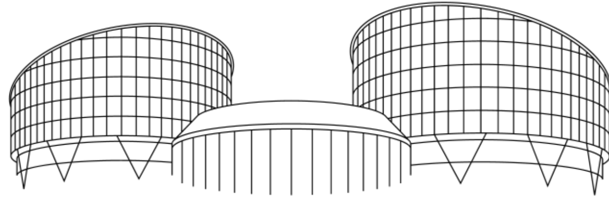

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SKOROBOGATYKH v. RUSSIA

(Application no. 4871/03)

JUDGMENT

STRASBOURG

22 December 2009

FINAL

28/06/2010

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 4871/03) 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 Sergey Dmitriyevich Skorobogatykh ("the applicant"), on 15 November 2003.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya and Ms K. Moskalenko, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev and Ms 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 and degrading conditions and that the courts at two levels of jurisdiction had refused to secure his participation in the civil proceedings concerning his claims for compensation for damage resulting from detention in such conditions.

4. On 19 January 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and is serving a prison sentence in Kaliningrad Region.

A. Conditions of detention

7. On 16 March 1998 the applicant was arrested on suspicion of possession of illegal drugs. From 16 March to 30 December 1998 he was detained in remand prison no. IZ-39/1 in Kaliningrad pending investigation and trial.

1. Number of inmates per cell

8. Pursuant to the certificate issued by the remand prison administration on 16 March 2007 and produced by the Government, the applicant was detained in four cells. From 16 March to 24 April 1998 he was held in cell no. 29, which measured 7.7 square metres. From 24 April to 15 June 1998 he was placed in cell no. 145, which measured 7.9 square metres. From 15 June to 26 August 1998 he was kept in cell no. 8, which measured 7.8 square metres. Lastly, from 26 August to 29 December 1998 he was held in cell no. 4/19, which measured 14 square metres. According to the Government, the information on the numbers of inmates detained in the same cells as the applicant was not available as the documents had been destroyed. The Government, relying on the same certificate, further submitted that at all times the applicant had had an individual bed and bedding.

9. The applicant did not dispute the cell measurements and the period of detention there. He submitted that the cells in the remand prison were always overcrowded. The number of bunk beds in the cells was insufficient and the inmates had to take turns to sleep. There were six beds in cell no. 29, while there were twelve inmates held there. In cell no. 145 there were ten or eleven inmates who had to share four beds. No bedding was provided for him and all the time he had been detained in cell no. 29 he had had to sleep just on the metal mesh of the bunk bed. Then his relatives sent him a mattress, a blanket, a pillow, sheets and a pillow case.

2. Sanitary and hygienic conditions

10. Relying on the certificates issued by the management of the remand prison on 16 and 27 March 2007, the Government provided the following description of the cells where the applicant had been detained. The windows had glass panes and were provided with air vents which could be kept open.

Each cell was equipped with mechanical and exhaust ventilation. When the inmates went out for exercise the door vents in the cells were kept open too, to allow for additional air circulation. The central heating ensured an adequate temperature of 18^0C. The lights in the cells were constantly on, which permitted permanent supervision of the inmates detained in the cells and the prevention of altercations between them, and against other contingencies too. Between 6 a.m. and 10 p.m. the cells were lit with two 100-watt bulbs, ensuring sufficient brightness in the cells. During the night the lighting used was of a lower intensity. Cleaning and disinfection were carried out on a regular basis, at least once a month. Rodent and insect extermination was carried out on a weekly basis. Should lice, bed bugs, cockroaches, etc. be detected in the cells, additional prompt disinfection was conducted too. The cells were equipped with a centralised cold and hot water supply and a sewage system. The remand prison did not limit or restrict water use by the detainees in any way. The toilet was separated from the living area of the cell by a wall one metre in height and functioned properly.

11. The applicant rejected the description of the conditions of his detention as submitted by the Government. As regards the certificates provided by the Government, he considered them to be an unreliable source of information given that they had been prepared almost nine years after he was detained at the remand prison in question. According to the applicant, the windows in the cells were covered with metal shutters which prevented the access of fresh air. The shutters were removed only in 2003 pending the visit of the European Committee for the Prevention of Torture. The cells were infested with cockroaches, bed bugs, lice and other insects. They were never sanitised. The inmates had at their disposal only disinfectants received from their relatives. The food was of poor quality. It was distributed by inmates dressed in dirty clothes. It could be seen that their hands and fingernails were dirty too. The laundry service was always closed and the inmates had to wash and dry their bed sheets in the cells. The toilet was separated from the living area of the cell only in cell no. 4/19. In other cells the inmates had to hang up a curtain made of an old bed sheet to partition off the toilet area. In cells nos. 29 and 145 the toilets were broken and leaked constantly. In cell no. 8 the toilet installed had been manufactured in Germany before the Second World War. The furniture in the cells was scarce and broken. There was practically no hot water supply. The light was very bright and was never switched off. Because of the lack of any ventilation in the cells it was stiflingly hot in summer. The applicant further alleged that as a result of detention in such conditions he had developed skin diseases such as psoriasis and eczema. He also suffered from a psychological disorder and depression.

3. Availability of showers and daily walks

12. According to the applicant, his daily walk lasted no longer than an hour. It took place in a small yard measuring seven square metres. Due to the high number of inmates taken into the yard it was practically impossible to move around. There were no benches in the yard either. Everyone just had to stand still.

13. The applicant further submitted that between 16 March and 24 April 1998 the administration had introduced a quarantine regime in the cell after one of the inmates had fallen ill with hepatitis. During that period the inmates were not allowed to use the shower facilities. After the quarantine was over, the applicant could take a shower only on very rare occasions, that is no more often than once in twelve, fifteen or twenty days. At all times the shower rooms were overcrowded and the water was either too cold or too hot to allow adequate washing.

14. The Government denied that an inmate suffering from hepatitis had been detained in any of the same cells as the applicant. Nor had there been any restrictions on the use of the shower facilities.

B. Proceedings for compensation

15. On 23 January 2003 the applicant, who was at that time serving a prison sentence, sued the Ministry of Finance of Russia and remand prison no. IZ-39/1 for compensation for damage resulting from his pre-trial detention in appalling conditions and lack of medical assistance. The applicant claimed an award for non-pecuniary damage in the amount of 99,000 Russian roubles (RUB). He also sought leave to appear before the court and asked for a lawyer to be appointed to represent him.

16. On an unspecified date the Tsentralniy District Court of the Kaliningrad Region informed the applicant that the applicable laws did not provide for the attendance of persons serving a prison sentence at a hearing concerning the determination of their civil rights and obligations. The court further advised the applicant of his right to submit observations in writing and/or to appoint a representative and communicated to him the date and time of the court hearing.

17. On 22 April 2003 the District Court heard the case in the applicant's absence. The respondent parties were present. They made oral submissions to the court and presented written evidence. The court dismissed the applicant's claims in full. Firstly, the court accepted that the applicant had been detained in overcrowded cells pending investigation and trial. After reviewing the applicant's medical file the court found that the applicant had received necessary medical assistance. The court examined the documents provided by the respondents to substantiate their argument that conditions of the applicant's detention had been in conformity with applicable

standards, and dismissed the remainder of the applicant's allegations as unsubstantiated. Lastly, the court noted that Articles 1069 and 1070 of the Russian Civil Code were not applicable to his case, given that he had been detained lawfully.

18. On 24 September 2003 the Kaliningrad Regional Court considered the applicant's appeal against the judgment of 22 April 2003 in his absence. In sum, the appeal court noted that the overcrowding of the remand prison had been due to objective reasons and could not give rise to the respondent parties' civil liability, even though the latter conceded that the remand prison had been overcrowded. The court upheld the said judgment noting that (1) it had not been incumbent on the lower court to provide the applicant with free legal assistance and (2) the applicant had been duly notified of the date and time of the court hearing and had had ample opportunity to retain a representative to plead the case on his behalf.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions of detention

19. Detainees should be provided with food free of charge and sufficient to maintain them in good health according to standards established by the Government of the Russian Federation (Section 22 of the Detention of Suspects Act in force as of 15 July 1995 ("the Act")). The conditions of their detention should satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place, bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell (Section 23 of the Act).

B. Compensation for damages

20. The damage caused to the person or his or her property shall be compensated in full by the tortfeasor (Article 1064 § 1 of the Civil Code of the Russian Federation ("the CC")). A State agency or a State official shall be liable for damage caused by their unlawful actions or failure to act (Article 1069 of the CC). Such damage is to be compensated at the expense of the federal or regional treasury.

C. Presence in court

21. Parties to civil proceedings may appear before a court in person or act through a representative (Article 48 of the Code of Civil Procedure in force as of 1 February 2003 ("the CCP")). A court may appoint an advocate to represent a defendant whose place of residence is not known (Article 50

of the CCP). Free legal assistance may be provided to indigent plaintiffs in civil disputes concerning alimony or pension payments or claims for health damage (section 26 § 1 of the Advocates Act in force as of 31 May 2002).

22. 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 of the Code of Corrections in force as of 8 January 1997). The possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or defendant is not provided for.

23. On several occasions the Constitutional Court has examined complaints by convicted persons whose requests for leave to appear in civil proceedings had been refused by courts. It has consistently declared the complaints inadmissible, finding that the contested provisions of the CCP and the Code of Corrections 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 court may hold the hearing at the location where the convicted person is serving the sentence or may ask the court having territorial jurisdiction over the correctional colony to obtain the applicant's submissions or carry out any other procedural actions (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004, and no. 94-O of 21 February 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained that he had been detained in appalling conditions from 16 March to 30 December 1998 in remand prison no. IZ-39/1 in Kaliningrad in contravention 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. Admissibility

1. The parties' submissions

25. The applicant submitted that he had tried to obtain redress for the violation of his rights set out in Article 3 of the Convention by bringing an action against State authorities to recover damages for inhuman conditions of his detention. However, it was to no avail.

26. The Government conceded that the applicant had resorted to one of the domestic remedies available in respect of his grievances. However, in their opinion, he had applied to domestic courts only four years after his detention ended and the civil proceedings instituted by the applicant should not be taken into account for the purposes of the six-month rule. They submitted that the period of six months for the introduction of the complaint should be calculated from 30 December 1998, which was when the applicant's detention ended. Therefore, the applicant had introduced his complaint out of time and it should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. *The Court's assessment*

(a) The Court's competence to examine the complaint

27. The Court notes from the outset that the applicant complained about the conditions of his detention between 16 March and 30 December 1998. However, it will examine the complaint only in respect of the period which falls within its competence *ratione temporis*, that is after the Convention entered into force in respect of Russia on 5 May 1998.

(b) Whether the applicant complied with the six-month rule

28. In view of the Government's argument that the applicant introduced his complaint about the conditions of detention more than four years after his detention ended and his application to the domestic courts should not be taken into account for the purposes of the six-month rule, the Court must ascertain from what date the six-month period should be calculated in the present case.

29. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, in the absence of domestic remedies the six-month period runs from the date of the acts or measures complained of. Special considerations could apply in exceptional cases, where an applicant first avails himself of a remedy and only at a later stage becomes aware, or should have become aware, of circumstances which render the remedy ineffective. In such a case the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see, among other authorities, *Laçin v. Turkey*, no. 23654/94, Commission decision of 15 May 1995).

30. Accordingly, the Court's task in the present case is twofold. Firstly, the Court has to decide whether the applicant's action for damages could be considered an effective remedy in respect of the alleged violation of his rights. Then, if the Court finds that that action fell short of providing the applicant with adequate and sufficient redress, it has to see whether the latter could still be considered to have complied with the six-month rule.

31. The Court observes that it has previously found on numerous occasions that an application to a court with a view of obtaining redress for allegedly inhuman and degrading conditions of detention cannot be regarded as an effective domestic remedy (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 76-91, 12 March 2009). Having regard to the materials submitted by the Government, the Court notes that they have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Even though the domestic courts accepted and considered the applicant's claims at two levels of jurisdiction, this fact alone is not sufficient to consider the judicial avenue pursued by the applicant to be an effective remedy. While recognising the truthfulness of the applicant's allegations concerning the overcrowding of the cells where he had been detained, the courts nevertheless dismissed his claims for damages, finding no unlawfulness in the authorities' failure to comply with applicable domestic standards concerning conditions of detention.

32. The Court finds that the way the domestic courts interpreted and applied the relevant provisions of the Russian Civil Code deprived the applicant's action for damages lodged against State authorities of any prospect of success. Therefore, it could not be considered an effective remedy in respect of the alleged violation. In such circumstances, it remains for the Court to ascertain from what moment the applicant became aware, or should reasonably have become aware, of this situation, in order to decide whether he complied with the six-month rule.

33. Turning to the facts of the present case, the Court discerns nothing in the parties' submissions to suggest that during the four years after the applicant's pre-trial detention ended in December 1998, he was aware, or should have become aware, of the futility of his action for damages arising from the conditions of his detention. During the whole of that period the applicant remained incarcerated, serving a prison sentence without readily available access to legal advice. The Court considers it reasonable that the applicant, even though he did not do so promptly, tried first to obtain redress in respect of the violation of his rights at the domestic level and only after his action was dismissed in the final instance by the Kaliningrad Regional Court on 24 September 2003 did he bring the complaint to the Court's attention, on 15 November 2003 (see, by contrast, *Laçin*, cited above, where the Commission considered the applicant's complaint to have been introduced out of time, since he made use of the domestic remedy of whose ineffectiveness he had earlier been advised by the lawyer assisting him with the application to the Commission).

34. Having regard to the above, the Court concludes that, by introducing the complaint about conditions of his detention on 15 November 2003, the applicant complied with the six-month rule, and the complaint cannot be rejected pursuant to Article 35 § 4 of the Convention. The Court further notes that this 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.

B. Merits

1. The parties' submissions

35. The Government claimed that the conditions of the applicant's detention in the remand prison were satisfactory and in compliance with applicable domestic norms and standards. They based their submissions on the certificates issued by the administration of the remand prison on 16 and 27 March 2007, noting that the original official records had been destroyed in March 2005 after the statutory period for their storage had expired.

36. The applicant maintained his complaint. He noted that the conditions of detention at remand prison no. IZ-39/1 in Kaliningrad were the subject of many applications pending before Court.

2. The Court's assessment

37. The Court reiterates that Article 3 enshrines one of the fundamental values of democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of liberty may often involve such an element, in accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

38. Turning to the facts of the instant case, the Court notes that the parties disagreed as to most aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, because it can find a violation of Article 3 on the basis of the facts presented to it by the applicant, which the respondent Government did not dispute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

39. In particular, the Court observes that the parties were in agreement as far as the area of cells where the applicant was detained was concerned. The Court further notes that the Government's submissions were silent as to the applicant's argument about overcrowding of the cells where he had been

detained. They merely noted that the relevant official records had been destroyed after the time-limit for their storage had expired. Nor did they provide any comment as to the domestic courts' finding that the applicant had indeed been detained in overcrowded cells.

40. The Court accepts that the Government have duly accounted for their failure to provide the relevant official documents. Nevertheless, the Court agrees with the applicant, the truthfulness of whose allegations had been in fact established by the domestic courts, that the cells in the remand prison where he was detained were constantly overcrowded. At times, the space the cells afforded did not exceed 0.78 sq. m per person. Besides, the number of beds was insufficient and the applicant had to take turns with other inmates to sleep. Given that the applicant was allowed no more than an hour's exercise per day, he remained confined in such conditions practically all day for a period of approximately eight months.

41. The Court reiterates that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial 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, and *Benediktov v. Russia*, no. 106/02, § 37, 10 May 2007).

42. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005).

43. Having regard to its case-law on the subject and the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although there is no indication in the present case that there was an intention on the part of the authorities to humiliate or debase the applicant, the Court finds that the fact he was obliged to live, sleep and use the facilities in the same cells as so many other inmates for almost eight months in severely crowded 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.

44. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-39/1 in Kaliningrad between 5 May and 30 December 1998, which it considers to have been inhuman and degrading within the meaning of this provision.

45. In view of the above finding, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning the sanitary and hygienic conditions of the cells where the applicant was detained.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

46. The applicant complained that no effective domestic remedies had been available to him in respect of the violation of his rights set out in Article 3 of the Convention. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

47. The Court 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.

B. Merits

1. The parties' submissions

48. The Government pointed out that the applicant had had preventive and compensatory effective domestic remedies at his disposal. In support of their argument, they provided copies of judicial decisions taken in response to the complaints and claims lodged by inmates against the remand prisons where they were detained. In particular, they presented a copy of the final judgment of 26 April 1999 whereby Mr P. was awarded RUB 1,000 in non-pecuniary damages for having been detained in overcrowded cells at remand prison no. IZ-35/1 in the Kaliningrad Region. They also submitted a copy of the final judgment of 16 April 2003, whereby Mr Z. was awarded RUB 7,000 in non-pecuniary damages for lack of adequate medical assistance in detention. In the Government's opinion, it had been open to the applicant, during the period of his detention, to bring his grievances to the attention of the administration of the remand prison or a prosecutor. Alternatively, he could have challenged the lawfulness of the alleged failure of the remand prison administration to ensure adequate conditions of his detention. The applicant, however, did not make use of those remedies. Instead, he chose to pursue a different avenue by bringing an action for

damages against State authorities after his detention in the remand prison had ended. Domestic courts had thoroughly examined his complaints and had taken lawful and reasoned decisions. Accordingly, there was no violation of the applicant's rights under Article 13 of the Convention.

49. The applicant maintained his complaint. He submitted that his action for damages incurred through detention in appalling conditions had been to no avail. As regards the copies of judicial acts submitted by the Government, he considered them to be an exception rather than a rule. In any event, in his opinion, the compensation awarded to plaintiffs in those cases was so insignificant that it could not have been regarded as adequate redress for the violation of their rights.

2. The Court's assessment

50. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła*, cited above, § 157). The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

51. Turning to the facts of the present case, the Court firstly notes that it has already examined the Government's argument with regard to the action for damages lodged by the applicant in respect of the conditions of his detention in the remand prison, finding that it could not be considered an adequate and effective remedy (see paragraphs 31 and 32 above).

52. As regards the Government's contention that the applicant could have brought his grievances to the attention of the prison's administration or a prosecutor or complain to the court of the alleged failure by the prison administration to comply with applicable laws, the Court reiterates that it has already found a violation of Article 13 in a number of cases against Russia on account of the ineffectiveness of the said remedies (see, for example, *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007).

53. Having regard to its case-law on the subject and the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

54. Accordingly, there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law for the applicant to complain about the conditions of his detention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

55. The applicant complained that he had been refused the opportunity to participate in the civil proceedings. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

57. The Government submitted that, as a matter of law, the applicant, who had been serving a prison sentence at the time, did not have the right to be personally present at the court hearing concerning determination of his civil rights and obligations or to be entitled to free legal assistance. Nor did the interests of justice require that he be provided with legal aid. Accordingly, the domestic courts' decision to hear the case in the applicant's absence had been in compliance with applicable domestic laws. The courts had duly advised the applicant of the date and time of the court hearings and of his procedural rights, including the rights to appoint a representative to plead the case on his behalf and to ask the court to procure evidence. The applicant, however, had chosen not to avail himself of them. The courts had thoroughly examined the applicant's claims and the submissions made by the respondent parties in accordance with the rules of civil procedure. In the Government's opinion, the fact that the applicant had not been present in court was not decisive for the outcome of the proceedings. Nor had the principle of the equality of arms been infringed.

58. The applicant maintained his complaint. In his view, it was essential for compliance with the principle of the equality of arms that he attended the hearing. The domestic judicial authorities' failure to ensure his presence in court had deprived him of the opportunity to make effective use of his procedural rights. He had been unable to produce and examine evidence, to lodge requests and to argue his case. He did not have the financial means to retain a lawyer to represent him. In any event, the nature of his claims was such that his personal presence was indispensable for proper examination of his claims.

2. The Court's assessment

59. 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 or her 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 an imprisoned applicant was similarly unable to be present and testify in court with regard to 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).

60. The Court further observes 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).

61. The Court notes 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 21 above). However, neither the Code of Civil Procedure nor the Code of Corrections make 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 institutions to the place where their civil claim was being heard.

62. 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 23 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, representation of the detainee by an advocate would not be in breach of the principle of equality of arms.

63. Turning to the circumstances of the instant case, the Court accepts the Government's argument that the domestic courts had acted in strict compliance with applicable rules of civil procedure when considering the applicant's action for damages. They duly advised him of his rights, including the right to be represented (see, by contrast, *Khuzhin*, cited above, §§ 106-09). Nevertheless, in the circumstances the Court is not convinced that the representative's appearance before the court could have secured the effective, proper and satisfactory presentation of the applicant's case.

64. The Court observes that the applicant's claims were, to a major extent, based on his personal experience. The Court considers that his testimony describing the conditions of his detention, of which only the applicant himself had first-hand knowledge, would have constituted an indispensable part of the plaintiff's presentation of the case (see *Kovalev*, cited above, § 37). Only the applicant could, by testifying in person, substantiate his claims and answer the judges' questions, if any.

65. The Court also notes that the domestic courts refused the applicant leave to appear, relying on the absence of a legal norm requiring his presence. In this connection, the Court is also mindful of another possibility which was open to the domestic courts as a way of securing the applicant's participation in the proceedings. The District Court could have held a session in the correctional institution where the applicant was serving his sentence, as the Constitutional Court indicated in its relevant decisions (see para. 23). However, the domestic courts did not consider such an option.

66. In these circumstances, the Court finds that the domestic courts, by refusing to grant the applicant leave to appear and make oral submissions at a hearing, deprived him of the opportunity to present his case effectively.

67. There has therefore been a violation of Article 6 § 1 of the Convention on account of the applicant's absence before the domestic courts in the civil proceedings in his case.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. Lastly, the applicant complained under Article 14 of the Convention that he had been refused leave to appear before the courts considering his civil claims on the sole ground of being a detainee.

69. The Court considers that the complaint is, in fact, a restatement of the applicant's complaint under Article 6 § 1 of the Convention and does not

raise any separate issue. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to its Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 10,000 euros (EUR) or 250,000 roubles (RUB) in respect of non-pecuniary damage.

72. The Government considered the applicant's claims excessive and opined that, should the Court find a violation of the applicant's rights, the acknowledgment of a violation would constitute adequate just satisfaction.

73. The Court observes that it found a combination of serious violations of the applicant's rights in the present case. The applicant spent almost eight months in inhuman and degrading conditions and had no effective remedy in respect of his relevant complaint. Nor was he able to present his civil case before the domestic courts. 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 him EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

74. The applicant also claimed compensation, without specifying the amount and asking for the Court's discretion, for the legal costs incurred in the proceedings before the Court.

75. The Government considered that the applicant had not actually asked for compensation of costs and expenses and no award should be made by the Court.

76. 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 are reasonable as to quantum. In the present case, the amount of EUR 850 has already been paid to the applicant by way of legal aid. In such circumstances, the Court does not consider it necessary to make an award under this head.

C. Default interest

77. 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 inhuman and degrading conditions of the applicant's detention at remand prison no. IZ-39/1 in Kaliningrad, the absence of an effective remedy in respect of his complaint about the conditions of his detention and the domestic authorities' failure to ensure the applicant's participation in the civil proceedings 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 from 5 May to 30 December 1998 at remand prison no. IZ-39/1 in Kaliningrad;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of 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;

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

Done in English, and notified in writing on 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President