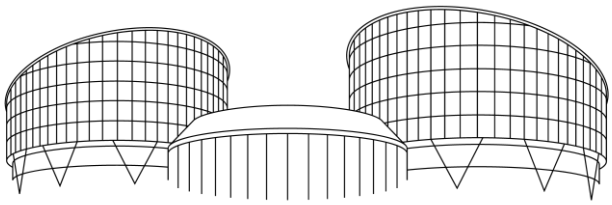

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VLADIMIR VASILYEV v. RUSSIA

(Application no. 28370/05)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

09/07/2012

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

In the case of Vladimir Vasilyev v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 28370/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vladimir Aleksandrovich Vasilyev ("the applicant"), on 18 July 2005.

2. The applicant, who had been granted legal aid, was represented by Mr T. Misakyan, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about inadequate medical assistance in a detention facility and the unfairness of civil proceedings.

4. On 26 June 2009 the President of the First Section decided to give priority treatment to the application and to give notice of it to the Government.

5. By a decision of 1 July 2010 the Court declared the application admissible in respect of the applicant's complaints concerning medical assistance after 18 January 2005 and the fairness of the civil proceedings. The remainder of the application was declared inadmissible.

6. The parties filed additional observations on the merits (Rule 59 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1953 and is serving a prison sentence in a correctional colony in the town of Solikamsk, Perm Region (Russia).

A. Criminal proceedings against the applicant

8. The applicant was arrested on 8 February 1996 in the town of Ukhta, Komi Republic. On 25 December 1997 the Supreme Court of the Komi Republic convicted him of, *inter alia*, attempted rape and several counts of murder, and sentenced him to death. On 22 December 1998 the Supreme Court of Russia upheld the trial judgment in substance.

9. In 1999 the President of Russia issued an act of clemency in respect of the applicant, replacing the death penalty with life imprisonment. Thereafter, the applicant unsuccessfully sought a supervisory review of the conviction.

B. The applicant's medical condition and his complaints to national authorities

10. Between February 1996 and January 2000 the applicant was detained for various periods of time in Sosnogorsk remand centre no. 11/2 in the Komi Republic and other detention facilities. After his arrest the applicant was admitted to hospital because he had frostbite on his feet. He underwent a surgical operation resulting in the amputation of the fifth toe on his right foot and the distal part of his left foot. In 1996 he was diagnosed with diabetes. In December 1999 the applicant was examined in a hospital. A group of experts concluded that he was able to work, except if it required physical exertion; no disability status was attributed.

11. In 2001 the applicant was transferred to Solikamsk colony no. 2 in the Perm Region ("the colony"). Between 2002 and 2004 he was treated for tuberculosis. It was indicated that he would shortly be examined to determine whether he needed dental and ophthalmological treatment and orthopaedic footwear. In late 2004 the applicant was treated for his diabetes, diabetic angiopathy (the generic term for a disease of the blood vessels) and other diseases. The doctors recommended oral medication to lower blood glucose and a diet. The applicant received medication by Maninil, an oral blood-glucose-lowering drug. It does not transpire from the available medical record that any blood or urine tests were carried out between late 2004 and late 2005 (see paragraph 13 below).

12. The applicant lodged complaints in relation to the allegedly inadequate treatment of his diabetes, unavailability of books on diabetes, insufficient nutrition and some other matters relating to medical care. On 3 May 2005 the Solikamsk Penitentiary Office stated that it was not incumbent on this office or another public authority to supply books to individual detainees; that all relevant counselling on diabetes could be obtained from the detainee's doctor, and that the applicant had been examined by a therapist on a number of occasions and received the necessary medication, including oral medication by Maninil. Another complaint was examined on 31 October 2005 by the Perm Region Penitentiary Department. It rejected the applicant's complaints, indicating that no special or high-vitamin diet was required for prisoners suffering from diabetes; that they were to be fed according to the standard set by the Ministry of Justice (see paragraph 37 below); that the applicant was given appropriate medication; and that in December 2005 he would be able to have a medical consultation concerning his requests for dental treatment, orthopaedic footwear and an eyesight check-up.

13. In October 2005 blood and urine tests were carried out; the applicant also had an X-ray, which showed no anomalies. From 28 November to 8 December 2005 he was admitted to prison hospital no. 9 to receive dental treatment. The applicant was diagnosed with a partial maxillary and full mandibular adentia (loss of teeth) connected to his then sub-compensated diabetes status. The applicant also had various blood and urine tests (glucose, bilirubin, lipoproteid, cholesterol, alanine and aspartate aminotransferase). He was examined by specialist doctors (a surgeon, a neuropathologist and an ophthalmologist) who recommended regular medical check-ups. The ophthalmologist diagnosed slight myopia in both eyes and angiopathy. The applicant also had chronic pancreatitis but was in a stable condition. The applicant was given a dental prosthesis and instructions on how to use it. The final recommendations in the discharge certificate included provision of enzymes when needed, a low carbohydrate diet, monthly blood and urine tests, as well as exclusion of medication by Maninil.

14. In May 2006 the applicant complained about chest pain and was given medication. In June 2006 he had a check-up by a physician, an ophthalmologist, a dentist and a surgeon. No specific prescriptions were made. The dentist indicated that the applicant's oral cavity "had been sanitised". On an unspecified date the applicant handed over his allegedly defective dental prosthesis to his lawyer, apparently, to have this prosthesis adjusted. Subsequently he was examined by a radiologist and a tuberculosis specialist. On a number of occasions he was given medication for his headaches, hypertension and insomnia. The applicant had several check-ups and X-rays in 2007, 2008 and 2009.

15. As follows from the applicant's medical record compiled in colony no. 2, various blood tests were carried out twice in 2006 (25 January and 7 August 2006); five times in 2007 (10 April, 20 June, 3 and 9 October, 10 December); eight times in 2008 (15 January, 5 and 19 March, 9 and 16 April, 11 June, 24 October, 3 December); four times in 2009 (6 March, 24 June, 9 July and 16 December) and at least once in 2010 (February). Urine tests were carried out in January and July 2006, October 2007, April 2008, June and December 2009, and February 2010.

16. The applicant wrote to the Perm Region Ombudsman, requesting his re-admission to prison hospital no. 9. This letter was forwarded to the Perm Region Penitentiary Department. On 24 October 2007 the Penitentiary Department rejected the applicant's request as follows:

> "The complaint has been examined by the medical unit of the Penitentiary Department. Since 2001 [the applicant's] state of health has been monitored in the colony...In November 2005 he was examined and received treatment *inter alia* from a dentist in prison hospital no. 9. He was discharged from this hospital in a satisfactory condition and was given recommendations to be followed within the regime of an out-patient observation. At present, his state of health is satisfactory; the most recent laboratory tests were carried out in October 2007. For the time being, a consultation with a dentist was not possible because [the applicant] did not have his dental prosthesis (which he had handed over to his lawyer).
>
> In-patient treatment in the prison hospital is not necessary."

17. The applicant was examined again in August 2009 by a medical panel composed of the governor of the prison hospital and the head officers of the gastroenteritis and neurology units in this hospital. The applicant's condition was classified as satisfactory. The medical panel confirmed the diabetes (Type 2) diagnosis and symptoms of encephalopathy. The panel concluded that the applicant did not require in-patient treatment in the prison hospital and made the following recommendations:

> "to carry out a glycemic profiling (thirty minutes before eating and at 2 p.m.); to follow a low fat and carbohydrate diet (which has been followed by the patient on his own)...and to continue intake of Glidiab (each morning), and treatment by vasoactive and nootropic substances."

18. The management of Ukhta colony no. 24 in the Komi Region affirmed in a certificate dated 14 August 2009, produced by the Government, that they could not provide the applicant with orthopaedic footwear because it could only be manufactured in another town and there was a long waiting list. Apparently, the applicant had been detained in this colony in 2000 or 2001. The management of Ukhta medical facility no. 18 stated in a certificate dated 14 August 2009, produced by the Government, that the applicant needed orthopaedic footwear; however, the relevant regulations on supplies to convicted detainees did not require that it be provided by the State. The applicant had been detained in this medical facility in 1996.

19. A certificate dated 17 August 2009 and issued by Solikamsk colony no. 2 (in the Perm Region) states that during the entire period of his detention in that detention facility the applicant was provided with adequate medication, including glucose-related medicines and five meals per day. The management of the colony also stated in a certificate dated 29 July 2010, produced by the Government, as follows:

> "[The applicant] was not given a prescription for any special diet and receives a ration in compliance with the standards adopted for convicted detainees."

20. In August 2010 the Perm Region Penitentiary Department issued a report in relation to the applicant's grievances previously raised before various national authorities and the European Court. The report reads as follows:

> "In 2001 the applicant was transferred to colony no. 2, where on numerous occasions he underwent out-patient examinations and treatment in relation to various diseases. He was also admitted to prison hospital no. 9, from which he was discharged in a satisfactory condition, provided that recovery had been obtained for acute illnesses and that amelioration had been observed for chronic diseases...
>
> The medical unit of the colony has the requisite licences for providing health care (medication, out-patient treatment, therapy and assessment of disability). The colony has the requisite medical staff (head of the unit, two therapists and two medical assistants) with the necessary qualifications...
>
> For providing consultations on diagnoses and hospitalisation the above staff is assisted by external specialists from hospital no. 9 or municipal or State medical institutions...Certain types of health care (dental treatment, X-ray imaging, laboratory testing) are carried out in the medical unit of prison no. 1.
>
> In 2005 [the applicant] received dental treatment and prosthesis in prison hospital no. 9 and was discharged from it in a satisfactory condition. The final recommendations included a low carbohydrate diet. In 2007 he handed over the prosthesis to advocate V., as can be seen from [the applicant's] written statement. After 2005 he did not request a replacement of prosthesis from the medical unit of prison no. 2.
>
> Food is supplied [to the applicant] in the colony in compliance with the standards set in Decree no. 125 of 2 August 2005 by the Ministry of Justice...Since 2001 he has been receiving five meals per day in order to impede undesired changes in the blood glucose levels. The recommendations for a low carbohydrate diet and low glucose have been followed [by the applicant] under monitoring by the medical personnel in the colony.
>
> [The applicant] has no disability status. No recommendation for orthopaedic footwear was issued. The regime for detainees on life sentences does not require any substantial movement, except for outdoor exercise...
>
> [The applicant] was and continues to be provided with medical care in compliance with Decree no. 640/190 issued by the Ministry of Justice and the Ministry of Health. Such medical care is provided within the framework of the State programme concerning provision of free medical assistance to Russian nationals.
>
> During his detention [the applicant] was given all requisite medical monitoring and treatment..."

21. The management of Solikamsk colony no. 2 in the Perm Region affirmed in a document dated 27 July 2011 and produced by the Government that they had no document which indicated that the applicant had asked them for special footwear or that it had been recommended (see also paragraph 18 above). The Government also submitted written statement made in August 2011 by a medical assistant in colony no. 2, who affirmed that the applicant could walk independently without any assistance and, in the absence of disability status, did not need special footwear.

22. According to the applicant, he was not provided with orthopaedic footwear, which was necessary on account of the injuries to his feet. In the absence of such footwear, he suffered pain in his feet and could hardly keep his balance, for instance during long routine line-ups organised by the prison staff or when cleaning cells; his standard footwear did not fit him properly and wore out quickly. For many years, the applicant was kept in a cell on the ground floor of the detention facility and had difficulty, in the absence of special footwear, to walk up and down the stairs to/from the first and second floors where the medical unit and the offices of the prison staff were located.

C. Civil proceedings for compensation on account of damage to health

23. The applicant brought civil proceedings before the Ukhtinskiy District Court of the Komi Republic ("the District Court") against the Ukhta Department of the Interior, the Federal Ministry of Finance, the Prosecutor's Office of the Komi Republic and three detention facilities. The applicant alleged, *inter alia*, that he had not been provided with the requisite medical assistance in 1996; as a result of medical negligence, parts of his feet had had to be amputated; and he had not been given a special diet adapted to his diabetes in the late 1990s. His claim was dismissed on procedural grounds on several occasions.

24. In 2003 the applicant resubmitted his above claims to the District Court. The court opened a file and sought the applicant's observations on the need for an expert report to be commissioned. In September and November 2003 the applicant wrote to the District Court giving his consent for an expert report to be commissioned and suggested that some questions be put to the expert (see also paragraph 28 below).

25. The applicant also wrote to the District Court asking that he be brought to court hearings in his civil case. The court dispatched summons to the applicant in prison. However, it issued no order for his transfer for any hearings. On 17 and 25 December 2003 the District Court held hearings and heard the prosecutor, the defendants and witnesses. The applicant was neither present nor represented at these hearings.

26. In December 2003 the presiding judge asked to see the applicant's medical record from prison hospital VK-240/1-2 in Solikamsk.

27. In April 2004 a Mr Sh. applied to Ukhta Civil Hospital on behalf of the applicant, asking for the applicant's medical file, in particular in relation to the year 1996. He was informed that the applicant's medical record had been destroyed because the building in which the hospital had filed it had been flooded in June 1999.

28. An expert report was commissioned and carried out on the basis of the available material. The expert concluded that the surgical operation in 1996 had been justified; the applicant's diabetes was hereditary and its treatment had been appropriate, including Maninil; and that an adequate diet had been given to the applicant. It was noted in this connection that type 2 diabetes required diet no.9, which consisted in five or six servings of food per day excluding or replacing sugar and reducing carbohydrates. A copy of the expert report was sent to the applicant in January 2005. According to the applicant, he never saw the documents which served as a basis for the expert report.

29. Hearings in February and March 2005 were adjourned in the absence of any proof that the applicant had been properly notified. On 31 March 2005 the court received a letter from the applicant in which he commented on the expert report and also sought his own participation in the hearing and access to the medical documents submitted by the defendants.

30. On 19 May 2005 the District Court held a hearing at which the applicant was neither present nor represented. By a judgment of 19 May 2005, the District Court rejected his claims. The applicant appealed. The defendants submitted their observations in reply. On 28 July 2005 the applicant was provided with a copy of the verbatim record of the trial. In August 2005 he was served with a copy of the defendants' observations.

31. By a letter of 29 August 2005 the applicant was informed that an appeal hearing was listed for 29 September 2005 and that "his absence would not halt the proceedings".

32. On 29 September 2005 the Supreme Court of the Komi Republic heard the representative of the Regional Prosecutor's Office. The applicant was neither present nor represented at the appeal hearing. At the closure of this hearing the Supreme Court upheld the first-instance judgment. In October 2005 the applicant received a copy of the appeal decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Medical assistance in detention facilities

33. Russian law gives detailed guidelines for the provision of medical assistance to detained individuals. These guidelines, found in joint Decree no. 640/190 of the Ministry of Health and Social Development and the

Ministry of Justice, on Organisation of Medical Assistance to Individuals Serving Sentences or Detained ("the Regulation"), enacted on 17 October 2005, are applicable to all detainees without exception. In particular, section III of the Regulation sets out the procedure for initial steps to be taken by medical personnel of a detention facility on admission of a detainee. On arrival at a temporary detention facility all detainees must be subjected to preliminary medical examination before they are placed in cells shared by other inmates. The examination is performed with the aim of identifying individuals suffering from contagious diseases or in need of urgent medical assistance. No later than three days after the detainee's arrival at the detention facility, he should receive a medical examination, including fluorography. During the in-depth examination a prison doctor should record the detainee's complaints, study his medical and personal history, record injuries if present, and recent tattoos, and schedule additional medical procedures if necessary. A prison doctor should also authorise laboratory analyses to identify sexually transmitted diseases, HIV, tuberculosis and other illnesses.

34. Subsequent medical examinations of detainees are performed at least twice a year or at detainees' request. If a detainee's state of health has deteriorated, medical examinations and assistance should be provided by medical personnel of the detention facility. In such cases a medical examination should include a general medical check-up and additional methods of testing, if necessary, with the participation of particular medical specialists. The results of the examinations should be recorded in the detainee's medical history. The detainee should be fully informed of the results of the medical examinations.

35. Section III of the Regulation also sets the procedure for cases of refusals by detainees to undergo medical examination or treatment. In each case of refusal, a corresponding entry should be made in the detainees' medical record. A prison doctor should fully explain to the detainee the consequences of his refusal to undergo the medical procedure.

36. Detainees take prescribed medicines in the presence of a doctor. In a limited number of cases the head of the medical department of the detention facility may authorise his medical personnel to hand over a daily dose of medicines to the detainee for unobserved intake.

37. Until 2 August 2005 food supplies for detainees were regulated by Decree no. 136 of 4 May 2001 of the Federal Ministry of Justice. Since 2 August 2005 they have been regulated by Decree no. 125. Neither decree has provided for any specific diet for detainees suffering from diabetes.

38. On 11 December 2007 the Federal Ministry of Health issued a standard protocol for out-patient treatment of persons suffering from non-insulin-dependent diabetes. The protocol recommends, *inter alia*, a yearly provision of thirty-six glucose (laboratory) tests and/or for one hundred and eighty glucose meter tests.

B. Civil court proceedings

39. The Code of Civil Procedure of the Russian Federation ("the CCP") provides that individuals may appear before a court in person or act through a representative (Article 48 § 1). A court may appoint a lawyer 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 court proceedings in civil disputes concerning alimony or pension payments or claims for compensation for employment-related health damage (section 26 § 1). In 2005 the Russian Government launched a test project in a number of regions concerning provision of free legal assistance in civil law matters (Decree no. 534 of 22 August 2005).

40. Articles 57 and 149 of the CCP provide that parties may seek a court's assistance in obtaining evidence. The relevant party should indicate the circumstances impeding access to such evidence and its relevance to the case, as well as the location from where such evidence should be collected. An unjustified failure to comply with the court order could lead to the person or official in possession of the relevant evidence being fined.

41. In a given civil case a civil court could ask a court in another location to carry out specific actions in relation to the evidence situated in that location (Article 62 of the CCP). This request is mandatory and has to be carried out within one month from its receipt.

42. Under Articles 58 and 184 of the CCP, a court may hold a session outside the court-house if, for instance, it is necessary to examine evidence which cannot be brought to the court-house.

43. As follows from Ruling no. 2 of 10 February 2009 by the Plenary Supreme Court of Russia, complaints brought by detainees in relation to the inappropriate conditions of detention (for instance, a lack of adequate medical assistance) should be examined by a court under the procedure prescribed by Chapter 25 of the CCP. The latter provides that a person may bring court proceedings if an action or omission by a public authority or official violated this person's rights or freedoms, impeded their exercise or unlawfully imposed an obligation or liability (Articles 254 and 255 of the CCP). Such court action should be lodged within three months of the date when the person learnt about the violation of his or her rights or freedoms (Article 256). If a court considers that the complaint is justified, the court orders the respondent authority or official to remedy the violation (Article 258).

C. Other relevant legislation and practice

44. 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). A convicted person may consult his or her lawyer (Articles 12 and 89).

45. On several occasions the Constitutional Court 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 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 the sentence, or the court in which the case is being heard may instruct the court having territorial jurisdiction over the correctional colony to obtain the applicant's submissions or take any other procedural action (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004 and no. 94-O of 21 February 2008).

46. The Code of Civil Procedure, as interpreted by the Constitutional Court in its ruling no. 4-П of 26 February 2010, allows for a reopening of the domestic civil proceedings on the basis of a European Court judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant alleged that he had not been provided with proper medical assistance in detention. He referred to Article 3 of the Convention, which reads as follows:

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

48. The Court reiterates at the outset that by a decision of 1 July 2010 it declared the application admissible in respect of the applicant's complaints concerning medical assistance after 18 January 2005. The remainder of the complaints under Article 3 of the Convention was declared inadmissible (see paragraph 5 above).

A. The parties' submissions

49. The applicant alleged that he had not been provided with a "special" diet, which was an indispensable part of his diabetes treatment. The domestic regulations did not make any provision for such a diet. The

prescribed medication was not effective and was, at times, out of date. The detention facilities were not equipped with glucose meters, while ordinary laboratory blood tests, which were carried out once every four months, were manifestly inadequate and irregular. Owing to inadequate medical treatment and monitoring, the applicant experienced dramatic changes in blood glucose levels. Moreover, the dentures provided in 2005 had become unfit for purpose on account of loss of teeth. The applicant argued that the dentists in the detention facilities in which he was being detained had no equipment which would allow for implants to be fixed in his mouth. The absence of the appropriate denture and diet could lead to various problems for his digestive system. He also had progressive hearing and sight loss. He was not provided with orthopaedic footwear, which was necessary on account of the injuries to his feet. In the absence of such footwear, he suffered pain in his feet and could hardly keep his balance, for instance during long routine line-ups organised by the prison staff or when cleaning cells; his standard footwear did not fit him properly and wore out quickly. He could not obtain any documentary proof concerning the need for such footwear.

50. With reference to various reports and medical evidence (see paragraphs 12, 16-20 and 28 above), the Government argued that the applicant had been, and continued to be, provided with all necessary medical assistance. During his detention in colony no. 2 he received a low fat and carbohydrate diet, regular blood tests and medicines for lowering the glucose level. The ration provided to the detainees in the colony was compatible with the requirements set for persons suffering from diabetes. Moreover, since 2001 the applicant was allowed to receive five meals per day to exclude undesired changes in the glucose level. In 2005 he had been treated in a hospital. Thereafter, he had not lodged any claim for dental treatment, including provision of dentures. In 1999 he had been refused disability status and thus needed no special footwear. In any event, as he is serving a life sentence he has no particular need for mobility, except for outdoor exercise in the prison yard.

B. The Court's assessment

1. General principles

51. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on the circumstances of the case, such as the duration of the treatment, its physical

and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

52. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

53. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention (see, *mutatis mutandis*, *Tyrer v. the United Kingdom*, 25 April 1978, § 30, Series A no. 26, and *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161).

54. Furthermore, the Court reiterates that allegations of ill-treatment should be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, cited above, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Convention proceedings 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. 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, in various contexts, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 179, ECHR 2007-IV; *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004; *Aleksandr Leonidovich Ivanov v. Russia*, no. 33929/03, §§ 27-35, 23 September 2010, and *Boris Popov v. Russia*, no. 23284/04, §§ 65-67, 28 October 2010).

55. Regarding the issue of medical care in detention facilities, the Court reiterates that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately ensured by, among other things, providing him with the requisite

medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

56. Where complaints are made about a failure to provide requisite medical assistance in detention, it is not indispensable for such a failure to lead to any medical emergency or otherwise cause severe or prolonged pain in order to find that a detainee was subjected to treatment incompatible with the guarantees of Article 3 (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 114, 15 June 2010). The fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to reach a conclusion that such treatment was in breach of that Article (ibid).

57. Thus, although Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds save for exceptional cases (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001), a lack of appropriate medical treatment may raise an issue under Article 3, even if the applicant's state of health does not require his immediate release.

58. The national authorities must ensure that diagnosis and care in detention facilities, including prison hospitals, are prompt and accurate, and that where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing his or her condition from worsening (see *Pitalev v. Russia*, no. 34393/03, § 54, 30 July 2009, with further references).

59. On the whole, while taking into consideration "the practical demands of imprisonment" the Court reserves sufficient flexibility in deciding, on a case-by-case basis, whether any deficiencies in medical care were "compatible with the human dignity" of a detainee (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008). In its assessment the Court gives a thorough scrutiny to the question concerning the compliance with recommendations and prescriptions issued by medical professionals, in the light of specific allegations made by the applicant.

2. Application of the principles in the present case

60. In this case, the Court should determine whether during the relevant period of detention the applicant needed regular medical care, whether he was deprived of it as he claims, and if so whether this amounted to inhuman and/or degrading treatment contrary to Article 3 of the Convention (see *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004, and *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005).

61. The applicant's major grievances in the present case may be summarised as follows: (i) lack of a special diet commensurate with his diabetes status, aggravated by the alleged inefficiency of the medication regime and the lack of regular and adequate tests; (ii) the alleged deficiency

of the dentures; (iii) a deterioration of his eyesight and hearing and possible new health problems, in particular of the digestive system; and (iv) lack of orthopaedic footwear. As already indicated, the above grievances essentially concern the period of the applicant's detention since 2005.

62. The applicant was diagnosed with diabetes in 1996. The Court is unable to conclude on the basis of the available information and submissions that the method used for diabetes-related laboratory tests (as compared to glucose meters) was in itself incompatible with the applicant's medical condition. The Court also observes that the applicant made a general statement concerning the unsatisfactory frequency of the tests. He did not clearly substantiate, with reference to medical data and prescriptions, that the omission to carry out such tests at specific intervals affected his state of health.

63. The Court also reiterates that unavailability of medicines may raise an issue under Article 3 if it has negative effects on the applicant's state of health or causes suffering of a certain intensity (see *Mirilashvili v. Russia* (dec.) no. 6293/04, 10 July 2007). The applicant was given an oral blood-glucose-lowering drug. As can be seen from a discharge certificated issued in December 2005, the applicant was given a recommendation of exclusion of medication by this drug. It appears that he was later on given a prescription for other drugs (see paragraph 17 above). Having examined the available materials, including the applicant's medical record for 2005 and the expert reports issued in 2004, 2009 and 2010 (see paragraphs 17, 20 and 28 above), and in the absence of any alternative evidence, the Court considers that no violation of Article 3 of the Convention has been convincingly established on that account (see, for comparison, *Polufakin and Chernyshev v. Russia*, no. 30997/02, § 169, 25 September 2008). The applicant's allegation that the medication did not produce the desired effect does not suffice to raise an issue under Article 3 of the Convention.

64. As to the diet, it is common ground between the parties that the applicant was given a recommendation of a low fat and carbohydrate diet and that he was allowed to receive five meals per day in order to exclude undesired changes in the glucose level (see paragraphs 17 and 28 above). In the Government's submission, the applicant himself moderated his consumption of certain foodstuffs. It has not been alleged that the applicant was refused counselling on the appropriate diet to be observed. In any event, it has not been shown that the ration provided to all detainees in the colony, including the applicant, was incompatible with the applicant's diabetes status. While the Court notes that the efficiency of diabetes treatment depends on the combination of factors such as an adapted diet, medication and monitoring, no sufficient elements were provided in the present case to enable the Court to doubt the appropriateness of the nutrition afforded to the applicant in detention.

65. As to the dental treatment, the respondent Government appear to deny that since 2005 onward the applicant was faced with any difficulties in relation to his dentures or footwear. The Court observes that the applicant received dental treatment in 2005 and was given a dental prosthesis (see, by contrast, *V.D. v. Romania*, no. 7078/02, §§ 95-98, 16 February 2010). It appears that he could not, however, use it because of the progressive retraction of the gums. For unspecified reasons, the applicant handed over the denture to another person (this seems to have been his lawyer). It is unclear from the applicant's summary submissions what specific requests were made by the applicant after 2005 in that connection or whether it was at all practicable to provide any replacement of dentures, given the applicant's state of health at the time.

66. The Court recognises that detained applicants may have difficulties in collecting evidence to substantiate, both at the national level and before this Court, their grievances relating to previous or ongoing deficiencies in medical care in detention. This is especially so when such grievances involve complex medical issues. However, the applicant underwent annual check-ups and his grievances at the national level were assessed and dismissed as unfounded on several occasions between 2005 and 2010 (see paragraphs 12, 14, 16, 17, 20 and 28 above). The Court has found no reason to disagree with these assessments. Therefore, as regards the grievances mentioned under (i)-(iii) in paragraph 61 above, the Court concludes that the applicant, who was represented before this Court by a lawyer, did not provide sufficient and convincing arguments disclosing that any allegedly serious failings on the part of the national authorities in complying with medical recommendations and prescriptions were such as to violate the requirements of Article 3 of the Convention.

67. Nevertheless, as regards the grievance concerning orthopaedic footwear, the Court reiterates that since 1996 the applicant had a toe on his right foot and the distal part of his left foot amputated (see paragraph 10 above). Relying on the 1999 refusal of disability status and the conclusions reached by the prison authorities in the Perm Region (see paragraphs 10, 20 and 21 above), the respondent Government stated that no prescription of special footwear had been issued to the applicant.

68. While taking note of the Government's argument, the Court cannot but observe that the management of a medical facility in the Komi region stated that the applicant needed orthopaedic footwear; however, the relevant regulations on supplies to convicted detainees did not require that it be provided by the State (see paragraph 18 above). The Ukhta colony management (in the same region) made a different statement, considering that orthopaedic footwear was not readily available to the applicant (ibid). While these statements relate to the periods of the applicant's detention in these facilities between 1996 and 2001, there is no indication that his medical condition in this respect has improved significantly or that it was

properly (re)assessed in or after 2005 during his detention in the Perm region, where he has been serving the sentence of life imprisonment. Thus, it was incumbent on the national authorities to react to the applicant's situation of which they were aware (see paragraphs 11 and 12 above).

69. Therefore, the Court considers that the lack of any appropriate solution in the above matter between 2005 and 2011 was such as to amount to degrading treatment in breach of Article 3 of the Convention. In the Court's view, the applicant has been subjected to distress and hardship exceeding the unavoidable level of suffering inherent in detention and due to his handicap. While taking note of the practical demands of imprisonment, the Court concludes that in this respect the applicant's health and well-being have not been adequately ensured.

70. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

71. The applicant complained that the civil proceedings had been unfair. He alleged in particular that the principle of the equality of arms had not been respected in that he had not been afforded an opportunity to be present at the hearings. The Court will examine this complaint under Article 6 § 1 of the Convention, which reads as follows:

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

A. The parties' submissions

72. The applicant submitted that since his claim was based on various aspects of his personal experience (such as medication and treatment, lack or presence of certain documents) his personal testimony before the civil court was the decisive, if not the main, tool for ensuring the equality of arms. The above-mentioned consideration acquired even more importance, given the unavailability of the applicant's medical file and the prosecutor's participation in the proceedings. Neither the Code of Civil Procedure nor the Code of Criminal Procedure contained any explicit provision which made it possible for detainees to participate in civil court proceedings. No such provision was present in the Code of Execution of Sentences. The applicant also submitted that he had no means to retain counsel. He was not entitled to free legal advice under the Advocates Act or any other statute.

73. In the Government's submission, the Code of Execution of Sentences implicitly authorises a court to require a detainee's presence at a court hearing if required by the interests of justice and for the protection of individual rights. The Government concluded that neither the letter nor the spirit of Article 77.1 of the above-mentioned Code or the Code of Criminal

Procedure precluded the hearing of a detainee in person in civil cases. The Government further argued that the fairness of the proceedings, including the principle of equality of arms, had been respected in the applicant's civil case. He had been properly notified of the hearings, had made a written deposition at the court's request, had been afforded an opportunity to suggest questions to be put to a medical expert and had been provided with a copy of the trial verbatim record, as well as the defendants' appeal observations. The first-instance court received and examined the applicant's requests, as well as his comments on the other parties' submissions and the expert report. In addition, a convicted detainee could present his arguments to a court by way of a video link or in writing, which would be sufficient.

74. The Government submitted that a detainee had the opportunity to seek legal advice, for a fee, from a bar association or a law firm. A lawyer or other persons could be authorised to visit a convicted detainee, including for a legal consultation. The applicant had not however requested any such meetings. While the national legislation did not require provision of free legal assistance in civil court proceedings, the applicant's reference to lack of financial means should not have prevented him from seeking legal advice, which would have been readily available free of charge in cases concerning damage to health under the Advocates Act. Lastly, the prosecutor acted as a respondent in the civil case. In view of the above, the applicant had not been put at any significant disadvantage *vis-à-vis* the other parties.

B. The Court's assessment

1. General principles

75. The Court reiterates that the principle of adversarial proceedings and equality of arms, which are 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).

76. Article 6 of the Convention does not expressly provide for a right to be heard in person; rather, it is implicit in the more general notion of a fair trial that a criminal trial should take place in the presence of the accused (see *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). However, in respect of non-criminal matters there is no absolute right to be present at one's trial, except in respect of a limited category of cases, such as those where the personal character and manner of life of the person concerned is

directly relevant to the subject matter of the case, or where the decision involves the person's conduct (see, among others, *Kabwe and Chungu v. the United Kingdom* (dec.), nos. 29647/08 and 33269/08, 2 February 2010).

77. A party's presence at the trial is closely linked to the right to an oral and public hearing, since if Article 6 does not require an oral hearing there is, by extension, no right to be present. An oral and public hearing constitutes a fundamental principle enshrined in Article 6 § 1 (see *Jussila v. Finland* [GC], no. 73053/01, §§ 40-42, ECHR 2006-XIII). There may be proceedings in which an oral hearing may not be required: for example where there are no issues of credibility or contested issues which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see, among others, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 74, ECHR 2007-IV).

78. The Court has further acknowledged that the national authorities may have regard to the demands of efficiency and economy and has found, for example, that the systematic holding of hearings could be an obstacle to the particular diligence required in social security cases and ultimately prevent compliance with the reasonable-time requirement of Article 6 § 1 (see *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, § 58, Series A no. 263, with further references). Although the earlier cases emphasised that a hearing must be held before a court of first and only instance unless there were exceptional circumstances that justified dispensing with one (see, for instance, *Håkansson and Sturesson v. Sweden*, cited above, § 64; *Fredin v. Sweden (no. 2)*, judgment of 23 February 1994, §§ 21 and 22, Series A no. 283-A; and *Allan Jacobsson v. Sweden (no. 2)* judgment of 19 February 1998, § 46, *Reports* 1998-I), the Court has clarified that the character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may be justified only in rare cases (see *Miller v. Sweden*, no. 55853/00, § 29, 8 February 2005). The overarching principle of fairness embodied in Article 6 is the key consideration.

79. The Court has previously found violations of Article 6 of the Convention in cases where Russian courts, after having refused leave to appear to detainees who had wished to make oral submissions on civil claims, failed to consider other legal avenues for the securing of their effective participation in the proceedings (see *Khuzhin and Others v. Russia*, no. 13470/02, §§ 53 et seq., 23 October 2008; see also *Mokhov v. Russia*, no. 28245/04, §§ 45-51, 4 March 2010; and *Larin v. Russia*, no. 15034/02, § 35 et seq., 20 May 2010). For instance, the Court has found a violation of Article 6 in a case where a Russian court refused leave to appear to a detainee 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 was 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 (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

80. The Court further reiterates that the right of access to court does not necessarily entail a right to legal assistance in non-criminal matters. Only where a party would not receive a fair hearing without the provision of legal aid, with reference to all the facts and circumstances of the case, will Article 6 require legal aid, including legal representation or assistance (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 61, ECHR 2005-II).

2. Application of the above principles in the present case

81. Turning to the circumstances of the case, the Court observes at the outset that the applicant brought proceedings against the Ukhta Department of the Interior and several other public authorities before the Ukhtinskiy District Court of the Komi Republic (see paragraph 23 above). At the time of this court action the applicant was serving a prison term in another region of Russia. In addition, it is noted that the representatives of the State authorities, including a public prosecutor, were present at the hearings in December 2003 and made oral submissions to the first-instance court. A representative of the regional prosecutor's office was present at the appeal hearing.

82. The applicant's grievance before the Court was based on his wish to be present at the civil hearings, arguing, among other things, that he did not have the means to pay for a lawyer (see paragraph 72 above).

83. The domestic courts refused the applicant leave to appear, relying on the absence of any legal norm allowing his presence. The Court observes that the Russian legislation provided for a party's right to an oral hearing (see, by contrast, *Súsanna Rós Westlund v. Iceland*, no. 42628/04, § 41, 6 December 2007, and *Gülmez v. Turkey*, no. 16330/02, § 37, 20 May 2008). This legislation, however, did not make any explicit provision for detainees to be brought to the court-house in civil proceedings, if necessary in the circumstances of the case. The legislative gap absolved the civil judges from considering any security issues relating to transporting the convicted prisoner outside the territory of the detention facility.

84. Bearing in mind that there could be practical difficulties in ensuring the applicant's own presence at the civil hearing before the Ukhtinskiy District Court (see paragraph 81 above), the Court reiterates that Article 6 of the Convention does not guarantee the right to be heard in person at 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*, cited above, §§ 59 and 60). For instance, as a way of securing the applicant's participation in the proceedings, the national authorities could have held a session by way of a video link or in the detention facility, in so far as it was possible under the rules on court jurisdiction (see paragraph 42 above, and, for the relevant principles, *Riepan v. Austria*, no. 35115/97, §§ 27-42, ECHR 2000-XII, and *Marcello Viola v. Italy*, no. 45106/04, § 49 et seq., ECHR 2006-XI (extracts)). However, these options were not considered.

85. The Court considers, despite the Government's argument, that the option of legal aid was not available to the applicant in his civil case (see paragraph 39 above). The Court is not satisfied on the basis of the available information that the Russian legal aid system could offer the applicant sufficient protection of his rights (see, for comparison, *Staroszczyk v. Poland*, no. 59519/00, § 129, 22 March 2007, and *Larin*, cited above, §§ 53-55).

86. The only possibility for the applicant 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 (see paragraph 27 above).

87. At the same time, the Court observes that the first-instance court was not passive. It sought and obtained certain medical documents and commissioned an expert opinion on the basis of those documents. It is also noted that Russian law afforded the applicant the opportunity to seek a domestic court's assistance in obtaining the necessary evidence in support of his claim, if such evidence was not readily accessible (see paragraph 40 above, and *Trapeznikova v. Russia*, no. 21539/02, § 101, 11 December 2008). Also, a civil court could request a court in another location to carry out specific actions in relation to the evidence situated in that location (see paragraph 41 above).

88. This being so, the Court does not lose sight of the fact that in the present case the applicant's claims in the domestic proceedings were, to a certain extent, based on his personal experience. It could have served, *inter alia*, as a basis for assessment of the damage which his detention entailed for him in terms of distress and anxiety.

89. Bearing in mind the unavailability of legal assistance or representation and considering that the applicant's testimony describing the conditions of his arrest and subsequent admission to hospital and the detention facility, of which the applicant 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, the latter concerning a claim for title to reside in a certain flat), the Court concludes that the domestic proceedings did not satisfy the requirements of Article 6 § 1 of the Convention.

90. There has been a violation of that provision in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 406,975 in respect of pecuniary damage, including lost profits.

93. The Government contested the claims as excessive and unsupported by any evidence.

94. Having regard to the nature of the violations found and making an assessment on an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. The Court rejects the remaining claims as unsubstantiated and unrelated to the Court's findings.

B. Costs and expenses

95. The applicant also claimed EUR 14,000 for costs and expenses incurred in the criminal proceedings at the national level and EUR 125 for those incurred before the Court.

96. The Government contested the claims.

97. 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. The Court notes that that the applicant was granted legal aid and considers that this award covers the reimbursement of the costs and expenses incurred. Therefore, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses as unsubstantiated.

C. Default interest

98. 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. *Holds* that there has been a violation of Article 3 of the Convention on account of the issue of orthopaedic footwear;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President