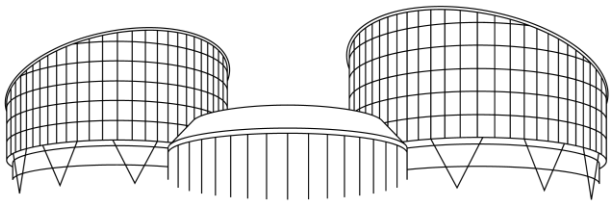

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ROMOKHOV v. RUSSIA

(Application no. 4532/04)

JUDGMENT

STRASBOURG

16 December 2010

FINAL

20/06/2011

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

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

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

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

Having deliberated in private on 25 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 4532/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Stanislav Fedorovich Romokhov ("the applicant"), on 5 January 2004.

2. The applicant, who had been granted legal aid, was initially represented by Mr A. Koss and subsequently by Ms E. Khramova, lawyers practising in Kaliningrad. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in inhuman conditions and had not been provided with requisite medical treatment while in detention, which had caused his blindness, in breach of Article 3 of the Convention.

4. On 28 May 2008 the President of the First Section decided to communicate the above mentioned complaints to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in the city of Kaliningrad, in the Kaliningrad Region.

A. Criminal proceedings against the applicant

1. The applicant's arrest

6. On 15 August 2002 the applicant and two other persons were arrested in Moscow on suspicion of drug trafficking during an undercover police operation.

7. According to the applicant, the police officers allegedly ill-treated him during the arrest, planted a sachet of drugs into his pocket, and took his money and car documents.

8. On 17 August 2002 the Ostankinskiy District Court of Moscow authorised the applicant's placement in custody. On 19 August 2002 the applicant lodged an appeal against that detention order but it was never examined.

9. On an unspecified date the investigating authorities allegedly seized the applicant's car.

2. Trial

10. On an unspecified date the applicant was charged with drug trafficking and the case was transferred to the Ostankinskiy District Court of Moscow for trial.

11. On 28 March 2003 the Ostankinskiy District Court found the applicant guilty of having acquired, transported and sold drugs in an organised criminal group on a particularly large scale. The court established that the applicant, his two co-accused and several other persons had organised a criminal group with a view to drug trafficking. The applicant had transported the drugs and had surveyed the sales. Before the court, he claimed that he had never sold drugs and that the undercover agents had planted them on him. The court dismissed the applicant's submissions, relying on the testimonies of his co-accused and the police officers, including anonymous witness A., and other physical evidence. It sentenced the applicant to nine years' imprisonment and a confiscation of property.

12. On 22 July 2003 the Moscow City Court upheld the judgment.

B. Conditions of the applicant's detention

1. The applicant's account

(a) Remand centre IZ-77/2 in Moscow

13. From 17 August 2002 to 2 April 2003 the applicant had been held in remand centre IZ-77/2 in Moscow.

14. For the first ten days the applicant was held in cell no. 157 where the conditions of detention were satisfactory.

15. On 28 August 2002 the applicant was transferred to cell no. 283 which was designed for six persons and had five or six bunks but accommodated eight inmates. The applicant was afforded less than one square metre of cell space. For six months he did not have daily walks. He was not provided with bedding. The lavatory was not separated from the living area and was two metres away from the dining table and one metre away from the bunks. The windows were covered with bars and metal shutters which limited access to natural light. In December 2002, while the outside temperature dropped to between -20º and -28ºC, the cell was not heated; the walls were covered with frost and the applicant had to sleep in his jacket. In November and December 2002 he did not have access to shower. The cell was full of smoke because all inmates smoked, the applicant being a non-smoker. The cell was infested with lice and cockroaches. The applicant's complaints to the administration were left without reply.

16. On an unspecified date after the trial the applicant was transferred to a cell for convicts where four to five detainees had to share one bunk and slept in shifts.

(b) Remand centre IZ-77/3 in Moscow

17. From 2 April to 16 August 2003 the applicant was held in remand centre IZ-77/3 in Moscow, firstly in cell no. 213 and later in cell no. 714.

18. Cell no. 213 was designed for 30 persons but housed over one hundred inmates. The detainees had to sleep in shifts. The applicant was not provided with bedding. The cell swarmed with lice, bugs and cockroaches but the administration did not provide disinfectants. The lights and the TV were always on. The cell had no ventilation and was filled with smoke. The applicant constantly suffered from hypertension and nose bleeding, developed dermatitis and lost over twenty kilograms in weight. As a result of the inflammation of his sciatic nerve and aggravation of radiculitis, his legs became numb, limiting his ability to move.

19. On an unspecified date the applicant was transferred to cell no. 714 in the medical wing of the remand centre where he was given anti-hypertensive medications and received anaesthetic injections to relieve him from pain.

(c) Remand centre IZ-67/1 in Smolensk

20. From 17 to 28 August 2003 the applicant was detained in remand centre IZ-67/1 in Smolensk.

21. The cell where the applicant was detained had three-tier bunks, two detainees sharing one bunk. No bedding was provided. The cell was smoky

and infested with insects. The lavatory was not separated from the living area.

(d) Hospital no. 1 of prison IK-8 in Kaliningrad

22. From 27 October 2004 to 16 February 2005 the applicant stayed in hospital no. 1 of prison IK-8 in Kaliningrad. He was not provided with bedding or any hygiene items. His cells swarmed with lice, bugs and cockroaches and the applicant developed dermatitis. The applicant was held together with Sh., suffering from schizophrenia and advanced tuberculosis and a HIV-positive detainee who had bleeding wounds on his body and used common tableware. He was also kept together with inmates having infectious hepatitis. The food and water were of bad quality and the applicant was deprived of a daily walk.

2. The Government's account

(a) Remand centre IZ-77/2 in Moscow

23. Referring to certificates issued by the head of remand centre IZ-77/2 and dated 21 and 29 July 2008, the Government stated that in 2002-2003 the maximum capacity of remand centre IZ-77/2 had been 2,110 persons. At the material time the remand centre had accommodated 3,194 detainees. The applicant had been detained in cell no. 150 measuring 57.9 square metres and cell no. 283 measuring 10.5 square metres.

24. With reference to the above certificates, the Government submitted that the applicant had at all times been provided with at least 4 square metres of cell space, a personal sleeping place and bedding. His cells had been sufficiently lit and ventilated and properly heated in winter. The metal shutters in all of them had been removed pursuant to an instruction of the Ministry of Justice of the Russian Federation of 26 November 2002. The cells had been permanently disinfected and the cell windows had been glazed in winter. The applicant had had weekly access to a shower and his bedding had been replaced accordingly.

25. The Government stated that it had been impossible to indicate the exact number of persons who had been held together with the applicant in his cells owing to the destruction of the logbook containing the headcount of detainees held in the remand centre (*книга количественной проверки лиц, содержащихся в следственном изоляторе*).

26. The Government also provided a barely legible copy of the applicant's cell record card (*камерная карточка*), according to which he had been provided with bedding and cutlery.

(b) Remand centre IZ-77/3 in Moscow

27. At the time of the applicant's detention in remand centre IZ-77/3 in Moscow, the centre's maximum capacity had been 1,250 inmates. The applicant had been held there in cells nos. 202, 213 and 704, measuring, respectively, 32.7 square metres, 28.5 square metres and 36.2 square metres.

28. With reference to certificates issued by the head of remand centre IZ-77/3 dated 22 and 31 July 2008 and the applicant's cell record card, the Government submitted that the applicant had been at all times provided with at least 4 square metres of cell space, a personal sleeping place and bedding. His cells had been sufficiently lit and ventilated and properly heated in winter. The metal shutters in all of them had been removed pursuant to an instruction of the Ministry of Justice of the Russian Federation of 26 November 2002. The cells had been permanently disinfected and the cell windows had been glazed in winter. The applicant had had weekly access to a shower and his bedding had been replaced accordingly.

29. The Government stated that it had been impossible to indicate the exact number of persons who had been held together with the applicant in his cells owing to destruction of the logbook containing the detainee headcount.

30. The Government enclosed copies of records of the destruction of documents from IZ-77/3 dated 20 September 2005 and 10 April 2006. According to the first record, on 20 September 2005 an official commission of remand prison IZ-77/3 had destroyed the following documents: lists of prisoners participating in the detention facility's household activities (*списки осужденных, используемых на хозяйственных работах*), daily orders concerning security and control (*суточные приказы по охране и надзору*), guard reports (*постовые ведомости*), check lists (*проверочные списки*), regulations on the structural subdivisions of certain internal affairs entities (*положения о структурных подразделениях органов внутренних дел*), and correspondence with various organisations. According to the report of 10 April 2006, on that date a commission consisting of officials of IZ-77/3 had destroyed the following documents: documentation concerning the facility's personnel drills (*документы учебных тренировок с личным составом*), records of planned and control searches (*акты плановых и контрольных обысков*), lists of prisoners participating in the detention facility's household activities, a plan of supervision of IZ-77/3 (*план надзора ИЗ-77/3*), correspondence with various organisations, and copies of orders given by the head of IZ-77/3.

(c) Remand centre IZ-67/1 in Smolensk

31. While the applicant had been detained in remand centre IZ-67/1 in Smolensk, the capacity of that detention facility had been 945 detainees and it had accommodated 894 inmates throughout 2003. In remand

centre IZ-67/1 the applicant had been detained in cell no.171 measuring 17.5 square metres.

32. The Government made further submissions concerning the material conditions of the applicant's detention in IZ-67/1 similar to their statements concerning remand centres IZ-77/2 and IZ-77/3 summarised above.

(d) Hospital no.1 of IK-8 in Kaliningrad

33. The Government made no submissions concerning hospital no. 1 of IK-8 in Kaliningrad.

C. Alleged defects in the applicant's medical treatment

34. In August 2004 the applicant allegedly asked for dental treatment and paid for it. After several consultations the head of the colony's hospital allegedly refused to continue the treatment, which caused the applicant physical and mental suffering because he was unable to eat.

35. On 11 August 2004 the applicant complained to the colony hospital about the rapid deterioration of his eyesight but was refused any treatment.

36. One month later, when the applicant was practically unable to move by himself, the administration authorised an ophthalmologist paid by the applicant's wife to examine the applicant. He was diagnosed with retinal detachment in both eyes and urgent surgery was recommended.

37. In October 2004 the applicant was transferred to hospital no. 1 of IK-8 in Kaliningrad.

38. It appears that despite the applicant's repeated requests he was not examined by any specialist until December 2004.

39. On 20 December 2004 an ophthalmologist examined the applicant and diagnosed him with total retinal detachment in both eyes.

40. On 22 December 2004 a medical panel established that the applicant's illness was incompatible with his continued detention. He was discharged from the hospital on 16 February 2005.

41. On 18 April 2005 the applicant was granted disability status in connection with his loss of sight.

42. By a decision of 13 May 2005, the Tsentralny District Court of Kaliningrad ordered the applicant's release from custody owing to health reasons. It appears that he was released on the same day.

D. Proceedings for compensation of damage caused by refusal of eye treatment

43. In March 2006 the applicant issued proceedings against colony IK-9, colony IK-8 and the Ministry of Finance, claiming compensation in the amount of 50,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of the refusal to provide him with medical treatment,

which had in turn caused him to lose his eyesight. It transpires that throughout the proceedings the applicant was represented by a lawyer that he had appointed.

44. By a judgment of 26 March 2007 the Tsentralny District Court of Kaliningrad granted the applicant's claims in part. The judgment, in so far as relevant, reads:

> "... It follows from the reply of the head of the medical unit of the Kaliningrad regional department of the Federal Service for the Execution of Sentences... dated 4 April 2005, [the applicant] had been under medical supervision in the medical unit of colony OM-216/9 from 10 September 2003. Upon admission he was examined by a medical panel which concluded that his state of health was satisfactory. Since autumn 2004 [the applicant] had started noticing a rapid deterioration of his eyesight. On 20 October 2004 he was examined by an ophthalmologist. The preliminary diagnosis was: "secondary retinal detachment in both eyes?" To confirm the diagnosis [the applicant] was admitted to hospital no.1 where he stayed from 1 December 2004 to 16 February 2005 and received an in-patient clinical and X-ray examination. The diagnosis was confirmed: "total retinal detachment in both eyes".
>
> ...
>
> Witness S. interviewed by the court submitted that she had examined [the applicant] on his wife's request in colony IK-9 on 20 October 2004 when she had diagnosed him with [retinal detachment in both eyes]. She had indicated that he needed an additional examination in a hospital.
>
> ...
>
> The medical expert panel in its report no. 98 established the following.
>
> The materials available [to the medical panel] do not enable it to establish the exact period of time when [the applicant] acquired the illness which had entailed declaring him disabled.
>
> However it is reasonable to assume that the illness (total retinal detachment in both eyes, in respect of which disability status was granted [to the applicant]) started developing on 15 June 2004 when [the applicant] first complained of periodic blinking of dark spots in his eyes and deterioration of his eyesight.
>
> After examining the case materials and the medical documents, the panel discovered grave defects in the diagnostics and medical treatment during [the applicant's] stay in hospital no.1:
>
> - in spite of the applicant's complaints of deterioration of his eyesight and the ophthalmologist's request for his additional examination in connection with the diagnosis of secondary retinal detachment in both eyes made on 27 October 2004, [the applicant] was not examined in due time. He was only examined on 20 December 2004 – that is, two months after his admission to the hospital, which had major implications and negative consequences for his eyesight.
>
> - At the examination in hospital after the diagnosis of "total retinal detachment in both eyes", [the applicant] did not undergo the ultrasound eye scanning ordered

> on 20 December 2004. The scanning was indispensable for establishing the origin of his illness, which could have been caused by a trauma, a tumour, myopia, or excessive physical effort.
>
> According to the conclusion of the special medical panel, [the applicant] suffers from total retinal detachment in both eyes which has caused total blindness. It is impossible to establish the exact reason of this condition owing, in particular, to the defects in [the applicant's] examination and treatment in hospital no.1.
>
> ...
>
> According to the clinical data available in [the applicant's] medical file, in 2000 he suffered from slight myopia in both eyes – 0.2 in the right eye and 0.1 in the left eye, corrigible to 1.0.
>
> Moreover, the development of the applicant's eye problems permits the expert panel to conclude that heightened tension was not the reason for him developing total two-sided retinal detachment.
>
> The [applicant's] illness, which entailed his disability, has a clear causal connection with the defects in his medical treatment.
>
> Despite the fact that the exact reason for [the applicant's illness] could not be identified, grave defects of examination and treatment took place. During the first examination by an ophthalmologist on 20 October 2004 the latter diagnosed [the applicant] with two-sided retinal detachment with a retained pink reflex of the pupil, which indicates that at that moment [the applicant] did not suffer from total retinal detachment and, if treated in due time, a positive outcome including partial preservation of eyesight could not have been excluded. At the examination on 20 December 2004 [the applicant] was already diagnosed with total two-sided retinal detachment.
>
> Hence, the delays in providing [the applicant] with qualified ophthalmologic surgery played a crucial rule in his becoming blind.
>
> Bearing in mind the above mentioned circumstances of the case, the court considers that grave defects in the applicant's examination and treatment while in detention, which had caused his blindness, caused him physical and mental suffering.
>
> Under those circumstances the court, taking into account the character of the mental and physical suffering sustained by [the applicant] as a result of his inadequate medical treatment during the service of his prison sentence, which had caused his blindness, considers it appropriate to award him 300,000 Roubles in respect of non-pecuniary damage against the Ministry of Finance of the Russian Federation."

45. By a special decision (*частное определение*) taken on the same date as the above-mentioned judgment, the Tsentralny District Court called on the head of Federal Service for the Execution of Sentences ("the FSES") and the head of the Kaliningrad regional department of the FSES to pay attention to the fact that the examination of the applicant's case had revealed the lack of proper organisation of medical treatment for convicts in the colonies of the Kalningrad Region, which seriously endangered their life

and health. Both officials were requested to inform the court of the measures taken in that respect within the time-limits provided by the relevant national legislation.

46. The outcome of that request remains unclear.

47. On 30 May 2007 the Kaliningrad Regional Court dismissed the prosecutor's appeal against the judgment of 26 March 2007. In particular, it rejected the prosecutor's argument that the amount of the award was excessive and found that it was reasonable and adequate.

48. The judgment of 26 March 2007 and the appeal decision of 30 May 2007 referred to the applicant's family name as "Romakhov" instead of "Romokhov".

E. Enforcement of the judgment of 26 March 2007

1. The Government's account

49. On 30 May 2007 the judgment of the Tsentralny District Court of Kaliningrad became final and enforceable.

50. On 24 August 2007 the Ministry of Finance of the Russian Federation received unspecified "enforcement documents" from the applicant in respect of the above judgment.

51. On 17 October 2007 the Ministry of Finance received further unspecified "enforcement documents" from the applicant.

52. By a letter of 21 November 2007 the Ministry of Finance returned the first set of documents to the applicant because he had failed to enclose a duly certified copy of the judgment and his bank details.

53. By a letter of 5 December 2007 the Ministry returned the second set of documents to the applicant because he had again failed to submit a duly certified copy of the judgment and his bank details.

54. On 13 February 2008 the Ministry of Finance received the required documents.

55. On 29 May 2008 the amount of 300,000 Russian roubles (RUB) was transferred to the applicant's bank account.

56. In support of their submissions the Government furnished a copy of the payment order of 29 May 2008, according to which the amount of RUB 300,000 had been transferred to the applicant's account on that date.

2. The applicant's account

57. According to the applicant, the delay in the execution of the judgment of 26 March 2007 had been caused by the fact that the first-instance court had misspelled his family name as "Romakhov" instead of "Romokhov", both in the first-instance judgment and the related writ of enforcement.

II. RELEVANT DOMESTIC LAW

A. Rules on the prison regime in pre-trial detention centres (as approved by Ministry of Justice Decree no. 148 of 12 May 2000)

58. Rule 42 provided that all suspects and accused persons in detention had to be given, amongst other things: a sleeping place; bedding, including a mattress, a pillow and one blanket; bed linen, including two sheets and a pillow case; a towel; tableware and cutlery, including a bowl, a mug and a spoon; and seasonal clothes (if the inmate had no clothes of his own).

59. Rule 44 stated that cells in pre-trial detention centres were to be equipped with, amongst other things, a table and benches to seat the number of inmates detained there, sanitation facilities, running water and lighting for use in the daytime and at night.

60. Rule 46 provided that prisoners were to be given three warm meals a day, in accordance with the norms laid down by the Government of Russia.

61. Under Rule 47 inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh linen after taking their shower.

62. Rule 143 provided that inmates could be visited by their lawyer, family members, or other persons, with the written permission of an investigator or an investigative body. The number of visits was limited to two per month.

B. Order no. 7 of the Federal Service for the Execution of Sentences dated 31 January 2005

63. Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 deals with the implementation of the "Pre-trial detention centres 2006" programme.

64. The programme is aimed at improving the functioning of pre-trial detention centres so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in pre-trial detention centres and seeks to reduce and stabilise the number of detainees in order to resolve the problem. Amongst those affected, the programme mentions pre-trial detention centre SIZO no. 3 (IZ-77/3).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

65. The relevant extracts from the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ..."

Extracts from the 7th General Report [CPT/Inf (97) 10]

"13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ..."

Extracts from the 11th General Report [CPT/Inf (2001) 16]

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

66. The applicant complained under Article 3 of the Convention that the conditions of his detention in remand centres IZ-77/2 and IZ-77/3 in Moscow, hospital no. 1 of IK-8 in Kaliningrad and remand centre IZ-67/1 in Smolensk were in breach of that provision. Article 3 reads as follows:

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

A. Submissions by the parties

1. The Government

67. The Government argued that the applicant had failed to exhaust domestic remedies in respect of his complaints about the conditions of his detention because he had not raised them before the prosecutors or domestic courts. In the alternative, they submitted that the applicant had not complied with the six-month requirement in respect of the period of his detention prior to 5 July 2003. In that respect they claimed that, as a rule, detainees had been held in different cells during their detention – even in the same remand centre. Conditions of detention in those cells had varied and thus, they could not be regarded as having been the same throughout the whole period of detention.

68. On the merits, they argued that, although they could not provide the documents attesting to the exact number of inmates in the applicant's cells owing to their destruction, in all detention facilities mentioned by the applicant he had been afforded 4 square metres of cell space in accordance with the relevant domestic regulations. He had been provided with an individual sleeping place and bedding. The cells had been sufficiently lit, ventilated, heated and disinfected. The toilet had been separated from the living area and the applicant's access to a shower had been secured according to the regulations in force, which had also given him the possibility of taking daily walks.

2. The applicant

69. The applicant maintained his submissions. He stated that in Russia there was no opportunity for detainees to challenge their conditions of detention effectively before the domestic authorities. On the merits, he contested the Government's submissions as untrustworthy and false. In particular, if, as the Government argued, remand centre IZ-77/2 had accommodated 3,194 inmates whilst its capacity was 2,120 persons, the applicant could not have possibly been afforded 4 square metres of cell space but had been afforded less than 2 square metres. Furthermore, from the cell space of a particular cell one was to deduct the space used for the cell amenities – such as bunks, the table and the toilet, which left even less cell space per detainee. The applicant and the other detainees had had to sleep in shifts because there had not been enough bunks. The applicant further stated that, contrary to the Government's assertion, he had not been provided with bedding, the windows in his cells had been covered with metal shutters and he had had to sleep in his jacket because it had been extremely cold in winter.

B. The Court's assessment

1. Admissibility

70. The Government argued that the applicant had failed to exhaust domestic remedies in respect of the allegedly appalling conditions of his detention. In that respect the Court firstly notes that it is for the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Kohlhofer and Minarik v. the Czech Republic*, nos. 32921/03, 28464/04 and 5344/05, § 77, 15 October 2009). However, the Government have not specified with sufficient clarity the type of complaint which would have been an effective remedy in their view, nor have they provided any further information as to how such a complaint could have prevented the alleged violation or its continuation or provided the applicant with adequate redress. Moreover, in a number of judgments the Court has held that the problem of overcrowding was of a structural nature and thus did not concern the applicants' personal situation (see *Guliyev v. Russia*, no. 24650/02, § 34, 19 June 2008; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)). In sum, the Court considers that the Government have not substantiated their claim that the remedy or remedies the applicant allegedly failed to exhaust were effective ones (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004). It therefore considers that the applicant's complaints under Article 3 cannot be rejected for failure to exhaust domestic remedies.

71. The Court has next to examine the Government's argument that the applicant had not complied with the six-month requirement in respect of his complaints about the conditions of his detention.

72. As regards the applicant's submissions concerning his detention in IZ-67/1 in Smolensk from 17 to 28 August 2003, the Court notes that this complaint was first made in his application form dated 30 November 2005, more than six months after the end of his detention there. Furthermore, the applicant first complained about the conditions of his detention in hospital no. 1 in Kaliningrad from 27 October 2004 to 16 February 2005 in his letter of 20 August 2005. Having regard to its findings concerning the issue of exhaustion, the Court accordingly concludes that the applicant's complaints about the conditions of detention in IZ-67/1 in Smolensk and hospital no. 1 in Kaliningrad should be dismissed as lodged out of time pursuant to Article 35 §§ 1 and 4 of the Convention.

73. The Government also invited the Court to dismiss the applicant's complaint about the conditions of his detention before 5 July 2003 as lodged

out of time. However, the Court cannot accept their argument for the following reasons.

74. The gist of the applicant's complaint under Article 3 of the Convention is the allegedly appalling conditions of his detention in remand centres IZ-77/2 and IZ-77/3 in Moscow in the period from 28 August 2002 to 16 August 2003. In particular, he complains on account of the allegedly severe overcrowding in his cells, which existed, according to him, throughout the whole period of his detention in the above-mentioned facilities, as from 28 August 2002. Bearing this in mind, the Court considers that the continuous nature of the applicant's detention on remand and his almost identical description of the general conditions of his detention in both facilities and the allegation of severe overcrowding as the main characteristics of the conditions of his detention warrant examining his detention in the above mentioned time span without dividing it into separate periods (see *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; and *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008). Hence, the Government's argument that the period under Court's consideration should be limited to the time span from 5 July 2003 to 16 August 2003 should be dismissed.

75. Having regard to the above, the Court dismisses the Government's objection concerning non-exhaustion by the applicant of domestic remedies and his non-compliance with the six-month requirement in respect of his complaint about the conditions of his detention prior to 5 July 2003. The Court also rejects the applicant's complaint about the conditions of his detention in IZ-67/1 in Smolensk and hospital no. 1 of IK-9 in Kaliningrad as lodged out of time pursuant to Article 35 §§ 1 and 4 of the Convention.

76. As regards the applicant's complaint concerning conditions of his detention in remand centres IZ-77/2 and IZ-77/3 in Moscow from 28 August 2002 to 16 August 2003, the Court considers that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

77. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in detention facilities IZ-77/2 and IZ-77/3 in Moscow. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government did not refute.

78. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facilities. The main characteristic which the parties did agree upon was the size of the cells. However, while the applicant claimed that the population of the cells had severely exceeded

their design capacity, the Government stated that the applicant had been provided at least 4 square metres of cell space throughout his detention in the above-mentioned detention facilities. In that respect they relied on certificates from the heads of remand centres IZ-77/2 and IZ-77/3, issued in July 2008, and the applicant's cell record cards. They also stated that it was impossible to indicate the exact number of inmates held together with the applicant, owing to the destruction of the relevant logs.

79. The Court observes in the first place that the Government did not produce any copies of the records of destruction of the relevant logs for facility IZ-77/2. As to the records of destruction of documents regarding facility IZ-77/3, they did not contain any reference to such logs having been among the documents destroyed (see paragraph 29 above). As to the cell cards, they provided only information on the hygiene items supplied to the applicant and appear to be irrelevant to the overcrowding issue.

80. As regards the certificates issued by the heads of the respective remand centres, the Court considers it rather extraordinary that in July 2008, five years after the applicant's detention in those facilities, their directors were able to recollect how much space had been afforded to the applicant. Hence, those certificates are of little evidential value to the Court (see *Belashev v. Russia*, no. 28617/03, § 52, 4 December 2008). However, if the registration logs still exist, the Court finds it peculiar that the Government preferred to rely on the director's certificates to support their allegations concerning the conditions of the applicant's detention when it was open to them to submit copies of registration logs showing the names of inmates detained with the applicant (see ibid.).

81. The Court further takes note of the Government's submission that, whilst facility IZ-77/2 had been designed to accommodate 2,100 detainees, throughout the applicant's detention 3,194 inmates had been held there. Thus, it appears that the number of detainees exceeded the detention facility's capacity by one-and-a-half times. Against this background and the applicant's submission that conditions of his detention from 17 to 28 August 2002 had been satisfactory, it was particularly important that the Government produced the relevant documents to support their submission that the applicant had not been subsequently held in severe overcrowding, as alleged.

82. In this connection, the Court reiterates that Convention proceedings, such as those arising from the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the

well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

83. Against this background, the Court cannot be convinced by the Government's unsupported submission that the applicant had been afforded 4 square metres of cell space throughout his detention in remand centre IZ-77/2 and is inclined to accept the applicant's submission that he had been afforded less than 2 square metres of cell space and had had to take shifts to sleep (compare *Belashev*, cited above, §§ 53-54). The same holds true for the applicant's detention in facility IZ-77/3. In respect of the latter remand prison the Court also points out that it has found violations of Article 3 on account of applicants' detention in overcrowded conditions in the same detention facility concerning the same period of time (see *Vladimir Kozlov v. Russia*, no. 21503/04, §45, 20 May 2010; *Belashev*, cited above, §§ 50-60, and *Bychkov v. Russia*, no. 39420/03, §§ 33-43, 5 March 2009).

84. The Court reiterates that it has frequently found violations of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

85. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates for almost a year was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

86. There has therefore been a violation of Article 3 of the Convention, as the Court finds the applicant's detention in IZ-77/2 and IZ-77/3 from 28 August 2002 to 16 August 2003 have been inhuman and degrading within the meaning of this provision.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S DELAYED AND DEFECTIVE MEDICAL TREATMENT

87. The applicant complained under Article 3 of the Convention about the refusal of medical treatment for his eye problems while in detention,

which had caused him to lose his eyesight. The text of this provision was cited above.

A. Submissions by the parties

88. The Government argued that the applicant had ceased to be a "victim" of the alleged breach of Article 3 on account of the refusal of medical treatment for his eyes. The domestic courts had examined and granted his claims for compensation of non-pecuniary damage in part. They had determined the amount of the compensation in accordance with the requirements of domestic legislation and the considerations of equity and justice, having taken into account the relevant circumstances. Moreover, the applicant had not challenged the amount of the award on appeal. With reference to the Court's judgment in the case of *Eckle v. Germany*, the Government stressed that "duplicat[ing] the domestic process with proceedings before [...] the Court would appear hardly compatible with the subsidiary character of the machinery of protection established by the Convention" (15 July 1982, § 66, Series A no. 51). They also referred to the case of *Jón Kristinsson v. Iceland*, where the Court had found that an applicant who had claimed and had received a compensation in domestic proceedings could not be considered a "victim" within the meaning of Article 25 of the Convention (1 March 1990, § 36, Series A no. 171-B).

89. The applicant relied on the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V), arguing that he could have lost his "victim status" only if the domestic authorities had awarded him an appropriate and sufficient compensation. However, the compensation obtained at the domestic level could not be considered either appropriate or sufficient. Moreover, the domestic courts had never acknowledged a breach of his Convention rights.

B. The Court's assessment

1. Admissibility

90. The Government argued that the applicant had ceased to be a "victim" of the alleged breach of his rights under Article 3 of the Convention on account of the defects in his medical treatment while in detention, whilst the applicant stated that he had retained his "victim status".

91. The Court considers that in the present case the question of whether the applicant may still claim to be victim of a violation of Article 3 of the Convention is closely linked to the merits of the complaint (see *Ciorap v. Moldova (no. 2)*, no. 7481/06, § 18, 20 July 2010). The Court therefore decides to join this matter to the merits.

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

2. Merits

93. Having regard to the decisions of the domestic courts, the Court takes note of their finding that the applicant had not had serious eye problems before his arrest, that he had had only a slight myopia, and that his eyesight started deteriorating while he was in detention. The courts further established that the applicant had lost his eyesight because of grave defects and delays in the examination and treatment of his illness by the prison hospital authorities (see paragraph 44 above). With reference to the conclusions of the medical expert panel, the courts noted, in particular, that, had the applicant received the appropriate treatment in due time, it could have been possible to preserve his eyesight, at least in part (*ibid*.). Lastly, they noted that the situation must have caused the applicant physical and mental suffering.

94. The Court has no reason to doubt the findings of the domestic courts, which had regard to all relevant circumstances of the case, including a qualified medical opinion on the matter.

95. It further notes that in order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum 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 (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

96. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV, and *Ramirez Sanchez v. France* [GC], no. 59450/00, § 118, ECHR 2006-IX). Treatment has been held to be "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, *Jalloh*, cited above, § 68).

97. Having regard to the findings of the domestic courts and the materials in its possession, the Court considers that the treatment to which the applicant was subjected should be qualified as "inhuman" and "degrading" within the meaning of Article 3 of the Convention.

98. Nonetheless, the question remains whether, as the Government suggested, the applicant had lost his "victim status" in respect of the alleged breach of Article 3 of the Convention as a result of the proceedings for compensation.

99. In this respect the Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

100. It also reiterates that in the specific sphere of medical negligence, where the infringement of the right to life or to personal integrity is not caused intentionally, the State's positive obligation under the Convention to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In this particular sphere, this obligation may be satisfied if the legal system affords victims a remedy in the civil courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as, *inter alia*, an order for damages, to be obtained (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I, and *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII). On the latter point, the Court has stressed that in the case of a breach of Articles 2 or 3 of the Convention, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress (see *Z and Others v.* the United *Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V).

101. Regard being had to the principles enunciated above and the decisions of the domestic courts in the applicant's case, the Court is satisfied that they carefully examined the applicant's submissions and all relevant circumstances and acknowledged, at least in substance, that he had been subjected to treatment in breach of Article 3 of the Convention (see paragraphs 44 and 47 above). It remains to be ascertained whether he was afforded appropriate and sufficient redress for the breach of his rights under the Convention.

102. The question of whether the applicant received compensation – comparable to just satisfaction as provided for under Article 41 of the Convention – for the damage caused by the treatment contrary to Article 3 is an important indicator for assessing whether the alleged breach of the Convention was redressed (see *Rytsarev v. Russia*, no. 63332/00, § 31, 21 July 2005; more recently, *Shilbergs v. Russia*, no. 20075/03, § 72, 17 December 2009; and *Gäfgen v. Germany* [GC], no. 22978/05, § 118, ECHR 2010-...). In other words, the applicant's victim status may depend on the level of compensation awarded at the domestic level on the basis of the facts about which he or she complains before the Court (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 93, ECHR 2006-V).

103. As regards pecuniary damage, the domestic courts are clearly in a better position to determine its existence and quantum (see *Scordino*, cited above, § 203). As to non-pecuniary damage, the Court will exercise

supervision to verify whether the sums awarded are not unreasonable in comparison with the awards made by the Court in similar cases (see *Scordino* and *Cocchiarella*, both cited above, §§ 214 and 106, respectively). Whether the amount awarded may be regarded as reasonable falls to be assessed in the light of all the circumstances of the case (see *Shilbergs*, cited above, § 72).

104. The Court has accepted that it might be easier for the domestic courts to refer to the amounts awarded at domestic level, especially in cases concerning personal injury, and rely on their innermost conviction, even if that results in awards that are somewhat lower than those fixed by the Court in similar cases. However, where the amount of compensation is substantially lower than what the Court generally awards in comparable cases, the applicant retains his status as a "victim" of the alleged breach of the Convention (see, *mutatis mutandis*, *Scordino (no. 1)*, cited above §§ 182-192 and 202 – 215).

105. In the present case it does not transpire from the documents available to the Court that the applicant, who was represented by a lawyer appointed by him, claimed compensation for pecuniary damage in the domestic proceedings concerning his delayed and defective medical treatment while in detention. It is further noted that the applicant never submitted, and the Court does not find any indication, that he was prevented from doing so either by the applicable legislation or in view of any other reasons. It emerges from the materials before the Court that the applicant's claims were limited to compensation for non-pecuniary damage, and the Court will thus concentrate its analysis on that issue.

106. The Court is unable to conclude whether the amount of compensation in respect of non-pecuniary damage awarded to the applicant could have been considered sufficient in domestic terms. The parties did not produce any information in that respect. However, the Court's task in the present case is not to review the general practice of the domestic courts in awarding compensation for delays and defects in medical treatment, nor is it to set certain monetary figures which would satisfy the requirements of "adequate and sufficient redress", but rather to determine, in the circumstances of the case, whether the amount of compensation awarded to the applicant was such as to deprive him of "victim status" in respect of his complaint under Article 3 of the Convention pertaining to his medical treatment (see, *mutatis mutandis*, *Shilbergs*, cited above, § 73).

107. In this connection the Court considers that the conduct of the domestic authorities, who were supposed to provide the applicant with required medical treatment, the consequences of the delayed and deficient treatment for the applicant's physical health and mental wellbeing, and the reasons given by the domestic courts in making the award are among the factors which should be taken into account in assessing whether the

domestic award could be regarded as adequate and sufficient redress (see *mutatis mutandis, Shilbergs*, cited above, § 74).

108. The Court is mindful that the task of making an estimate of damages to be awarded is a difficult one. It is particularly difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in monetary terms. The Court has no doubt that the domestic courts in the present case, with, as pointed out by the Government, every desire to be just and eminently reasonable, attempted to assess the level of physical suffering, emotional distress, anxiety or other harmful effects sustained by the applicant as a result of the treatment to which he had been subjected (see *Shilbergs*, cited above, § 76).

109. However, the Court cannot but observe that the award of EUR 8,862 is substantially lower than the awards made by it in comparable cases where treatment in breach of Article 3 has resulted in very serious and irreversible damage to the applicants' health (see, for example, *Mikheyev v. Russia*, no. 77617/01, § 163, 26 January 2006), even though it does not lose sight of the fact that in those cases the applicants were found to have been subjected to extremely cruel torture, which was not the situation in the present case. In this connection the Court also takes note of the recent case of *Oyal v. Turkey* concerning irreparable damage to the health of the applicants' child following his infection with HIV as a result of medical negligence (no. 4864/05, §§ 105-107, 23 March 2010).

110. Whilst in the present case the applicant was not a victim of wilful ill-treatment or torture, the consequences of the established failure of the domestic authorities, under whose exclusive control he was held in detention, to provide him with adequate treatment in due time are particularly grave. As a result of their omissions, he suffers from total sight loss and has become a disabled person, although, according to a reliable medical opinion, this outcome could have been avoided and he might have partially retained his eyesight, had he been provided with the required treatment (see paragraphs 41, 42 and 44 above).

111. As regards the Government's argument that the applicant had not challenged the amount of the award on appeal, the Court would not speculate as to what would have been the outcome of the compensation proceedings, had he done so. Nonetheless, it cannot but note that the appellate court upheld the impugned amount on the prosecutor's appeal, finding that it was reasonable and sufficient (see paragraph 47 above).

112. In sum, in the light of its case-law and taking into account the absence of a reasonable relationship of proportionality between the amount of the award and the circumstances of the case, the Court finds that the compensation awarded to the applicant did not constitute sufficient redress and thus that he may still claim to be a “victim” of a breach of Article 3 of

the Convention on account of the delays and defects in his medical treatment while in detention.

113. In view of those findings the Court does not consider it necessary to asess the reasons given by the domestic courts in making the award, as well as the expediency with which it was paid to the applicant, the latter issue being examined separately below.

114. Having regard to its findings above, the Court dismisses the Government's objection concerning the applicant's "victim status" and finds that there has been a violation of Article 3 of the Convention on account of the delays and defects in the applicant's medical treatment while in detention, which led to the applicant losing his eyesight.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION ON ACCOUNT OF THE DELAYED ENFORCEMENT OF THE JUDGMENT IN THE APPLICANT'S FAVOUR

115. The Court, of its own motion, raised the issue of the respondent State's compliance with its obligations under Article 6 of the Convention and Article 1 of Protocol No.1 to the Convention on account of the delay in the enforcement of the judgment of 26 March 2007. Those provisions, in so far as relevant, read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Submissions by the parties

116. The Government argued that it had taken the authorities only three months to enforce the judgment after the applicant had submitted all of the relevant documents and that the responsibility for the preceding period of

non-enforcement lay exclusively with the applicant, who had failed to provide the required documents despite the authorities' clear and unequivocal instructions.

117. The applicant maintained that the domestic courts, who had misspelled his family name, had been responsible for delays in the execution of the judgment in his favour. With reference to the practice of the Constitutional Court, he argued that it had been for the authorities to take the necessary steps to enforce the judgment.

B. The Court's assessment

1. Admissibility

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

2. Merits

119. The Court observes that on 30 May 2007 the judgment in the applicant's favour became final and enforceable. It was not disputed between the parties that it was enforced on 29 May 2008, one year after it had become final.

120. The Court notes at the outset that the parties have submitted very little information, and even less documentary evidence, concerning the events which unfolded after the judgment in the applicant's favour had become final. It points out, nonetheless, that it was not disputed by the parties that the Ministry of Finance had been informed about the need to enforce the judgment shortly after it had become final and enforceable. Whilst not disputing that fact, the Government claimed that the judgment had been enforced with a delay because of the applicant's failure to furnish both a certified copy of the judgment and his bank details. The applicant submitted that the delay had been caused by the fact that the courts had misspelled his family name in the judgment and the writ of enforcement.

121. Although it is not unreasonable that the authorities might request that the applicant produce additional documents, such as bank details, to allow or speed up the execution of a judgment (see *Akashev v. Russia*, no. 30616/05, § 22, 12 June 2008), the Court cannot but note that the Government in the present case failed to furnish any documents, such as, for example, copies of the correspondence between the Ministry of Finance and the applicant, to support their submission that the latter had been warned but had nonetheless failed to submit the required information. The only document they provided was the payment order confirming that the amounts due had been paid to the applicant's account on 29 May 2008 (see paragraph

56 above). Hence, the Court cannot accept their argument that the enforcement of the judgment had been delayed because of the applicant's failure to furnish the relevant information.

122. At the same time, it follows from the judgment of 26 March 2007, as upheld on appeal, that both the first-instance and the appellate courts did indeed misspell the applicant's family name (see paragraph 48 above).

123. The Court reiterates that the requirement of the creditor's cooperation must not go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely action, on their own motion if necessary, on the basis of the information available to them, with a view to honouring the judgment against the State (see *Akashev*, cited above, § 22). The State authorities in the present case were aware of the applicant's claims, and, as soon as the judgment in the applicant's favour became enforceable, it was incumbent on the State to comply with it (see *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005).

124. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Akashev*, cited above, § 21 et seq.; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005, and *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

125. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for twelve months to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the money he could reasonably have expected to receive.

126. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

127. The applicant further complained that his lawyer had been authorised by a judge to visit him in detention only once, which had impaired his defence rights. He relied on Article 6 §§ 1 and 3 (c) of the Convention which provides as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

128. The Government argued that the applicant's submission that he had been precluded from seeing his counsel was unfounded. Neither the judge examining his criminal case nor the administrations of his detention facilities had interfered with his meetings with counsel. The frequency of the applicant's meetings with his counsel had been a matter for their discretion.

129. The applicant made no further submissions on this issue in addition to his initial complaint.

130. The Court observes that restrictions on the number or duration of meetings with one's counsel in criminal proceedings may raise an issue under Article 6 §§ 1 and 3 (c) of the Convention, particularly if a criminal case against an applicant concerns complex legal issues (see *Öcalan v. Turkey* [GC], no. 46221/99, §§ 135-136, ECHR 2005-IV).

131. However, in the present case, apart from alleging very vaguely that an unspecified judge from an unspecified court had only once authorised the applicant's lawyer to visit him, the applicant failed to provide any further details as to the alleged breach of his rights under Article 6 §§ 1 and 3 (c) of the Convention. In particular, he did not indicate whether his counsel had been privately retained or court-appointed, how many meetings they had had, whether the applicant had asked the authorities for further meetings and had been refused them or whether his counsel had not shown up. There is likewise no indication in the materials available to the Court that this issue was brought to the attention of the domestic authorities, and the applicant failed to provide any explanation or submit any further information in this respect in his observations.

132. Having regard to these considerations, the Court concludes that the applicant's complaint should be dismissed as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

133. Lastly, the applicant alleged violations of his rights under Articles 3, 5, 6, 13, 14 and 17 of the Convention and Article 1 of Protocol No.1 to the Convention on various grounds.

134. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part

of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. 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

136. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage and EUR 406,000 in respect of non-pecuniary damage.

137. As regards pecuniary damage, he submitted, in particular, that before his arrest he had worked as a trainer for stuntmen and that, as a result of his criminal prosecution and loss of eyesight, he could no longer exercise that profession. He submitted that the related losses amounted to EUR 36,000, without providing any further details. He further submitted that, following his prosecution, he had lost a plot of land, several vehicles, and special equipment for stunt activities.

138. As to non-pecuniary damage, the applicant submitted that on an unspecified date a group of ophthalmologists from Netherlands had visited him in Kaliningrad and had invited him to undergo eyesight restoration surgery, which would cost EUR 150,000 and would not be available to him in Russia, according to unspecified specialists from the Russian Eye Microsurgery Institution. The applicant submitted that the costs for the surgery and the rehabilitation period would amount to approximately EUR 160,000-170,000. He stated that the remainder of the sum claimed under this head was to represent compensation for the suffering and pain he had endured and continued to endure because of the defects in his medical treatment and his resulting loss of eyesight, as well as the inhuman and degrading conditions of his detention.

139. The Government argued that the applicant's pecuniary claims were unfounded and that he had failed to furnish proof of his title to the property enumerated therein. They also noted that by a judgment of 11 September 2007 the Svetlovskiy Town Court of the Kaliningrad Region had dismissed as unfounded the applicant's claims concerning the land plot, the vehicles and the equipment, precisely because he had failed to adduce any evidence of his property rights in respect of those items.

140. The Government further submitted that the amount sought in respect of non-pecuniary damage was unreasonable and that, moreover, the

applicant had already been compensated for his loss of eyesight at the domestic level.

141. The Court points out that there must be a clear causal connection between the pecuniary damage claimed by the applicant and the violation of the Convention and that this may, in an appropriate case, include compensation in respect of loss of earnings or other sources of income (see, amongst other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 57-58, Series A no. 285-C, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV).

142. As regards the applicant's claims for damage concerning the eye surgery, the Court notes that he did not furnish any documents, such as a medical opinion, indicating the necessity or possibility for him to undergo such a surgery, an estimate of costs, or any other information showing how he had arrived at its estimated cost of EUR 160,000-170,000. In the same vein, apart from stating that he had previously trained stuntmen, the applicant failed to furnish any further information as to the income he had made prior to having become disabled or any, even rough, estimates which could have permitted the Court to assess the alleged pecuniary loss in that respect. The Court therefore considers that he has failed to properly substantiate his claim for pecuniary damage and accordingly dismisses it (see *Vladimir Romanov v. Russia*, no. 41461/02, § 116, 24 July 2008, and *Necdet Bulut v. Turkey*, no. 77092/01, § 33, 20 November 2007).

143. As regards the alleged loss of the land plot, vehicles and stunt activity equipment as a result of the applicant's criminal prosecution, the Court does not discern any causal link between the violations found and the pecuniary damage alleged.

144. In so far as non-pecuniary damage is concerned, the Court points out that the amount it awards under that head under Article 41 may be less than that indicated in its case-law where the applicant has already obtained a finding of a violation at domestic level and compensation by using a domestic remedy. The Court considers, however, that where an applicant can still claim to be a "victim" after making use of that domestic remedy he or she must be awarded the difference between the amount actually obtained from the national authorities and an amount that would not have been regarded as manifestly unreasonable compared with the amount awarded by the Court in analogous cases (see *Scordino (no. 1)*, cited above, §§ 268 and 269).

145. Regard being had to the above criteria, and taking into account, in particular, the very serious consequences of the treatment in breach of Article 3 for his health and the fact that it has found violations of several provisions of the Convention in the applicant's case, the Court awards the applicant EUR 70,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount.

B. Costs and expenses

146. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

147. The Court considers it appropriate that 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. *Decides* to join to the merits the Government's objection that the applicant may no longer claim to be a "victim" of a violation of Article 3 of the Convention on account of the delays and defects in his medical treatment while in detention and rejects it;

2. *Declares* the complaints under Article 3 and 6 § 1 of the Convention and Article 1 of Protocol No.1 to the Convention concerning conditions of the applicant's detention in remand prisons IZ-77/2 and IZ-77/3 in Moscow from 28 August 2002 to 16 August 2003, the defects and delays in the applicant's medical treatment and the non-enforcement of the judgment of 26 March 2007 in the applicant's favour admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prisons IZ-77/2 and IZ-77/3 in Moscow from 28 August 2002 to 16 August 2003;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the delays and defects in his medical treatment while in detention;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the delay in the enforcement of the judgment of 26 March 2007 in the applicant's favour;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 70,000 (seventy thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that, from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President