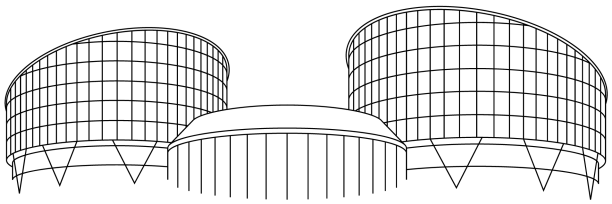

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHATAYEV v. RUSSIA

(Application no. 56994/09)

JUDGMENT

STRASBOURG

11 October 2011

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khatayev v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 20 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 56994/09) 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 Shamil Elsiyevich Khatayev ("the applicant"), on 27 October 2009.

2. The applicant was represented by Ms V. Shaysipova, a lawyer practising in the town of Tambov. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not received adequate medical assistance in correctional facilities after his conviction in 2007, and that his complaints of having been subjected to inhuman and degrading treatment by warders in a prison hospital on two occasions had not been effectively investigated.

4. On 2 March 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Further to the applicant's request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lived until his arrest in the village of Serebryaniki in the Tver Region.

A. General information on the applicant's arrest and conviction

6. On 2 August 2001 the Vyshne-Volotsk Town Court of the Tver Region found the applicant guilty of aggravated rape and sexual assault on a minor and sentenced him to six years' imprisonment. He was released on 28 February 2007, having served the sentence.

7. On 7 April 2007 the applicant was arrested on suspicion of aggravated robbery.

8. On 1 October 2007 the Tverskoy District Court of Moscow found the applicant guilty of having attempted to commit an aggravated robbery and sentenced him to two years and six months' imprisonment, which he was sent to serve in correctional colony no. 5 in the town of Morshansk in the Tambov Region. In December 2008 he was transferred to special medical correctional facility no. 7 ("the medical colony") in the village of Polevoy in the Tambov Region.

B. The applicant's medical history

1. Prior to the applicant's arrest in 2007

9. Copies of medical records presented to the Court indicate that in 2000 the applicant was diagnosed with pulmonary tuberculosis accompanied by bacterial excretion and tuberculous papillitis of the kidneys and right ureter. From 16 February to 19 May 2000 the applicant underwent treatment in the Vyshne-Volotskiy Tuberculosis Hospital.

10. Subsequently, the applicant was regularly monitored in the Tver Regional Clinical Tuberculosis Hospital ("the TB hospital"). In particular, on 30 January 2001, following a complex examination in the TB hospital, the applicant was diagnosed with infiltrative tuberculosis in the disintegration stage. The examining doctors concluded that the tuberculoma was growing and that the applicant should undergo surgery to remove it. The applicant refused surgery and was admitted to the TB hospital for treatment with antimicrobial medicines. He was discharged from the hospital on 10 April 2001 following numerous unauthorised leaves and violations of hospital regulations. An extract of his medical record shows

that by the date of his discharge the applicant's state of health had not improved.

11. On his admission to a temporary detention facility in Tver after his arrest in 2001, the applicant was diagnosed with "focal pulmonary tuberculosis in the infiltration stage". On a number of occasions in 2001, 2002 and 2003 the applicant was admitted to prison hospital no. 3 or the Tver Regional TB hospital for anti-tuberculosis treatment. On 24 August 2004 a medical commission, comprising a number of specialists from prison hospital no. 3, examined the applicant and issued the final diagnosis: "clinical recovery from the focal tuberculosis of the upper lobe of the left lung accompanied by small residual post-tuberculosis changes in the form of pulmonary fibrosis, and clinical recovery from renal tuberculosis".

12. In September 2004 the applicant was transferred to correctional colony no. 4 in the Tver Region to serve the remaining part of his sentence. He was placed under regular supervision by a tuberculosis specialist, underwent complex in-patient medical examinations and received seasonal antibacterial prophylactic treatment twice a year.

2. After the arrest in April 2007

(a) Detention between April 2007 and October 2009

13. On admission to the detention facility in Moscow following his arrest on 7 April 2007, the applicant underwent a complex prophylactic examination, *inter alia* by a tuberculosis specialist. The following diagnosis was noted in the applicant's medical record: "clinical recovery from pulmonary tuberculosis, dense *nidi*, pulmonary fibrosis". He was placed on a special diet, received multivitamins and underwent a two-month course of anti-tuberculosis drug treatment in the tuberculosis department of the prison hospital.

14. When he arrived at correctional colony no. 5 in the town of Morshansk in the Tambov Region on 30 January 2008, the applicant did not make any complaints concerning his health. A medical examination performed on his admission to the colony confirmed the previous diagnosis of clinically treated pulmonary tuberculosis with residual changes. The doctor's recommendation was that the applicant should be placed on an enriched diet, should undergo X-ray testing twice a year and should receive prophylactic treatment with two anti-bacterial drugs each spring and autumn.

15. According to a letter sent by the head of the Tambov Regional Department of the Service for the Execution of Sentences to the applicant's lawyer on 23 December 2008, the applicant applied for medical assistance once during the entire period of his detention in correctional colony no. 5. In particular, the applicant's medical history shows that on 8 February 2008 he complained to a prison doctor about a phlegm cough. Following an

examination, including a chest X-ray, he was diagnosed with "clinical recovery from pulmonary tuberculosis [and] bronchitis." After undergoing conservative treatment, the applicant was considered to have been cured of bronchitis.

16. The Government stressed that the recommendations given on the applicant's admission to correctional colony no. 5 had been followed to the letter. The applicant disputed that assertion, arguing that he had not received the requisite medical attention. According to the applicant's medical history submitted to the Court in 2008, during the first year of his detention in colony no. 5 the applicant was given a chest X-ray once and received a full course of anti-bacterial treatment in the autumn of 2008. At the same time a prison medical assistant or a prison doctor attended the applicant once a month, took his blood pressure, measured his body temperature and recorded no health complaints on the applicant's part.

17. During a medical examination on admission to the medical colony in December 2008, the applicant made no complaints about his health. His state of health was considered to be satisfactory. At the same time, he was registered for regular medical check-ups because of his medical history. The examining doctor confirmed the diagnosis of the applicant's clinical recovery from pulmonary tuberculosis, but noted the unclear status of the applicant's renal illness and authorised blood and urine tests. As the tests could not be performed in the medical colony for lack of a laboratory technician, the applicant's transfer to the Tambov Regional Prison Hospital was authorised.

18. From 13 to 23 December 2008 the applicant underwent a complex medical examination, including blood and urine tests and X-ray exams of the urinary tract and chest, in the tuberculosis department of the Tambov Regional Prison Hospital. Tests for the presence of mycobacterium tuberculosis ("MBT") in the urine were also performed, producing negative results. The applicant was treated for acute cystitis and also received prophylactic anti-tuberculosis treatment. His medical record drawn up in the hospital, in so far as relevant, read as follows:

> "Diagnosis: clinical recovery from focal tuberculosis of the upper lobes of both lungs resulting in circumscribed post-tuberculosis pneumosclerosis... Acute cystitis. The diagnosis in respect of the tuberculosis was made on 17 December 2008 by the Central Medical Commission of the Tambov Regional Tuberculosis Hospital.
>
> Fitness for work: able to work, excluding types of work involving exposure to cold, dust and gas pollution.
>
> [The applicant] is recommended treatment twice a year (spring and autumn) for two or three months with two anti-tuberculosis drugs to prevent a relapse of tuberculosis and X-ray examinations twice a year in compliance with [internal regulations].
>
> [The applicant] should be detained in correctional facilities in general conditions."

The final diagnosis was made on 17 December 2008 by the Central Medical Commission of the Tambov Regional Anti-Tuberculosis Clinic.

19. According to the applicant, the recommendations were never complied with. On a number of occasions he requested the facility administration to admit him for medical treatment, but to no avail.

20. The applicant's medical history, however, shows that following his transfer back to the medical colony he was regularly examined (at least once a month) by the colony medical personnel or independent medical specialists, including a tuberculosis specialist from the Kirsanov Town Tuberculosis Hospital. In particular, examinations by independent tuberculosis specialists were carried out on 8 March, 3 and 24 May and 9 August 2009. Relying on the applicant's medical record, the Government argued that the personnel of the medical colony had fully complied with the recommendations given by the independent tuberculosis specialists. At the same time, those recommendations had met with resistance from the applicant. For instance, following the examination on 8 March 2009 the tuberculosis specialist noted the applicant's satisfactory state of health and recommended maintaining a three-month course of prophylactic antibacterial treatment. The applicant refused to take the anti-bacterial medicines, however, expressing a general disinclination to submit to medical procedures. A report recording the applicant's refusal to undergo treatment was drawn up and signed by four colony staff members. It was also noted that the applicant would not confirm his refusal in writing.

21. In response to the applicant's refusal to submit to the treatment, the colony administration intensified the frequency of his medical examinations by a prison doctor or medical assistant to a rate of at least once a fortnight. The applicant submitted that on 1 May 2009, when the colony administration had attempted to reason with him, he had gone on a hunger strike, being dissatisfied with the conditions of his detention and appalled by the fact that he had to use the same crockery as "inmates of a lower social status". The attending prison doctor noted the applicant's complaint about dizziness, fatigue and stomach ache, recommended his transfer to the colony hospital and asked to be informed of the result of the applicant's urine test for the presence of the MBT in the urine. A chest X-ray performed the following day revealed no changes. An independent tuberculosis specialist who saw the applicant on 3 May 2009 confirmed the need to perform additional testing in the tuberculosis hospital, suspecting reactivation of the tuberculosis process in the urinary tract.

22. The applicant was transferred to the therapeutic department of the prison hospital. While he started receiving prophylactic anti-bacterial treatment, the necessary tests and X-rays were carried out, revealing no presence of MBT in the applicant's urine and no reactivation of the tuberculosis process in his lungs. The report drawn up by the attending doctor read, in so far as relevant, as follows:

"Taking into account the results of additional examinations (microbiological and X-ray [testing]) there is no sufficient evidence of any reactivation of the tuberculosis process in the kidney and urinary tracts.

Recommended: dynamic supervision, chest X-ray testing once every six months, repeated urine testing for the presence of MBT after six months ...

Diagnosis: clinical recovery from pulmonary tuberculosis resulting in fibrosis and firm *nidi* in the upper lobes of the lungs... No evidence of recurrence of the illness..."

23. After the applicant's release from the hospital, the colony medical personnel examined him at least once a month. The applicant's medical record shows that he had no health complaints apart from those raised on the following occasions. On 4 July 2009 a doctor called to the applicant made the following two entries in his medical record. The first entry read as follows:

"4 July 2009. A medical examination of [the applicant] was performed after special measures (handcuffs) and physical force were used [against him].

No injuries were discovered during the medical examination ..."

The second entry read as follows:

"...[the applicant] made two slash wounds to his right and left forearms at 11.05 a.m. During the examination he did not make any complaints.

Objectively: his general condition is satisfactory, lungs and heart are without any peculiarities; blood pressure is 125/80 mm. [There is] a cut measuring 4 cm in length and 0.2 cm in width on his right forearm; insignificant bleeding. [There is] a cut measuring 5 cm in length and 0.2 cm in width on his left forearm; insignificant bleeding. [The applicant] refused to explain why he had cut himself.

Diagnosis: self-injuring. Slash wounds on both forearms.

[Treatment provided]..."

24. In the early morning of 17 August 2009 the doctor on duty was called to the punishment unit, where the applicant was detained at the time. The doctor made the following entry in the applicant's medical record:

"Complaints about headache, dizziness.

Special measures were applied to [the applicant].

Objectively: temperature 36.4 degrees. [The applicant] exited [the cell] without assistance. [He] is threatening the colony administration with 'his relatives'.

Oedematous face. A bruise measuring 2.5 cm on the forehead.

There are no fresh injuries on the body ...

Diagnosis: Quincke's oedema? Self-injury? ..."

25. The doctor treated the applicant's bruise and gave him an analgesic, an antiallergenic and a sedative. At each subsequent daily examination the attending doctor recorded the applicant's facial oedema and the absence of any other health complaints. Suspecting that the applicant was suffering from an allergic reaction of some kind, the doctors continued treating him with antiallergenics.

26. On 18 August 2009 a medical assistant reported to the head of the medical colony that a medical examination of the applicant performed that same day had revealed that, in addition to the facial oedema, the applicant had an abrasion 1.5 cm in length on his left shin. The necessary medical assistance was provided. On 21 August 2009 the applicant complained to the doctor of severe back pain. After examining him, the doctor concluded that he was suffering from allergic oedema of the face and was feigning a kidney injury. Two days later the applicant complained of severe headache and dizziness. The attending doctor found no signs of health problems apart from the facial oedema.

27. The acting deputy head of the medical colony drew up the final report, which read as follows:

"On 17 August 2009 [the applicant] was examined by the doctor on duty, who noted that the inmate had a facial oedema and a bruise 2.5 centimetres in length on the left side of his forehead. [He] did not record any other objective pathological data, or any fresh injuries.

Over the following three days of proactive supervision, as [the applicant] did not apply for medical assistance himself, the facial oedema (of the paraorbital region), which revealed no changes symptomatic of a traumatic pathology was still recorded. No other objective pathological changes to the body or viscera were noted (such as changes in the colour of the urine [or] phlegm, the stool, blood pressure, body temperature, heart beat, breathing, etc.).

[After the applicant] had taken special medicines, including antiallergenics, the dynamic of the oedema was arrested, which shows that the oedema was of the allergic aetiology typically associated with insect bites."

28. Following an examination by a number of prison medical specialists on 27 August 2009, the applicant's transfer to a hospital was recommended "for subsequent supervision and examination to exclude his feigning illness". The applicant was immediately transferred to the therapeutic department of the Tambov Regional Prison Hospital.

29. On 31 August 2009 the applicant underwent blood and urine testing and chest and skull X-rays, which revealed no signs of injuries. He was also examined by a surgeon, a neurologist, a tuberculosis specialist, a psychiatrist and a general practitioner. Having heard the applicant's complains of chest pain, headache, pain in the lumbar region and stomach, dizziness and nausea, which he alleged were caused by a beating in the

medical colony on 17 August 2009, and having noted healing abrasions on the applicant's head, the medical specialists concluded that the applicant was simulating the kidney injury and the general deterioration of his health. The tuberculosis specialist also found that there were no signs of reactivation of the tuberculosis process and recommended keeping up the seasonal prophylactic treatment.

30. A course of prophylactic antibacterial treatment was initiated on 1 September 2009. On 9 September 2009 a medical assistant made an entry in the applicant's medical record noting his refusal to continue treatment. The applicant submitted that he had been admitted to the therapeutic department of the hospital by mistake instead of to a specialised tuberculosis medical facility. He argued that any treatment he received there would accordingly be ineffective.

(b) Detention after October 2009

31. On 30 September 2009 the applicant was transferred to temporary detention facility no. 4 to take part in criminal proceedings instituted against him. A prison doctor examined him on admission to the facility, recorded his complaints of chest pain and his slurred speech, noted his generally satisfactory state of health, authorised continuation of his enriched food ration and re-initiated his seasonal prophylactic anti-tuberculosis treatment. Medical records submitted by the Government show that the applicant was placed on a two-month chemotherapy course, with each intake of antibacterial drug observed and noted in the applicant's medical record by the medical personnel.

32. Another medical examination, performed on 2 October 2009 in response to the applicant's complaints of a constant ache in the lumbar region, chest pains and a burning sensation during urination, led to his being diagnosed with lower back pain. The applicant was prescribed treatment on the condition that it should not interfere with the prophylactic anti-tuberculosis procedures.

33. On 14 October 2009 the applicant, suffering from a slight fever, shortness of breath, a runny nose and fatigue, was diagnosed with acute respiratory disease, for which he started receiving treatment. Following subsequent medical examinations the chemotherapy was adjusted to respond to the changes in the state of the applicant's health, his health complaints and his refusals to take certain medicines. On 21 October 2009 a schedule for the applicant's clinical examinations and X-ray testing was developed. However, it was not until his transfer to the Tambov Regional Prison Hospital on 9 November 2009, given no positive changes in his condition, that the applicant was subjected to an X-ray exam. The delay was due to the fact that temporary detention facility no. 4 did not have the necessary equipment to perform the exam and had no means of transporting the applicant to the tuberculosis hospital for testing.

34. During the applicant's stay in the prison hospital, he underwent a full clinical examination, including blood and urine tests, chest, abdominal and kidney X-rays and ultrasound scans, sputum smear and urine culture testing, monitoring of renal functions, screening by a tuberculosis urologist, which revealed no new signs of tuberculosis. At the same time, as the medical records show, the applicant refused to submit to additional MBT tests. His attitude towards the examinations and treatment was recorded by the attending doctor in his medical record in the following manner:

> "During his in-patient treatment, [the applicant] failed to cooperate, occasionally refusing to take injections and submit to clinical testing."

The applicant was released from the hospital on 26 November 2009 with a recommendation to admit him to the tuberculosis department of the Tambov Regional Prison Hospital for additional testing after the new round of criminal proceedings against him came to an end.

35. In December 2009 and January and February 2010 the applicant received treatment for migraines, intercostal neuralgia, a slight cold and dental problems, as well as undergoing prophylactic treatment against acute respiratory illness. In March 2010 he started the spring course of his seasonal prophylactic anti-tuberculosis treatment. An examination of the applicant in April 2010 showed that his health was satisfactory and there were no signs of any deterioration of his health.

3. Complaints about the lack of medical assistance

36. On 10 March 2009 the applicant's lawyer, Ms Shaysipova, arrived at the medical colony and, after producing identification papers and a writ issued by the Bar Association to represent the applicant's interests, asked the colony administration to organise a meeting with her client. The request was refused because the lawyer had not submitted a copy of the power of attorney showing that the applicant had retained her as his counsel.

37. The lawyer lodged a complaint with the Tambov Regional Prosecutor, describing the events of 10 March 2009 and asking for permission to see the applicant.

38. On 20 April 2009 the Tambov Regional Prosecutor supervising correctional institutions sent a letter to the applicant's lawyer, which, in so far as relevant, read as follows:

> "It was established that on 10 March 2009 at 7.15 a.m., having arrived at the check-point of [the medical colony] in the Tambov Region and disregarding the orders of an officer on duty... to wait until the beginning of the working day, you entered the restricted area adjacent to the [medical colony].
>
> On arriving at the office building, you did not file a request for a meeting with [the applicant] with the colony administration.

> The facility administration considered that your actions constituted an administrative offence proscribed by Article 19.3 of the Russian Code of Administrative Offences; you were accordingly asked to produce identification documents in order to draw up a report [of an administrative offence], but you categorically refused [to comply with the request] and left the premises.
>
> However, the inquiry shows that [the applicant], when asked why he needed to see a lawyer, refused to give any explanation; a report on the incident was drawn up on 14 April 2009 and it was signed by deputy directors of the colony Mr D. and Mr K. and by the head of the duty unit, Ms A.
>
> ...
>
> In these circumstances there is no ground for the prosecution authorities to apply supervisory measures."

39. The lawyer sent a letter to the Prosecutor General of the Russian Federation complaining about the applicant's poor state of health, the lack of medical assistance in the colony and her inability to visit her client.

40. On 19 June 2009 the lawyer received a letter from a deputy prosecutor of the Tambov Region. The relevant part of the letter read as follows:

> "The Regional prosecutor's office examined your complaint which was forwarded by the office of the Prosecutor General of the Russian Federation [and in which you complained] about beatings and threats of violence against [the applicant], about the refusal of the [colony] administration to provide him with medical assistance, about the refusal to organise meetings with the lawyer and so on.
>
> In the course of the inquiry no acts of violence, threats of violence against [the applicant] either on the part of the administration or other convicts... have been objectively proven. In fact, in his statement to a deputy head of the medical colony on 4 June 2009 ... [the applicant] affirmed that he did not have any complaints against the administration.
>
> [The applicant] unequivocally refused to give prosecution officials any explanation pertaining to the facts laid down in your complaint and a complaint lodged by [the applicant's female partner].
>
> During a medical examination of [the applicant] performed on 10 June 2009 by officers of the medical department of the prison hospital in the presence of an officer from the Tambov Regional Prosecutor's office... no injuries were discovered on [the applicant's] body.
>
> During his detention in correctional facilities in the Tambov Region [the applicant] received and continues to receive appropriate medical treatment for his illnesses.
>
> Following additional medical tests and an additional examination by a prison tuberculosis specialist on 12 May 2009, no convincing evidence showing any reactivation of the tuberculosis process in the applicant's lungs and urinary tract was discovered; therefore, there is no medical data calling for [the applicant's] routine admission to the tuberculosis department of the hospital ...

[The applicant] is detained in a [solitary] cell in [the medical colony]; his state is satisfactory."

The remaining part of the letter repeated the content of the letter sent to the lawyer on 20 April 2009.

41. On 23 June 2009 the lawyer arrived at the medical colony. Once again, however, she was not allowed to see the applicant. She was given a note allegedly handwritten by the applicant to the head of the colony in which he stated that he did not need legal assistance. The applicant, relying on the handwritten power of attorney filled in and submitted by him to the European Court of Human Rights in compliance with Rule 36 of the Rules of Court, disputed the authenticity of that note.

42. Two days later the applicant went on a hunger strike in response to the facility administration's alleged refusal to provide him with legal assistance.

C. Ill-treatment in the medical colony. Institution of criminal proceedings against the applicant. His detention on remand

1. Events of 4 July 2009

43. According to the applicant, on 4 July 2009 warders at the medical colony began beating an inmate, K., who had recently been transferred there. In response to inmate K.'s cries for help, the applicant and other inmates started banging on their cell doors demanding that the beating stop. The warders, a deputy director, Mr D., and a junior inspector, Mr S., forced the applicant out of his cell and beat him up. The applicant alleged that as a result of the beating his ribs had been broken and he had had severe chest and head pains and numerous injuries and bruises to the head and legs. The applicant further submitted that when he was put back in his cell following the beating, Mr D. had thrown a razor blade at him, urging him to commit suicide. In response to this treatment the applicant had slashed his forearms with the razor blade.

44. The Government disputed the applicant's version of events. Relying on records of disciplinary offences drawn up in correctional colony no. 5, they noted that during his detention in the colony between January and December 2008 the applicant had violated the regulations fifty-four times and had been ranked a "persistent offender". On three occasions he had been placed in a punishment ward, where he had spent thirty-seven days in all. On 28 November 2008 a decision was taken to place the applicant in a solitary confinement cell for ten months. When transferred to the medical colony, the applicant had continued his unruly behaviour, and was reprimanded almost on a daily basis. The Government submitted that a conflict between the administration of the colony and the applicant had

come to a head on 4 July 2009, when the applicant had attempted to cut junior inspector S. with a piece of glass, part of which was wrapped in a white cloth for use as a handle. The warder had grabbed the applicant by the hands and handcuffed him behind his back. The applicant had then been taken to a punishment ward, where he broke a glass in the window and cut his forearms with a piece of broken glass. The Government stressed that a prison doctor had examined the applicant twice on 4 July 2009: after the use of physical force and handcuffs on him and after the act of self-mutilation. No injuries, save for two small cuts on the forearms, were reported on the applicant's body.

45. On 4 July 2009 duty officer Mr F. reported to the head of the medical colony that physical force in the form of arm-twisting and handcuffing had been used against the applicant in response to his attack on junior inspector S. Similar reports were made by two other warders who had witnessed the incident.

46. On the same day junior inspector S. addressed a complaint to the Kirsanovskiy District Prosecutor. The complaint read as follows:

> "On 4 July 2009, at 9.23 a.m., when I was on duty, [the applicant]..., who is serving a disciplinary penalty in the punishment ward of the [medical colony], attacked me, Mr S., with a piece of glass in the corridor of the punishment ward near cell no. 17 when a partial search of his person was being performed".

The complaint was registered with the Kirsanovskiy District Prosecutor's office on 9 July 2009. Ten days later an investigator from the prosecutor's office instituted criminal proceedings against the applicant for having attacked junior inspector S. and threatened him with violence on 4 July 2009.

47. In the meantime an investigator from the operations unit of the medical colony carried out an internal inquiry into the incident of 4 July 2009. The inquiry was closed following a decision of 20 July 2009 that the use of force and handcuffs had been lawful, reasonable and proportionate to the applicant's violent behaviour. The investigator also addressed the applicant's self-inflicted injuries to the forearms, noting that the applicant had refused to explain his conduct. He concluded that the applicant had intended to "blackmail" the colony administration to avoid detention in a solitary punishment cell and to secure more comfortable conditions of detention. A similar conclusion was reached on 24 July 2009 by the Tambov Regional Prosecutor supervising detention facilities.

2. Events of 17 August 2009

48. Without offering any description of the events of 17 August 2009, the applicant submitted that he had again been given a severe beating by the warders. He further stated that since the beating he had suffered from stammering and distorted facial expressions when speaking.

49. The Government submitted that in the morning of 17 August 2009 the applicant had violently resisted the warders' attempts to transfer him to a punishment cell, where he was to stay for fifteen days because of another disciplinary offence. The applicant had tried to punch the director of the punishment ward, Mr St., in the face. Warders had restrained the applicant by holding his hands behind his back and handcuffing him. Inside the punishment cell the applicant had immediately started hitting his head against the bars of a bed, causing abrasions. The Government stressed that, in an attempt to "make matters worse", the applicant had placed a wasp on the bridge of his nose. The wasp had stung him, causing an allergic reaction in the form of facial swelling. The applicant had received treatment for both the abrasions and facial swelling. On the following day the applicant had cut his left shin with the sharpened handle of a tooth brush. The medical assistant who had treated his cut had not observed any other injuries on his body and had not reported any health complaints.

50. On 20 August 2009 warder F. wrote an explanatory note to the head of the medical colony which, in so far as relevant, read as follows:

> "...on 17 August 2009, at 6.00 p.m., I went on duty supervising the inmates in [the punishment ward]. After the lights-out call at 9.30 p.m., [the applicant], who was detained in a solitary confinement cell, started talking to inmates in neighbouring cells... He referred in particular to the fact that the warders had used physical force and handcuffs against him in the morning when taking him to the punishment cell. He had intentionally 'pulled a stunt' ["*mastyrka*" was the term he used in inmates' slang] and injured himself and [he urged] other inmates to certify that handcuffs had not been used and that [the applicant] had been beaten up instead. He said it was necessary for their 'common benefit' and that he would file a complaint about the unlawful actions of the colony administration...
>
> Before the wake-up call, at approximately 4.30 or 4.40 a.m. during a scheduled round of the cells, I looked through a peephole in the door of cell no. 05 and saw [the applicant] sitting on the lower bunk with his back to the door and his legs tucked up beneath him, doing something. I called out, startling him. He turned and, after a while, replied that he was waiting for the wake-up call, ready to brush his teeth, and he showed me a tooth brush. I warned him that he was violating the regulations and he laughed at me. I thought no more of the incident".

51. An internal inquiry into the events of 17 August 2009 resulted in the following decision:

> "On 17 August 2009, at 8.00 a.m., by decision of the head [of the medical colony], [the applicant], who had breached prison regulations, was found guilty of a disciplinary offence and was to be placed in the punishment ward for fifteen days. While being escorted to the punishment cell, in a corridor near the entrance to cell no. 05 [the applicant] started pushing away the warders ... [and] grabbing their uniforms. He was warned to stop misbehaving. [The applicant] disregarded the warning and continued pushing the warders. At the same time he proffered threats of violence against the officers and their families. Suddenly, he turned towards the head of the [punishment ward], Mr St., and tried to punch him in the face. Given [the applicant's] unruly conduct, handcuffs were used to restrain him, but without harming him ....

After a medical examination [the applicant] was placed in a punishment cell as a disciplinary measure. [He] did not make any complaints or requests.

The inquiry did not reveal that any other physical force had been applied to [the applicant]."

52. Another inquiry looking into the applicant's self-mutilation ended with decisions of 20 and 21 August 2009 which, in so far as relevant, read as follows:

Decision of 20 August 2009

"On 17 August 2009... [the applicant] applied for medical assistance, complaining of abrasions on the head and swelling round both eyes.

... After [the applicant] had been placed in [the punishment cell], at 8.45 a.m., while checking cells, the officer on duty heard a noise in the cell and, looking through a peephole, discovered that [the applicant] was attempting to injure himself, hitting his head against the bars of the bunk, and uttering obscenities against the administration of [the facility]. He ignored orders to calm down. Warders and a medical assistant, called to the scene, took [the applicant] from the cell. Once outside the cell, [the applicant] was calm. On examining him a prison doctor noted two abrasions in the region of the forehead and swelling round both eyes. [The applicant] did not make any complaints or requests.

The inquiry established that [in the evening] of 17 August 2009, after the lights-out call, [the applicant] started talking to inmates in other cells, telling them that the warders had used physical force against him and that he had taken advantage of the opportunity and injured himself, banging his head and getting a wasp to sting him on the bridge of his nose for extra effect. He was intending to apply to human rights organisations and to lodge a frivolous complaint about the actions of the prison staff. To help him put his plan into action [the applicant] asked the other inmates to corroborate the reality of the beating when representatives of the human rights organisations arrived ... and to organise their visit by calling his wife on the phone and giving her the following message: 'Do the same as the last time'. She would know what to do. He threatened anyone who refused to comply with his instructions with violence. [The applicant] wanted to discredit the administration ... and blackmail them into closing the criminal proceedings against him ... The facts were confirmed by witnesses; [the applicant] angrily refused to give any explanation."

Decision of 21 August 2009

"[The head of the detention facility] talked to [the applicant to prevent further self-mutilation, but the applicant] did not abandon his plan [to discredit the administration] and on 18 August 2009 he again injured himself. In particular, he inflicted a small cut measuring 1.5 centimetres in length on his left shin, using the rough end of his toothbrush, which he had heated on a fire before he was placed in the punishment cell; [the applicant] constantly picked open his cut. That fact is confirmed by eyewitness statements and reports by medical staff.

53. The conclusions of the internal inquiry that the use of handcuffs had been lawful and well-founded and that the applicant's injuries were the

result of his own actions were reproduced by the Tambov Regional Prosecution in a decision of 28 August 2009.

54. On 1 September 2009 the applicant's lawyer, Ms Shaysipova, found out that criminal proceedings had been instituted against the applicant in July 2009. On the following day she informed the investigator in charge of the applicant's case of her intention to represent the applicant and submitted a power of attorney. On the same day the investigator sent a letter to the head of the medical colony to notify him of the applicant's counsel's name. The investigator misspelt the lawyer's last name as Ms Shaysinova.

55. The lawyer arrived at the colony for the first consultation with the applicant, but was not allowed to see him on 2 September 2009. The same thing happened the next day. She immediately lodged a complaint with the Kirsanovskiy District Prosecutor's office, asking to have her client medically examined. Two days later a prosecution investigator dismissed the request, finding that it was groundless and unnecessary for the criminal investigation. The lawyer was notified of the investigator's decision on 15 September 2009.

56. On 4 September 2009 the lawyer lodged a complaint with the Prosecutor General of the Russian Federation and the Tambov Regional Prosecutor, alleging numerous violations of the applicant's defence rights. She also complained about the investigating authorities' refusals to interview the applicant and to medically examine him in response to his ill-treatment complaints. On the same day the lawyer applied to various human rights organisations in the Tambov Region asking for their assistance.

57. On 8 September 2009 the lawyer and representatives of two regional human rights NGOs arrived at the colony and asked to see the applicant and a number of other inmates who had complained of numerous instances of ill-treatment in the facility. While the human rights activists were allowed to enter the premises of the medical colony, the administration did not consent to the lawyer's visit. A handwritten note by the head of the medical colony in response to the lawyer's written request for a meeting with the applicant stated that the visit "was not allowed on the investigator's orders because no investigative actions were being performed [with the applicant] in connection with the criminal proceedings" at the time when the request for a meeting was lodged.

58. Following their visit to the prison hospital, the representatives of the human rights organisations issued the following joint statement:

> "The basis for the visit was complaints from the relatives of inmates detained in the punishment ward and a phone call from a staff member of 'Amnesty International'.
>
> On 8 September 2009, during a visit to [the medical colony], following discussions with warders and inmates detained in [the punishment ward], it was established:

> According to the inmates detained in [the punishment ward], they are subjected to severe beatings by the warders in that ward. The most recent beatings occurred when a group of newcomers was admitted to the punishment ward. Inmate K. was subjected to the cruellest beating. Unable to bear the cries and moans, detainees in the punishment ward responded by banging on their cell doors. Those responsible for the uproar were subjected to psychological pressure and threats and unjustified beatings. Several warders – up to 12 officers from the punishment ward – entered the cells and beat up inmates, using rubber truncheons and punching and kicking them. During the visit on 8 September 2009, injuries could be observed on the inmates' heads, faces, bodies and legs.
>
> A doctor present during the beatings had insisted that it was necessary to provide medical assistance, apply bandages, stop the bleeding; but the warders in the punishment ward had replied that the detainees did not need medical assistance and continued the beatings. The doctor's insistence was to no avail. The officers in the punishment ward ignored the persistent lawful requests of the detainees; in order to break their will they seized the inmates' tableware then returned it to them, telling them it had been 'defiled' by 'untouchable' inmates. Having no other means to protect themselves, the detainees went on a hunger strike; [the facility administration] kept the hunger strike a secret for seventeen days. Inmates are subjected to psychological pressure; they are threatened with rape; inmates who have been raped or who are likely to commit rape are placed in the cells to show that the threats are real. Inmates slash their veins ([the applicant], Mr Yu.) and drive nails into their bodies (Mr Ye.) to escape rape. All this is being concealed. Complaints of ill-treatment are not being investigated; detainees are given the run-around in response to their complaints to the prosecution authorities. Criminal proceedings were instituted against one of them ([the applicant]) for allegedly attacking a warder in the punishment ward.
>
> The lawyer, Ms Shaysipova, who had power of attorney to represent [the applicant], was not allowed to see her client."

The human rights activists called on the prosecution authorities to perform forensic medical examinations of a number of inmates, including the applicant, to provide the applicant with the necessary medical assistance and perform appropriate medical tests in connection with his ailments, and to open a criminal investigation into the actions of the colony officials.

59. On 9 September 2009 the applicant's lawyer lodged complaints with various prosecution authorities and human rights organisations alleging numerous violations of her client's rights in the colony.

60. Five days later the applicant was served with a bill of indictment. According to the prosecution, on 4 July 2009, during the morning search in the cells, the applicant refused to comply with the lawful orders of the officers on duty and started calling for collective disobedience. The applicant was taken out to the corridor, where he grabbed inspector S.'s right hand and tore his uniform. He subsequently produced a piece of glass hidden in his sleeve and tried to hit inspector S. in the chest with it. Inspector S. knocked the piece of glass from the applicant's hand. Two other warders intervened, handcuffed the applicant and took him to a punishment cell.

61. On 24 September 2009 the Tambov Regional Prosecutor supervising detention facilities set aside the decisions dismissing the applicant's complaints of ill-treatment. The prosecutor noted that the initial inquiry had failed to secure expert evidence which might have made it possible to determine whether the injuries on the applicant's head and his facial swelling had been caused by a beating.

62. On 5 October 2009 an expert examined the applicant and found that the medical evidence, including X-ray results, indicated that the injury on the applicant's head could have been caused by self-mutilation on 17 August 2009. The expert discovered no other injuries on the applicant's body, save for pigment spots on his shin, which he interpreted as possible signs of a now cured skin disease.

63. On 6 October 2009 a deputy Tambov Regional Prosecutor sent a letter to the head of a human rights group, a copy of which was delivered to the applicant's lawyer. The letter, in so far as relevant, read as follows:

> "During his detention and while serving his sentence in correctional institutions in the Tambov Region [the applicant] has been viewed negatively; on a number of occasions [he] has violated the internal regulations of his detention facility; for those [violations] he has received 223 oral and written reprimands in the form of warnings, and been placed in a punishment cell and transferred to a punishment ward.
>
> On 28 November 2008 the head of the [medical colony], Mr M., authorised the applicant's placement in the punishment ward for ten months.
>
> [The applicant] continues to break the rules in the punishment ward..., for which he is lawfully punished with disciplinary sanctions.
>
> Furthermore, the inquiry showed that [the applicant] has committed unlawful attacks on the staff members of [the colony]. As a result, on 19 July 2009 the Kirsanovskiy District [Prosecutor's office] opened criminal case no. 01714 under Article 318 § 1 of the Russian Criminal Code in connection with the [applicant's] unlawful attack on a junior inspector in the punishment ward, Mr S.
>
> The investigation in that criminal case has not yet been completed.
>
> ...
>
> At the same time the inquiry showed that the administration of [the medical colony] actually violated certain provisions of Article 48 of the Russian Constitution ...
>
> On 15 September 2009 the Regional Prosecutor's office lodged an order with the Tambov Regional Department of the Federal Service for the Execution of Sentences in connection with a violation by the administration on 8 September 2009 of [the applicant's] right [under Russian law] to receive legal assistance from his lawyer, Ms Shaysipova ....
>
> On 2 October 2009 the prosecutor's order was examined at a meeting attended by the head of the Regional Department of the Federal Service for the Execution of Sentences and regional prosecution authorities, and [the order] was accepted.

> On 30 September 2009 the Tambov Regional Prosecutor ... sent an official warning to the head of [the medical colony] stating that such violations would not be tolerated in the future."

64. On 19 October 2009 an investigator from the Kirsanovskiy Inter-district Investigation Office refused to institute criminal proceedings against the personnel of the colony, finding no evidence of ill-treatment on either occasion. The investigator's decision was based on statements by the applicant, the warders and a medical assistant who had examined the applicant after the alleged beating on 4 July 2009, medical reports from the Tambov Regional Prison Hospital following his examination on 31 August 2009 and the expert opinion of 5 October 2009. The investigator also interviewed two inmates, Mr Yu. and Mr K., who confirmed the applicant's version of the events of 4 July 2009, stating that they too had been beaten by the warders. However, their statements were not considered trustworthy as the inmates had refused to sign the interview report and certify their awareness of their criminal liability in the event of false testimony.

3. Bill of indictment and authorisation of the applicant's detention on remand

65. In the meantime, on 14 September 2009 the applicant was questioned in the presence of Ms Shaysipova. The applicant denied having attacked inspector S. and maintained his version of events, alleging that he had been severely beaten up by several warders, including inspector S., and that his requests for medical examinations and assistance after the beating had been disregarded. He also complained that he had been beaten on 17 August 2009.

66. On 30 September 2009 the Kirsanovskiy District Court of the Tambov Region authorised the applicant's detention on remand, finding that it was warranted by the applicant's numerous convictions, the gravity of the charges brought against him in respect of the events of 4 July 2009, the fact that he had no permanent place of residence, and information provided by a deputy head of the medical colony that the applicant intended to abscond to avoid investigation and trial and to pervert the course of justice if released. The applicant's lawyer appealed, arguing that the detention order was not based on any relevant facts. On 27 October 2009 the Tambov Regional Court upheld the detention order of 30 September 2009, endorsing the District Court's reasoning.

67. On 3 November 2009 the applicant's lawyer asked the prosecution authorities to perform another forensic medical examination of the applicant, to question inmates who had been detained together with the applicant in the punishment ward and to hold confrontation interviews between the applicant and two detainees who had already been questioned by the investigating authorities in respect of the events of 4 July 2009.

Two days later the investigator partly accepted the request, authorising a forensic medical examination of the applicant.

68. A complex medical examination of the applicant performed between 6 and 9 November 2009 entirely confirmed the expert's findings of 5 October 2009.

69. Following the expert examination the applicant lodged a complaint with the Tambov Regional Prosecutor, asking for criminal proceedings to be instituted against the warders who had participated in the beating on 4 July and 17 August 2009. He further complained about the absence of medical assistance and the refusal of the medical personnel to record his injuries after the beating.

70. On 16 November 2009 the pre-trial investigation was closed and the applicant was committed to stand trial before the Kirsanovskiy District Court.

71. In the course of the trial against the applicant the District Court heard, among other witnesses, the representatives of the human rights NGOs who had visited the applicant after the alleged beatings in the summer of 2009. The representatives testified to having met the applicant and a number of other inmates, including Mr Yu., and having heard their complaints of severe beatings in the colony. According to them, there had been no eye-witnesses to the applicant's beating among the inmates, but the detainees had provided a very coherent and similar version of the events of 4 July 2009. The applicant had told them that on 4 July 2009 approximately twelve warders had burst into his cell and beaten him with rubber truncheons and kicked him repeatedly in the head and other parts of his body. He had fallen to the floor covered in blood and had then been dragged to the punishment cell. There, he had tried to commit suicide by slashing his wrists with a piece of a tile he had taken from a wall. The human rights activists stressed that at their meeting on 8 September 2009 the applicant's face had been swollen, he had twitched his head from time to time and he had had an old scratch on the face, an abrasion on his shin and some kind of bump on the chest which he said was a broken rib. The applicant had also stammered, complained of pain in the ribs and kidneys and had desperately pleaded for help. The representatives also noted, however, that the applicant had had no "pronounced" bruises on him. One of the representatives testified to having seen photos of a wasp and a wasps' nest on a cell window that were presented to him by the colony administration during the visit.

72. The District Court also heard several inmates who had been detained with the applicant during the summer of 2009. One inmate, Mr Yu., testified to having witnessed the applicant's beating by the warders on 4 July 2009. He stated that three warders had attacked the applicant for no apparent reason and had started beating him with rubber truncheons and kicking him repeatedly. Mr Yu. was unable to recall the exact course of events as he had been subjected to ill-treatment by the warders at the same time. Mr Yu. also

stressed that he had refused to sign the record of his questioning by the investigator during the proceedings instituted in respect of the applicant's ill-treatment complaints and did not want to complain about the beatings himself as that was his usual behaviour *vis-à-vis* the authorities. Another inmate claimed that he had heard the applicant being beaten up in the corridor on 4 July 2009. That witness said he had heard the voices of at least three warders, the sound of blows and the applicant screaming with pain.

73. On 4 March 2010 the Kirsanovskiy District Court, relying heavily on the testimony of the staff members of the medical colony, found the applicant guilty of a violent attack on an officer on duty in a detention facility and sentenced him to three years' imprisonment. The court dismissed the applicant's argument that he had been severely beaten by warders on 4 July 2009. It noted that the applicant's complaints had already been examined by the investigating authorities and there was no reason to doubt the results of their inquiry laid down, *inter alia*, in the decision of 19 October 2009.

74. However, the District Court found it necessary to issue a separate interim order, noting "the poor standard of the pre-trial investigation into the events of 4 July 2009". Citing the investigator's inexperience with difficult criminal cases, the lack of supervision of the investigator despite his inexperience, the delays in the opening an inquiry into the events, the length of the investigation, the investigator's failure to examine the scene of the events, the improper filing of documents and evidence in the case file, the failure to interrogate certain witnesses and so on, the District Court urged the Kirsanovskiy Inter-District Prosecutor to take the necessary steps to avoid the same defects in future investigations.

75. On 29 April 2010 the Tambov Regional Court amended the judgment of 4 March 2010. Finding that the applicant's criminal conduct had not been characterised by serious violence or caused any physical pain to the warder, the court reduced the sentence to two years' imprisonment.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND REPORTS

76. The relevant provisions of the domestic and international law on health care of detainees and authorities' response to alleged instances of ill-treatment in detention facilities are set out in the following judgments: *Pakhomov v. Russia*, no. 44917/08, 30 September 2011 and *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, 27 January 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE QUALITY OF MEDICAL ASSISTANCE IN DETENTION

77. The applicant complained that the authorities had not taken steps to safeguard his health and well-being, having failed to provide him with adequate medical assistance after his arrest in 2007. Article 3 of the Convention reads as follows:

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

A. Submissions by the parties

78. Relying on a copy of the applicant's medical record, the Government submitted that the applicant had been under effective medical supervision throughout his detention. That supervision involved regular medical check-ups and a prompt and effective response to any health grievances the applicant had, as well as effective medical treatment to the point of cure whenever an illness revealed itself. The treatment the applicant had received complied with the requirements laid down by Russian law and international medical standards. The Government specifically pointed out that the complex medical supervision received by the applicant had included consultations and examination by independent medical specialists from a civil hospital. The recommendations by those specialists had been closely followed through by the medical staff of the detention facilities.

79. The Government concluded by arguing that the prosecution authorities as well as prison administration officials had thoroughly studied the applicant's complaints of alleged lack of medical assistance and had found them to be unsubstantiated.

80. The applicant insisted that the medical assistance he had received in the detention facilities had been ineffective from the start as it had been dispensed in the therapeutic departments of prison hospitals and not in a specialised tuberculosis clinic. He further submitted that his medical history unequivocally showed that he had not regularly received seasonal prophylactic anti-tuberculosis treatment, that doctors had not always complied with the schedule of X-ray examinations and that medical examinations to which he had been subjected had had a "formal" character. His state of health had continued to deteriorate but that fact had not brought any adequate response from the authorities. Even when in autumn 2009, in response to his own, his lawyer's and his relative's complaints, the

authorities had admitted him to the Tambov Regional Prison Hospital, he had not received any treatment. He also pointed out that while some medical attention had been devoted to his pulmonary tuberculosis, his suffering from renal tuberculosis had gone entirely unnoticed. The applicant stressed that, even assuming that the Government's submission of the lack of health complaints on his part was true, the prison authorities should have taken a more active position given the seriousness of his illness and the social and legal priority that his right to health took over any other considerations of the domestic authorities.

B. The Court's assessment

1. Admissibility

(a) General principles

81. 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).

82. 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).

83. 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).

84. 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)).

85. 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 76 above). The Court insists that, in particular, 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 v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006; 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*, cited above, § 211). However, 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 clinics" (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007).

86. 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

87. The Court observes that, unlike in other cases concerning the quality of medical assistance administered to Russian detainees, in the present case it is not called upon to examine the cause of the applicant's infection with tuberculosis, from which he suffered from 2000 onwards (see paragraph 9 above). However, keeping in mind the State's responsibility to ensure treatment for prisoners in its charge and given the fact that a lack of adequate medical assistance for serious health problems, such as tuberculosis, may amount to a violation of Article 3 (see *Hummatov*, cited above, §§ 108 et seq., and *Vasyukov v. Russia*, no. 2974/05, § 66, 5 April 2011), the Court has to assess the quality of medical services the applicant was provided with after his arrest in 2007 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* cited above, § 78).

88. Turning to the circumstances of the present case, the Court observes that the quality of the medical care provided to the applicant following his arrest in 2007 appears to have been adequate. In particular, the evidence put before the Court shows that the Russian authorities used all existing means (sputum smear bacterioscopy, culture testing and X-rays) for the correct diagnosis of the applicant's condition, thoroughly considered the possibility of a recurrence of the illness, and took the necessary steps to prevent a new onset of the tuberculosis by, *inter alia*, prescribing appropriate prophylactic treatment and admitting the applicant to medical institutions for in-depth examinations. This conclusion is not altered by the applicant's argument that the tuberculosis specialists' recommendations as to the frequency of X-ray testing and prophylactic TB treatment were disregarded by the medical personnel of the facilities where he was detained at the time. In this regard, the Court attributes particular weight to the fact that it is not asked to assess the quality of the medical services rendered in response to an active form of the disease and aiming at curing the illness, or at least maintaining it under control, when any failure on the part of domestic authorities to keep up with a schedule of necessary medical procedures may have a crucial effect on a patient's health (see, for example, *Vasyukov,* cited above, §§ 68-76). The Court's task in the present case is limited to the examination of the level of medical care meant to prevent a patient's relapse, that is a therapeutic strategy not comprising measures of such an urgent and vital character. While noting that the domestic authorities did occasionally fail to comply with the schedule of X-ray examinations and prophylactic treatment in the applicant's case, the Court does not find that that failure was such as to endanger his health and well-being (see paragraphs 16 and 33 above). Furthermore, the Court does not exclude that in the absence of any signs of deterioration of the applicant's health and in the circumstances of his close clinical monitoring by the medical personnel, the authorities' decision to

dispense with another X-ray test or seasonal prophylactic chemotherapy regimen, that is, with generally aggressive/invasive medical procedures, was reasonable (see paragraph 16 above).

89. At the same time, the Court observes that when placed on a strict medication regime required for the prophylactic tuberculosis therapy, the applicant received the necessary anti-tuberculosis medicines, which were administered to him in the requisite dosage, at the right intervals and for the appropriate duration, unless the treatment was interrupted as a result of the applicant's refusal to continue with it. The applicant was subjected to regular and systematic clinical assessment and bacteriological monitoring, which formed part of the comprehensive therapeutic strategy aimed at preventing a relapse. The detention authorities also effectively implemented the doctors' recommendations about a special dietary ration necessary to improve the applicant's health (contrast *Gorodnichev v. Russia*, no. 52058/99, § 91, 24 May 2007).

90. Furthermore, the Court attributes particular weight to the fact that the facility administration not only ensured that the applicant was attended to by doctors, that his complaints were heard and that he was prescribed trials of anti-tuberculosis medication, but they also created the necessary conditions for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116). The Court notes that the intake of medicines by the applicant was supervised and directly observed by the facility medical personnel as required by the DOTS strategy. In addition, in a situation where the authorities met with occasional refusal to cooperate and resistance to the treatment on the applicant's part, they offered him psychological support and attention, providing clear and complete explanations about medical procedures, the desired outcome of the treatment and the negative side-effects of interrupting the treatment, irregular medication or fasting (contrast *Gorodnichev,* cited above, § 91; and see *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007, and *Tarariyeva v. Russia*, no. 4353/03, § 80, ECHR 2006-XV (extracts)) (see paragraphs 20 and 21 above). It also does not escape the Court's attention that when unsuccessful in their attempts to persuade the applicant to continue with the prophylactic treatment, the authorities intensified the clinical monitoring of his condition, invited independent medical specialists to examine him and even transferred him to the prison hospital for additional testing. The authorities' actions ensured the applicant's adherence to the treatment and compliance with the prescribed regimen.

91. The medical record containing the applicant's diagnosis as "clinical recovery from focal pulmonary tuberculosis... [and] clinical recovery from renal tuberculosis" showed no signs of a relapse during the entire period of the applicant's detention, thus confirming the effectiveness of the medical care he received in the detention facilities. The Court also notes that the authorities efficiently addressed any other health grievances that the

applicant might have had (see paragraph 35 above). The applicant's anti-tuberculosis treatment was adjusted accordingly, to take account of his concomitant health problems as well as his personal preferences as to medical procedures to follow and medicines to take. In this respect, the Court would like to stress that patients like the applicant have a responsibility to communicate and cooperate with health authorities, to follow treatment and to contribute to community health. The Court does not lose sight of the fact that the applicant's refusals to undergo treatment or medical examinations were occasionally linked to his requests for those procedures to be performed in a particular medical establishment (see paragraph 30 above). In this regard, the Court would like to reiterate its constant jurisprudence according to which a State has a sufficient margin of discretion in defining the manner in which it fulfils its obligation to provide detainees with the requisite medical assistance, *inter alia,* by choosing an appropriate medical facility, taking into account "the practical demands of imprisonment", as long as the standard of chosen care is "compatible with the human dignity" of a detainee (see *Aleksanyan*, cited above, § 140, and most recently, *Vasyukov*, cited above, § 79). There is no indication in the file that the authorities' choice of medical facility for the applicant was incompatible with the required standard of care.

92. To sum up, the Court considers that the Government provided sufficient evidence to enable it to conclude that the domestic authorities, without undue delay, afforded the applicant comprehensive, effective and transparent medical assistance during the entire period of his detention after his arrest in 2007. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 § 3 (a) and § 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ALLEGED ILL-TREATMENT ON 4 JULY AND 17 AUGUST 2009

93. The applicant, relying on Article 3 of the Convention, complained that he had been severely beaten by warders on 4 July and 17 August 2009 and that the investigation had not led to the punishment of those responsible. Article 3 of the Convention has been cited above.

A. Submissions by the parties

94. The Government argued that the applicant's complaints of severe ill-treatment on 4 July and 17 August 2009 were clearly ill-founded. In particular, they stressed that despite unlawful and aggressive behaviour by the applicant, who had repeatedly disregarded the lawful orders of the colony administration and persistently resisted attempts by the

administration to engage in constructive dialogue, on the two occasions when the colony personnel had used force and handcuffs in the last resort, they had remained within the limits of the lawful and acceptable application of those special measures. Relying on medical records and the findings by the investigating authorities, the Government further submitted that there was no evidence that excessive force had been used. Every injury which had been discovered on the applicant's body in the wake of the various events had been the result of his own attempts to malign the colony administration.

95. The applicant maintained his claims, arguing that he had been subjected to inhuman treatment on both occasions. Despite the fact that there had been witnesses to the ill-treatment among the inmates and that his injuries had been observed by the human rights activists and had been recorded in his medical history, the authorities had turned a blind eye on his complaints, dismissing his claims as unreliable and fully accepting the warders' version of events. He further stated that the investigators had delayed his expert medical examination and only performed it at the request of his counsel and almost three months after the events, by which time it had been virtually impossible to establish the facts. The investigators' indifference towards his complaints had been demonstrated in their decisions not to institute criminal proceedings against the warders.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the scope of Article 3

97. The Court has consistently stressed that measures depriving a person of his liberty may often involve an element of the suffering and humiliation connected with a given form of legitimate treatment or punishment. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva*, cited above, § 73; *Sarban*, cited above, § 77; and *Mouisel v. France*, no. 67263/01, § 40). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity

and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

(ii) As to the establishment of the facts

98. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

99. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, mutatis mutandis, *Ribitsch*, cited above, § 32).

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

(i) Alleged ill-treatment: establishment of the facts

100. The Court observes, and the parties did not dispute this fact, that on 4 July and 17 August 2009 the warders used physical force against the applicant. The exact circumstances and the intensity of the force used were, however, disputed by the parties. The Government alleged that on both occasions the force had been used lawfully in response to the applicant's unruly conduct and had not exceeded what was reasonable and necessary in the circumstances of the case. As is apparent from the reports by the warders, their interviews with the investigator and the findings of the domestic courts, when in the morning of 4 July 2009 warders attempted to perform a search on the applicant, the latter attacked one of them, inspector

S., grabbed him by the uniform and attempted to cut him with a piece of glass. The warders overpowered the applicant by placing his arms behind his back and, after handcuffing him, took him to the punishment ward. According to the Government, similar events had occurred on 17 August 2009, the only difference being that the applicant had tried to punch the director of the punishment ward while resisting his transfer there. The applicant disputed that he had disobeyed the warders' orders and actively resisted them to the point of using violence. He submitted that on 4 July 2009 the warders had repeatedly hit and kicked him in various parts of his body, breaking his ribs and injuring his head and legs in response to his attempt to stop the beating of another inmate, Mr K. Without providing any description of the events of 17 August 2009, the applicant further submitted that the warders had again subjected him to a severe beating for no apparent reason.

101. The Court first notes that the applicant was examined by a prison doctor on 4 July 2009. According to the applicant's medical record, he had no injuries save for two small slash wounds on his forearms (see paragraph 23 above). Following another instance of the use of force by the warders on 17 August 2009, the applicant was examined by the prison doctor who noted his swollen face and a bruise on his forehead (see paragraph 24 above). An examination on the following day led to a small abrasion on the applicant's left shin being recorded (see paragraph 26 above). On 31 August 2009, in response to repeated complaints of severe head and back pain and dizziness, the applicant underwent a complex medical examination in the Tambov Regional Prison Hospital. Observation by a number of hospital specialists, as well as clinical and X-ray testing, did not reveal any injuries, apart for the healing abrasions on his head. The doctors' conclusion was that the applicant was simulating a kidney injury and the general deterioration of his health (see paragraph 29 above). In this connection the Court is particularly mindful of the fact that the applicant did not dispute the credibility or accuracy of the findings made by the hospital personnel.

102. The Court also does not lose sight of additional evidence which attests to the applicant's state of health following the alleged beatings. In particular, representatives of the human rights NGOs who visited the applicant on 8 September 2009 noted his swollen and scratched face, an abrasion on his shin and a mysterious bump on his chest which they took for a broken rib. While seeing no "pronounced" bruises on the applicant, the visitors still concluded that he had been severely beaten up, given his stammering and head twitching (see paragraphs 58 and 71 above). The fact that the applicant's speech was "slurred" was noted during yet another examination on the applicant's admission to a temporary detention facility on 30 September 2009 (see paragraph 31 above). Finally, two forensic medical examinations performed in October and November 2009 only revealed the applicant's head injury and a pigment spot on his shin, with the

experts linking the head injury to an act of self-mutilation and the pigmentation to the consequence of a skin disease.

103. The Court notes that the Government put forward an explanation for every injury discovered on the applicant's body in the aftermath of the events under consideration.

104. In particular, they submitted that the two small cuts discovered on the applicant's forearms on 4 July 2009 were the result of an act of self-mutilation when the applicant cut himself with a piece of a broken glass in the punishment ward. Although the Court is mindful of the applicant's argument that he injured himself in response to the warders' "provocative" conduct, what is of significance is that he corroborated the Government's argument as to the nature of those injuries. In the absence of any other evidence recording physical sequela of the alleged violence on the applicant's body, the Court cannot accept his allegation of ill-treatment by warders on 4 July 2009.

105. This conclusion is not altered by the fact that one of the applicant's inmates, Mr Yu., testified before the Kirsanovskiy District Court to having witnessed the beating of the applicant on 4 July 2009. In this regard, the Court cannot overlook the inconsistencies that abounded in the various accounts of the events which the applicant and Mr Yu. gave in their complaints to human rights activists and domestic authorities and which the applicant laid down in his submissions to the Court. For instance, during the meeting with the representatives of human rights NGOs the applicant affirmed that there had been no eye-witnesses to his beating (see paragraph 71 above). It further appears that Mr Yu., who was also heard by the visitors, did not claim to be an eye-witness to the incident involving the applicant. However, when questioned by the investigator, both the applicant and Mr Yu. amended their version of events, asserting that the warders had been beating Mr Yu. in the corridor at the same time as the applicant and that Mr Yu. had, therefore, witnessed the applicant's beating (see paragraph 64 above). Nevertheless, in his testimony during the applicant's trial Mr Yu. partly retracted his statement to the investigator, noting that his having been beaten at the same time as the applicant precluded him from giving a detailed description of the course of the events of 4 July 2009 (see paragraph 72 above). The Court also finds it peculiar that the applicant's description of the events of 4 July 2009 changed with time, depending on who was the recipient of his complaint. In particular, while complaining to the human rights activists that he had been beaten by up to twelve warders and that he had then tried to take his life by slashing his wrists with a piece of broken tile, in his application to the Court the applicant claimed that two warders had participated in the beating and that he had cut his forearms with a razor blade allegedly thrown at him by the deputy head of the medical colony.

106. In these circumstances, keeping in mind the inconsistencies in the applicant's versions of events recounted at the various stages of the proceedings and having regard to the material in the case file, the Court is unable to find that the applicant was subjected to the alleged ill-treatment on 4 July 2009.

107. As to the events of 17 August 2009, the Court observes that the applicant did not provide any description of the beating on that occasion, noting that the injuries recorded in his medical history or by witnesses spoke for themselves. The Government, on the other hand, once again gave an account of the applicant's violent resistance to the warders' orders and accounted for every injury on the applicant's body. According to them, the applicant's facial swelling was caused by a wasp bite when he placed the insect on his nose, the abrasions on his head were the result of his banging his head against the metal bars of the bunk and the cut on his shin was again an act of self-mutilation, with the sharpened handle of a toothbrush. The Government further submitted that the listed injuries, as well as the applicant's simulation of the head twitching and stammering, had merely been attempts to malign the colony administration.

108. Here, the Court observes that the evidence before it does not allow it to entirely exclude either the Government's or the applicant's version of events. The injuries on the applicant's face, head and leg are consistent both with a physical confrontation between the applicant and the warders and with acts of self-mutilation as described by the Government. While noting that the story of the wasp bite may seem odd and reiterating that the applicant's face was still swollen more than two weeks after the alleged bite (see paragraph 58 above), the Court cannot ignore the applicant's medical records and findings by the prison doctors reporting that the applicant's facial oedema was a manifestation of an allergic reaction to the wasp bite. The doctors' conclusion was based on the fact that the applicant's medical condition responded to the antiallergenics with which he was treated and that the development of the illness was successfully arrested (see paragraphs 25-27 above). The Court also takes note of the fact that the human rights activists saw photos of the wasps' nest on the window of the cell (see paragraph 71 above). Furthermore, the conclusion that the applicant's head abrasions and cut on the leg were also of non-traumatic origin is supported by the findings of the medical experts in their opinions of October and November 2009. Although disappointed with the timing of the expert examinations, the impact of which on the quality of the investigation into the applicant's complaints of ill-treatment will be discussed below, the Court cannot disregard the experts' opinion (see paragraphs 62 and 68 above).

109. While noting the inconclusive analysis of the applicant's injuries, the Court further observes that there was no other evidence which could have shed light on the events of 17 August 2009. Under these

circumstances, the Court cannot consider it established beyond reasonable doubt that on 17 August 2009 the warders used excessive force when, in the course of their duties, they were confronted with the alleged disorderly behaviour of the applicant.

110. To sum up, the materials in the case file do not provide an evidential basis sufficient to enable the Court to find "beyond reasonable doubt" that either on 4 July 2009 or on 17 August 2009 the applicant was subjected to treatment contrary to Article 3 or that the authorities had recourse to physical force which had not been rendered strictly necessary by the applicant's own behaviour.

111. Accordingly, the Court cannot but conclude that there has been no violation of Article 3 of the Convention on account of the applicant's alleged ill-treatment by prison warders on those two occasions.

(ii) Alleged inadequacy of the investigation

112. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102 et seq., *Reports of Judgments and Decisions* 1998-VIII).

113. Turning to the circumstances of the present case, the Court notes that the prosecution authorities, who were made aware of the applicant's beating, carried out a preliminary investigation which did not result in the criminal prosecution of the warders. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the

parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was "effective".

114. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to identify and, if need be, prosecute those responsible for the applicant's alleged ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case, inquiries into both the incident of 4 July 2009 and that of 17 August 2009 were opened by the administration of the medical colony immediately after the events. As to the very fact of the internal investigation by the management of the detention facility, the Court acknowledges the need for internal investigation with a view to possible disciplinary action in cases of abuse by warders. However, it finds it striking that in the present case the initial investigative steps, which usually prove to be crucial for establishing the truth in cases of brutality committed by State officials, were conducted by the same State authority whose employees were allegedly implicated in the events being investigated (see, for similar reasoning, *Vladimir Fedorov v. Russia*, no. 19223/04, § 69, 30 July 2009, and *Maksimov v. Russia*, no. 43233/02, § 87, 18 March 2010). In this connection the Court reiterates its finding, made on a number of occasions, that the investigation should be carried out by competent, qualified and impartial experts who are independent of the suspected perpetrators and the agency they serve (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II, and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). Furthermore, the Court is struck by the fact that, merely days after the closing of the internal inquiries, the prosecution investigators issued decisions of similar content (see paragraphs 47 and 53 above). Despite relying on the warders' and inmates' statements, the investigator did not hear evidence from them in person and merely recounted the witnesses' statements made during the internal inquiry. The Court, however, is mindful of the important role which investigative interviews play in obtaining accurate and reliable information from suspects, witnesses and victims and, in the end, in discovering the truth of the matter under investigation. Observing the suspects', witnesses' and victims' demeanour during questioning and assessing the probative value of their testimony forms a substantial part of the investigative process (see *Premininy v. Russia*, no. 44973/04, § 109, 10 February 2011).

115. The Court also finds it striking that it was not until 24 September 2009, following numerous complaints from the applicant, his counsel and human rights activists, that the investigation into the applicant's ill-treatment complaints was reopened. In reinitiating the investigation, the supervising prosecutor pointed to the investigator's failure to summon

expert evidence to determine the origin of the applicant's injuries. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and have a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). An expeditious expert medical examination of the applicant was particularly crucial in the circumstances of the present case in the absence of conclusive medical evidence of the physical violence alleged by him. Although the forensic expert examination was finally performed in October 2009, that is three months after the first instance of alleged beating on 4 July 2009 and almost two months after the second instance, the Court cannot but suspect that the initial delay in authorising the expert examination resulted in a loss of precious time and made it impossible to secure evidence of the alleged ill-treatment. The Court notes with concern that the lack of objective evidence – such as timely expert examination might have provided – was subsequently relied on as a ground for refusing to institute criminal proceedings against the warders.

116. The Court does not overlook the fact that the investigation into the applicant's ill-treatment complaints was intertwined with the criminal proceedings instituted against him on suspicion of an attack on the warder. However, the Court is of the opinion that the pre-trial investigation into the alleged attack, as well as the subsequent court proceedings, were unable to remedy the authorities' failure to effectively investigate the applicant's allegations of ill-treatment. The Court firstly observes that the main purpose of the criminal proceedings against the applicant was to establish whether the latter had committed an act of violence against an officer on duty and not whether he himself had been a victim of brutality. This conclusion is corroborated by the fact that in responding to the applicant's complaints of ill-treatment by the warders, the domestic courts refused to go into the matter, relying heavily on the results of the separate investigation and, in particular, the investigator's decision of 19 October 2009. The Court further notes that, according to the domestic courts, the pre-trial investigation into the applicant's alleged attack on the warder was itself marred by the same defects as those which the Court can identify in the investigation into the applicant's allegations of ill-treatment by the warders. The Court fully agrees with the domestic courts' description of the pre-trial investigation as being of "a poor standard" given its protracted nature, the failure to perform important investigative steps, such examining the crime scene and questioning important witnesses, and the lack of supervision over the investigator's actions (see paragraph 74 above).

117. Proceeding further with the assessment of the thoroughness of the investigation into the applicant's ill-treatment complaints, the Court is under the impression that the primary focus of the investigation was not the

instances of alleged ill-treatment. Instead it appears that the authorities concentrated on finding an explanation for the applicant's alleged acts of self-mutilation. The investigating authorities' selective and somewhat inconsistent approach to the assessment of evidence demonstrated itself in their conclusions, based mainly on testimonies given by colony staff members. Although excerpts from the testimonies of the applicant and two other inmates were included in the decision of 19 October 2009 refusing to institute criminal proceedings, the investigator did not consider those testimonies to be credible. However, the investigator unquestioningly accepted the warders' testimonies as credible, even though they might simply have been defence tactics aimed at damaging the applicant's credibility. In the Court's view, the prosecution inquiry applied different standards when assessing the testimonies, as those given by the applicant and his fellow inmates were deemed to be subjective but not those given by the colony officials. The credibility of the latter testimonies should also have been questioned, as the prosecution investigation was supposed to establish whether the warders were guilty of disciplinary or criminal offences (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

118. The Court further observes that the investigator questioned two inmates who had been detained with the applicant in the medical colony in July 2009. The excerpts from their testimonies were included in the decision of 19 October 2009. The Court firstly finds it inexplicable that the investigator limited his inquiry to the examination of only two inmates. It is also peculiar that the investigator never heard any witness, such as an inmate, a prison doctor or a representative of a human rights organisation, who might have had information in relation to the events of 17 August 2009. In this connection, the Court notes that while the investigating authorities may not have been given the names of individuals who might have witnessed the alleged beatings or have been able to shed light on the events under investigation, they would have been expected to take steps on their own initiative to identify possible eyewitnesses.

119. The Court is thus of the view that the investigator's inertness and reluctance to look for corroborating evidence precluded the creation of an accurate, reliable and precise record of the events of 4 July and 17 August 2009.

120. In such circumstances the Court is bound to conclude that the authorities failed to comply with the requirements of promptness, thoroughness and effectiveness (see *Kişmir v. Turkey*, no. 27306/95, § 117, 31 May 2005; *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007-IX; and *Vladimir Fedorov*, cited above, § 70). Accordingly, it holds that there has been a violation of Article 3 of the Convention under its procedural limb.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

121. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

123. The applicant claimed 15,000 euros (EUR) in respect of non pecuniary damage.

124. The Government submitted that the claim was excessive.

125. The Court notes that it has found a serious violation of the Convention in the present case. In these circumstances the Court considers that the applicant's suffering and frustration caused by the ineffective investigation into his ill-treatment complaints cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant in full the sum claimed in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

126. The applicant also claimed 177,165.4 Russian roubles (RUB) for the costs and expenses incurred before the domestic authorities and the Court, of which RUB 84,000 was the cost of legal representation during the criminal proceedings against the applicant, RUB 45,000 estimated translation fees, RUB 18,000 legal fees for representing the applicant in the proceedings pertaining to his ill-treatment complaints, RUB 30,000 the cost of legal representation before the Court and RUB 165.40 postal expenses.

127. The Government stressed that only those reasonable expenses and costs which had in fact been incurred should be reimbursed to the applicant.

128. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads.

C. Default interest

129. 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 alleged ill-treatment by the warders on 4 July and 17 August 2009 and ineffective investigation into the applicant's ill-treatment complaints admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged ill-treatment of the applicant on 4 July and 17 August 2009;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's ill-treatment allegations;

4. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses incurred before the domestic authorities and the Court;

(iii) any tax that may be chargeable to the applicant on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajic
Registrar	President