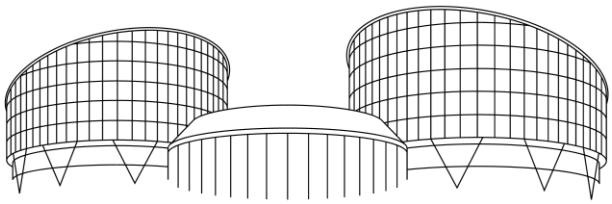

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GLADKIY v. RUSSIA

(Application no. 3242/03)

JUDGMENT

STRASBOURG

21 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 Gladkiy v. Russia**,**

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

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

Having deliberated in private on 2 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 3242/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Nikolay Nikolayevich Gladkiy ("the applicant"), on 17 January 2003.

2. The applicant, who had been granted legal aid, was represented by Mrs O. Preobrazhenskaya, a lawyer practising in Moscow. The Russian Government ("the Government") were represented Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been denied adequate medical assistance in detention, that the conditions of his detention had been extremely poor, that he had not had an effective domestic remedy for his complaint about contracting tuberculosis and that he had not been afforded the possibility to attend an appeal hearing in civil proceedings.

4. On 23 May 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and lived before his arrest in Kaliningrad, Kaliningrad Region.

A. Medical assistance during imprisonment

7. On 13 December 1999 the applicant was arrested and two days later he was placed in detention facility no. IZ-39/1 in Kaliningrad. On his admission to the facility he received a fluorography examination which revealed no signs of tuberculosis. On 20 June 2000 the applicant underwent another fluorography test which also showed no symptoms of the illness.

8. On 16 January 2001 the applicant was once again subjected to a fluorography examination which detected tuberculosis changes in his left lung. On the basis of that examination the applicant was diagnosed with infiltrative tuberculosis ("TB") of the upper lobe of the left lung and transferred to the pulmonary tuberculosis ward of the medical department of the detention facility, where he remained until 28 January 2002.

9. Despite the Court's request for them to produce the applicant's complete medical record, the Government only submitted medical documents drawn up after 28 January 2002. Relying on a certificate issued by the head of the medical department of the Kaliningrad Regional Department of Execution of Sentences, the Government argued that in facility no. IZ-39/1 the applicant had undergone an intensive course of anti-tuberculosis chemotherapy comprising two unidentified drugs. As follows from that certificate, in May 2001 a positive dynamic in the treatment of the illness was registered. However, on 5 August 2001 the applicant's state of health seriously deteriorated. A medical examination by a tuberculosis specialist on 16 August 2001 led to the applicant being diagnosed with acute viral respiratory infection. He was prescribed "symptomatic treatment". A fluorography examination performed on 3 September 2001 revealed a negative dynamic of the tuberculosis process showing an increase in the number of disintegration cavities. The doctor's diagnosis was "infiltrative tuberculosis of the upper lobe of the left lung in the disintegration phase, [presence of mycobacterium tuberculosis ("MBT")], progress of the tuberculosis process and 1-2 stage hypotrophy". According to the same certificate, the regimen of anti-tuberculosis treatment received by the applicant was amended to take the deterioration of his health into account. The applicant was prescribed "infusion chemotherapy", including a number of drugs (izoniazid, ethambutol, and rifampicin) and detoxication therapy.

10. An extract from the applicant's medical record drawn up on 26 June 2003 shows that the deterioration of the applicant's health in August 2001 was linked to "irregular medication".

11. On 28 January 2002 the applicant was discharged from the medical department of the detention facility with a final diagnosis of infiltrative tuberculosis of the upper lobe of the left lung in the disintegration phase, and sent for subsequent treatment to tuberculosis hospital no. 5 in Kaliningrad. On the applicant's admission to the hospital the attending doctor made an entry in his medical record noting that the applicant was calm and collected, exhibiting strong determination to continue anti-tuberculosis treatment. The applicant did not make any complaints about the quality of the treatment provided to him in the tuberculosis hospital.

12. On 11 November 2002, following a series of examinations by a forensic medical commission, the applicant was assigned second degree disability status because of his tuberculosis. In July 2004 he underwent stabilising thoracoplasty followed by an intensive course of anti-tuberculosis chemotherapy. The applicant was recommended further surgery following his release from detention.

B. Conditions of the applicant's detention in facility no. IZ-39/1

13. From 15 December 1999 to 28 January 2002 the applicant was detained in facility no. IZ-39/1. According to the applicant, that detention facility was built in 1929 and no renovation work has been done on the cells since.

14. According to certificates issued on 12 July 2007 by the director of the facility and produced by the Government, the applicant was kept in nine different cells which measured 7.8, 16.7, 17.4, 18.4 and 21 square metres. The smaller cells had two sleeping places, the three larger cells were equipped with four bunks and the largest cell had five sleeping places. The Government submitted that the information on the exact number of inmates detained together with the applicant was not available. They further noted that at all times the applicant had had an individual bunk and bedding.

15. Relying on the information provided by the director of the facility, the Government further argued that the sanitary conditions in the cells were satisfactory. In particular, the Government submitted that the cells received natural light and ventilation through a window measuring 1.2 square metres. The cells had no artificial ventilation. Each cell was equipped with a lavatory pan, a sink, a tap with running water, wooden benches and a table. Inmates were allowed to take a shower once every seven to ten days for no less than fifteen minutes. Clean bedding was also provided once a week. The cells were disinfected. Inmates were afforded an hour of outdoor recreation per day in twelve-square-metre yards equipped with wooden benches and covered by a shed roof against rain and snow. The

Government, relying on the information provided by the director of the facility, further stated that the applicant was given food "in accordance with the established norms".

16. The applicant did not dispute the cell measurements. However, relying on submissions by his former fellow inmates whose complaints about the conditions of detention in facility no. IZ-39/1 had already been examined by the Court (see, among other authorities, *Artyomov v. Russia*, no. 14146/02, §§ 123-133, 27 May 2010, and *Shilbergs v. Russia*, no. 20075/03, §§ 89-99, 17 December 2009), he alleged that the cell which measured 21 square metres had had eight sleeping places and had usually housed 24 inmates. The smallest cells, which measured 7.8 square metres, had either four or six sleeping places and accommodated from 8 to 12 detainees. The remaining three cells were equipped with eight sleeping places and housed 16 inmates. Given the lack of beds, inmates had slept in shifts. They were not provided with bedding.

17. The applicant further submitted that the sanitary conditions had been appalling. The cells were infested with insects but the management did not provide any insecticide. The walls in the cells were covered with a thick layer of mould. Pieces of plaster were falling from the walls. The applicant submitted that the windows were covered with metal blinds which blocked access to natural light and air. It was not before 25 November 2002, that is long after his transfer to another detention facility, that the metal blinds were removed in compliance with the recommendations of the Russian Ministry of Justice. It was impossible to take a shower as inmates were given only fifteen minutes and two to three men had to use one shower head at the same time. That situation was further aggravated by the fact that inmates could only take a shower once every two weeks. Inmates had to wash and dry their laundry indoors, creating excessive humidity in the cells. They were also allowed to smoke in the cells. The toilet was a filthy hole in the floor, separated from the living area by a small partition, and spread an unpleasant odour in the cell. At no time did inmates have complete privacy. Anything they happened to be doing – using the toilet, sleeping – was in view of the guard or fellow inmates. No toiletries were provided. The food was of poor quality and in scarce supply.

18. The applicant complained to various Russian authorities, including the Kaliningrad Regional Ombudsman, about the poor conditions of his detention. On 28 June 2001 the applicant received a letter from the Ombudsman which, in so far as relevant, read as follows:

> "An inspection, performed by the Kaliningrad Regional Ombudsman on 25 April 2001 in the detention facility established that [each inmate] has less than one square metre of personal space while the required norm is 4 square metres for each detainee, thus the constitutional rights of detained individuals are being violated. Other violations of sanitary norms and [norms] related to medical assistance were discovered and the Ombudsman recommended the head of detention facility no. IZ-39/1 to eliminate [those violations]."

C. Tort proceedings

19. On 12 July 2001 the applicant lodged an action against detention facility no. IZ-39/1 and the Ministry of Finance seeking compensation for damage caused to his health because he had contracted tuberculosis in detention, had been denied access to adequate medical services and had been detained in appalling conditions for almost two years after his arrest.

20. On 19 November 2001 the Tsentralniy District Court of Kaliningrad dismissed the action, reasoning that as the applicant had been medically examined on his admission to facility no. IZ-39/1, had remained under constant medical supervision and had shared cells with healthy inmates, there was no evidence of fault on the part of the facility administration for the damage caused to his health. In addressing the applicant's complaint about the poor conditions of his detention and a possible link between the detention conditions and his having been infected with tuberculosis, the District Court found as follows:

> "[The applicant's] arguments that sanitary requirements were not complied with in the detention facility are unsubstantiated, as the representative of the detention facility refuted those arguments ... despite the fact that the facility premises need reconstruction, all sanitary measures are taken in the facility; tuberculosis patients take showers separately from healthy inmates, then the premises are disinfected. There are separate premises for outdoor walks for tuberculosis patients. Those premises are also disinfected.
>
> It was established in the course of the hearing that [the applicant] had not had tuberculosis before or been registered as a tuberculosis patient, and that his tuberculosis had been detected for the first time in the detention facility.
>
> However, that circumstance cannot serve as a ground for upholding the plaintiff's claims, because the cause of the illness was not established and the prison authorities were not at fault; furthermore, there was no action/inaction on the part of the prison administration which could have created the conditions for the development of the plaintiff's illness.
>
> The overcrowding in the cells of the detention facility is an objective circumstance which was not caused by the facility administration and, moreover, the court did not establish a direct causal link between the overcrowding in the cells where [the applicant] was detained and his illness."

The applicant participated in the hearings before the District Court.

21. The applicant appealed, and sought leave to attend the appeal hearing.

22. On 27 February 2002, in the absence of the applicant, who had not been notified of the hearing, the Kaliningrad Regional Court upheld the judgment of 19 November 2001. The Regional Court concluded that the fact that the applicant had contracted tuberculosis in the detention facility "could not serve as evidence of the defendant's fault in having caused the illness"

because the cause of the tuberculosis had not been and could not be established.

23. On 22 April 2002 the President of the Kaliningrad Regional Court lodged an application for supervisory review of the judgment of 27 February 2002, arguing as follows:

> "In violation of the requirements of Article 299 of the RSFSR Code of Civil Procedure the [Regional] Court examined the case upon [the applicant's] action although there was no evidence that the plaintiff had been notified of the date and place of the court hearing.
>
> [The applicant] is in detention and was not brought to the court, however, he has the right to submit his arguments, [or] participate in the proceedings through his representative ... and, thus, he has to be promptly notified of the day of the examination of the case."

24. On 16 May 2002 the Presidium of the Kaliningrad Regional Court accepted the application for supervisory review, quashed the judgment of 27 February 2002, having endorsed the arguments of the Regional Court President, and sent the case for fresh examination by the appeal court.

25. In March 2002 the applicant lodged an additional statement of appeal, informing the Regional Court that he had appointed two lawyers to represent him during the appeal proceedings. He also noted that in the event of the lawyers' failure to appear, the Regional Court should issue the judgment in their absence. No request for leave for the applicant to appear before the Regional Court was filed.

26. By a letter of 27 May 2002 the Regional Court informed the applicant's lawyers and the applicant that a hearing had been scheduled for 19 June 2002.

27. On 19 June 2002 the Kaliningrad Regional Court, having examined the case on the basis of the parties' written submissions as the applicant's representatives and the respondent party failed to appear, upheld the judgment of 19 November 2001. The Regional Court confirmed the District Court's findings that the applicant had been healthy before his placement in custody, and that tuberculosis had only been detected more than a year after his admission to the detention facility. It further endorsed the District Court's conclusion that it was impossible to establish the cause of the illness and that there was no fault on the part of the facility administration in the deterioration of the applicant's health. Without providing any details, the Regional Court further stressed that the applicant had been subjected to regular medical check-ups during his detention and that he had received the necessary medical assistance. It also noted that the fact that the cells in the detention facility had housed 1.5 times more detainees than they had been designed to accommodate could not be the cause of the applicant's illness.

28. The applicant was served with a copy of the judgment on 16 August 2002.

II. RELEVANT DOMESTIC LAW

A. Health care of detainees

1. *Federal Law of 18 June 2001 no. 77-FZ "On Prevention of Dissemination of Tuberculosis in the Russian Federation"*

Section 7. Organisation of anti-tuberculosis aid

"1. Provision of anti-tuberculosis aid to individuals suffering from tuberculosis is guaranteed by the State and is performed on the basis of the principles of legality, compliance with the rights of the individual and citizen, [and] general accessibility in the amount determined by the Programme of State guarantees for provision of medical assistance to citizens of the Russian Federation, free of charge.

2. Anti-tuberculosis aid shall be provided to citizens when they voluntarily apply [for such aid] or when they consent [to such aid], save for cases indicated in Sections 9 and 10 of the present Federal law and other federal laws ..."

Section 8. Provision of anti-tuberculosis aid

"1. Individuals suffering from tuberculosis who are in need of anti-tuberculosis aid shall receive such aid in medical anti-tuberculosis facilities licensed to provide [it].

2. Individuals who are or have been in contact with an individual suffering from tuberculosis shall undergo an examination for the detection of tuberculosis in compliance with the laws of the Russian Federation..."

Section 9. Regular medical examinations

1. Regular medical examinations of persons suffering from tuberculosis shall be performed in compliance with the procedure laid down by a competent federal executive body ...

2. Regular medical examinations of persons suffering from tuberculosis shall be performed irrespective of the patients' or their representatives' consent.

3. A medical commission appointed by the head of a medical anti-tuberculosis facility ... shall take decisions authorising regular medical examinations or terminating them and record such decisions in medical documents ...; an individual in respect of whom such a decision has been issued, shall be informed in writing about the decision taken."

Section 10. Mandatory examinations and treatment of persons suffering from tuberculosis

"2. Individuals suffering from contagious forms of tuberculosis who... intentionally avoid medical examinations aimed at detecting tuberculosis, or avoid treating it, shall be admitted, by court decision, to specialised medical anti-tuberculosis establishments for mandatory examinations and treatment."

Section 12. Rights of individuals .... suffering from tuberculosis

"2. Individuals admitted to medical anti-tuberculosis facilities for examinations and (or) treatment, shall have a right to:

receive information from the administration of the medical anti-tuberculosis facilities on the progress of treatment, examinations...

have meetings with lawyers and clergy in private;

take part in religious ceremonies, if they do not have a damaging impact on the state of their health;

continue their education...

3. Individuals ... suffering from tuberculosis shall have other rights provided for by the laws of the Russian Federation on health care ..."

Section 13. Obligations of individuals ... suffering from tuberculosis

"Individuals ... suffering from tuberculosis shall;

submit to medical procedures authorised by medical personnel;

comply with the internal regulations of medical anti-tuberculosis facilities when they stay at those facilities;

comply with sanitary and hygiene conditions established for public places when persons not suffering from tuberculosis [visit them]."

Section 14. Social support for individuals... suffering from tuberculosis

"4. Individuals... suffering from tuberculosis shall be provided with medication free of charge for out-patient treatment of tuberculosis by federal specialised medical facilities in compliance with the procedure established by the Government of the Russian Federation..."

2. Regulation on Medical Assistance to Detainees

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

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

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

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

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

33. Section X of the Regulation regulates medical examinations, monitoring and treatment of detainees suffering from tuberculosis. It lays down a detailed account of medical procedures to be employed, establishes their frequency, and regulates courses of treatment for new tuberculosis patients and previously treated ones (relapsing or defaulting detainees). In particular, it provides that when a detainee exhibits signs of a relapse of tuberculosis, he or she should immediately be removed to designated premises (infectious unit of the medical department of the facility) and

should be sent for treatment to an anti-tuberculosis establishment. The prophylactic and anti-relapse treatment of tuberculosis patients should be performed by a tuberculosis specialist. Rigorous checking of the intake of anti-tuberculosis drugs by the detainee should be put in place. Each dose should be recorded in the detainee's medical history. A refusal to take anti-tuberculosis medicine should also be noted in the medical record. A discussion of the negative effects of the refusal should follow. Detainees suffering from tuberculosis should also be put on a special dietary ration.

3. Anti-Tuberculosis Decree

34. On 21 March 2003 the Ministry of Health adopted Decree no. 109 on Improvement of Anti-Tuberculosis Measures in the Russian Federation ("the Anti-Tuberculosis Decree" or "Decree"). Having acknowledged a difficult epidemic situation in the Russian Federation in connection with a drastic increase in the number of individuals suffering from tuberculosis, particularly among children and detainees, and a substantial rise in the number of tuberculosis-related deaths, the Decree laid down guidelines and recommendations for country-wide prevention, detection and therapy of tuberculosis which conform to international standards, identifying forms and types of tuberculosis and categories of patients suffering from them, establishing types of necessary medical examinations, analyses and testing to be performed in each case and giving extremely detailed instructions on their performance and assessment; it also laid down rules on vaccination, determined courses and regimens of therapy for particular categories of patients, and so on.

35. In particular, Addendum 6 to the Decree contains an Instruction on chemotherapy for tuberculosis patients. The aims of treatment, essential anti-tuberculosis drugs and their dose combinations, as well as standard regimens of chemotherapy laid down by the Instruction for Russian tuberculosis patients conformed to those recommended by the World Health Organisation in *Treatment of Tuberculosis: Guidelines for National Programs* (see below).

B. Conditions of detention

1. Detention of Suspects Act

36. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping

place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

2. Report of the Kaliningrad Regional Ombudsman

37. In 2002, following the inspection in 2001 of penitentiary facilities in the Kaliningrad Region, the Regional Ombudsman published his report which, in so far as relevant, read as follows:

> "One of the most acute problems continues to be the problem of medical and sanitary assistance [provided to] detainees. The medical [and] sanitary assistance provided in the prison system does not ensure the preservation and improvement of [detainees'] health, and the financial resources available are insufficient to meet the detainees' needs in terms of medical and sanitary assistance. In fact, penitentiary institutions and temporary detention facilities are frequently left without any financial resources to purchase medical equipment or medicines, in serious violation of the right to health and medical assistance guaranteed by the Constitution of the Russian Federation.
>
> A particular concern is the contraction of tuberculosis in those institutions ...
>
> In 2001 [the Kaliningrad Regional Department of the Russian Ministry of Justice] received 849 complaints (including 32 collective complaints) from detainees, 382 of which concerned medical assistance ...
>
> According to information supplied by [the Kaliningrad Regional Department of the Russian Ministry of Justice], 1,386 persons are detained in [facility no. IZ-39/1] ...
>
> The Kaliningrad Regional Ombudsman received 75 complaints from persons detained in facility no. IZ-39/1 ...
>
> In 2001 the Ombudsman visited the detention facility. During the visit the Ombudsman identified the following violations: overpopulation [of the facility] (more than three instances); shortage of bedding; absence of radio in certain cells; complete absence of TV sets or refrigerators; limitation of the time for outside walks ...; insufficient medical assistance.
>
> ...
>
> [Facility no. IZ-39/1] was built before the war; it requires complete reconstruction. During the last seven years the detention facility has always been overpopulated, housing three times more inmates than it should; management are therefore unable to comply with the minimum space requirement per inmate. While the rule is 4 square metres of living space per inmate, inmates in the detention facility have less than one square metre each. Persons whose guilt [in having committed crimes] has not yet been established by a court are detained in conditions which diminish their human dignity and frequently cause harm to their health."

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

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

D. Provisions on attendance at hearings

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

40. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with certain investigative measures (Article 77 § 1). The Code does not mention any possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or a defendant.

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

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

III. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

A. General health care issues

1. *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies (“the European Prison Rules”)*

43. The European Prison Rules provide a framework of guiding principles for health services. The relevant extracts from the Rules read as follows:

> “*Health care*
>
> 39. Prison authorities shall safeguard the health of all prisoners in their care.
>
> *Organisation of prison health care*
>
> 40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.
>
> 40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.
>
> 40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
>
> 40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.
>
> 40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.
>
> *Medical and health care personnel*
>
> 41.1 Every prison shall have the services of at least one qualified general medical practitioner.
>
> 41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.
>
> ...

41.4 Every prison shall have personnel suitably trained in health care.

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

...

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

...;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

...

f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;

...

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

...

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment."

2. 3rd General Report of the European Committee for the Prevention of Torture ("the CPT Report")

44. The complexity and importance of health care services in detention facilities was discussed by the European Committee for the Prevention of Torture in its *3rd General Report* (CPT/Inf (93) 12 - Publication Date: 4 June 1993). The following are the extracts from the Report:

"33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has

recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.

34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay ...

35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds)... Further, prison doctors should be able to call upon the services of specialists.

As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.

Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital...

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.). ...

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service. ...

...

54. A prison health care service should ensure that information about transmittable diseases (in particular hepatitis, AIDS, tuberculosis, dermatological infections) is regularly circulated, both to prisoners and to prison staff. Where appropriate, medical control of those with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors) should be carried out."

3. Committee of Ministers Recommendation No. R (98) 7 on Health care in Prisons

45. A further elaboration of European expectations towards health care in prisons is found in the appendix to Recommendation no. R (98) 7 of the Committee of Ministers to Member States on the ethical and organisational aspects of health care in prison (adopted on 8 April 1998 at the 627th meeting of the Ministers' Deputies). Primarily restating the European Prison Rules and CPT standards, the Recommendation went beyond reiteration of the principles in some aspects to include more specific discussion of the management of certain common problems including transmissible diseases. In particular, in respect of cases of tuberculosis, the Committee of Ministers stressed that all necessary measures should be applied to prevent the propagation of this infection, in accordance with relevant legislation in this area. Therapeutic intervention should be of a standard equal to that outside prison. The medical services of the local chest physician should be requested in order to obtain the long-term advice that is required for this condition, as is practised in the community, in accordance with relevant legislation (Section 41).

B. Health care issues related to transmissible diseases

1. Committee of Ministers Recommendation no. R (93) 6 on Control of Transmissible Diseases in Prisons

46. The fact that transmissible diseases in European prisons have become an issue of considerable concern prompted a recommendation of the Committee of Ministers to Member States concerning prison and criminological aspects of the control of transmissible diseases and related health problems in prison (adopted on 18 October 1993 at the 500th meeting of the Ministers' Deputies). The relevant extracts from the Recommendation read as follows:

"2. The systematic medical examination carried out on entry into prison should include measures to detect intercurrent diseases, including treatable infectious

diseases, in particular tuberculosis. The examination also gives the opportunity to provide health education and to give prisoners a greater sense of responsibility for their own health ....

15. Adequate financial and human resources should be made available within the prison health system to meet not only the problems of transmissible diseases and HIV/Aids but also all health problems affecting prisoners."

2. *11th General Report of activities of the European Committee for the Prevention of Torture*

47. An expanded coverage of the issue related to transmissible diseases in detention facilities was given by the European Committee for the Prevention of Torture in its *11th General Report* (CPT/INF (2001) 16 published on 3 September 2001), a discussion prompted by findings of serious inadequacies in health provision and poor material conditions of detention which were exacerbating the transmission of the diseases. Addressing the issue, the CPT reported as follows:

"31. The spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/AIDS has become a major public health concern in a number of European countries. Although affecting the population at large, these diseases have emerged as a dramatic problem in certain prison systems. In this connection the CPT has, on a number of occasions, been obliged to express serious concerns about the inadequacy of the measures taken to tackle this problem. Further, material conditions under which prisoners are held have often been found to be such that they can only favour the spread of these diseases.

The CPT is aware that in periods of economic difficulties - such as those encountered today in many countries visited by the CPT - sacrifices have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment. Compliance with this duty by public authorities is all the more important when it is a question of care required to treat life-threatening diseases.

The use of up-to date methods for screening, the regular supply of medication and related materials, the availability of staff ensuring that prisoners take the prescribed medicines in the right doses and at the right intervals, and the provision when appropriate of special diets, constitute essential elements of an effective strategy to combat the above-mentioned diseases and to provide appropriate care to the prisoners concerned. Similarly, material conditions in accommodation for prisoners with transmissible diseases must be conducive to the improvement of their health; in addition to natural light and good ventilation, there must be satisfactory hygiene as well as an absence of overcrowding.

Further, the prisoners concerned should not be segregated from the rest of the prison population unless this is strictly necessary on medical or other grounds ...

In order to dispel misconceptions on these matters, it is incumbent on national authorities to ensure that there is a full educational programme about transmissible

diseases for both prisoners and prison staff. Such a programme should address methods of transmission and means of protection as well as the application of adequate preventive measures.

It must also be stressed that appropriate information and counselling should be provided before and - in the case of a positive result - after any screening test. Further, it is axiomatic that patient-related information should be protected by medical confidentiality. As a matter of principle, any interventions in this area should be based on the informed consent of the persons concerned.

Moreover, for control of the above-mentioned diseases to be effective, all the ministries and agencies working in this field in a given country must ensure that they co-ordinate their efforts in the best possible way. In this respect the CPT wishes to stress that the continuation of treatment after release from prison must be guaranteed."

C. Health care reports on the Russian Federation

1. The CPT Report on Russia

48. The CPT report on the visit to the Russian Federation carried out from 2 to 17 December 2001 (CPT/INF (2003) 30) provides as follows:

"102. The CPT is also seriously concerned by the practice of transferring back from SIZO [temporary detention facility] to IVS [temporary detention ward in police departments] facilities prisoners diagnosed to have BK+ tuberculosis (and hence highly contagious), as well as by the interruption of TB treatment while at the IVS. An interruption of the treatment also appeared to occur during transfers between penitentiary establishments.

In the interest of combating the spread of tuberculosis within the law-enforcement and penitentiary system and in society in general, the CPT recommends that immediate measures be taken to put an end to the above-mentioned practice."

2. The World Bank Report on Tuberculosis and Aids Control Project in Russia

49. On 23 December 2009 the World Bank published the *Implementation Completion and Results Report* (Report no. ICR00001281, Volume I) on a loan granted to the Russian Federation for its Tuberculosis and Aids Control Project. The relevant part of the Report read as follows:

"According to the World Health Organization (WHO), Russia was one of the 22 high-burden countries for TB in the world (WHO, Global Tuberculosis control: Surveillance, Planning, Financing, Geneva, 2002). The incidence of TB increased throughout the 1990s. This was due to a combination of factors, including: (i) increased poverty, (ii) under-funding of TB services and health services in general, (iii) diagnostic and therapeutic approaches that were designed for a centralized command-and-control TB system, but were unable to cope with the social mobility and relative freedom of the post-Soviet era, and (iv) technical inadequacies and outdated equipment. Migration of populations from ex-Soviet republics with high TB

burdens also increased the problem. Prevalence rates were many times higher in the prison system than in the general population. Treatment included lengthy hospitalizations, variations among clinicians and patients in the therapeutic regimen, and frequent recourse to surgery. A shrinking health budget resulted in an erratic supply of anti-TB drugs and laboratory supplies, reduced quality control in TB dispensaries and laboratories, and inadequate treatment. The social conditions favouring the spread of TB, combined with inadequate systems for diagnosis, treatment, and surveillance, as well as increased drug resistance, produced a serious public health problem.

TB control in the former Union of Soviet Socialist Republics (USSR) and in most of Russia in the 1990s was heavily centralized, with separate hospitals (TB dispensaries), TB sanatoriums, TB research institutes and TB specialists. The system was designed in the 1920s to address the challenges of the TB epidemic. Case detection relied strongly on active mass screening by X-ray (fluorography). Specificity, sensitivity, and cost-effectiveness considerations were not features of this approach. Bacille Calmette-Guerin (BCG) immunization was a key feature of the TB control system...

By 2000, there was more than a two-fold increase in TB incidence, and mortality from TB increased 3 times, compared with 1990. The lowered treatment effectiveness of the recent years resulted in an increase in the number of TB chronic patients, creating a permanent 'breeding ground' for the infection. At that moment, the share of pulmonary TB cases confirmed by bacterioscopy did not exceed 25%, and the share of such cases confirmed by culture testing was no more than 41% due to suboptimal effectiveness of laboratory diagnosis, which led to poor detection of smear-positive TB cases. Being a social disease, TB affected the most socially and economically marginalized populations in Russia."

D. General guidelines for tuberculosis therapy

50. The following are the extracts from *Treatment of Tuberculosis: Guidelines for National Programmes,* World Health Organisation, 1997, pp. 27, 33 and 41:

"Treatment regimens have an initial (intensive) phase lasting 2 months and a continuation phase usually lasting 4-6 months. During the initial phase, consisting usually of 4 drugs, there is rapid killing of tubercle bacilli. Infectious patients become non-infectious within about 2 weeks. Symptoms improve. The vast majority of patients with sputum smear-positive TB become smear-negative within 2 months. In the continuation phase fewer drugs are necessary but for a longer time. The sterilizing effect of the drugs eliminates remaining bacilli and prevents subsequent relapse.

In patients with smear positive pulmonary TB, there is a risk of selecting resistant bacilli, since these patients harbour and excrete a large number of bacilli. Short-course chemotherapy regimens consisting of 4 drugs during the initial phase, and 2 drugs during the continuation phase, reduce this risk of selecting resistant bacilli. These regimens are practically as effective in patients with initially resistant organisms as in those with sensitive organisms.

In patients with smear negative pulmonary or extra-pulmonary TB there is little risk of selecting resistant bacilli since these patients harbour fewer bacilli in their lesions.

Short-course chemotherapy regimens with three drugs during the initial phase, and two drugs in the continuation phase, are of proven efficacy...

Patients with sputum smear-positive pulmonary TB should be monitored by sputum smear examination. This is the only group of TB patients for whom bacteriological monitoring is possible. It is unnecessary and wasteful of resources to monitor the patient by chest radiography. For patients with sputum smear-negative pulmonary TB and extra-pulmonary TB, clinical monitoring is the usual way of assessing response to treatment. Under programme conditions in high TB incidence countries, routine monitoring by sputum culture is not feasible or recommended. Where facilities are available, culture surveys can be useful as part of quality control of diagnosis by smear microscopy...

Directly observed treatment is one element of the DOTS strategy, i.e. the WHO recommended policy package for TB control. Direct observation of treatment means that a supervisor watches the patient swallowing the tablets. This ensures that a TB patient takes the right drugs, in the right doses, at the right intervals ...

Many patients receiving self-administered treatment will not adhere to treatment. It is impossible to predict who will or will not comply, therefore directly observed treatment is necessary at least in the initial phase to ensure adherence. If a TB patient misses one attendance to receive treatment, it is necessary to find that patient and continue treatment."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION IN FACILITY NO. IZ-39/1

51. The applicant complained that the conditions of his detention in facility no. IZ-39/1 in Kaliningrad had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

52. In their first line of argument, the Government submitted that the applicant had failed to exhaust domestic remedies. In particular, they stressed that the applicant could have lodged an application for a supervisory review of the judgment of 19 June 2002. In the alternative, the Government argued that the applicant's complaint was manifestly ill-founded in view of the latter's failure to produce any evidence in support

of his allegations of poor detention conditions. Referring to the destruction of the facility registration logs, they acknowledged that there was no information about the exact number of inmates detained together with the applicant in facility no. IZ-39/1. However, the Government stressed that the applicant could have provided statements by his fellow inmates in support of his allegations. They noted that the Court's findings in respect of other individuals who had been detained in facility no. IZ-39/1 and had complained to the Court under Article 3 of the Convention about the conditions of their detention in that facility (for instance, Mr Artyomov, application no. 14146/02, or Mr Shilbergs, application no. 20075/03) were inapplicable to the circumstances of the applicant's case because neither Mr Artyomov nor Mr Shilbergs had been detained in the same cells as the applicant. The Government also found it peculiar that the applicant, despite the lapse of time between the end of his detention and his submissions to the Court, had been able to remember how many individuals had been detained in his cells in facility no. IZ-39/1.

53. The Government further submitted that the applicant had had an individual sleeping place and bedding at all times. They noted that the remaining features of the conditions of the applicant's detention (lighting, sanitary conditions, privacy, etc.) had also complied with domestic legal requirements and the guarantees of Article 3 of the Convention.

54. Citing the report of the Ombudsman of the Kaliningrad Region (see paragraph 37 above), the domestic courts' judgments (see paragraphs 20 and 27 above) and the Court's findings in the cases of *Artyomov v. Russia* (see no. 14146/02, judgment of 27 May 2010), *Shilbergs v. Russia* (no. 20075/03, judgment of 17 December 2009), and *Skorobogatykh v. Russia* (no. 4871/03, judgment of 22 December 2009), the applicant insisted that the conditions of his detention had been inhuman and degrading. He steadfastly maintained his description of the detention conditions, alleging severe overcrowding, poor sanitary conditions, insufficient lighting, inadequate food, and so on. The applicant also relied on statements by another inmate, Mr Karasyov, whose application is pending before the Court and who had been detained in facility no. IZ-39/1 at the same time and in the same cells as the applicant.

B. The Court's assessment

1. Admissibility

(a) Exhaustion issue

55. As to the Government's argument pertaining to the applicant's failure to institute supervisory-review proceedings, the Court reiterates that it has already found in a number of cases against Russia that supervisory-review proceedings are not an effective remedy for the purpose of Article 35 § 1 of the Convention (see, among other authorities, *Berdzenishvilli v. Russia* (dec.), no. 31697/03, 29 January 2009). The Court also reiterates its finding made in the context of a complaint under Article 13 of the Convention that in Russia there have been no domestic remedies whereby an applicant could effectively complain about the conditions of his or her detention (see *Benediktov v. Russia*, no. 106/02, § 30, 10 May 2007). In addition, noting that the applicant in the present case lodged an action for damages against the administration of detention facility no. IZ-39/1 complaining about the conditions of his detention in that facility, the Court considers it necessary to stress that on numerous occasions it has previously found that an application to a court with a view of obtaining redress for allegedly inhuman and degrading conditions of detention cannot be regarded as an effective domestic remedy. In the case of *Artyomov v. Russia* (no. 14146/02, §§ 111-112, 27 May 2010) the Court, in particular, held:

> "In the light of the information before it, the Court observes that Article 1069 of the Russian Civil Code provides for compensation for any unlawful act or omission by State authorities ... which could in principle provide a remedy in respect of the applicant's allegations of appalling conditions of his detention. However, in the instant case, having established, among other things, that the applicant had been detained in overcrowded cells, the domestic courts dismissed his action and refused compensation on the sole ground that the domestic authorities, in particular, the facility administration, had not been liable for damage arising out of the conditions of his detention ... The courts' finding was apparently based on the underlying proposition that the authorities were only accountable for damage caused by culpable conduct or omission. In the particular case, they considered that the lack of financial resources excluded the liability of the domestic authorities for unsatisfactory conditions of the applicant's detention, which were amply proven. They did not consider that it was not open to the State authorities to cite lack of funds or limited capacity of the detention facility as an excuse for not honouring their obligation to ensure satisfactory conditions of detention.
>
> Bearing in mind the Government's argument that the problem of overcrowding in Russian detention facilities is derived from, *inter alia*, the lack of financial resources ... which rendered the overcrowding a structural problem, and having regard to the subject matter of the applicant's claim, the approach adopted by the Russian courts is unacceptable. It allows a large number of cases, such as the applicant's, where the unsatisfactory conditions of detention result from lack of funds or limited capacity of

> detention facilities, to be dismissed. Thus, as a result of that stance of the courts, the remedy under the Russian Civil Code offers no prospect of success and could be considered theoretical and illusory rather than adequate and effective in the sense of Article 35 § 1 of the Convention. The Court is not satisfied that in the present state of the Russian law of tort claimants could reasonably expect to recover damages on proof of their allegations unless there were to be a change or at least a material development in the existing interpretation of the domestic legal provisions on tort by the Russian courts (see *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009)." (see also for similar reasoning *Skorobogatykh v. Russia*, no. 4871/03, §§ 31-33, 22 December 2009)

56. The Court sees no reason to depart from that finding in the present case and, considering that the applicant did not have any effective remedy to complain about the conditions of his detention, rejects the Government's non-exhaustion objection.

(b) Six-month issue

57. In light of the Court's finding in paragraph 56 above and having regard to the fact that the applicant's detention in facility no. IZ-39/1 ended more than six months before the application was lodged with the Court, the issue arises whether the applicant complied with the six-month requirement imposed by Article 35 of the Convention.

58. The Court notes in the first place that the purpose of the six months' rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore it ought to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 156, ECHR 2009-...). The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32-33, *Reports of Judgments and Decisions* 1997-V). Finally, the rule should ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205, and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

59. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of.

Nevertheless, where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take the start of the six month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Varnava*, cited above, § 157).

60. Turning to the circumstances of the present case, having found that the tort action brought by the applicant is not a remedy within the meaning of Article 35 § 1 of the Convention (see paragraph 56 above) and therefore cannot, as such, be taken into account for the purpose of the six-month rule, the Court has now to decide when the applicant first became or ought to have become aware that the action for damages was not an effective remedy, with the effect that the six-month period started running from that moment in time.

61. The Court reiterates that the applicant alleged appalling conditions of his detention during the period which ended on 28 January 2002. On 17 January 2003, that is almost a year later, he introduced his application to the Court.

62. It is apparent that since December 1999, when the applicant found himself for the first time in the allegedly unsatisfactory conditions of detention, at least in theory an action lay under the Russian Civil Code for compensation for damages for pain and suffering experienced by him during his detention (see paragraph 38 above). The applicant made use of that judicial avenue in July 2001 when he lodged his action with the Tsentralniy District Court seeking compensation for damage arising out of the conditions of his detention. While it is true that it was not until the domestic tort proceedings came to an end on 19 June 2002 and the applicant received a copy of the final judgment on 16 August 2002 that he complained to the Court for the first time, the Court, however, cannot overlook its finding that, were it not for the domestic courts' arbitrary and unlawful interpretation of Article 1069 of the Russian Civil Code (see paragraph 55 above), a tort action might have provided a remedy in respect of the applicant's allegations of appalling conditions of his detention. The Court discerns nothing in the parties' submissions to suggest that while the tort proceedings were still pending the applicant was aware or should have become aware of the futility of his action for damages arising from the conditions of his detention. Thus, the Court finds it reasonable that the applicant awaited the outcome of the proceedings and only after his action was dismissed in the final instance by the Kaliningrad Regional Court did he bring the complaint to the Court's attention on 17 January 2003.

63. To sum up, the Court considers that in the particular circumstances of the present case the non-availability of any effective remedy finally became apparent to the applicant on 16 August 2002, when he was served with the final judgment of the Kaliningrad Regional Court dismissing his

tort action, and that this date must therefore be regarded as the final decision for the purposes of Article 35 § 1 of the Convention (see, for similar reasoning, *Skorobogatykh*, cited above, §§ 33-34). The complaint about the conditions of the applicant's detention lodged on 17 January 2003 was therefore introduced within the requisite six months and cannot be rejected pursuant to Article 35 § 4 of the Convention.

(c) Conclusion

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

2. Merits

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

66. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The main characteristic which the parties did agree upon was the size of the cells in which the applicant had been detained. The applicant claimed that the number of detainees in the cells had considerably exceeded their intended capacity. The Government, without providing any information on the exact number of inmates, disputed the applicant's assertion, claiming that the applicant had been provided with an individual sleeping place at all times. In this respect, the Court notes that the Government did not refer to any source of information on the basis of which that assertion could be verified. It was open to the Government to submit copies of registration logs showing names of inmates detained with the applicant. However, no such documents were presented.

67. At the same time the Court observes that the applicant's assertion of severe overcrowding was supported by the report of a high-ranking State official, the Kaliningrad Regional Ombudsman, who, following a visit to detention facility no. IZ-39/1 in 2001, had reported that the number of inmates detained in the facility had been three times more than that which the facility was designed to accommodate, leading to a situation where individuals had been afforded less than one square metre of personal space (see paragraph 37 above). Furthermore, a similar finding of overcrowding, albeit of a lesser degree than that established by the Ombudsman, was made by the domestic courts in the tort proceedings (see paragraphs 20 and 27 above).

68. In these circumstances, having regard to the evidence presented by the applicant in support of his submissions, together with the fact that the Government did not submit any convincing relevant information, the Court finds it established that the cells in facility no. IZ-39/1 were overcrowded. The Court also accepts the applicant's submissions that, owing to the overpopulation in the cells and the resulting lack of sleeping places, he had to take turns with other inmates to rest. Given the size of the cells, the number of inmates detained in them at the same time and the parties' submission that the cells had been equipped with bunks, a table, wooden benches and a cubicle in which a lavatory pan was situated, the Court entertains doubt that there was sufficient floor space even to pace out the cell. In this respect, the Court notes that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

69. The applicant's situation was further exacerbated by the fact that the opportunity for outdoor exercise was limited to one hour a day in the small facility courtyard, leaving him with twenty-three hours to endure every day without any kind of freedom of movement. The Court further observes, and it was not disputed by the parties, that the windows in the cells in which the applicant was held were small and covered with metal shutters. This arrangement significantly reduced the amount of daylight that could penetrate into the cell, and cut off fresh air. In addition, as was confirmed by the Government (see paragraph 15 above), the cells lacked artificial ventilation. It therefore appears that for more than two years the applicant had to spend a considerable part of each day in a cramped cell with poor ventilation and no window in the proper sense of the word (compare *Peers v. Greece*, no. 28524/95, § 75, ECHR 2001-III).

70. In this connection, the Court does not overlook the fact that the applicant was suffering from tuberculosis and thus required sufficient circulation of clean air (see, for similar reasoning, *Pitalev v. Russia*, no. 34393/03, § 46, 30 July 2009, and *Pokhlebin v. Ukraine*, no. 35581/06, § 51, 20 May 2010). Although the issue of the applicant's infection with tuberculosis will be discussed later, the Court would already like to stress at this juncture that the lack of access to fresh air as well as the obligation to stand for hours with no possibility of lying down could have been among the factors causing a serious deterioration in the applicant's health.

71. To sum up, the Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov*

v. Russia, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court reiterates that it has already found a violation of Article 3 on account of the detention of applicants in overcrowded conditions in detention facility no. IZ-39/1 at the time when the applicant in the present case was detained there (see *Artyomov v. Russia*, no. 14146/02, §§ 123-133, 27 May 2010; *Kositsyn v. Russia*, no. 69535/01, §§ 21-31, 12 May 2010; and *Shilbergs v. Russia*, §§ 89-99, no. 20075/03, 17 December 2009).

72. 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 very fact that the applicant was obliged to live, sleep and use the toilet in a particularly limited space with so many other inmates, combined with the lack of access to fresh air, was 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.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF MEDICAL ASSISTANCE

74. The applicant complained under Article 3 of the Convention that he had contracted tuberculosis during his detention in facility no. IZ-39/1 and that the prison authorities had not taken steps to safeguard his health and well-being, but had failed to provide him with adequate medical assistance in respect of his tuberculosis. Article 3 is cited above.

A. Submissions by the parties

75. The Government firstly argued that it was impossible to establish "beyond reasonable doubt" that the applicant had contracted tuberculosis in detention. They reasoned that according to medical specialists and research, the majority of the Russian adult population and, consequently, the majority of individuals entering the Russian penitentiary system, are already infected with mycobacterium tuberculosis ("MBT"). The Government stressed that a period of several years may pass between the date when a person contracts the illness and the date when the illness fully develops. They admitted that at some point during detention in facility no. IZ-39/1 the applicant had

shared a cell with a person who had suffered from tuberculosis but had been clinically cured. Therefore, the applicant's contact with that person could not have been a factor in the development of the illness.

76. The Government further submitted that the Russian authorities had taken all appropriate measures to safeguard the applicant's health. On admission to detention facility no. IZ-39/1 he had been examined by a prison doctor and given a fluorography examination which revealed no signs of infection. From 15 December 1999 to 28 January 2002 the applicant had had no contact with individuals suffering from infectious diseases. The Government observed that the applicant had received medical assistance in full compliance with the domestic legal norms. The medical department of the detention facility had had the necessary equipment and medication and employed real professionals. Without providing any further explanation or submitting medical documents related to the period of the applicant's detention in facility no IZ/39/1, the Government argued that after a fluorography examination of 16 January 2001 had revealed tuberculosis changes in his left lung, the applicant had been admitted to the pulmonary tuberculosis ward of the facility medical department where he had received an intensive course of anti-tuberculosis treatment. The subsequent stages of the applicant's treatment in prison hospitals after 28 January 2002 had also complied with established requirements.

77. The applicant provided the Court with copies of medical certificates drawn up prior to his arrest and showing that he had undergone full medical examinations twice a year and had been considered healthy. He argued that he had not suffered from tuberculosis before his arrest in December 1999 and that he had acquired his illness in detention. Furthermore, the first two fluorography tests performed in facility no. IZ-39/1 did not show any symptoms of tuberculosis. It was more than a year later that his illness was discovered. The applicant insisted that the Government had provided no evidence in support of their assertion that the applicant had already been infected with MBT before his arrest or, for that matter, that he had received the necessary medical assistance in facility no. IZ-39/1. He argued that he had not been given all the medicines required for the treatment of tuberculosis, which was confirmed by the fact that his health had seriously deteriorated on 5 August 2001. The detention facility did not have the financial resources to purchase the anti-tuberculosis drugs and, as a consequence, inmates were prescribed treatment only with drugs that the facility had, without any personal assessment and irrespective of the correct diagnosis. The treatment was also interrupted when the facility ran out of the drugs. Despite the fact that prison medical personnel were aware of his illness, it was not until 16 August 2001 that he was examined by a tuberculosis specialist and given treatment for acute viral respiratory infection. Furthermore, he had to wait another two weeks before a fluorography examination was performed on 3 September 2001, showing

the negative dynamic of the tuberculosis process. The applicant concluded that the medical assistance he was given had been insufficient, sporadic and ineffective.

B. The Court's assessment

1. Admissibility

78. The Court observes that in July 2001 the applicant sued the administration of detention facility no. IZ-39/1 and the Ministry of Finance in tort, arguing, *inter alia*, that he had contracted tuberculosis in detention and had not received effective medical assistance. The proceedings terminated with the final judgment of the Kaliningrad Regional Court of 19 June 2002, establishing no fault of the domestic authorities in the deterioration of the applicant's health. The applicant was served with a copy of the judgment on 16 August 2002. Given the fact that the applicant lodged his application with the Court on 17 January 2003, the Court considers that he complied with the six-month requirement established by Article 35 § 1 of the Convention (see *Buzychkin v. Russia*, no. 68337/01, § 74, 14 October 2008).

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

2. Merits

(a) General principles

80. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). 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 and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

81. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or

her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

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

83. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most of the cases concerning the detention of people who are ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this respect that even if Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

84. The "adequacy" of medical assistance remains the most difficult element to determine. The CPT proclaimed the principle of the equivalence of health care in prison with that in the outside community (see paragraph 44 above). However, the Court does not always adhere to this standard, at least when it comes to medical assistance for convicted prisoners (as opposed to those in pre-trial detention). While acknowledging that authorities must ensure that the diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik*, cited above, §§ 104-106; and, *mutatis mutandis, Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006), and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109, 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, cited above, § 211), the Court has also held that Article 3 of the

Convention cannot be interpreted as securing for every detained person medical assistance at the same level as "in the best civilian clinics" (see *Mirilashivili v. Russia* (dec.), no. 6293/04, 10 July 2007). In another case the Court went further, holding that it was "prepared to accept that in principle the resources of medical facilities within the penitentiary system are limited compared to those of civil[ian] clinics" (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007).

85. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

(b) Application of the above principles to the present case

86. Turning to the circumstances of the present case, the Court observes that following a fluorography test on 16 January 2001, more than a year after the arrest in December 1999, the applicant was diagnosed as having tuberculosis which, according to him, he had not suffered from prior to his arrest. In fact, the medical certificates submitted by the applicant show that he had no history of tuberculosis before his placement in detention facility no. IZ-39/1 in Kaliningrad. Likewise, no symptoms of tuberculosis were discovered in the period from 13 December 1999 when the applicant was arrested to 16 January 2001 when the disease was diagnosed. The two fluorography tests performed during that period revealed no signs of infection.

87. In this respect, the Court shares the Government's opinion that Mycobacterium tuberculosis, also known as Koch's bacillus, may lie dormant in the body for some time without exhibiting any clinical signs of the illness. However, for the Government to effectively argue that the applicant was infected with Koch's bacillus even before his arrest, it would have been necessary for the authorities to perform the Mantoux test on the applicant upon his admission to the detention facility and in addition to a fluorography examination, or a special tuberculosis blood test which would have indicated the presence of the latent infection. However, as follows from the parties' submissions, apart from fluorography examinations, the Russian penitentiary institutions did not employ any other methods to check for TB at the moment of detainees' admission to detention facilities. It is therefore impossible to exclude that the applicant was never exposed to the infection prior to his arrest and that he only contracted tuberculosis in detention, particularly taking into account that the severe overcrowding, unsatisfactory ventilation and poor sanitary conditions in which the applicant found himself in facility no. IZ-39/1 (see paragraphs 68-73 above) are a recognised setting for the transmission of tuberculosis (see *Ghavtadze v. Georgia*, no. 23204/07, § 86, 3 March 2009). The Court also does not

lose sight of the statistical estimations that place Russia among one of the twenty-two highest-burden countries for tuberculosis in the world, recording a drastic increase in the incidence of tuberculosis in 1990s, with some reports indicating that TB is twenty times more prevalent in Russian prisons than in civilian life (see paragraph 49 above). With all these considerations in mind and also adding to them the fact that the first two fluorography tests performed in December 1999 and June 2000 showed no pathology in the applicant's lungs, the Court considers it most probable that the applicant contracted tuberculosis in detention facility no. IZ-39/1 (see *Staykov v. Bulgaria*, no. 49438/99, § 81, 12 October 2006; *Yakovenko v. Ukraine*, no. 15825/06, §§ 28 and 95, 25 October 2007; *Hummatov*, cited above, §§ 108 and 111; and *Ghavtadze*, cited above, § 86).

88. While finding it particularly disturbing that the applicant's infection with tuberculosis occurred in a penitentiary institution within the State's control, as an apparent consequence of the authorities' failure to eradicate or prevent the spread of the disease, the Court reiterates its constant approach that even if an applicant had contracted tuberculosis while in detention, this in itself would not imply a violation of Article 3, provided that he received treatment for it (see *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005, and *Pitalev v. Russia*, no. 34393/03, § 53, 30 July 2009, with further references). However, the State does have a responsibility to ensure treatment for prisoners in its charge and a lack of adequate medical assistance for serious health problems not suffered from prior to detention may amount to a violation of Article 3 (see *Hummatov*, cited above, § 108 et seq.). Absent or inadequate treatment for tuberculosis, particularly when the disease has been contracted in detention, is most certainly a subject of the Court's concern. It is therefore bound to assess the quality of medical services rendered to the applicant in the present case and to determine whether he was deprived of adequate medical assistance as he claims and, if so, whether this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005).

89. The Court observes that following the discovery of tuberculosis changes in the left lung in January 2001 the applicant was placed in the pulmonary tuberculosis ward of facility no. IZ-39/1, where he remained until his transfer to the tuberculosis hospital in January 2002. The Court accepts the Government's argument, as it was not disputed by the applicant, that certain medical treatment was provided to him in the ward. However, the mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Pokhlebin v. Ukraine*, no. 35581/06, § 62, 20 May 2010, with further references).

90. Instead of producing a copy of the applicant's complete medical record, the Government furnished an extract which relates only to the period

after January 2002. In the absence of any explanation from the Government, the Court is unable to establish whether their failure to comply with the Court's request is, in its turn, a product of the domestic authorities' failure to keep a comprehensive record concerning the applicant's state of health and the treatment he underwent (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII (extracts)) or a result of the Government's omission to enclose, in their submissions to the Court, that part of the applicant's medical record which may be considered vital evidence necessary for the examination of the complaint in so far as it contains information capable of corroborating or refuting the violation alleged by the applicant. However, irrespective of the reasons, the Court is prepared to draw inferences as to the well-foundedness of the applicants' allegations and the Government's conduct in the instant case (see *Bekirski v. Bulgaria*, no. 71420/01, § 115, 2 September 2010, with further references, and *Imakayeva v. Russia*, no. 7615/02, § 124, ECHR 2006-XIII (extracts)).

91. Keeping this in mind and, at the same time, remaining free to make its own assessment in the light of all the material before it (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 113, ECHR 2004-IV (extracts)), the Court makes the following findings as to the quality of the treatment provided to the applicant in facility no. IZ-39/1 following the detection of tuberculosis. According to the Government the applicant was subjected to an intensive chemotherapy regimen comprising two medicines. Apart from the fact that the medicines in question were not identified by the Government, the Court notes that neither standardised treatment regimen recommended by the WHO for new TB patients consists of only two drugs (see paragraph 50 above). In fact, the initial two-month phase of the tuberculosis treatment recommended by the WHO should include at least three drugs aimed at rapidly killing tubercle bacilli. At the same time, as follows from the certificate issued by the head of the medical department of the Kaliningrad Regional Department of Execution of Sentences, it was not before September 2001, that is almost nine months after the infection had been discovered, that the applicant was prescribed a course of three anti-tuberculosis drugs recommended by the WHO. Furthermore, the Government have not argued that the initial phase of the treatment was followed up by the four-month or six-month continuation phase during which the chemotherapy regimen should have been amended for the purpose of eliminating the remaining bacilli and preventing subsequent relapse.

92. The Court is of the view that the fact that the disease was still active more than nine months after the initial diagnosis is the major sign of inadequate management of the applicant's case by the Russian medical authorities.

93. The evidence put before the Court also shows that the applicant's treatment was unregulated and erratic. In particular, the Court observes that in August 2001 the applicant's health deteriorated significantly. However, it was more than ten days later that a tuberculosis specialist examined him for the first time and prescribed "symptomatic treatment" for acute viral respiratory infection. The Court finds it particularly striking that despite the applicant's history of tuberculosis the first chest fluorography examination was given to him almost a month after the deterioration of his condition. At the same time, there is no indication that the medical authorities performed any other tests, such as sputum culture testing and sputum smear bacterioscopy, drug susceptibility testing, blood analysis, liver examinations, and so on, which form part of the comprehensive therapeutic strategy required in the course of the treatment of TB patients and aimed at curing the disease. In fact, there is no evidence that the applicant was subjected even to systematic radiological assessment or that his condition was regularly checked by the facility medical personnel. In the Court's view, this cannot be deemed to be adequate and reasonable medical attention, given the disease from which the applicant was suffering.

94. Moreover, not only is the Court unconvinced that the applicant was attended by doctors on a regular and systematic basis and prescribed an adequate course of anti-tuberculosis medication, but it is of the opinion that the facility administration also failed to create the necessary conditions for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116). For instance, the Government did not argue that the intake of medicines by the applicant had been supervised and directly observed by the facility medical personnel throughout the whole treatment regime as required by the DOTS strategy (see paragraph 50 above). In addition, as follows from an extract from the applicant's medial record drawn up on 26 June 2006, the deterioration of his health in August 2001 was attributed to "irregular medication" (see paragraph 10 above). In the absence of the Government's argument that the applicant refused to cooperate with the domestic authorities and resisted the treatment and having regard to the observations of the attending doctor in the tuberculosis hospital recording the strong determination on the applicant's part to go through with anti-tuberculosis treatment (see paragraph 11 above), the Court cannot but accept the applicant's argument concerning the authorities' failure to administer him with anti-tuberculosis drugs in the requisite dosage and at the right intervals. This conclusion is also supported by the report of the Kaliningrad Regional Ombudsman who, having visited detention facility no. IZ-39/1 in 2001, found that inmates did not have access to sufficient medical assistance in view of the facility's lack of financial resources to purchase medical equipment or medicines (see paragraph 37 above). In this respect the Court observes that the authorities' inability to assure a regular, uninterrupted supply of essential anti-tuberculosis drugs to patients is a key

factor in tuberculosis treatment failure (see, for similar reasoning, *Yakovenko v. Ukraine*, no. 15825/06, §§ 98-102, 25 October 2007). It also notes that special attention, obviously lacking in the applicant's case, should always be given to patients whose treatment was interrupted, including specific clinical and radiological assessment and adjustment of treatment regimen in the light of the results of the assessment.

95. Lastly, the evidence before the Court shows that no provision for a special dietary ration necessary for the applicant to improve his health was made by the facility administration (see *Gorodnitchev v. Russia*, no. 52058/99, § 91, 24 May 2007, and, by contrast, *Pakhomov,* cited above, § 68).

96. To sum up, the Court considers that the Government did not provide sufficient evidence to enable it to conclude that the applicant received comprehensive, effective and transparent medical assistance in respect of his tuberculosis during detention in facility no. IZ-39/1. The Court is particularly mindful of the fact that following his transfer from facility no. IZ-39/1 the applicant was forced to undergo long-term treatment for his tuberculosis, becoming a chronic patient and being assigned second-degree disability. In addition, he was subjected to surgery in relation to his tuberculosis and is in need of another operation. The Court believes that, for lack of adequate medical treatment, the applicant was exposed to prolonged mental and physical suffering diminishing his human dignity. The authorities' failure to provide the applicant with the requisite medical care amounted to inhuman and degrading treatment with the meaning of Article 3 of the Convention.

97. Accordingly, there has been a violation of Article 3 of the Convention on account of the authorities' failure to comply with their responsibility to ensure adequate medical assistance to the applicant during his detention in facility no. IZ-39/1.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

98. The applicant complained that he had not had an equal and effective opportunity to present his case before the appeal court at the hearing on 19 June 2002 because the domestic authorities had failed to secure his attendance at that hearing. He relied on Article 6 § 1 which provided in so far as relevant as follows:

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

A. Submissions by the parties

99. The Government argued that on 16 May 2002 the Presidium of the Regional Court had corrected all the procedural defects committed by the Regional Court on 27 February 2002, by quashing the Regional Court's judgment and authorising the re-examination of the applicant's case on appeal. The Presidium had explicitly acknowledged a violation of the applicant's right to participate effectively in the appeal hearing on 27 February 2002. The Government further stressed that having been afforded an opportunity to present his case for the second time before the appeal court the applicant had appointed two representatives. In addition, while not filing for leave to appear in person the applicant had also authorised the appeal court to examine the case in the absence of his representatives should the latter fail to appear. The Government asserted that the applicant's representatives, who had been properly summoned to the appeal hearing, had defaulted. No explanation for their absence had been provided. The Government concluded that, in the circumstances, the applicant's "fair trial" rights had been fully respected during the hearing on 19 June 2002, when neither the applicant's representatives nor the respondent had attended the appeal hearing and the domestic court had based its ruling on the parties' written submissions.

100. The applicant maintained his complaints, arguing that the hearing on 19 June 2002 had been held in violation of his Article 6 rights. Without disputing the fact that his representatives had been duly summoned to the hearing on 19 June 2002, the applicant submitted that the appeal court had committed a gross violation by failing to investigate the reasons for the lawyers' absence and by rendering the judgment on the basis of the parties' written submissions.

B. The Court's assessment

1. Admissibility

101. 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

102. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence

adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). The Court has previously found a violation of the right to a "public and fair hearing" in a case where a Russian court, after having refused leave to appear to the imprisoned applicants, who had wished to make oral submissions on their defamation claim, failed to consider other legal possibilities for securing their effective participation in the proceedings (see *Khuzhin and Others v. Russia*, no. 13470/02, §§ 53 et seq., 23 October 2008). It also found a violation of Article 6 in a case where a Russian court refused leave to appear to an imprisoned applicant who had wished to make oral submissions on his claim that he had been ill-treated by the police. Despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

103. The Court observes that the Russian Code of Civil Procedure provides for the plaintiff's right to appear in person before a civil court hearing his claim (see paragraph 39). However, neither the Code of Civil Procedure nor the Penitentiary Code makes special provision for the exercise of that right by individuals who are in custody, whether they are in pre-trial detention or are serving a sentence. At the same time the Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

104. Turning to the circumstances of the present case, the Court notes that on 19 November 2001 the Tsentralniy District Court dismissed the applicant's action. On 27 February 2002 the Kaliningrad Regional Court, acting on appeal, upheld the District Court's ruling. The appeal judgment was taken in the absence of the applicant, who had neither been brought to the hearing nor been afforded an opportunity to seek representation because of the Regional Court's failure to inform him of the hearing. On 16 May 2002 the Presidium of the Regional Court, by way of supervisory review, quashed that judgment, finding that the Regional Court had violated the applicant's right to present his case in person or with the assistance of a representative. The case was sent back to the Regional Court for fresh examination. On 19 June 2002 the Kaliningrad Regional Court upheld the judgment of 19 November 2001. The appeal judgment was issued on the

basis of the parties' written submissions as neither the applicant's representatives nor the respondent attended the appeal hearing.

105. The Government argued that, having appointed two representatives and having authorised the Regional Court to examine the case in their absence should they fail to appear, the applicant had clearly waived his right to attend the hearing. The applicant, however, disagreed. He averred that after the Regional Court had learnt that his representatives had defaulted, it should have ensured the applicant's presence at the hearing. The Regional Court, however, had proceeded with the examination of the case without even considering the possibility of bringing the applicant to the hearing.

106. The Court observes that in March 2002, when lodging an amendment to his statement of appeal, the applicant notified the Regional Court that he had entrusted two lawyers with the task of representing him before the appeal court. Having provided the Regional Court with the representatives' personal data, including their contact information, the applicant authorised it to examine the case in the absence of his representatives should the latter default. He did not seek leave to appear.

107. The Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial (see *Hermi v. Italy* [GC], no. 18114/02, § 73, ECHR 2006-XII). However, such a waiver must, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance (ibid).

108. The Court considers that the applicant in the instant case voluntarily and unequivocally chose to defend his interests at the appeal stage through the services of legal representatives. It has not been disputed, and the Court finds it established, that the applicant was sufficiently aware of his procedural rights, including the right to seek leave to appear before the Regional Court. In fact, he effectively exercised that right before the Tsentralniy District Court, which held every hearing in his presence (see, by contrast, *Shilbergs v. Russia*, no. 20075/03, §§ 108-110, 17 December 2009). However, the Court does not find it surprising that the applicant opted for legal representation on appeal, as his personal attendance was no longer crucial at that stage of the proceedings. The Court is convinced that the applicant made informed decisions in appointing representatives and asking the Regional Court to examine the action in their absence if they failed to appear. It was open to him to make an additional provision for his personal attendance when he instructed the Regional Court regarding the consequences of his representatives' failure to attend. Furthermore, having been apprised of the date of the appeal hearing in May 2002, the applicant could have responded by lodging a separate application for leave to attend. However, he did not make use of either of those avenues. The Court does not doubt that the applicant fully understood that, in the absence of an

explicit request to attend on his part, his choice of legal representation, and his consent to the examination of the action should his representatives fail to appear, implied the waiver of his right to attend the appeal hearing.

109. Consequently, the Court concludes that the applicant, through his conduct, implicitly waived his right of personal attendance. In the circumstances of the case, there is no reason to consider that the applicant was not sufficiently aware of the consequences of his decision not to seek leave to appear. Furthermore, the materials before the Court do not disclose any circumstance which would lead it to consider that the Regional Court, on its own initiative, should have taken steps to ensure the applicant's presence.

110. The latter conclusion is based on the following considerations. The Court reiterates that having discovered that both parties had not appeared in court, the Kaliningrad Regional Court dispensed with the hearing and issued the judgment on the basis of the parties' written submissions and the case file materials. In this connection, the Court observes that in proceedings before a court of first and only instance there is normally a right to a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 64, Series A no. 171-A). However, the absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue, provided a hearing has been held at first instance (see, for instance, *Helmers v. Sweden*, 29 October 1991, § 36, Series A no. 212-A).

111. The Court notes that it has already established that the applicant waived his right to be present at the appeal hearing of his own free will. It acknowledges that, in the interests of the proper administration of justice, it is normally more expedient that the plaintiff is heard at first instance rather than before the appellate court. Depending on the circumstances of the case, it might even be acceptable to reject a request for a hearing upon appeal when no such hearing has been held at first instance (see *Döry v. Sweden*, no. 28394/95, § 40, 12 November 2002).

112. In the present case, the Court observes that the applicant was given an oral hearing before the District Court, where he fully exercised his right to make oral submissions to the court, present his evidence and raise any arguments in defence of his interests. The applicant's presence was sufficient to ensure that the proceedings before the District Court were adversarial and the principle of equality of arms was respected. There is no evidence that the applicant's position had changed since the hearings before the District Court or that he intended to present to the Regional Court any new arguments in support of his claims for compensation. The Court further takes into account that the applicant did not request the Kaliningrad Regional Court to call any witnesses on his behalf. The task of the appeal court was therefore limited to verifying whether the relevant provisions of the domestic law conferred on the applicant the right to compensation for

damage caused by his having contracted tuberculosis as a result of inadequate conditions of detention. The Court recognises that the Regional Court's task was rather technical and accordingly perhaps best dealt with in writing rather than in oral argument. Furthermore, it cannot overlook the demands of efficiency and economy that are to be met by the national authorities in the administration of justice (see, for similar reasons, *Belan v. Russia* (dec.), no. 56786/00, 2 September 2004).

113. Having regard to the foregoing, the Court concludes that in the circumstances of the present case the national authorities cannot be blamed for not securing the applicant's presence before the appeal court and that the appeal court was able adequately to resolve the issues before it on the basis of the case file and the applicant's written submissions.

114. It follows that there has been no violation of Article 6 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

115. The applicant also complained that he did not have an effective domestic remedy for his complaint concerning the contraction of tuberculosis in detention, in breach of Article 13 of the Convention, which provides as follows:

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

A. Submissions by the parties

116. The Government argued that the applicant's complaint was manifestly ill-founded, being linked to the manifestly ill-founded complaint under Article 3 of the Convention. In any event, it had been open to the applicant to lodge a tort action with the Tsentralniy District Court of Kaliningrad and he had explored that avenue. The fact that the applicant was unsuccessful did not strip that avenue of its effectiveness.

117. The applicant maintained his complaint.

B. The Court's assessment

118. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although

Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent State (see *Menteş and Others v. Turkey*, 28 November 1997, § 89, *Reports* 1997-VIII).

119. Turning to the circumstances of the present case the Court observes that the applicant lodged an action in tort against State officials arguing their liability for damage caused to his health by his contracting tuberculosis. In his application to the Court the applicant argued that the tort action was not sufficiently effective to comply with Article 13 of the Convention, as it did not provide any redress. It is apparent from the above that the Court must examine whether the judicial avenue for obtaining compensation for the damage sustained by the applicant represented an effective, adequate and accessible remedy capable of satisfying the requirements of Article 13 of the Convention.

120. The Court reiterates that the applicant introduced an action, seeking compensation for damage resulting from the authorities' alleged failure to safeguard his health. Following the examination of the action by the domestic courts of the three levels of jurisdiction, it was dismissed for absence of cause. In this respect the Court observes that Russian law undoubtedly afforded the applicant the possibility of bringing judicial proceedings to claim compensation for the damage flowing from actions/inactions of State officials (see paragraph 38 above). The Court reiterates that the applicant availed himself of that possibility by bringing an action against the State agencies seeking compensation for the damage he had sustained on account of his contracting tuberculosis. The domestic courts examined the applicant's claims, having found them to be manifestly ill-founded in view of the absence of any evidence of the authorities' fault in infecting the applicant with tuberculosis. The applicant's dissatisfaction with the outcome of the proceedings does not in itself demonstrate that a tort action was an ineffective remedy for airing such complaints (see *Buzychkin*, cited above, § 74). In this connection the Court notes that the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

121. The Court therefore concludes that the remedy available to the applicant satisfied the conditions laid down in paragraph 118 above. As it has already pointed out, the applicant's failure to succeed in the light of the particular circumstances of his case does not detract from the "effectiveness" of the remedy for the purpose of Article 13 (see, for similar reasoning, *Murray v. the United Kingdom*, 28 October 1994, § 100, Series A

no. 300-A). It follows that the complaint under Article 13 is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

122. Lastly, the Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

125. The Government submitted that no compensation should be awarded as the applicant had not submitted any claims.

126. The Court notes that it has found two very grave violations in the present case. In these circumstances, the Court considers that the applicant's suffering and frustration, caused by the inhuman conditions of his detention and the fact that he did not receive adequate medical assistance in detention, cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 27,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

127. The applicant also asked the Court to award an unspecified amount in compensation for his legal representation before the Court.

128. The Government submitted that the applicant had not provided any evidence in support of the expenses incurred.

129. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the amount of EUR 850 has already been paid to the applicant by way of legal aid. Taking into account that the applicant failed to provide any documents in support of his claim for compensation of additional expenses for legal representation or even indicate the sum claimed, the Court does not consider it necessary to make an award under this head.

C. Default interest

130. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the inadequate medical care and conditions of detention during the applicant's imprisonment in facility no. IZ-39/1 in Kaliningrad and the alleged failure of the domestic authorities to secure his presence before the Kaliningrad Regional Court on 19 June 2002 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility no. IZ-39/1 in Kaliningrad from 15 December 1998 to 28 January 2002;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to provide the applicant with the requisite medical care in facility no. IZ-39/1 in Kaliningrad;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 27,000 (twenty-seven thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

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

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

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President