to the failure to serve on the applicant copies of documents submitted by the defendant in the proceedings concerning the conditions of detention in facility no. IZ-39/1;

6. *Holds* that there has been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention in respect of the criminal proceedings against the applicant on account of the lack of legal aid at the appeal stage;

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 10,500 (ten thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
(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.

Done in English, and notified in writing on 17 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President