

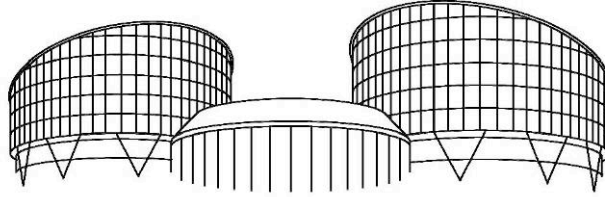
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Voir Notice  
See Notes

*См. Пояснительную записку*

Numéro de dossier  
File number

Номер досье \_\_\_\_\_



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME  
ЕВРОПЕЙСКИЙ СУД ПО ПРАВАМ ЧЕЛОВЕКА

Requête  
*Application*  
ЖАЛОБА

présentée en application de l'article 34 de la Convention européenne des  
Droits de l'Homme,  
ainsi que des articles 45 et 47 du Règlement de la Cour

*under Article 34 of the European Convention on Human Rights  
and Rules 45 and 47 of the Rules of Court*

*В соответствии со статьей 34 Европейской Конвенции по правам человека  
и статьями 45 и 47 Регламента Суда*

IMPORTANT:

La présente requête est un document juridique et peut affecter vos droits et obligations.  
*This application is a formal legal document and may affect your rights and obligations.*

**ВАЖНАЯ  
ИНФОРМАЦИЯ**

*Настоящая жалоба является официальным юридическим документом, который может повлиять  
на Ваши права и обязанности.*



**I. Les Parties**  
**The Parties**  
**СТОРОНЫ**

**A. Le Requérant / La Requérante**  
**The Applicant**  
**ЗАЯВИТЕЛЬ**

(Renseignements à fournir concernant le/la requérant(e) et son/sa représentant(e) éventuel(le))  
(Fill in the following details of the applicant and the representative, if any)  
(Данные о заявителе и его представителе, при наличии такового)

1.	Nom de famille <i>Surname</i> <i>Фамилия заявителя</i>	2.	Prénom(s) <i>First Name(s)</i> <i>Имя (имена) и отчество</i>
Sexe: masculin / féminin <i>Sex: male / female</i> <i>Пол: мужской / женский</i>			
3.	Nationalité <i>Nationality</i> <i>Гражданство</i>	4.	Profession <i>Occupation</i> <i>Род занятий</i>
5.	Date et lieu de naissance <i>Date and place of birth</i> <i>Дата и место рождения</i>		
6.	Domicile <i>Permanent address</i> <i>Постоянный адрес</i>		
7.	Tél n° <i>Tel no.</i> <i>Номер телефона</i>		
8.	Adresse actuelle (si différente de 6.) <i>Present address (if different from 6.)</i> <i>Адрес проживания в настоящее время</i> (если отличается от п. 6)		
9.	Nom et prénom du/de la représentant(e) <sup>1</sup> <i>Name of representative</i> <i>Имя и фамилия представителя</i>		
10.	Profession du/de la représentant(e) <i>Occupation of representative</i> <i>Род занятий представителя</i>		
11.	Adresse du/de la représentant(e) <i>Address of representative</i> <i>Адрес представителя</i>		
12.	Tél n° <i>Tel no.</i> <i>Номер телефона</i>	Fax n° <i>Fax no.</i> <i>Номер телефакса</i>	

**B. La Haute partie contractante**  
**The High Contracting Party**  
**ВЫСОКАЯ ДОГОВАРИВАЮЩАЯСЯ СТОРОНА**

(Indiquer ci-après le nom de l'Etat/des Etats contre le(s) quel(s) la requête est dirigée)  
(Fill in the name of the State(s) against which the application is directed)  
(Укажите государство, против которого направлена жалоба)

13. **RUSSIAN FEDERATION**

<sup>1</sup> Si le/la requérant(e) est représenté(e), joindre une procuration signée par le/la requérant(e) et son/sa représentant(e).  
*If the applicant appoints a representative, attach a form of authority signed by the applicant and his or her representative.*  
*Если заявитель действует через представителя, следует приложить доверенность, подписанную заявителем и представителем.*

## **ABSTRACT OF APPLICATION**

For over 20 years the applicant has been suffering from drug addiction with opiate dependence syndrome. Due to injecting drug use with non-sterile syringes she contracted HIV and hepatitis C. For drug-related crimes the applicant was incarcerated 5 times, for 16 years in total. During her last incarceration the applicant contracted tuberculosis. The applicant made numerous attempts to treat drug addiction with all methods available in Russia. However, none of these methods helped her and she resumed using drugs effectively immediately after the treatment. Due to her disease and the ban on its effective treatment, for over 20 years the applicant has been living “from withdrawal to withdrawal”. Every day she has to purchase illicit drugs and thus to put herself at risk of arrest and incarceration; she has to experience profound humiliation, impotence and despair as she cannot abandon drugs, the effective treatment is banned and the state is intolerant of people with drug addiction. Due to the ban on the effective treatment, the applicant’s life is entirely focused on illicit drugs and for this reason she cannot exercise her right to private and family life. The applicant appealed to the Ministry of Health requesting a prescription for treatment of drug addiction with opioid substitution therapy with the use of methadone or buprenorphine. However, she was refused with a reference to the provision of federal law which bans the use of methadone or buprenorphine for treating drug addiction in Russia. The applicant appealed against this decision at district court where her appeal was also rejected. She then went to regional court which also refused to defend her.

### **Alleged violation of Article 3 of the Convention**

The applicant alleges that her right not to be subjected to torture, inhuman or degrading treatment or punishment was violated as a result of the Russian Federation authorities promoting unavailability of opioid substitution treatment with the use of methadone and buprenorphine to treat drug addiction, as well as promoting intolerance to people suffering from drug addiction.

### **Alleged violation of Article 8 of the Convention**

The applicant alleges that by refusing her access to opioid substitution therapy with the use of methadone or buprenorphine, Russia’s authorities violated her right to respect for her private and family life.

### **Alleged violation of Article 14 of the Convention**

The applicant alleges that the ban on the use of substitution therapy with methadone and buprenorphine is not a reasonable, justified or necessary measure in a free democratic society and is contrary to Article 14 of the Convention taken in conjunction with Articles 3 and 8 of the Convention.

### **Alleged violation of Article 6 of the Convention**

The applicant alleges that her right to a fair trial was violated by the Russian Federation as domestic courts exclusively used the arguments of the respondent (Kaliningrad Region Ministry of Health) to justify their judgments, while the Applicant’s numerous key arguments failed to be assessed in the courts judgments.

The applicant exhausted all domestic remedies of legal defence and by appealing to the European Court of Human Rights she is requesting to recognize that the Russian Federation violated her rights safeguarded by Articles 3, 6, 8 and 14 of the Convention and to demand that Russian Federation restore her rights and pay a just satisfaction.

## **II. Exposé des faits** **Statement of the Facts** **ИЗЛОЖЕНИЕ ФАКТОВ**

(Voir § 19 (b) de la notice)  
(See § 19 (b) of the Notes)  
(См. § 19 (б) Пояснительной записки)

### *14.1 Opiate drug addiction with opiate dependence syndrome and treatment attempts*

The applicant has been using opiates since February 1984. She has been registered as a drug user since April 20, 1984. Her first record of diagnosis “opiate drug addiction” was dated July 18, 1984. Starting 2000, she had her diagnosis “F11 opiate dependence syndrome” confirmed every year, which is documented in her records of specified diagnoses in the medical chart of narcological out patient #364/14. (Medical data below are recorded in the chart. Copy of the chart is enclosed).

The applicant first received drug addiction treatment in a mental hospital from April to June 1984 and then she was regularly treated in various polyclinics using all methods for treating addiction which were practiced in the USSR and then in Russia, both in prison and in civil settings in various regions of the country. When incarcerated the applicant received compulsory drug addiction treatment twice, but she resumed using drugs effectively immediately after release. The treatment never resulted in lengthy remissions. On average (with the exception of the time the applicant spent in prison) she could not live more than two weeks without opiates. At times of abstinence the applicant replaced opiates with spirits. She took her last attempt to receive treatment in 2009. She

resumed using drugs within less than two weeks after completing treatment.

#### *14.2 Incarceration as a punishment for using drugs*

The applicant was deprived of her liberty and served sentence 5 times for committing offences related to drug use (in October 1989, December 1995, December 1998, December 2001 and September 2005). In total, the applicant spent 16 years of her life in prison in effect for suffering from drug addiction.

#### *14.3 HIV/ AIDS, Hepatitis C and tuberculosis as a result of drug addiction*

In 1989 the applicant was diagnosed with hepatitis C. She was diagnosed with HIV in February 2000 and then with AIDS on 14 May 2005. The only possible route of infection is sharing non-sterile injecting equipment with other drug users. The applicant often practiced this behaviour since, firstly, before 2000 she had no opportunity to receive information on prevention of infectious diseases among injecting drug users due to absence of such programs in Kaliningrad City; secondly, due to fear of detention by police she had to use drugs in haste, often at the spot of drug purchase where she could find a used syringe. During her last time in prison for possession of drugs she contracted tuberculosis.

#### *14.4 A threat to life and health as a result of barriers to effective treatment of drug addiction*

The applicant's inability to terminate drug use leads to extremely unstable life-style, which also affects treatment of severe diseases (AIDS and tuberculosis). Due to her AIDS condition, she has to receive antiretroviral therapy (ART) medications and to strictly adhere to the timetable, which the need to use illicit drugs renders difficult. As a result of illicit drug use and lack of effective drug addiction care the applicant interrupted her ART several times. In this connection, she had to repeatedly change therapy regimen to include other more costly medications. Currently she is using the fourth-line regimen (the last line), though if her disease had taken a regular course she could still be using first-line medications. In this connection should the applicant develop resistance to fourth-line medications she will experience tremendous difficulties in finding another suitable treatment regimen.

In 2006, while in the tuberculosis clinic [*tuberculosis dispensary*], the application could not adhere to treatment regimen due to her drug addiction condition, since she had to leave the clinic several times a day to find drugs. She was continued her treatment the clinic only because her compassionate friends delivered heroin to the clinic. Otherwise she would not have been able to adhere to treatment regimen.

The applicant's condition will rapidly deteriorate without effective drug addiction treatment. Given her deadly diagnosis of AIDS and her recent history of tuberculosis, the current situation poses an immediate threat not only to the applicant's health but also to her life.

#### *14.5 Barriers to treatment as a factor affecting private life*

In connection with unavailability of effective treatment for drug addiction, the applicant's lifestyle is unstable, which is related to illicit drug use. She has no family, children, permanent job, housing or a steady income and means of subsistence.

#### *14.6 Severe pain, physical and moral sufferings related to the barriers to treatment.*

The applicant cannot do without opiates. As early as in 1989, her medical chart stated that without drugs she experiences "nausea, vomiting, pains in arms and legs, shivering, diarrhoea and insomnia". For over 20 years of her life her daily routine has been from one withdrawal to another. Psychologically, withdrawal from drugs leads to constant anxiety, fear and discomfort, regardless of the time that elapsed since the previous withdrawal.

#### *14.7 Fear and humiliation as a consequence of unavailability of effective treatment for drug addiction.*

Because of her drug addiction, the applicant has to regularly purchase and use illicit drugs. Thus she is at constant risk of being held liable under criminal or administrative law. Her constant fear of detention by law-enforcement authorities and the need for money to purchase drugs as well as her inability to get employment put her in a condition of constant despair and hopelessness. The applicant is aware that the state considers her a person who cannot be treated with tolerance due to her inability to terminate drug use and this awareness places her in a permanent condition of profound humiliation.

#### *14.8 Refusal to prescribe methadone or buprenorphine substitution therapy*

On 11 January 2011 the applicant requested that Kaliningrad Region Ministry of Health prescribe her drug addiction treatment using the method of opioid substitution (maintenance) therapy with methadone or

buprenorphine. In her letter the applicant stated her consent for receiving opioid substitution therapy with the use of methadone or buprenorphine to treat her in accordance with Article 43 of the Russian Federation Framework Legislation on Health Care # 5487-1 of 22 August 1993 and Decree # 494 “On procedures for using life-saving medications for patients” of 9 August 2005.

**Russian Federation Framework Legislation on Health Care # 5487-1 of 22 August 1993**

*Article 43 – (2). Medications, methods of diagnostics and treatment that are not approved for use but are under consideration according to established procedures can be used for the purpose of curing a patient only after receiving their voluntary written consent. (4). Federal executive authority that exercises legal regulation of health care shall establish procedure for using methods of diagnostics, treatment and medications referred to in Paragraphs 2 and 3 of this Article, as well as immunobiological drugs and disinfectants, including those used abroad.*

**Decree of the Ministry of Health and Social Development of the Russian Federation # 494 “On procedures for using life-saving medications for patients” of 9 August 2005**

*(3). Should the need arise for individual use of a life-saving medication that is not registered in the Russian Federation, the council of the federal specialized medical institution shall decide on prescribing this medication. This decision shall be duly recorded and signed by the head doctor or director of the federal specialized medical institution.*

On 27 January 2011, in his letter on behalf of Kaliningrad Region Ministry of Health (office number 172) Medical Director of Regional State Special Health Care Provider “Regional Narcological Hospital” refused prescribing drug addiction treatment with substitution therapy to the applicant. To justify this refusal the letter quoted the ban on treating drug addiction with methadone and buprenorphine in the Russian Federation in accordance with the Law # 3-FZ of 8 January 1998 “On Narcotic Drugs and Psychotropic Substances”.

**Federal Law “On Narcotic Drugs and Psychotropic Substances” (adopted 8 January 1998)**

*Article 14 § 1 – Trafficking/ distribution of narcotic drugs and psychotropic substances included in Schedule I shall be allowed exclusively for the purpose of research, forensic tests and operational-search activities.*

*Article 31 § 6 – Treatment of drug addiction with narcotic drugs and psychotropic substances included in Schedule I shall be prohibited in the Russian Federation.*

**Decree by the Russian Federation Government # 681 “On Approving the Russian Federation’s List of Controlled Narcotic Drugs, Psychotropic Substances and Their Precursors” of 30 June 1998**

*Schedule I includes methadone*

*Schedule II includes buprenorphine*

**14.8 Appeal against the refusal of the Ministry of Health Care at District Court**

On 27 April 2011 the applicant went to Leningrad District Court of Kaliningrad City to appeal the actions of the Ministry of Health as those that violate her right to freedom from abuse, freedom from discrimination, right to private life, right to health and as those contrary to the Constitution and international treaties of the Russian Federation. In particular, the applicant indicated that Kaliningrad Region Ministry of Health was bound to be guided by Articles 15 and 17 of the Russian Federation Constitution and not to use provisions of the Law “On Narcotic Drugs and Psychotropic Substances” that are contrary to the Russian Federation Constitution and international treaties of the Russian Federation. The Ministry was bound to proceed from the rule under Article 18 of the Russian Federation Constitution and to take into account that the meaning, content and application of laws as well as the activities of the legislative and executive branches are determined by human and civil rights and freedoms that have direct effect in the Russian Federation.

On 27 May 2011 Leningrad District Court of the Kaliningrad City ruled that appeal by Irina Nikolaevna Abdysheva to contest actions by Kaliningrad Region Ministry of Health shall be dismissed. In court the respondent party did not contest facts that described the nature of the applicant’s disease, her sufferings and other effects on her life and health related to unavailability of effective drug addiction treatment (opioid substitution therapy). The Court also expressed no doubts as to their trustworthiness. To justify its decision the District Court referred to the ban on using methadone and buprenorphine to treat drug addiction in the Russian Federation under the Law #3-FZ “On Narcotic Drugs and Psychotropic Substances” of 8 January 1998 and to the exclusion of substitution therapy from the list of methods of treating drug addiction in Russia.

**Federal Law “On Narcotic Drugs and Psychotropic Substances” (adopted 8 January 1998)**

*Article 55 § 4 – To diagnose and treat drug addiction methods and means shall be used that are approved by federal health care executive authority [Ministry of Health and Social Development of Russia].*

**Decree by the Ministry of Health of Russia #140 of 28 April 1998 approves standards (model protocols) for diagnostics and treatment of drug dependent patients.**

*Substitution therapy is not included in the list of methods eligible for treating opioid dependence.*

Additionally, the Court indicated that medical use of methadone and buprenorphine is in line with the Single Convention on Narcotic Drugs of 1961

Quote from the Court's ruling:

*“By implication of Article 2 § 5 subparagraphs “a” and “b” and Article 4 § subparagraph “a” of the Single Convention on Narcotic Drugs of 1961 (that took effect in Russia on 3 July 1996), in accordance with the conventions the Russian Federation is signatory to, the country has the right to adopt within its own territory special measures of control, which in its opinion are necessary towards any narcotic drug in Schedule I on this Convention having regard to the particularly dangerous properties of a drug so included, as well as if the prevailing conditions in the country render it the most appropriate means of protecting the public health and welfare, to take legislative and administrative measures to carry out the provisions of this Convention. This convention includes narcotic drug methadone in Schedule I”*

#### 14.9 *Appeal to Kaliningrad Regional Court against the District Court ruling*

On 10 June 2011 the applicant appealed to Kaliningrad Regional Court to contest the ruling of Leningrad District Court of Kaliningrad City. In her appeal the applicant indicated that the District Court violated her rights as it did not apply provisions of the Russian Federation Constitution and international treaties of the Russian Federation.

On 3 August 2011 Kaliningrad Regional Court made a cassational ruling to leave the District Court decision unchanged and to dismiss cassational appeal. The Regional Court indicated that the use of methadone and buprenorphine is legally prohibited in Russia, which is in line with the Single Convention on Narcotic Drugs of 1961.

14.10 *The list of sources of applicable domestic law and international treaties is provided in I.N. Abdysheva's application to Leningrad District Court of Kaliningrad City (enclosed)*

### **III. Exposé de la ou des violation(s) de la Convention et/ou des Protocoles alléguée(s), ainsi que des arguments à l'appui Statements of alleged violation(s) of the Convention and/or Protocols and of relevant arguments**

#### **ИЗЛОЖЕНИЕ ИМЕВШЕГО(ИХ) МЕСТО, ПО МНЕНИЮ ЗАЯВИТЕЛЯ, НАРУШЕНИЯ(ИЙ) КОНВЕНЦИИ И/ИЛИ ПРОТОКОЛОВ К НЕЙ И ПОДТВЕРЖДАЮЩИХ АРГУМЕНТОВ**

(Voir § 19 (c) de la notice)

(See § 19 (c) of the Notes)

(См. § 19 (в) Пояснительной записки)

15.1 The use of methadone and buprenorphine to treat drug addiction is prohibited in Russia by Federal law. In principle, the issue of the actions necessary to ensure the supremacy of law or to exercise constitutional rights remains at the discretion of national authorities. However, implementation of these actions should be in line with obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention). A possibility should also exist for the Convention bodies to inspect these actions. A different understanding may potentially lead to deviation from the obligation of the Court [European Court of Human Rights], that under Article 19 of the Convention was established “to ensure the observance of the engagements undertaken by the High Contracting Parties...” (*Open Door and Dublin Well Woman v. Ireland*. [Plenary]. nos 14234/88; 14235/88. §69. ECHR, 1992)

#### **Alleged violation of Article 3 of the Convention**

15.2 The applicant alleges that her right not to be subjected to torture, inhuman or degrading treatment or punishment was violated as a result of the Russian Federation authorities' promoting unavailability of opioid substitution therapy with the use of methadone and buprenorphine to treat drug addiction as well as promoting intolerance of people suffering from drug addiction.

15.3 In accordance with the practice of the European Court of Human Rights as well as that of UN bodies to protect human rights, the following principles applicable to assessment of the circumstances of this case in view of Article 3 of the Convention can be presented.

- 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 is relative, it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (*Kafkaris v. Cyprus* [GC], no. 21906/04, § 95, ECHR 2008).
- Distinction between “torture” and “inhuman or degrading treatment” lies in the special stigma to deliberate inhuman treatment causing very serious and cruel suffering attached to “torture” (*Ireland v. the United Kingdom*, 18 January 1978, § 67, Series A no. 25).
- Where there are no signs of torture, treatment can be considered to be “inhuman” if it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering (*A. and Others v. the United Kingdom* [GC], no. 3455/05, §127 and 163, 19 February 2009).
- Treatment can be deemed “degrading” because it was such as to arouse in the victim the feelings of fear, anguish and inferiority capable of humiliating and debasing them (*Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI).
- To qualify treatment as ill-treatment it should be regarded whether its object is to humiliate and debase the person concerned and to what extent under certain circumstances this treatment adversely affected his or her personality in a manner incompatible with Article 3 of the Convention. However the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In order for a treatment to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment (*Ramirez Sanchez v. France* [GC], no. 59450/00, § 118-119, ECHR 2006-IX).
- UN Special Rapporteur on torture indicates that “there can be no doubts that withdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment” (Human Rights Council: Report of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment, Manfred Nowak. 14 January 2009. A/HRC/10/44. § 57).
- In accordance with the practice of the Committee Against Torture, the victim does not have to be under immediate control of public authorities or their representatives (e.g. in prison) or to directly interact with public authorities for treatment to be deemed as that contrary to Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is sufficient for cruel treatment to be committed with the consent or acquiescence of public authorities (*Hajrizi Dzemajl et.al v. Yugoslavia*, No. 161/2000).
- Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Observance of this prohibition is guaranteed irrespective of the victim's conduct (*Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1853, §§ 73-74).
- Caused by the difficulties in obtaining medication, deterioration in the existing mental illness and associated sufferings could, in principle, fall within the scope of prohibition under Article 3 of the Convention. (*Bensaid v. the United Kingdom*, no. 44599/98, §37. ECHR 2001-I).
- The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3 of the Convention, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible (*Pretty v. the United Kingdom*, 2346/02, § 52, ECHR 2002-III; *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

15.4 It is obvious from the circumstances of the applicant’s life that none of the methods of drug addiction treatment practiced in Russia had any positive effect on her.

In connection to the barriers to effective treatment – opioid substitution (maintenance) therapy with the use of methadone or buprenorphine – she has been constantly experiencing physical and moral sufferings. The applicant cannot do without opiates. As early as in 1989 her medical chart stated that without drugs she experiences “nausea, vomiting, pains in arms and legs, shivering, diarrhoea and insomnia”. Effectively for over 20 years she has been living from one withdrawal to another. Psychologically, withdrawal causes constant anxiety, fear, and discomfort irrespective of the period of time that elapsed since the previous withdrawal.

The applicant constantly experiences fear, humiliation and despair caused by unavailability of the aforementioned drug addiction treatment and the state’s intolerance of people suffering from drug addiction.

Because of her disease, the applicant has to obtain and use illicit drugs on a regular basis. Thus, she finds herself at constant risk of being held liable under criminal or administrative law. Her constant fear of detention by law-

enforcement agencies, her need for money to obtain drugs and lack of opportunity to get employed put her in a position of constant despair and hopelessness.

15.5 Paragraphs 23 and 48 of the “Strategy of the Russian Federation’s National Antidrug Policy until 2020” approved by the Presidential Decree #690 of 9 June 2010 declare the need for building public intolerance to drug use. Paragraph 48 of this Strategy also equates needle and syringe exchange programs that aim to protect drug users’ health and to prevent infectious diseases with promotion of drugs. According to Russia’s Minister of Health and Social Development, “distribution of sterile needles and syringes is stimulation of public tolerance of drug addicted persons and violates the Russian Federation Criminal Code” (“Sostoyanie i usovershenstvovanie narkologicheskoy sluzhby v Rossii”. Summary of Minister T. Golikova’s presentation on the state and improvement of Russia’s narcological service at the conference “Narcology 2010”, Moscow, 2010). Russia’s Chief Narcologist Officer states the need to build up “social pressure” towards drug users as a means of preventing and combating drug addiction (A. Kurskaya (16 May 2011) “Sotsialnyi pressing protiv narkomanii”. RIA Novosti ). Scientific discourse on substitution therapy in Russia is repressed by law enforcement means (Parfitt, T. (2006). “*Vladimir Mendeleevich: fighting for drug substitution treatment*”. The Lancet, Volume 368, Issue 9532, Page 279).

The applicant is aware that the state views her as a person who does not deserve tolerance since she is unable to terminate drug use; this also puts the applicant in a constant position of profound humiliation, anguish and powerlessness.

15.6 There is no doubt that severe pain, physical and moral sufferings, despair and humiliation the applicant experiences as a consequence of unavailability of opioid substitution (maintenance) therapy in their intensity and duration (over 20 years) fall under the signs of ill-treatment. HIV prevention programs are inaccessible for the applicant as a drug user. This and unavailability of effective drug addiction treatment led to her contracting HIV and hepatitis as she used non-sterile injection equipment. Deprived of liberty as a punishment for using drugs, when in prison HIV-infected applicant contracted tuberculosis. Currently her feelings of fear, inferiority and humiliation are exacerbated by the permanent fear of death from severe diseases (HIV, hepatitis C and tuberculosis). Treatment of these diseases is substantially complicated with the lack of effective treatment for drug addiction.

15.7 Drug addiction, especially opiate dependence, is chronic in its nature and is marked with relapses (Volkow, N.D., et al. (2001). Journal of Neuroscience 21, 9414-9418). Russia officially recognizes that dependence syndrome is present even with lengthy remissions and manifests itself in a strong, at times overwhelming desire for substance use (Decree by the RF Ministry of Health of 22.10.2003 #500 “On approving the protocols for managing patients and drug rehabilitation (Z50.3)”). The state controls every aspect of drug addiction as a chronic disease and, effectively, the entirety of a drug dependent’s life. Non-medical use of drugs is prohibited and is punishable by an administrative arrest for a term of up to 15 days (Article 6.9 of the Russian Federation Code of Administrative Offences). Purchase and possession of drugs with no intent of drug dealing (for personal use) is prohibited and punishable with deprivation of liberty for a term of up to 3 years (Article 228 of the Russian Federation Criminal Code). Drug addicted patients can only be treated in health care providers of public and municipal health care systems (Article 55 § 2 of the Federal Law “On Narcotic Drugs and Psychotropic Substances”). Drug addiction treatment uses only means and methods approved by the Ministry of Health (Article 55 § 4 of the Federal Law “On Narcotic Drugs and Psychotropic Substances”); use of substitution therapy in the Russian Federation is prohibited (Article 31 § 6 of the Federal Law “On Narcotic Drugs and Psychotropic Substances”). Needle and syringe exchange programs do not receive state support and are formally criminalized (Article 230 of the Russian Federation Criminal Code), since they require endorsement and the Ministry of Health and the Federal Drug Control Service have not yet developed the procedure. The state’s official policy is based on building public intolerance of non-medical use of drugs and of drug addicted persons. In this environment created by the state, a drug addicted person has to either conquer their chronic disease or, putting their liberty, health and life at risk, use illicit drugs. At the same time, every negative aspect of drug addiction is exacerbated by the official drug policy, which leads to addicted persons to become a target for law enforcement repressions, find themselves in prison or contract dangerous diseases and die.

15.8 Russian Federation authorities are aware of the poor quality of services provided by the governmental system for treating drug addiction. Russian experts estimate that over 90% patients resume using illicit drugs within a year after completing drug addiction treatment. On average, a drug addicted patient is admitted to hospital 5 to 6



times a year (Prof. T.V. Klemenko. “O gosudarstvennoy antinarkoticheskoy strategii Rossiyskoy Federatsii”. Moscow, 2009. <http://stratgap.ru>).

15.9 Information on the effectiveness of opioid substitution (maintenance) therapy is available from UN agencies and is known to the Russian Federation authorities.

15.10 In the World Health Organization’s documents substitution (maintenance) therapy method is referred to as “opioid agonist maintenance treatment”. It was recognized as the most effective of all considered methods of psychosocially assisted pharmacological treatment of opioid dependence and is defined as “the administration of thoroughly evaluated opioid agonists, by accredited professionals, in the framework of recognized medical practice, to people with opioid dependence, for achieving defined treatment aims. Both methadone and buprenorphine are sufficiently long acting to be taken once daily under supervision, if necessary. When taken on a daily basis they do not produce the cycles of intoxication and withdrawal seen with shorter acting opioids, such as heroin... Methadone and buprenorphine have a strong evidence base for their use, and have been placed on the WHO model list of essential medicines.” (“Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence”, WHO, 2009. p. x).

“Oral methadone liquid and sublingual buprenorphine tablets are the medications most widely used for opioid agonist maintenance treatment” (ibid).

Compared to detoxification or no treatment, methadone maintenance treatment... significantly reduces opioid and other drug use, criminal activity, HIV risk behaviours and transmission, opioid overdose and all-cause mortality; it also helps to retain people in treatment (ibid).

“To improve compliance, directly observed treatment of HIV and TB should be integrated with opioid agonist maintenance treatment, and provided in the same location” (ibid).

“Opioid agonist maintenance treatment is indicated for all patients who are opioid dependent and are able to give informed consent, and for whom there are no specific contraindications” (ibid, p. 29).

15.11 “Substitution maintenance therapy of opioid dependence is an important component of community-based approaches in that the treatment can be provided on an out-patient basis, achieving high rates of retention in treatment and increasing the time and opportunity for individuals to tackle major health, psychological, family, housing, employment, financial and legal issues while in contact with treatment services” (WHO/UNODC/UNAIDS. *Position paper Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention*. 2004).

15.12 Maintenance therapy was recommended by the UN General Assembly as an effective means of preventing HIV-infection among injecting drug users (Political Declaration (Para 20) and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, adopted by the High Level Segment of the Commission on Narcotic Drugs, March 2009, adopted by the UN General Assembly’s Resolution 64/182 of 18 December 2009).

15.13 On 20 May 2011 Committee on Economic, Social and Cultural Rights stated its continued concern “about the continued ban on the medical use of methadone and buprenorphine for treatment of drug dependence” and strongly recommended the Russian Federation “provide clear legal grounds and other support for... the opioid substitution therapy (OST) with the use of methadone and buprenorphine” (Committee on Economic, Social and Cultural Rights: Concluding Observations on Russia. § 29. 20 May 2011. E/C.12/RUS/CO/5).

15.15 In this connection, legislative ban on the use of methadone and buprenorphine for treatment of opiate dependence is a deliberate act of Russian Federation public authorities. It aims to create barriers for a considerable part of the country’s population to effective treatment of the disease and to condemn this population to pain, sufferings and humiliations, in order to force them into terminating drug use by will power, as well as to achieve an educational effect on the rest of the population to prevent drug use. The ban on substitution therapy increases the sufferings of drug dependent persons. Legislative ban on substitution therapy is a measure for which authorities are directly responsible.

15.16 At the same time drug addiction in the Russian Federation is recognized as a chronic disease, when the dependence syndrome is not wholly reduced even with lengthy remissions and is characterized with a strong, sometimes overwhelming need to take a psychoactive substance (Decree by the RF Ministry of Health#500 of 22.10.2003 on approving the protocols for managing patients and drug rehabilitation (Z50.3)). Chronic nature of drug addiction is also recognized by WHO (WHO, UNODC (2008). “*Principles of Drug Dependence Treatment*”. Discussion Paper. Page 1). Many dependent users are not capable of terminating drug use at once, or resume using drugs even after lengthy remissions. In many cases drug use is a symptom of a chronic disease, similar to recurrent symptoms in patients with asthma, diabetes or high blood pressure (US National Institute on Drug Abuse (2011). Info Facts: Understanding Drug Abuse and Addiction).

15.17 However, as the applicant’s case and many other similar cases show, the system of treatment of drug dependent persons in Russia is based on the policy that is not consistent with the chronic nature of drug dependence disease. Patients are often exposed to cruel, inhuman or degrading treatment and punishment (Human Rights Watch (2007). *Rehabilitation Required. Russia’s Human Rights Obligation to Provide Evidence-based Drug Dependence Treatment*. New York). Drug dependent persons are the only patient category in Russia for whom punishment and humiliation is used as prevention and treatment.

15.18 Discrimination is manifested when States without an objective or reasonable justification fail to treat differently persons whose situations are significantly different (*Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

15.19 State formally recognizes a chronic nature of opiate dependence. State is also aware that the approved methods do not lead to complete termination of drug use in over 90% patients. However, the state treats persons suffering from opiate dependence differently from persons with chronic diseases that are prescribed maintenance therapy, for example diabetes patients that are prescribed insulin. This justifies the conclusion that legislative prohibition of access to opioid substitution (maintenance) therapy with the use of methadone or buprenorphine is based on discrimination.

#### **Alleged violation of Article 8 of the Convention**

15.20 The applicant alleges that by refusing her access to opioid substitution therapy with the use of methadone or buprenorphine Russia’s authorities violated her right to respect for her private and family life.

15.21 There is no exhaustive definition of the notion of “private life” (*Niemietz v. Germany*, 16 December 1992, no. 13710/88, § 29), but it is a **broad term** (*Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I; *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III), which covers **physical and moral integrity** of the person (*X and Y v. the Netherlands*, 26 March 1985, A N 91, § 22), including **medical services and mental examinations** (*Glass v. the United Kingdom*, no. 61827/00, §§ 70-72, ECHR 2004-II; *Y.F. v. Turkey*, no. 24209/94, § 33, ECHR 2003-IX; *Matter v. Slovakia*, no. 31534/96, § 64, 5 July 1999; *Worwa v. Poland*, no. 26624/95, § 80, ECHR 2003-X (excerpts), **mental health** (*Bensaid v. the United Kingdom* no. 44599/98, § 47, ECHR 2001-I), as well as **right to personal development** and right to establish and develop **relationships with other human beings** and the outside world (*Friedl v. Austria*, 31 January 1995, A N 305-B, Commission conclusion, § 45) and **right to self-determination** and personal autonomy (*Pretty v. the United Kingdom*, no. 2346/02, §§ 61 and 67, ECHR 2002-III). The treatment that is not sufficiently cruel to be covered under Article 3 can at the same time violate Article 8 in the aspect of private life when it entails sufficiently adverse effects for the person’s physical and moral integrity (*Costello-Roberts v. the United Kingdom*, 25 March 1993, A N 247-C, § 36).

15.22 As it is obvious from the circumstances of the applicant’s life, *barriers to access to effective treatment for drug dependence adversely affect her private life*. The absence of access to effective treatment of drug dependence entails instability of her lifestyle that is related to the use of illicit drugs. She has no family, children, permanent job, housing or opportunity of steady income and means of subsistence. Because of the need to purchase illicit drugs and to find money for this purpose, the applicant has no time for any family, housing, legal, financial or other issues of a person’s private life. Her entire life is focused on illicit drugs. Absence of access to effective treatment for drug dependence hinders the applicant’s opportunities to achieve mental stability and to lead a full-fledged life, exercising her rights to self-determination and personal development.

15.23 WHO indicates that “Compared to detoxification or no treatment, methadone maintenance treatment... significantly reduces opioid and other drug use, criminal activity, HIV risk behaviours and transmission, opioid overdose and all-cause mortality; it also helps to retain people in treatment (Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence”, WHO, 2009. p. x).

15.24 WHO, UNODC and the Joint United Nations Programme on HIV/ AIDS indicate that “Substitution maintenance therapy of opioid dependence is an important component of community-based approaches in that the treatment can be provided on an out-patient basis, achieving high rates of retention in treatment and increasing the time and opportunity for individuals to tackle major health, psychological, family, housing, employment, financial and legal issues while in contact with treatment services” (WHO/UNODC/UNAIDS position paper Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention, 2004).

### **Alleged violation of Article 14 of the Convention taken in conjunction with Articles 3 and 8 of the Convention.**

15.25 The applicant alleges that the prohibition of substitution therapy with the use of methadone and buprenorphine is not a reasonable, justified and necessary measure in a free democratic society contrary to Article 14 of the Convention taken in the conjunction with Articles 3 and 8 of the Convention.

15.26 Under Article 14 of the Convention “*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”.

15.27 Practice of the European Court allows identifying the following aspects to be considered when deciding on the presence of discrimination signs in violations:

- Differences, based on the health status should be covered by the term “other status” in Article 14 of the Convention (*Kiyutin v Russia* [First Section]. No 2700/10. §57. ECHR, 2011).
- The issue is whether “different treatment based on characteristics which are personal in the sense that they are innate or inherent is the object of assessment with due consideration of circumstances of each case and taking into account that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective” (*Artico v. Italy*, 13 May 1980, § 33, Series A no. 37; and *Cudak v. Lithuania* [GC], no. 15869/02, § 36, 23 March 2010; *Clift v. the UK*, no. 7205/07, 13 July 2010, § 59).
- Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (*Zarb Adami v. Malta*, no 17209/02, 2006, § 42; *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I; *Petrovic v. Austria*, 27 March 1998, § 22, *Reports* 1998-II).
- Discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (*Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV).
- A difference of treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (*Clift v. the United Kingdom*, no. 7205/07, §73, 13 July 2010).
- The right to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification. The prohibition of discrimination is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different (*Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

15.28 Opiate addiction with opiate dependence syndrome is recognized as a disease under the Russian law and internationally (Decree by the RF Ministry of Health #500 of 22.10.2003 on approving the protocols for managing patients and ‘drug rehabilitation (Z50.3)’; WHO: International Classification of Diseases and Related Health Problems (10th edition) www.who.int). Health status is “other status” for discrimination purposes (*Kiyutin v Russia*. §57).

15.29 Impeding access to opioid substitution (maintenance) therapy with the use of methadone or buprenorphine infringe rights, guaranteed by Articles 3 and 8 of the Convention. Thus raising the issue of discrimination in the enjoyment of these rights is justifiable.

15.30 Opiate addiction has a chronic nature (Decree by the RF Ministry of Health of #500 22.10.2003 on approving the protocols for managing patients and 'drug rehabilitation (Z50.3)'; WHO: International Classification of Diseases and Related Health Problems (10th edition) www.who.int), similar to other chronic diseases, such as Type 2 diabetes, cancer and heart disease (National Institute of Drug Addiction Info Facts: Understanding Drug Abuse and Addiction. USA, 2011).

15.31 Establishing a legislative barrier to prescribing maintenance therapy for persons suffering from opiate addiction, the State treats these persons differently from other persons with chronic diseases that are prescribed maintenance, such as diabetes patients that are prescribed insulin.

15.32 A difference of treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (*Clift v. the United Kingdom*, no. 7205/07, §73, 13 July 2010).

15.33 Prohibition of the use of methadone and buprenorphine to treat drug addiction is established by the law "On Narcotic Drugs and Psychotropic Substances" that reads in its preamble that "*this federal law establishes legal foundation of the state policy on trafficking and distribution of narcotic drugs, psychotropic substances and their precursors, as well as on combating their illegal trafficking in order to protect citizens' health and state and public security*".

15.34 In order to achieve the established goals, with regard to the treatment of drug addiction, the state chose a method of prohibition of use of methadone and buprenorphine for drug treatment (Article 31 of the Law "On Narcotic Drugs and Psychotropic Substances"). This impedes the use of evidence-based effective method of treating drug addiction which has been recommended by leading international organizations and is in line with human rights – opioid substitution (maintenance) therapy with the use of methadone and buprenorphine.

15.35 It is necessary to establish whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be realized.

15.36 An important note is that with this ineffective system of drug addiction treatment in the Russian Federation, prevalence of socially important diseases (HIV/ AIDS, hepatitis, tuberculosis) and mortality among drug users are high and rising:

- Estimated number of people using illicit drugs in Russia is 5 millions (interview with the chief of Federal Drug Control Service (4 February 2010). "Rossiyskaya Gazeta", federal issue #5101 (22)).
- Estimated number of people illegally using opiates in Russia is 1.7 millions (UN Office on Drugs and Crime (2011). World Drug Report. Vienna).
- According to data, by the end of 2010, 547,000 persons were officially registered as drug users, whereof about 72% were injecting drug users (*V. Kirzhanova et al. (2011). "Chislo zabolevaniy narkologicheskimi rasstroistvami v Rossiyskoy Federatsii". Osnovnye pokazateli deyatelnosti narkologicheskoy sluzhby v 2010 godu. Natsionalnyi nauchnyi tsentr narkologii. Moskva*)
- Midpoint HIV prevalence among injecting drug users is 37.2% (UNODC (2009). World Drug Report. Vienna. p. 57), in some regions HIV prevalence in this population reaches 75% (*Federal Service on Customers' Rights Protection and Human Well-Being Surveillance (2010) «National Report of the Russian Federation on Progress of Implementation of Declaration of Commitment on HIV/ AIDS, Adopted at UN General Assembly's 26<sup>th</sup> Special Session, June 2001. Report Period: January 2008 – December 2009*).
- From 1987 to 2008 about 80% of HIV cases were related to injecting drug use (Federal'nyi nauchno-metodicheskiy tsentr po profilaktike i bor'be so SPIDom v Rossiyskoy Federatsii (2009). Informatsionnyi biulleten' # 33, Moscow p. 13.)
- Using drugs with non-sterile equipment was reported as a major risk of infection in 59.2% HIV cases detected in 2010 (Federal'nyi nauchno-metodicheskiy tsentr po profilaktike i bor'be so SPIDom v Rossiyskoy Federatsii (2010). Spravka VICH-infektsia v Rossiyskoy Federatsii v 2010 g.).

- About 11% of people living with HIV and aware of their diagnosis are in prison (A.Kuznetsova, Medical Department of the Russian Federation Federal Service of Execution of Sentences. Press-conference materials. Moscow, 14 January 2009).
- The last four years were marked with a steady and fast increase in new detected HIV cases among convicts, from 1,194.5 per 100,000 of examined convicts in 2007 to 1,638.8 in 2008 and to 1,712.6 in 2009 (Federal'nyi nauchno-metodicheskiy tsentr po profilaktike i bor'be so SPIDom v Rossiyskoy Federatsii (2010). Informatsionnyi biulleten' #34, Moscow).
- In some cities up to 90% of injecting drug users are infected with hepatitis C (Stellit, (2010). Survey among the "street population" of intravenous drug users, UN Office on Drugs and Crime project).
- By the end of 2009 262,718 patients with active tuberculosis were registered in RF tuberculosis healthcare facilities, whereof 117,227 were new cases (*Federal State Institution Central Research Institute for Organization and Informatization of Health Care (2010), data Tuberculosis Epidemic in Russian Federation as on 31 December 2009*). Of all patients with active tuberculosis, 16% were in facilities of Federal Service for Execution of Sentences (ibid.).
- According to WHO data, the Russian Federation became one of the three world leaders in terms of multi-drug tuberculosis incidence (MDR TB): in 2007 43,000 cases were documented (WHO (2010) Multidrug and extensively drug-resistant TB (M/XDR-TB): 2010 global report on surveillance and response). In 2009 MDR TB prevalence in Russia saw a 10.2% increase.
- Progressing tuberculosis became an immediate mortality cause in 66.5% cases among deceased patients with HIV (Russian Health Care Foundation (2010). Round-table about experience of interaction between regional tuberculosis services and AIDS Centres to bring to testing patients with tuberculosis and HIV co-infection).
- About 75% of men and 54% of women living with HIV and TB contracted HIV through injecting drug use (O. Frolova (2009). Presentation on epidemiology of tuberculosis and HIV co-infection. I.M. Sechenov First Moscow Medical State University).
- Russia has the second highest prison population rate per 100,000 of national population after the USA. Annually 850,000 to a million convicts are in Russia's prisons (Walmsley, R. (2009). World Prison Population List, 8<sup>th</sup> ed by, International Centre for Prison Studies).
- Research shows that up to 65% of drug users have liberty deprivation history (Sarang, A., et al. (2006). Drug injecting and syringe use in the HIV risk environment of Russian penitentiary institutions. *Addiction*, 101:1787–1796.).
- In Russia opiate overdose is one of the major mortality causes among injecting drug users (R.D. Iliuk, E.M. Krupitskiy, M.N. Torban, A.P. Kozlov, K.N. Blinnikova, L. Grow, T. Green, R. Heimer. Fenomenologiya peredozirovok u potrebiteley inyeksionnyh opiatnyh narkotikov. Obozrenie psikiatrii i meditsinskoy psihologii im. Bekhtereva #1 2009).
- According to the data of Joint United Nations Programme on HIV/ AIDS, Russia remains one of the few countries where AIDS epidemics continues to grow driven by injecting drug use (Global report: UNAIDS report on the global AIDS epidemic 2010 ). ISBN 978-92-9173-871-7).
- According to the Director of the Russian Federation Federal Drug Control Service, "One in eight prisoners has been convicted under drug-related legislation. The number of criminals among drug users that have been isolated from community on the court ruling more than doubled over the same period of time [since 2005] .... We institute criminal proceedings against 120,000 offenders annually. Among 2.5 million drug users in the country at least 150,000 are involved in drug dealing, primarily for the mundane purpose of making money for their drug ration by selling 5-6 doses to other drug users" (Records of the Russian Federation State Council Presidium Meeting on interventions to enhance countering drug use among youth". Irkutsk, 18 April 2011).

15.37 These processes take place with the ban of evidence-based method of drug dependence treatment. WHO, UNODC and the Joint United National Programme on HIV/ AIDS recommend opioid substitution (maintenance) therapy with the use of methadone and buprenorphine to treat drug addiction as an essential part of integrated interventions of HIV/ AIDS prevention, treatment and care among injecting drug users. Among interventions the success whereof depends on the availability of opioid substitution therapy, diagnostics and treatment of tuberculosis and viral hepatitis were also mentioned (WHO, UNODC, UNAIDS. Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users. 2009).

15.38 UN Office on Drugs and Crime recommends opioid substitution (maintenance) therapy as an effective means of crime prevention (Opioidnaya zamestitelnaya terapiya: obzor issledovaniy effektivnosti v snizhenii prestupnosti. UNODC. Moscow, 2007).

15.39 It is obvious that the ban on the use of methadone and buprenorphine and the entailed impeding the opportunity of applying evidence-based effective method of drug addiction treatment that was recommended by leading international organizations and is in line with human rights – opioid substitution (maintenance) therapy –

does not serve to achieve declared goals of protecting population's health, state and public security and, furthermore, runs contrary to them.

15.40 The existence of the European consensus can serve as an additional criterion in defining whether the respondent state was allowed a narrow or broad discretion in election of remedies (see, [First Section]. No 2700/10. §65, ECHR, 2011, *Dickson v. the United Kingdom* [GC], no. 44362/04, § 81, ECHR 2007-XIII, и *S.L. v. Austria*, no. 45330/99, § 31, ECHR 2003-I (extracts)). Where there is a common standard which the respondent State has failed to meet, this may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases (see, *Tănase v. Moldova* [GC], no. 7/08, § 176, ECHR 2010-..., and *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 85, 12 November 2008).

15.41 Opioid substitution therapy is available in all 27 EU member-states as well as in Croatia and Norway. About 670,000 Europeans receive opioid substitution treatment (European Monitoring Centre for Drugs and Drug Addiction: Annual Report 2010: Responding to the Drugs Problem. Lisbon, 2010). Of all 47 member states of the Council of Europe opioid substitution therapy is unavailable in Monaco, Russia and Turkey only ("*Opioidnaya zamestitelnaya terapiya: dostupnost' v mire*". Map set. UNODC. Moscow, 2010).

### **Alleged violation of Article 6 § 1 of the Convention**

15.42 The applicant believes that her right to a fair trial was violated by the Russian Federation as the national courts justified their decisions solely with the arguments of the respondent party (Kaliningrad Region Ministry of Health), while in their decisions courts did not assess numerous key arguments of the claimant party.

15.43 European Court reiterated that the proper administration of justice presumes that courts should adequately state the reasons on which their judgments are based. Article 6 § 1 obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. (*Kuznetsov and Others v. Russia*, no. 184/02, §83, 11 January 2007). The extent to which this duty to give reasons applies may vary according to the nature of the decision (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29). Even though a domestic court has a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions, an authority is obliged to justify its activities by giving reasons for its decisions (see *Suominen v. Finland*, no. 37801/97, § 36, 1 July 2003). A further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. (see *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001).

15.44 In her petition to Leningrad District Court of Kaliningrad City the applicant presented the following circumstances relevant to the case:

- That she suffers of opiate addiction with opiate dependence syndrome and numerous treatment attempts;
- That she suffers HIV/ AIDS, hepatitis C and that she had tuberculosis entailed by drug addiction;
- Presence of threat to life and health that flows from barriers to effective drug addiction treatment;
- Facts of numerous deprivations of liberty as a punishment for drug use;
- Fact of effects of barriers in drug addiction treatment on private life;
- Fact of the applicant suffering a severe pain, physical and moral sufferings in connection with barriers to drug addiction treatment over a long period of time;
- Fact of the applicant experiencing fear and humiliation over a long period of time, that flow from unavailability of effective drug addiction treatment;
- Fact of the OST as the most effective treatment being indicated to the applicant based on WHO documents and her health status;
- Fact of the applicant's consent for using substitution therapy treatment.

15.45 The respondent party (Kaliningrad Region Ministry of Health) did not contend these circumstances nor did the court question them.

15.46 The applicant indicated that the only formal barrier to prescribing substitution therapy with the use of methadone or buprenorphine is provisions of Articles 14 and 31 of the Law "On Narcotic Drugs and

Psychotropic Substances” as well as the unavailability of opioid substitution (maintenance) therapy in standards for diagnostics and treatment of drug dependent patients (Decree of the RF Ministry of Health #140 of 28 April 1998). Effects of the abovementioned regulative barriers should be assessed based on the requirements of mandatory regulations of Article 15 §§ 1 and 4 of RF Constitution, according to which *“the Russian Federation Constitution shall have supreme legal force and direct effect, and shall be applicable throughout the entire territory of the Russian Federation... If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.*

15.47 The Law “On Narcotic Drugs and Psychotropic Substances” that contains regulative barriers also contains a mandatory rule according to which “if an international treaty of the Russian Federation stipulates other rules than those stipulated by this Federal Law, the rules of the international treaty shall apply”. A similar mandatory rule is established in Article 5 § 2 of the Federal Law of the Russian Federation # 101-FZ of 15 July 1995 “On International Treaties of the Russian Federation”.

15.48 Further, with reference to numerous documents of UN General Assembly, UN specialized agencies and institutions, the following arguments were presented:

- Barriers to access to opioid substitution (maintenance) therapy with the use of methadone and buprenorphine is contrary to Article 12 of the International Covenant on Economic, Social and Cultural Rights as well as Article 41 of the Russian Federation Constitution.
- UN conventions on drugs do not exclude but imply opioid substitution (maintenance) for treating drug addiction.
- Provisions of UN conventions on drugs related to treatment of drug addiction must be explicitly interpreted in favour of the use of opioid substitution (maintenance) therapy to treat opioid dependence.
- International practice of applying UN conventions on drugs explicitly establishes agreement of participants related to their interpretation in favour of using opioid substitution (maintenance) therapy with the use of methadone and buprenorphine.

15.49 Also, with reference to the practice of the European Court of Human Rights, UN Committee Against Torture and documents of UN bodies and agencies the following arguments were presented:

- Barriers to access to effective means of treating opiate drug addiction – opioid substitution (maintenance) therapy with the use of methadone or buprenorphine – were established in violation of provisions of the Convention, UN Torture Convention as well as the International Covenant on Civil and Political Rights, and therefore they are contrary to Article 21 of the Russian Federation Constitution.
- Lack of access to opioid substitution (maintenance) therapy with the use of methadone or buprenorphine violates Article 8 of the Convention and therefore violates Article 23 of the Russian Federation Constitution.
- Lack of access to opioid substitution (maintenance) therapy to treat opiate drug addiction is a discriminatory measure and as such it is contrary to Article 14 of the Convention and Article 19 of the Russian Federation Constitution.

15.50 To justify its position, Kaliningrad Region Ministry of Health presented the sole argument that the use of methadone and buprenorphine in the Russian Federation is prohibited by federal law and that drug addiction treatment standards do not include substitution therapy method. Prohibition of the use of methadone and buprenorphine is entirely in line with the Single Convention on Narcotic Drugs of 1961.

15.51 Leningrad Court justified its judgment solely with the arguments presented by the respondent party. In its judgment Leningrad District Court did not assess any of the applicant’s arguments.

15.52 Furthermore, to justify its position in its judgment Leningrad Court referred to the provisions of the Single Convention on Narcotic Drugs of 1961, however the text of these provisions differs from that quoted in the court judgment. Verbatim the court judgment read: *“By implication of Article 2 § 5 subparagraphs “a” and “b” and Article 4 § subparagraph “a” of the Single Convention on Narcotic Drugs of 1961 (that took effect in Russia on 3 July 1996), in accordance with the conventions the Russian Federation is signatory to, the country has the right to adopt within its own territory special measures of control, which in its opinion are necessary towards any narcotic drug in Schedule I on this Convention having regard to the particularly dangerous properties of a drug so included, as well as if the*

*prevailing conditions in the country render it the most appropriate means of protecting the public health and welfare, to take legislative and administrative measures to carry out the provisions of this Convention. This convention includes narcotic drug methadone in Schedule I”*

15.53 However, the provisions of the Single Convention on Narcotic Drugs of 1961 the court referred to read different.

*Article 2. Substances under Control*

*Paragraph 5. The drugs in Schedule IV shall also be included in Schedule I and subject to all measures of control applicable to drugs in the latter Schedule, and in addition thereto:*

- a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and*
- b) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug **except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party.***

*Article 4. General Obligations*

*The parties shall take such legislative and administrative measures as may be necessary:*

- a) To give effect to and carry out the provisions of this Convention within their own territories;*
- b) To co-operate with other States in the execution of the provisions of this Convention; and*
- c) **Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.***

15.54 That means any **special measures of control** are possible solely in relation to narcotic drugs included to Schedule IV but not in Schedule I. Methadone is not included in Schedule IV. Furthermore, based on the preamble and provisions of Article 2 § 5 subparagraph “b” and Article 4 paragraph “c” of the Single Convention on Narcotic Drugs of 1961, the purpose of this Convention is to limit to solely medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and storage/ possession of narcotic drugs. In this connection, use of **any** narcotic drug for **medical purposes, including drug addiction treatment**, is entirely in line with the Single Convention on Narcotic Drugs of 1961.

15.55 The applicant pointed to all these circumstances in her appeal to Kaliningrad Regional Court. In accordance with the civil procedure law, the applicant presented numerous arguments to justify the following violations by the trial court:

- Misinterpretation of provisions on the UN Single Convention on Narcotic Drugs.
- Application of law that is not subject to application, namely prohibitive provisions of the Law “On Narcotic Drugs and Psychotropic Substances”.
- Failure to apply law to be applied – articles 15 and 18 of the Russian Federation Constitution.

15.56 However, appellate court in its judgment also failed to assess any of the applicant’s arguments and justified its dismissal of appeal with the same argument as Leningrad District Court of Kaliningrad City. In relation to other arguments, appellate court gave a brief opinion: “Other arguments of the appeal bear no legal import for the case and as such cannot revoke the judgment [of the trial court]”.

15.57 In these conditions trial cannot be deemed fair and in line with provisions under Article 6 § 1 of the Convention.

**Just satisfaction under Article 41 of the Convention.**

15.58 The applicant believes that even if the Russian Federation immediately eliminates conditions for violating her rights and prescribes her opioid substitution therapy, the applicant’s rights will be restored in part only.

15.59 Due to the absence of access to substitution therapy, the applicant has been experiencing pain, sufferings, humiliations, fear and impotence for over 20 years of her life. She had no opportunity to enjoy her right to private and family life, she contracted HIV, hepatitis and tuberculosis. The applicant’s life for over 20 years was focused solely on illicit drugs and due to this the Applicant spent about 16



years of her life in prison. The state's actions inflicted severe moral damage to the applicant. The applicant believes a compensation for non-pecuniary damage in the amount of 100,000 euros (EUR) will be a just satisfaction in her case.

**IV. Exposé relatif aux prescriptions de l'article 35 § 1 de la Convention**  
**Statement relative to article 35 § 1 of the Convention**  
**ЗАЯВЛЕНИЕ В СООТВЕТСТВИИ СО СТАТЬЕЙ 35 § 1 КОНВЕНЦИИ**

(Voir § 19 (d) de la notice. Donner pour chaque grief, et au besoin sur une feuille séparée, les renseignements demandés sous les points 16 à 18 ci-après)  
(See § 19 (d) of the Notes. If necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)  
(См. § 19 (г) Пояснительной записки. Если необходимо, укажите сведения, упомянутые в пунктах 16-18, на отдельном листе бумаги)

16. Décision interne définitive (date et nature de la décision, organe – judiciaire ou autre – l'ayant rendue)  
*Final decision (date, court or authority and nature of decision)*

*Окончательное внутреннее решение (дата и тип решения, орган – судебный или иной, - его вынесший)*

3 August 2011 – Appeal judgment by Kaliningrad Regional Court.

17. Autres décisions (énumérées dans l'ordre chronologique en indiquant, pour chaque décision, sa date, sa nature et l'organe – judiciaire ou autre – l'ayant rendue)  
*Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)*

*Другие решения (список в хронологическом порядке, даты и тип этих решений, орган – судебный или иной, - их принявший)*

27 January 2011 – Response from Kaliningrad Region Ministry of Health as to refusal to prescribe opioid substitution therapy to I.N. Abdysheva

27 May 2011 – Judgment by Leningrad District Court of Kaliningrad City to dismiss I.N Abdysheva's claim.

18. Dispos(i)ez-vous d'un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n'a-t-il pas été exercé?  
*Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.*  
*Располагаете ли Вы каким-либо средством защиты, к которому Вы не прибегли, или располагали ли Вы таким средством? Если да, то объясните, почему оно не было Вами использовано?*

The applicant has exhausted all domestic remedies.

**V. Exposé de l'objet de la requête**  
**Statement of the object of the application**  
**ИЗЛОЖЕНИЕ ПРЕДМЕТА ЖАЛОБЫ**

(Voir § 19 (e) de la notice)  
(See § 19 (e) of the Notes)  
(См. § 19 (д) Пояснительной записки)

19.

The applicant requests that Russian Federation's violation of her rights safeguarded by Article 3, 6, 8 and 14 of the Convention be recognized and demands that the Russian Federation restore her in her rights and award her a just satisfaction in the amount of 100,000 euros (EUR).

**VI. Autres instances internationales traitant ou ayant traité l'affaire**  
**Statement concerning other international proceedings**  
**ДРУГИЕ МЕЖДУНАРОДНЫЕ ИНСТАНЦИИ, ГДЕ РАССМАТРИВАЛОСЬ ИЛИ РАССМАТРИВАЕТСЯ ДЕЛО**

(Voir § 19 (f) de la notice)  
(See § 19 (f) of the Notes)  
(См. § 19 (е) Пояснительной записки)

20. Avez-vous soumis à une autre instance internationale d'enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.  
*Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.*  
*Подавали ли Вы жалобу, содержащую вышеизложенные претензии, на рассмотрение в другие международные инстанции? Если да, то предоставьте полную информацию по этому поводу.*

On 22 October 2010 the applicant submitted an individual application about violation of her right to health (Article 12 of the Convent on Economic, Social and Cultural Rights) to Anand Grover, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. To justify violation of her right to health the applicant referred to the facts and arguments, which in part are contained in this application. Since the Special Rapporteur's communication with Russian authorities is confidential, the applicant has no trustworthy knowledge of the steps taken in relation to her application.

## **VII. Pièces annexées**

**(pas d'originaux, uniquement des copies; prière de n'utiliser ni agrafe, ni adhésif, ni lien d'aucune sorte)**

### **List of documents**

**(no original documents, only photocopy; do not staple, tape or bind documents)**

### **СПИСОК ПРИЛОЖЕННЫХ ДОКУМЕНТОВ**

**(НЕ ПРИЛАГАЙТЕ ОРИГИНАЛЫ ДОКУМЕНТОВ – ПРИЛАГАЙТЕ ИСКЛЮЧИТЕЛЬНО ФОТОКОПИИ; НЕ СКРЕПЛЯЙТЕ, НЕ СКЛЕИВАЙТЕ И НЕ СШИВАЙТЕ ДОКУМЕНТЫ)**

(Voir § 19 (g) de la notice. Joindre copie de toutes les décisions mentionnées sous ch. IV et VI ci-dessus. Se procurer, au besoin, les copies nécessaires, et, en cas d'impossibilité, expliquer pourquoi celles-ci ne peuvent pas être obtenues. Ces documents ne vous seront pas retournés.)

*(See § 19 (g) of the Notes. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)*

*(См. § 19 (ж) Пояснительной записки. Приложите копии всех решений, упомянутых в Разделах IV и VI. Если у Вас нет копий, Вам следует их получить. Если Вы не можете их получить, то объясните причину. Полученные документы не будут Вам возвращены.)*

- 21.1 Letter from Kaliningrad Region Ministry of Health # 172 of 27 January 2011
- 21.2 Ruling by Leningrad District Court of Kaliningrad City of 27 May 2011
- 21.3 Journal of the proceedings of Leningrad District Court of 27 May 2011
- 21.4 Appeal ruling by Kaliningrad Regional Court of 3 August 2011
- 21.5 Abdysheva's application to Leningrad District Court of Kaliningrad City
- 21.6 Appeal petition to Kaliningrad Regional Court
- 21.7 Petition to Leningrad District Court of Kaliningrad Region
- 21.8 Medical chart of drug dependent out patient #364/14

**VIII. Déclaration et signature**  
***Declaration and signature***  
***ЗАЯВЛЕНИЕ И ПОДПИСЬ***

(Voir § 19 (h) de la notice)  
(See § 19 (h) of the Notes)  
(См. § 19 (з) Пояснительной записки)

Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.  
*I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.*  
*Настоящим, исходя из моих знаний и убеждений, заявляю, что все сведения, которые я указал(а) в формуляре, являются верными.*

Lieu  
*Place*  
*Место Toronto, Canada*

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Date  
*Date*  
*Дата 14 November 2011*

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(Signature du/de la requérant(e) ou du/de la représentant(e))  
(*Signature of the applicant or of the representative*)  
(Подпись заявителя или его представителя)

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