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

FIRST SECTION

CASE OF POPOV v. RUSSIA

(Application no. 26853/04)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

11/12/2006

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 Popov v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 26853/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Mikhail Yevgenyevich Popov ("the applicant"), on 14 July 2004.

2. The applicant, who had been granted legal aid, was represented by Mr M.I. Kogan, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 13 December 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 9 February 2005 the Court decided to request the Government to provide additional factual information concerning the applicant's allegations of being threatened by State officials in connection with his application before the Court and censorship of his correspondence with his representative.

5. On 25 March 2005 the Court decided to communicate to the Government the complaints concerning the alleged pressure from State officials and censorship of the applicant's correspondence with his representative and to put to them an additional question concerning the conditions of detention in the YaCh-91/5 (*ИТК ЯЧ-91/5*) prison in Sarapul.

6. On 1 September 2005 the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government not to require the applicant to perform any physical activity in the YaCh-91/5 prison in Sarapul, including

physical labour and physical exercise, until further notice. Furthermore, the Government were called upon to take the initiative of securing an independent medical examination of the applicant in a specialised uro-oncological institution within one month after receipt of the notice and further to secure such medical treatment as might be required according to the results of the examination. The Government were requested to inform the Court of the measures thus taken.

7. On 24 November 2005 the Chamber decided to lift the interim measure previously indicated under Rule 39 of the Rules of Court in the part related to the medical examination and to prolong until further notice the interim measure in the part related to the exempting of the applicant from any physical activity in the YaCh-91/5 prison in Sarapul.

8. On 22 June 2006 the Court decided that a hearing in the case was unnecessary (Rule 59 § 3 of the Rules of Court). It further dismissed the Government's objection concerning the application of Article 29 § 3 of the Convention and the applicant's request for investigative measures (Rule A1 of the Annex to the Rules of the Court).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1978 and lives in Moscow. He is currently serving his sentence in the YaCh-91/5 prison in Sarapul.

A. The facts of the case

1. Pre-trial proceedings

10. On 26 September 2001 at around 2 p.m. four teenagers attending a school for children with impaired hearing, while walking in Sokolniki park towards a tram stop, saw two young men fighting. One of the youths was later found dead. It was established that his death had occurred on the aforementioned date. The schoolboys described the event to their teacher. They noted that the alleged offender had been wearing a ponytail and a leather jacket.

11. On 14 May 2002, at 12 noon, police officers came to the applicant's flat and asked him to accompany them to the police station. The applicant complied with the request. In the police station he was searched and placed in a cell. At 2 p.m. he was interviewed as a witness. The applicant stated, *inter alia*, that he did not know the victim and had never heard his name. At

3 p.m. the applicant took part in an identification parade before two of the four schoolboys, Z. and M., who identified him as a person they had seen fighting on 26 September 2001. At 4 p.m. the investigator ordered the applicant's detention. According to the applicant, the detention order was not given to him for his signature. In the order it was indicated that the applicant's mother had been notified about his detention.

12. At 6.50 p.m. the investigator started the search in the applicant's flat. The applicant's desktop PC, mobile phone, photo album, notebook, a bag with diskettes, a leather jacket, two pairs of boots and two pairs of jeans were seized in the course of the search.

13. Between 8.40 p.m. and 9.45 p.m. the applicant was interviewed as a suspect in connection with the murder committed on 26 September 2001.

14. On 15 May 2002 the applicant was transferred to the temporary detention centre IVS Sokolniki.

15. On 17 May 2002 the investigator ordered the applicant to be taken into custody as a preventive measure.

16. On 21 May 2002 the applicant took part in another identification parade before the other two schoolboys who had also witnessed the fight on 26 September 2001. One of the boys, F., stated he was not sure he had seen the applicant. The other boy, Sh., submitted that he had never seen him before.

17. On 24 May 2002 the applicant was charged with murder. On the same date he was interviewed as the accused. He was assisted by an advocate K., appointed by the investigator.

18. On 25 May 2002 the applicant was transferred to remand prison SIZO 77/1 in Moscow.

19. On 21 June 2002 the advocate K. filed a complaint with the prosecutor concerning the conduct of the investigation. He alleged, *inter alia*, that the identification parades had been in breach of procedural requirements. In particular, the persons lined up with the applicant had been much older and the applicant had been the only one wearing a ponytail, which significantly decreased the evidential credibility of the identification. He further complained that the investigator had taken no steps to verify the applicant's alibi. In particular, Mrs R., the applicant's neighbour, who claimed to have seen him during the day on 26 September 2001, Mr Kh., the carpenter, who was performing work at the applicant's flat on that date, and Mrs K., the applicant's girlfriend's mother, had not been questioned.

20. On 2 July 2002 the Prosecutor allowed the advocate K.'s motion to have Mrs R., Mr Kh. and Mrs K. examined as witnesses. However, neither Mrs R. nor Mr Kh. were examined in the course of the investigation.

21. On 8 July 2002 the Preobrazhenskiy District Court of Moscow extended the term of the applicant's pre-trial detention until 13 September 2002 on the grounds that, being accused of a grave offence,

he might abscond during the investigation and interfere with the establishment of the truth in the case.

22. It appears that between July and September 2002 the applicant appointed as his representative advocate A. instead of advocate K., previously appointed by the investigator. Advocate A. assisted him throughout the rest of the proceedings.

23. On 10 September 2002 the Preobrazhenskiy District Court extended the term of the applicant's pre-trial detention until 14 November 2002 on the same grounds as those indicated in its ruling of 8 July 2002.

24. On 12 November 2002 the Preobrazhenskiy District Court extended the term of his pre-trial detention until 14 January 2003 on the same grounds as those indicated in its ruling of 8 July 2002. At the same hearing the court granted the applicant leave for his uncle's participation in the proceedings as his representative.

25. On 21 November 2002 the applicant appealed against the extension of the term of his detention.

26. It appears that on 2 December 2002 the order of 12 November 2002 was upheld on appeal.

27. On 18 December 2002 the applicant was notified about the termination of the preliminary investigation. The applicant was again notified about the termination of the preliminary investigation on 30 December 2002.

28. On 10 January 2003 the Prosecutor drew up a bill of indictment and referred the case to court. The bill of indictment stated that, on 26 September 2001 at around 2 p.m., near the entrance to the Sokolniki park, the applicant had quarrelled with the victim for unidentified reasons. The quarrel had turned into a fight. Due to “sudden personal hostility” the applicant had struck the victim at the nape with an unidentified blunt, hard object and had then cut his throat with an unidentified sharp object. The bill of indictment enumerated the items of evidence with reference to the pages of the case file. It contained no clarification as to their relevance.

2. Court proceedings

29. On 4 February 2003 the Preobrazhenskiy District Court scheduled the hearing for 17 February 2003 and ordered the preventive measure of restraint applied to the applicant to remain unchanged. The applicant appealed against the ruling.

30. On 17 February 2003 the Preobrazhenskiy District Court allowed the advocate A.'s motion to call Mrs R. as a witness at the hearing. The court refused leave for the applicant's uncle to participate in the proceedings as his representative since he was represented by a lawyer. Mr Kh. appeared at the hearing among other witnesses. However, none of them was examined because the court adjourned the hearing on the merits owing to the appeal lodged against the ruling of 4 February 2003.

31. On 22 April 2003 the Moscow City Court quashed the ruling of 4 February 2003 and remitted the matter for a fresh examination.

32. On 10 May 2003 the Preobrazhenskiy District Court ruled that it would hold a preliminary hearing of the case on 19 May 2003 and ordered the preventive measure applied to the applicant to remain unchanged.

33. On 19 May 2003 the Preobrazhenskiy District Court ruled that it would hold a hearing on the merits on 12 June 2003. On the same date the applicant filed a motion for the record of his interview on 14 May 2002 and the records of the identification parades to be excluded from the body of evidence as inadmissible. The prosecutor stated that he would leave it for the court to decide. The court held as follows:

> "[Mr] Popov's motion ... should be dismissed because the case has not yet been considered on the merits, the judicial investigation has not been conducted, therefore the assessment of all the evidence in the case, including the documents that [Mr] Popov seeks to have excluded, shall be made when the case is considered on the merits."

The court scheduled the next hearing for 12 June 2003.

34. The hearings of 12 and 18 June 2003 were adjourned. On 18 June 2003 the Preobrazhenskiy District Court extended the term of the applicant's detention until 18 September 2003 and refused leave for his uncle to participate in the proceedings as his representative on the ground that he was represented by a lawyer. The applicant appealed against the ruling.

35. On 8 September 2003 the Preobrazhenskiy District Court held a hearing on the merits. The minutes of the hearing stated that witnesses had appeared and had been removed from the courtroom. The names of the witnesses were not specified. The applicant's counsel filed a motion to call Mrs R., the applicant's neighbour, at the hearing in order to confirm his alibi and provide information about his personality. The prosecutor objected on the grounds that the information about the applicant's personality would be obtained from his relatives. The court dismissed the motion without giving any reasons.

36. At the hearing of 8 September 2003 the court heard evidence from three of the four schoolboys who had witnessed the events of 26 September 2001. M. confirmed that he had seen the applicant that day. Z. stated that although he had identified him at the identification parade, he could not at present remember exactly what the offender had looked like. F. submitted that he did not recognise the applicant. Their teacher, examined at the hearing, submitted that the schoolboys had good eyesight, although owing to the particularities of their mental state suffered from certain lapses of memory or forgetfulness, because of which they could not adequately recollect a situation after half a year. The court also heard evidence from the victim's parents. His father stated that he had received an anonymous call

and had been told that the applicant had murdered their son. At 3.56 p.m. the judge adjourned the hearing until the next day.

37. On 9 September 2003 the hearing continued. The record of the hearing did not contain information as to whether particular witnesses had attended. It appears that Mrs R. was present at the hearing because she placed her signature on a document dated 9 September 2003 to confirm that she had been notified of criminal responsibility for giving false evidence. The document was also signed by the trial judge. However, Mrs R. had not been examined at the hearing.

38. At the hearing the Preobrazhenskiy District Court heard evidence from Mrs P., the applicant's mother, who submitted that on 26 September 2001 the applicant had stayed at home until the evening and had also been seen by their neighbour Mrs R. and the carpenter Mr Kh. Miss K., the applicant's girlfriend, submitted that on 26 September 2001 between 9 p.m. and 12 midnight she and the applicant had walked her dog. Mrs K., her mother, submitted that between 1.30 p.m. and 3.30 p.m. on 26 September 2001 she had spoken to the applicant on the telephone a number of times and he had been at home. The court also heard evidence from a computer expert, Mr G., and from the applicant's friend, Mr B.

39. The applicant's counsel filed a motion to supplement the pleadings by summoning and examining Mr Kh. The court dismissed the motion on the grounds that Mr Kh. had been notified of the hearing but had failed to appear.

40. On 10 September 2003 the Preobrazhenskiy District Court convicted the applicant of murder and sentenced him to ten years' imprisonment. The court held that on 26 September 2001 at around 2 p.m. near the entrance to Sokolniki park the applicant had quarrelled with the victim for unidentified reasons. The quarrel had turned into a fight. Due to "sudden personal hostility" the applicant had struck the victim at the nape with an unidentified blunt, hard object and then cut his throat with an unidentified sharp object.

41. The court found that the applicant's guilt was confirmed by the statements of M. and Z., who had identified him as the person they had seen fighting with the victim, and by a similar statement from F., who, however, noted that he was only fifty per cent sure that it was the applicant he had seen. The court noted the schoolboys' teacher's statement to the effect that they had no mental abnormalities. The court further stated that the applicant's guilt was also confirmed by Mr G., who submitted that a password and log-in identification for each user were personal and allowed the location of the user and his correspondence with other users to be determined; by Mr B., who submitted that he was aware that the applicant had used the nickname "Spencer" on the Internet and that he had a black leather jacket; by the victim's post-mortem; by the crime scene reports; by the inspection reports concerning the victim's computer and diskettes and a computer and diskettes belonging to a certain Mr X., it was not specified

who he was; by inspection reports in respect of the applicant's personal items; by references from two Internet providers; by a reference from the Internet provider MTU-Intel, stating that on 12 September 2001 at 11.16 p.m. a user accessed the Internet from the applicant's mother's telephone.

42. The court dismissed the applicant's motion to exclude the reports of identification parades as inadmissible evidence. Having regard to the witness statements made at the hearing and to the case file, the court found that the identification parades had been conducted in accordance with procedural rules. The court further found that no credence could be given to the submissions of Mrs P., Miss K. and Mrs K. because, being the applicant's relatives, they had sought to help him.

43. The applicant appealed against the judgment on the grounds, *inter alia*, that the trial court had relied on inadmissible evidence, had dismissed his motion to call Mrs R. at the hearing and had refused to adjourn the hearing in order to call Mr Kh.

44. On 4 November 2003 the Moscow City Court examined the applicant's appeal against the ruling of 18 June 2003 concerning the extension of his pre-trial detention. The court upheld the ruling. The applicant and his counsel were present at the hearing.

45. On 6 November 2003 the Moscow City Court addressed the Preobrazhenskiy District Court in a letter stating that the appeal against the ruling of 18 June 2003 lodged by the applicant on 24 June 2003 had not been transmitted for examination in due course and that the case-file had been received by the Moscow City Court only on 4 November 2003. The Moscow City Court further noted that appeals against rulings concerning the application of a preventive measure should be transmitted immediately to the appeal court and failure to do so entailed a limitation of the right of access to a court.

46. On 20 January 2004 the Moscow City Court upheld on appeal the judgment of 10 September 2003. The court, *inter alia*, stated:

> "The crime was committed in Moscow in the circumstances set out in the [trial] court's judgment.
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> ...
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> The [trial] court was right to base its conclusions concerning the guilt of [the applicant] on the statements of [the witnesses]. The [appeal court] finds that such assessment ... corresponds to the body of evidence in the case: ...the computer databases, where the correspondence between the [applicant] using the nickname "Spencer" and the victim is recorded, and the relevant statement of [Mr B].
>
> ...
>
> The argument [put forward in the applicant's appeal] that his version about his being at home on the date of the crime was not duly examined is unsubstantiated.

...

The lawfulness of the procedural actions taken in the present case was checked, and the court's findings were not based on any evidence [the lawfulness] of which would give rise to doubts. ... ”

47. On an unspecified date the applicant challenged the constitutionality of Article 49 § 2 of the Code of Criminal Procedure in the Constitutional Court. The applicant claimed that the trial court had based on that provision its refusal to allow his uncle's participation in the proceedings as his defence counsel. The trial court had thus infringed his rights enshrined in Article 45 § 2 of the Constitution, which provided that everyone was entitled to defend his or her rights by any lawful means.

48. On 22 April 2004 the Constitutional Court dismissed the complaint as inadmissible. It held that Article 49 § 2 of the Code of Criminal Procedure did not provide any limitations as regards participation of the accused's relatives in the proceedings. Therefore, it did not violate the applicant's rights protected by Article 45 § 2 of the Constitution. Inasmuch as the applicant's rights could have been infringed by the court's arbitrary refusal to admit his relative to participate in the proceedings, he should have had recourse to remedies available under the laws on criminal procedure.

3. Material conditions of detention in remand prison SIZO 77/1

49. Between 24 May 2002 and 15 February 2004 the applicant was detained in remand prison SIZO 77/1 in Moscow.

(a) The applicant's account

50. Between 24 May and 14 June 2002 the applicant had been held in cell no. 236. 10 inmates were held in a cell measuring approximately 5 sq. m with 6 beds. The lavatory pan was placed a meter away from the dining table and was not separated by a partition. Food was provided twice a day. There was a very small window which did not let the daylight in and the artificial light was never turned off. The inmates were allowed to take a walk of 40 minutes per day.

51. Between 14 June and approximately 15 December 2002 the applicant had been held in cell no. 118. Between 75 and 90 inmates were held in a cell measuring approximately 25-30 sq. m with 24 beds in two tiers. The inmates had to sleep in three or four shifts. There was a very small window with no glass and the artificial light was never turned off. The temperature in the cell was +30-35º C. in summer and –10-12º C. in winter. The cell was always very damp. The lavatory pan, placed two to three meters from the dining table, always stank and there was no partition to separate it from the living area and the table. Food was provided twice a day. The cell was overrun by cockroaches, lice and bugs. Sometimes the applicant had had to share the cell with inmates infected with tuberculosis

and HIV. He had had to sleep without appropriate bedding. All his personal belongings and food sent to him by his mother had been taken away from him by other inmates allegedly with the consent of the prison authorities.

52. Between 15 December 2002 and 15 January 2003 the applicant had been held in cell no. 143. He submitted that the conditions of detention had been similar to those in cell no. 118. There were 26 beds for 60 inmates.

53. Between 15 and 30 January 2003 the applicant had been held in cell no. 127. The conditions of detention were similar to those in cell no. 118. There were 22 beds for 60-70 inmates.

54. Between 30 January and 10 March 2003 the applicant had been held in cell no. 739, which belonged to the medical unit. In the cell measuring approximately 6 sq. m there were 4 beds for 4 inmates. Walks were not allowed. Food was provided twice a day. There was no dining table. The lavatory pan was not separated from the living area. There was no hot water in the cell. No medical treatment was offered.

55. Between 10 March and 15 September 2003 the applicant had been held in cell no. 113. The conditions of detention were similar to those in cell no. 127. 50 inmates were held in a cell measuring approximately 30 sq. m with 26 beds.

56. Between 15 September 2003 and approximately 10 January 2004 the applicant had been held in cell no. 115. The conditions of detention were similar to those in the cell no. 127. 50 inmates were held in a cell measuring approximately 25 sq. m with 18 beds.

57. Between 10 January and approximately 14 February 2004 the applicant had been held in another cell, possibly no. 152. 60-70 inmates were held in a cell measuring approximately 20 sq. m with 15 beds. The inmates had to sleep in four shifts. The cell was in a basement with no window and no ventilation. The walls of the cell were wet with condensation, the cell was always very damp and there was water on the floor. The temperature in the cell was always very low. The lavatory pan was placed half a meter from the dining table and there was no partition to separate it from the living area.

58. The applicant submitted that between December 2002 and September 2003 he had filed a number of complaints concerning various aspects of his detention in remand prison SIZO 77/1, *inter alia*, with the Prosecutor's Office of Moscow and the General Prosecutor. However, he had received no reply.

(b) The Government's account

59. Between 24 and 26 May 2002 the applicant had been in cell no. 119, which measured 52.6 sq. m and held 39 inmates simultaneously. Between 26 May and 5 June 2002 the applicant had been in cell no. 236, which measured 18.72 sq. m and held 8 inmates. Between 5 June and 9 July 2002 he had been in cell no. 119, which measured 52.6 sq. m and held 37

inmates. Between 9 July and 25 November 2002 the applicant had been in cell no. 120, which measured 53.8 sq. m and held 37 inmates. Between 25 November 2002 and 4 January 2003 he had been in cell no. 143, which measured 53.4 sq. m and held 46 inmates. Between 4 and 23 January 2003 he had been in cell no. 127, which measured 51.2 sq. m and held 55 inmates. Between 23 January and 21 March 2003 he had been in cell no. 739, which measured 21.6 sq. m and held 4 inmates. Between 21 March and 6 August 2003 the applicant had been in cell no. 122, which measured 52.6 sq. m and held 40 inmates. Between 6 and 21 August 2003 he had been in cell no. 714, which measured 24.5 sq. m and held 5 inmates. Between 21 and 25 August 2003 the applicant had been in cell no. 122, which measured 52.6 sq. m and held 58 inmates. Between 25 August and 10 September 2003 he had been in cell no. 711, which measured 24.5 sq. m and held 1 inmate. Between 10 September 2003 and 15 February 2004, when the applicant was transferred to the YaCh-91/5 prison in Sarapul, he had been in cell no. 115, which measured 40 sq. m and held 29 inmates.

60. During the applicant's detention in remand prison SIZO 77/1 he had been provided with a bed and bedding in accordance with prison standards. He had been provided with clothing appropriate to the season. He had received hot meals three times a day (breakfast, dinner, supper) in accordance with prison standards. He had undergone hygienic procedures (*санитарная обработка*) once a week. The applicant had never been placed in the same cell as inmates infected with tuberculosis or HIV.

4. Alleged ill-treatment in remand prison SIZO 77/1

61. The applicant asserted that in the remand prison he had been regularly beaten by his cellmates and threatened with murder, allegedly with the consent or even under the instructions of the prison and investigative authorities, with a view to forcing him into self-incrimination. In August 2002 he had been hit with a heavy metal rod against his head. He had fainted, had sustained concussion of the brain and his right ear had been badly cut. In August, September and November 2002 the applicant had sustained multiple fractures in his nose and haematomas on his face. He submitted that his face and ears had been black and blue and he could hardly open his eyes. His nasal bones did not knit properly and the nasal partition had collapsed leading to disfiguration of his face. The applicant could not breath through one of his nostrils, always had a runny nose and almost lost his sense of smell. His ears often ached and his hearing was impaired. His sight had also worsened. The applicant also alleged that he had been regularly kicked, which had caused internal bruising and blood in his urine.

62. On 24 October 2002 the applicant's mother wrote to the Director of remand prison SIZO 77/1 concerning the applicant's correspondence from the remand prison. She stated that in mid-September the applicant had sent complaints about various aspects of the conditions of detention in the

remand prison to the Ministry of Justice and to an NGO Committee for Civil Rights. However, he had not received notification that the complaints had been sent or any replies. The applicant's mother asked to be informed whether the complaints had been sent and why the applicant had not received notification. The letter was received by the remand prison on the next day. It appears that there was no reply.

63. The applicant submitted that he had applied a number of times to the medical unit of the remand prison, but had never been duly examined by a doctor. At the same time, the entry of 1 November 2002 in his medical file stated that he had "fading haematomas".

64. On 26 August 2004 the applicant sent a letter to his representative describing, *inter alia*, his beating by his cellmates. He wrote that he had not made any complaints in this regard because he had been threatened with murder.

65. The Government submitted that during his detention in remand prison SIZO 77/1 the applicant had not been subjected to any forms of ill-treatment and sustained no injuries.

5. Alleged lack of adequate medical assistance in remand prison SIZO 77/1

66. Since 1994 the applicant had been suffering from cancer of the urinary bladder. In 1999 he underwent a resection of the cancerous tumour and subsequent chemotherapy. Despite the operation, his condition requires permanent medical supervision and specialised treatment.

(a) The applicant's account

67. According to the applicant, during his detention in remand prison SIZO 77/1 in Moscow, he had been subject to paroxysms of pain in his kidneys and stomach, together with a high temperature of 39.8º C. He had applied for medical assistance almost every week. However, either he was provided with no medical assistance at all or it was offered to him a week after the paroxysm. The only medicine the applicant had received was an analgesic. He had not been given the specialised medicine prescribed by his uro-oncologist and bought for him by his mother at the request of the remand prison medical unit. On a number of occasions the applicant had undergone blood and urine tests and ultrasound scans. In 2003 he had been placed in the medical unit several times. However, the medical unit did not have facilities to perform specialised tests, e.g., a cystoscopy. The applicant had refused to undergo certain tests because the personnel of the medical unit was not qualified to perform them. The unit did not have a uro-oncologist and the applicant had never been examined by a qualified specialist. The ultrasound scan performed in August 2003 had revealed a new tumour in his prostate measuring eight millimetres. The diagnosis had been confirmed by the ultrasound scan performed in September 2003. A

scan performed in December 2003 showed that the tumour had grown up to nine millimetres. The doctors of the medical unit had consulted by telephone the uro-oncologist, Dr M., who used to supervise the applicant. However, the medical unit had never provided Dr M. with the information about the new tumour, as confirmed by his report of 9 September 2004.

(b) The Government's account

68. According to the Government, upon the applicant's admission to remand prison SIZO 77/1 on 24 May 2002 he had informed the medical unit about the operated cancer of his urinary bladder.

69. On 23 January 2003 he had been placed in the surgical department of the remand prison medical unit, where he was examined by a urologist, a surgeon and a physician and underwent a blood test, an electrocardiogram and two ultrasound scans. The applicant had been subjected to antibacterial, antiphlogistic and tonic treatment. He had been released from the medical unit on 21 March 2003 in a satisfactory state of health. Between 6 and 19 August 2003 the applicant had again been placed in the surgical department of the medical unit where he underwent a similar course of treatment. On 15 August 2003 he had been examined by a urologist. Between 25 August and 3 September 2003 the applicant had been placed in a therapeutic department of the medical unit. The results of the tests and examinations showed no signs of recurrent cancer.

(c) Complaints about medical assistance in remand prison SIZO 77/1

70. In 2002 and 2003 the applicant's mother filed a number of complaints concerning the allegedly inadequate medical assistance available to the applicant in the remand prison.

71. On 30 July 2002 the Head of the medical unit of remand prison SIZO 77/1, Ms E., wrote to the applicant's mother that her son had been examined on 14 June and 30 July 2002 and that his condition had been found to be satisfactory. He was under the constant supervision of the medical unit's personnel and would be provided with medical aid if required.

72. On 4 February 2003 the Head of the surgical department of the medical unit informed the applicant's mother that the applicant had been placed there for a regular check-up on 23 January 2003. He had been diagnosed with chronic pyelonephritis and urine acid diathesis and his condition was satisfactory.

73. On 27 May 2003 the Head of the medical unit informed the applicant's mother that the applicant had undergone a medical examination. The results of the examination were communicated to the uro-oncologist Dr M., who recommended another examination within three months.

74. On 5 June 2003 the Head of the medical unit sent the applicant's mother a letter, the contents of which were similar to the letter of 27 May 2003.

75. On 1 August 2003 the Head of the medical unit again wrote to the applicant's mother. Ms E. informed her that the applicant's medical records had been transmitted to the uro-oncologist Dr M., and that the recommended examination as well as treatment with medication containing iron would be conducted in the near future. For this purpose Ms E. asked the applicant's mother to supply the medication containing iron and vitamins. She noted that the applicant's condition was satisfactory.

76. On 13 August 2003 the applicant's mother sent a letter to the Head of the Department for the Execution of Sentences asking him to transmit the results of the applicant's medical examination in the remand prison's medical unit to oncological dispensary no. 3.

77. On 19 August 2003 the applicant's mother wrote to the Director of remand prison SIZO 77/1. She asked him to explain why the applicant had not received treatment with the medication containing iron that she had obtained upon the request of the medical unit.

78. On 1 September 2003 the Head of the therapeutic department of the medical unit informed the applicant's mother, *inter alia*, that the blood tests performed between 6 and 19 August 2003 had shown no signs of anaemia. Therefore, treatment with medication containing iron was not required. Check-ups by a uro-oncologist and ultrasound scans were recommended once a year.

79. On 2 September 2003 the applicant's mother again wrote to the Director of remand prison SIZO 77/1. The content of the letter was similar to that of 19 August 2003.

80. On 4 September 2003 the Head of the therapeutic department of the medical unit re-sent its reply of 1 September 2003.

81. On 17 September 2003 the Head of the Moscow Directorate of the Department for the Execution of Sentences, Mr Z., replied to the applicant's mother. He stated, *inter alia*, that the applicant was under the constant medical supervision of the medical unit and did not require specialised in-patient treatment in an oncological hospital. He further noted that the administration of the detention facility could invite external medical specialists only when it was necessary, that is when specialised supervision or treatment was not possible in the detention facility.

82. On 18 September 2003 the Deputy Head of the medical unit of remand prison SIZO 77/1 informed the applicant's mother that the applicant's examination between 6 and 19 August 2003 and between 26 August and 2 September 2003 had revealed no signs of anaemia. The treatment with medication containing iron was not required. The medication supplied by the applicant's mother had been stored at the medical unit and would be returned upon her first request.

6. Conditions of detention and alleged lack of adequate medical assistance in the YaCh-91/5 prison in Sarapul

83. Between 15 February and 18 March 2004 the applicant was transferred to the YaCh-91/5 prison in Sarapul.

84. On 18 March 2004 the applicant was admitted to the prison. He informed the prison medical unit about the cancer of the urinary bladder operated in 1994. According to the applicant, no relevant tests had been performed for lack of required facilities and he had not been provided with any medical assistance. According to the Government, the applicant had refused to undergo any tests, which was confirmed by the statement of the medical personnel.

85. According to the applicant, owing to the constant pain in his loins and stomach he had had to refuse to perform certain compulsory work in the prison.

86. On 19 March 2004 the applicant was examined by a doctor with regard to his refusal to perform prison work. He complained of pain in his loins and strangury. The prison doctor diagnosed pyelonephritis and concluded that his state of health permitted him to perform prison work excluding hard labour.

87. On the same date, because of his refusal to perform prison work, the applicant was placed in disciplinary cell no. 5, where he remained for 15 days. According to the applicant, the cell measuring approximately 4 sq. m held 4 inmates. There were bunk beds in the cell that were unfolded only for seven hours at night, the rest of the time being folded up against the walls. The lavatory pan was placed within 0.5-1.5 metres of the dining table and there was no partition between them. There was no ventilation and very faint artificial light. The average temperature in the cell was +9-12ºC. It was forbidden to boil water and to have food other than that provided by the prison administration three times a day. The inmates were also forbidden to wear clothes other than those provided by the prison, which were not warm enough. They were forbidden to wear wristwatches and glasses, although the applicant's sight was -4. The inmates were taken for a walk once a day. The applicant's state of health worsened and the paroxysms of pain became more frequent. He had blood pressure boosts and drops, difficulties with movement; his hands and his head started to shake.

88. According to the Government, disciplinary cell no. 5 measured 6.1 sq. m and held 3 inmates simultaneously. It was equipped with four collapsible metal bunk beds with wooden cladding, a table, two benches, a lavatory pan, a wash-basin, a metal shelf for keeping items of personal hygiene and a radio.

89. On 3 April 2004 the applicant was placed in disciplinary cell no. 6, where he remained for 5 days. According to the applicant, the conditions of detention were similar to those in disciplinary cell no. 5. According to the Government, disciplinary cell no. 5 measured 6.1 sq. m and held 2 inmates

simultaneously. It was equipped in the same manner as disciplinary cell no. 5.

90. On 9 April 2004 the applicant was examined with regard to his refusal to perform morning exercises. The prison doctor found him able to perform them.

91. On the same date he was placed in disciplinary cell no. 7, where he remained for 15 days. According to the applicant, in the cell measuring approximately 8 sq. m there were 6 inmates. Otherwise the conditions of detention were similar to those in cells no. 5 and no. 6. According to the Government, disciplinary cell no. 7 measured 11.8 sq. m and held 5 inmates simultaneously. It was equipped with six collapsible metal bunk beds with wooden cladding, a table, two benches, a lavatory pan, a wash-basin, a metal shelf for keeping items of personal hygiene, a wooden cupboard and a radio.

92. On 26 April 2004 the applicant was again examined with regard to his refusal to perform morning exercises and found able to perform them.

93. On 27 April 2004 the applicant sent a letter to his mother. He described his poor state of health which included pains in his kidneys, unstable blood pressure, shaking hands and head, difficulties with movement. He wrote that he was not being properly treated in the prison and asked her to send him some medication.

94. On 12 May 2004 the applicant sent a complaint to the Main Department for the Execution of Sentences concerning the lack of adequate medical treatment in the YaCh-91/5 prison and his placement in a disciplinary cell for refusing to perform prison work because of his poor state of health.

95. On 7 June 2004 the applicant sent a similar complaint to the Main Department for the Execution of Sentences.

96. On 30 August 2004 the Head of the prison medical unit stated that it was impossible to examine the applicant in the prison because of the absence of qualified specialists, e.g., urologists and oncologists, and that all required tests could be performed only in the hospital at the YaCh-91/8 prison.

97. Between 3 and 13 September 2004 the applicant was placed in the hospital of the Department for the Execution of Sentences at the YaCh-91/8 prison for examination. An ultrasound scan revealed numerous concretions in his kidneys and diffuse changes and cysts in the prostate. In the applicant's medical file it was stated that he had refused operative treatment.

98. On 10 September 2004 the applicant's mother wrote to a medical officer of the Republic of Udmurtia Directorate of the Department for the Execution of Sentences. She sought the applicant's placement for examination in a hospital within the jurisdiction of the Department for the Execution of Sentences, because he had not been receiving adequate medical supervision and treatment since his detention in the remand prison.

99. On 28 September 2004 the applicant's representative wrote to the Ministry of Health regarding the possibility of examining the applicant in institutions within its jurisdiction.

100. On 25 October 2004 the applicant wrote to his representative that he had had paroxysms of pain after having performed prison work and morning exercises. He also stated that medical assistance in the prison was inefficient and that the entries in his medical file did not reflect his actual condition.

101. On 28 October 2004 Dr L., the Director of the Institute of Urology of the Ministry of Health, gave a written opinion concerning the possibility of recurrent cancer of the applicant's urinary bladder, in response to a request by the applicant's representative dated 2 September 2004. Dr L. noted that a lack of regular medical supervision of the patient by a uro-oncologist had led to belated diagnosis and had increased the risk of recurrent tumours spreading to adjacent organs, when radical surgery would no longer be possible. He concluded that the possibility of recurrent cancer of the urinary bladder could not be excluded. However, an exact diagnosis could only be made upon the applicant's physical examination in a specialised uro-oncological hospital. A cystoscopy and a biopsy were indispensable for this purpose.

102. On 1 November 2004 the Head of the Medical Department of the Udmurtia Directorate of the Department for the Execution of Sentences replied to the applicant's mother's letter of 10 September 2004. He noted that in September 2004 the applicant had been examined in the hospital at the YaCh-91/8 prison. The examination had shown no sign of disease of the uro-genital system, and the applicant had refused further treatment. He concluded that the applicant's condition was satisfactory and that no further examination in the medical institution within the jurisdiction of the Department for the Execution of Sentences was required.

103. On 17 November 2004 the Ministry of Health forwarded the applicant's representative's letter of 28 September 2004 to the Medical Directorate of the Ministry of Internal Affairs. The letter stated that in the present case the prison administration should either refer the applicant to a medical institution within the jurisdiction of the Ministry of Health or place him in a correctional institution which had the necessary facilities for medical examination and treatment.

104. On 29 November 2004 a medical officer from the Central Directorate of the Department for the Execution of Sentences informed the applicant's representative, *inter alia*, that convicts who required medical aid, including in-patient treatment, were referred to medical institutions attached to the system of execution of sentences or, if required, to institutions within the healthcare system. It was further stated that cystoscopy and biopsy might be carried out by any surgeon. Should any oncological symptoms be

revealed, the detention facility where the patient was held should provide the required consultations.

105. On 11 September 2005 Dr D., a urologist of Sarapul Town Hospital No. 1, arrived at the medical unit of the YaCh-91/5 prison. The applicant refused physical examination on the grounds that the medical unit was not licensed to practise urology. It appears that Dr D. made certain conclusions on the basis of the applicant's medical records.

7. Alleged interference with the applicant's correspondence and contacts by prison officials

106. On 23 October 2004 the applicant received a postal packet from his representative. According to the Government, a prison official opened it in the applicant's presence in order to check whether it contained forbidden items. As the postal packet only contained documents, they were handed over to the applicant without having been read by any prison official.

107. According to the applicant, on 25 and 27 January 2005 certain prison officials tried to force him to withdraw the complaints made before the Court inasmuch as they concerned the YaCh-91/5 prison. They threatened him with placement in worse conditions of detention. Furthermore, on 27 January 2005 the applicant was visited by an official of the Udmurtia Directorate of the Department for the Execution of Sentences, who refused to identify himself. He had asked the applicant about the medical assistance available to him in the prison and had said that should the applicant continue to complain about his health the required tests would be performed by non-specialists.

108. On 29 January 2005 the applicant sent a letter to his representative. He wrote that all correspondence from the representative was opened and censored by the prison administration. He also described the events of 25 and 27 January 2005.

109. On 14 February 2005 the applicant was contacted by certain State officials. According to the applicant, on that date he was first visited by an official of the Department for the Execution of Sentences, who questioned him about his application before the Court. The applicant confirmed his complaints about the conditions of detention and medical assistance in the YaCh-91/5 prison. He was later called by an official of the prison's operational department, who demanded that he state in writing that he had not been subjected to any pressure on the part of the prison administration. The applicant refused. According to the Government, the applicant had been contacted by officials of the YaCh-91/5 prison, who had questioned him in relation to the questions concerning the conditions of detention in the YaCh-91/5 prison put by the Court to the Government. The applicant had stated that the administration had been treating him on an equal basis with everybody else and that no restrictions had been applied to his correspondence.

110. On the same date the applicant sent a letter to his representative, which contained his account of the events.

111. On 17 February 2005 the applicant was again contacted by State officials. According to the applicant, the same official of the Department for the Execution of Sentences who had approached him three days before talked to him again in the presence of an official from the prison's operational department. The applicant had been asked whether the prison administration or any other State officials had put any pressure on him in connection with his complaints before the Court. He had refused to answer without first consulting his counsel. He had then been asked whether his correspondence with his counsel had been subjected to censorship, which he confirmed. He had also been asked about his relations with the prison administration and other inmates. He had stated that as regards general conditions of detention, leaving aside the issue of the pressure put on him in connection with his application before the Court, he had been treated in the same way as other inmates. As for his relations with other inmates, there had been no conflicts. According to the Government, the applicant had been contacted by officials of the YaCh-91/5 prison, who had questioned him in relation to the Court's request for factual information. The applicant had refused to answer questions concerning alleged threats on the part of the prison officials without first consulting his lawyer.

112. On 18 February 2005 the applicant sent a letter to his representative describing his meeting with the authorities the previous day.

113. According to the applicant, during his detention in the YaCh-91/5 prison several letters sent to his representative had not reached their addressee and a number of letters from his representative had been opened and read by prison officials. According to the Government, there had been no interference with the applicant's correspondence by the prison authorities. All the letters from the applicant's representative had been handed over to him unopened.

8. Medical examination conducted under Rule 39 of the Rules of Court

114. On 1 September 2005 the Court, under Rule 39 of the Rules of Court, indicated to the Government not to require the applicant to perform any physical activity in the YaCh-91/5 prison in Sarapul, including physical labour and physical exercises, until further notice. Furthermore, the Government were invited to take the initiative of securing an independent medical examination of the applicant in a specialised uro-oncological institution within one month after receipt of the notice in question and further to secure such medical treatment that might be required according to the results of the examination. The Government were requested to inform the Court of the measures thus taken.

115. On 7 October 2005 the Government informed the Court that on 16 September 2005 the applicant had been examined at the oncological

dispensary in Izhevsk. They submitted that according to the results of the examination there had been no development of the oncological disease and the applicant did not require special medical treatment.

116. On 7 October 2005 the applicant's representative sent a report of the examination to the Court.

117. On 24 November 2005 the Court decided to lift the interim measure previously indicated on 1 September 2005 under Rule 39 of the Rules of Court in the part related to the medical examination, and to prolong until further notice the interim measure in the part related to the exempting of the applicant from any physical activity in the YaCh-91/5 prison in Sarapul.

118. On 30 December 2005, upon a request from the applicant's representative, Dr S., Deputy Chief Medical Officer of the Institute of Urology gave a written opinion concerning the possibility of recurrent cancer of the applicant's urinary bladder. The opinion was approved by Dr L., Director of the Institute of Urology of the Ministry of Health. Dr S. studied the results of the applicant's examination on 16 September 2005 and concluded that the results of the cystoscopy and the cytological research were inconclusive and could not exclude the possibility of recurrent cancer of the urinary bladder or continued tumour growth. He also stated that regular outpatient examination of patients with musculo-invasive cancer included a cystoscopy and a biopsy at least once a year, computer tomography of the abdominal cavity and the small pelvis, ultrasound scanning of the kidneys, urinary bladder, prostate and liver, and radiography of the thorax.

B. Related materials

1. The applicant's medical records submitted by the Government

119. The Government submitted a collection of the applicant's medical records. In so far as the copies are legible, they contain the following relevant entries.

120. Between 2 and 16 February 1994 the applicant was placed in the resuscitation unit of hospital no. 52 in Moscow where he underwent a resection of the cancerous tumour of the urinary bladder and was recommended supervision by a uro-oncologist.

121. On 16 March 2002 (the date is not clearly legible) the applicant was examined by his uro-oncologist, Dr M., who recommended a cystoscopy.

122. During the applicant' detention in remand prison SIZO 77/1 the following entries were recorded.

On 29 July 2002:

> "Following a request, a urine test was recommended. [Mr Popov] refused to undergo the test."

On 30 July 2002:

"Examination by a medical attendant. At the time of the examination [Mr Popov] has no active complaints. Satisfactory condition..."

On 1 September 2002:

"The physical examination revealed healing paraorbital haematomas."

3 November 2002:

"Examination by a medical attendant. Complaints about periodical pains in the stomach... Satisfactory condition..."

23 January 2003 (several entries, in one of them the date is misrecorded as 23 January 2002):

"[Examination by a] physician. Complaints about pain in the kidneys. [Mr Popov] stated that he had had an operation for cancer of the urinary bladder in 1994. [He] had undergone chemotherapy in 1994-1995. There is an extract from [a medical file kept at] the oncological dispensary obtained from his relatives... Stable condition. Diagnosis: tumour of the urinary bladder... [The patient is to be] placed in the surgical department."

"[Department of] surgery. Complaints about pain in the loins... Satisfactory condition... Diagnosis: ..., chronic pyelonephritis, ..."

"[The applicant is recommended] urine and blood tests, cystoscopy, ultrasound scanning of kidneys and urinary bladder ... furazolidon, analgin, butadion ... biochemical blood test... papaverin..."

27 January 2003:

"Routine report by the Head of the surgical department. Satisfactory condition. No complaints. The patient has chronic pyelonephritis, in remission... He received analgesics, antiphlogistics, uroantiseptics."

30 January 2003:

"Satisfactory condition. No complaints..."

30 January 2003, results of the ultrasound scan of the abdominal cavity:

"...Conclusion: altered shape of the gall-bladder."

3 February 2003 (two entries):

"Routine report by the Head of the surgical department. Satisfactory condition. Complaints about the feeling of weight in the loins. The patient has chronic pyelonephritis in remission. He is undergoing regular examination."

"[The applicant is recommended] a urine test."

5 February 2003:

"Satisfactory condition. The same complaints..."

7 February 2003:

"Satisfactory condition. The same complaints..."

8 February 2003:

"[The applicant is recommended] ... papaverin, furazolidon, analgin, blood biochemistry test."

10 February 2003:

"Routine report by the Head of the surgical department. Satisfactory condition. Complaints about the feeling of weight in the loins. The patient has chronic pyelonephritis in remission. He is undergoing regular examination."

13 February 2003 (two entries):

"Satisfactory condition. No complaints..."

"[The applicant is recommended] a urine test."

17 February 2002:

"Routine report by the Head of the surgical department. Satisfactory condition. No complaints. As a result of the conducted examination no signs of the recurrent cancer of the urinary bladder have been revealed."

20 February 2002 (two entries):

"Satisfactory condition. No complaints..."

"[The applicant is recommended] papaverin, analgin, furazolidon."

24 February 2003:

"[The applicant is recommended] ultrasound scanning of kidneys and ureters."

28 February 2003 (two entries):

"Routine report by the Head of the surgical department. Satisfactory condition. Complaints about the feeling of weight in the loins. The patient still has microhaematuria and pain syndrome. It is planned to conduct ultrasound scanning of kidneys and ureters."

"Satisfactory condition. Complaints about the feeling of weight in the loins..."

3 March 2003 (two entries):

"Satisfactory condition. The same complaints..."

"[The applicant is recommended] papaverin, furazolidon, analgin."

6 March 2003:

"Satisfactory condition. The same complaints..."

8 March 2003:

"[The applicant is recommended] papaverin, furazolidon, analgin."

11 March 2003:

"Routine report by the Head of the surgical department. Satisfactory condition. Complaints about the feeling of weight in the loins. A cystoscopy and an examination by a uro-oncologist are planned for 13 March 2003."

13 March 2003:

"Satisfactory condition. The same complaints... The examination by a uro-oncologist did not take place for objective reasons... (impossibility of arranging transport...)."

17 March 2003:

"Routine report by the Head of the surgical department. Satisfactory condition. No complaints... Cystoscopy and examination by a uro-oncologist were not conducted for objective reasons..."

19 March 2003:

"Satisfactory condition. No complaints... The patient left in order to attend a court hearing. Transport for cystoscopy and examination by a uro-oncologist is impossible."

21 March 2003:

"Taking into account the absence of the patient [who has to attend a court hearing] and the impossibility of arranging transport for the examination since 13 March 2003 it is decided to release him... and recommend the examination in one month."

25 March 2003, results of the ultrasound scan of kidneys:

"...Conclusion: liquid mass in prostate. Pyelonephritis on left."

3 April 2003, it appears that the entry relates to a telephone consultation with a uro-oncologist:

"Consultation with the uro-oncologist. Recommended: ciprofloxacin, urine test, ultrasound scan of the urinary bladder."

8 April 2003:

"Urine test performed."

28 April 2003, results of the ultrasound scan of the urinary bladder:

"...in the left half of the [prostate] there is a round ... echo-producing mass ... of 7 mm. Conclusion: a mass in the prostate."

The next entry is dated 24 April 2003, although in the records it follows the entry of 28 April 2003:

"Placed under supervision on account of the oncological illness."

The next entry is again dated 3 April 2003 although in the records it immediately follows the entry of 24 April 2003:

"At the time of the examination there are no complaints. The patient refuses to be examined by a uro-oncologist. Satisfactory condition... Diagnosis: cancer of the urinary bladder. Condition after the resection of the urinary bladder in 1994. [Recommended:] Cystoscopy in oncological dispensary no. 3."

30 April 2003:

"Conclusion: a mass in the prostate. [Recommended:] consultation of an oncologist."

8 May 2003:

"Telephone consultation with the uro-oncologist [Dr M.]. Taking into account the clinical information, results of the urine test and ultrasound scan, there are no signs of oncological processes. Recommended: ultrasound scan within three months."

14 July 2003:

"Urine and blood tests are performed."

31 July 2003:

"Medical documents are submitted for a consultation with the uro-oncologist."

31 July 2003, entry by the uro-oncologist Dr M. following the examination of the medical documents:

"...Recommended: ultrasound scan of the urinary bladder and the small pelvis, medication containing iron."

5 August 2003:

"Ultrasound scan not conducted for technical reasons. A course of injections of ferum lex to be started on 6 August 2003."

6 August 2003:

"[The patient is] hospitalised for a course of treatment for anaemia..."

15 August 2003, examination by a urologist:

"At present treatment by medication containing iron is not required since there are no symptoms of ... anaemia. Recommended: medical supervision..., ultrasound scan of the urogenital system within three months."

22 August 2003:

"As agreed with [Dr M.], [the patient] is repeatedly placed in the therapeutic department ... for antiphlogistic treatment and ultrasound scanning. To be hospitalised on 25 August 2003."

4 December 2003, examination before transfer to prison:

"Complaints about weakness, tickling in the throat, aching in the whole body, pain in the loins, strangury..., temperature 38° C.... Diagnosis: acute respiratory disease, condition after the resection of the tumour of the urinary bladder in 1994. Transfer postponed, [the patient is to be placed in the] contagious-diseases ward."

15 December 2003 (two entries):

"[Mr] Popov was placed in the contagious-diseases ward between 4 and 15 December 2003... He received treatment with aspirin. He is released in a satisfactory condition..."

"No complaints. Satisfactory condition..."

24 December 2003, results of the ultrasound scan of kidneys:

"Urinary bladder: symmetrical shape, ... irregular internal contour, homogeneous contents. Prostate: ... heterogeneous structure, increased echogenicity, echo-free mass of 8 mm. Conclusion: symptoms of chronic cystitis, a mass in the prostate."

Unspecified date, results of the ultrasound scan of the abdominal cavity:

"...Conclusion: symptoms of chronic cholecystitis."

123. During the applicant' detention in the YaCh-91/5 prison in Sarapul the following entries were recorded.

18 March 2004, entry upon the applicant's arrival at the YaCh-91/5 prison:

"[Mr Popov] underwent sanitary treatment...

19 March 2004, examination concerning the refusal to perform prison work:

"At present [Mr Popov] can perform prison work excluding hard labour."

19 March 2004, examination by a physician:

"Complaints about pain in the loins, strangury... In 1994 [Mr Popov] underwent surgery for cancer of the urinary bladder... Diagnosis: chronic pyelonephritis? Incomplete remission. Disease of the urinary bladder? Operated urinary bladder."

9 April 2004, examination concerning the refusal to perform prison work and morning exercises:

"Chronic cystitis. [Mr Popov] is able to perform morning exercises."

9 April 2004, a document signed by the staff of the prison medical unit to the effect that the applicant refused to undergo a urine test.

26 April 2004, examination concerning the refusal to perform morning exercises:

"Chronic cystitis... [Mr Popov] is able to perform morning exercises."

3 September 2004:

"[Mr Popov] is placed in the therapeutic department of [the hospital of the Department for the Execution of Sentences at the YaCh-91/8 prison] for examination (ultrasound scan and...). Diagnosis: a neoplasm in the prostate."

7 September 2004, two documents signed by the prison surgeons to the effect that the applicant refused to undergo treatment on the grounds that at the moment he had no complaints.

3-13 September 2004:

"Chronic prostatitis... Diagnosis: a cyst of the prostate (diameter 0.8 cm), urine acid diathesis... According to the ultrasound scan conducted on 7 September 2004: symptoms of numerous concretions in both kidneys; symptoms of chronic cholecystitis, diffuse changes in the prostate, cysts of the prostate. [Mr Popov] refused operative treatment... Satisfactory condition at the moment of release [from the medical unit]. Recommended: diuretic tea, uroseptics..."

Unspecified date, examination by a physician:

"Complaints about frequent urination... Diagnosis: chronic pyelonephritis, ..., chronic prostatitis, cyst of the prostate. Recommended: prophylactic treatment in case of exacerbation."

13 December 2004:

> "[Mr Popov] submitted a written opinion of Dr L., the Director of the Institute of Urology of the Ministry of Health. He made no complaints about the state of his health and did not apply to the medical unit [for treatment]."

28 January 2005, a document signed by an attendant of the prison medical unit to the effect that the applicant had refused to be transported for an examination at the hospital of the Department for the Execution of Sentences in the YaCh-91/8 prison.

2. Licences and certificates pertaining to the medical institutions and their personnel

124. The Government submitted the following medical-practice licences and certificates pertaining to the medical institutions that provided the applicant with medical assistance and their personnel.

125. Licence for the medical unit of remand prison SIZO 77/1, valid from 24 July 2003 to 24 July 2008, with its appendix. The medical unit is licensed to provide the following types of medical care: pre-doctor care, including medical practice, roentgenology, paramedical practice; outpatient care, including neurology, therapeutics, stomatology; inpatient care, including anaesthesiology, resuscitation, dermatovenereology, infectious diseases, clinical laboratory diagnostics, roentgenology, therapeutics, ultrasound diagnostics, phthisiology, surgery, endoscopy.

126. Certificates confirming the qualification of the physician and specialist of the medical unit of remand prison SIZO 77/1, valid from 11 December 1998 to 11 December 2003, and from 27 October 1998 to 27 October 2003, respectively.

127. Appendix of 14 July 2004 to the licence of the medical unit of the YaCh-91/5 prison in Sarapul. The medical unit is licensed to provide the following types of medical care: pre-doctor care, including medical business; outpatient care, including psychiatry, roentgenology, therapeutics, stomatology; inpatient care; other types of work and services, including public healthcare, temporary disability examination, medical examination of drivers.

128. List of staff of the medical unit of the YaCh-91/5 prison in Sarapul dated 27 January 2005. The staff includes the Deputy Head of the prison responsible for medical treatment and prophylactics, who previously worked in resuscitation and therapy, a psychiatrist, a physician, a dentist and three medical attendants.

129. Licence of the medical unit and the hospital of the YaCh-91/8 prison in the village of Khokhryaki, Republic of Udmurtia, valid from 24 January 2002 to 24 January 2007, and a certificate dated 24 January 2002 pertaining to the same institution. The medical unit and the hospital are licensed to provide the following types of medical care: pre-doctor care,

including laboratory diagnostics, medical practice, paramedical practice, examination of drivers; diagnostics, including laboratory diagnostics, non-invasive tests, haematological tests, biochemical tests, immunological tests, radiodiagnostics, roentgenology; outpatient care, including psychiatry, stomatology, therapeutics, surgery, therapy; inpatient care, including anaesthesiology, resuscitation, clinical transfusiology, therapy, surgery.

130. Licence of the oncological dispensary in Izhevsk, valid from 10 March 2005 to 10 March 2010. The dispensary is licensed to provide the following types of medical care: pre-doctor care, including laboratory diagnostics, operating treatment, roentgenology, nursing, anaesthesiology and resuscitation, histology, dietology; outpatient care, including clinical laboratory diagnostics, roentgenology, oncology, ultrasound diagnostics, endoscopy; inpatient care, including anaesthesiology and resuscitation, clinical laboratory diagnostics, pathological anatomy, radiology, roentgenology, ultrasound diagnostics, oncology, endoscopy; other types of work and services, including temporary disability examination, control of the quality of medical aid, epidemiology.

131. Documents confirming the qualification of Dr K., the uro-oncologist of the oncological dispensary in Izhevsk who examined the applicant on 16 September 2005, including a diploma in medicine issued on 30 June 1993, a qualification certificate in oncology valid for five years from 22 October 1999, employment record.

3. Medical documents submitted by the applicant

132. 16 September 2003, a certificate issued by the Deputy Head of the medical unit of remand prison SIZO 77/1:

> "During his detention in [remand prison] SIZO 77/1 [Mr Popov] was examined and treated in the medical unit a number of times: between 23 January and 21 March 2003 with the diagnosis of cancer of the urinary bladder, condition after the resection; between 6 and 19 August 2003 with the diagnosis of chronic cystitis in remission, condition after the resection of the urinary bladder because of the tumour in 1994, chronic prostatitis in remission; between 25 August and 2 September 2003 with the diagnosis of chronic cystitis in remission, condition after the resection of the urinary bladder because of the tumour in 1994, chronic prostatitis in remission. Satisfactory condition at the time of the examination. [Mr Popov] can participate in investigative and judicial proceedings."

133. 19 March 2004, a certificate issued by a physician of the YaCh-91/5 prison in Sarapul:

> "[Mr Popov] is examined as regards his refusal to perform [prison] work (because of personal convictions). Complaints: about pain in the loins, strangury. Conclusion: chronic pyelonephritis (operated urinary bladder in 1994). His state of health allows his detention in the disciplinary cell."

134. 30 August 2004, a letter of the Head of the medical unit of the YaCh-91/5 prison:

"There is no possibility to examine [Mr Popov] in the medical unit of the YaCh-91/5 prison (there are no urologists, oncologists or other specialists except for a physician). All types of examination, including ultrasound scanning, cystoscopy and biochemical blood tests can only be carried out at the hospital of the prison [YaCh-91/8]."

135. 7 September 2004, a written opinion of the uro-oncologist Dr M.:

"...Chronic pyelonephritis and anaemia may be a consequence of the treatment conducted. Conclusive answer as to the presence (absence) of recurrent cancer may only be given by cystoscopy."

136. 9 September 2004, a statement of the uro-oncologist Dr M.:

"...The information concerning neoplasm in the urinary bladder [ultrasound scan] was not provided by the [remand prison SIZO 77/1]. The [applicant's] medical file was provided by the medical unit, the information was incomplete."

137. 28 October 2004, a written opinion of the uro-oncologist Dr L., Director of the Institute of Urology of the Ministry of Health, obtained upon the request of the applicant's representative:

"As regards your request of 2 September 2004 concerning the possibility of suspecting that at present the patient [Mr] Popov may have recurrent cancer of the urinary bladder at stage T3 or T4, I have studied the following materials provided by you:

1. Epicrisis ... according to which in 1994 the patient ... underwent resection of the urinary bladder...;

2. Certificate of 17 March 1995 ... about the results of the histological study... Cancer of the urinary bladder T3N0M0 was diagnosed, adjunctive chemotherapy was recommended.

3. Extract from the patient's ... medical file of 10 August 2004, from which it follows that the patient is supervised by [oncological dispensary no. 3] since 1994, he underwent regular medical examinations once every three months, but has not been examined since May 2002.

4. Extract from the patient's ... medical file kept in [remand prison] SIZO 77/1, from which it appears that in [the remand prison] between May 2002 and March 2004 the patient was examined only by physicians and surgeons, who at different times diagnosed him with anaemia, signs of chronic cystitis, pyelonephritis and prostatitis. This extract unequivocally shows that over the last two years the patient [Mr] Popov has not been physically examined by a uro-oncologist. Doctors of [remand prison] SIZO 77/1 consulted the uro-oncologist [Dr M.] by telephone. At the same time in January-February 2003 the ultrasound scan of the abdominal cavity showed an altered shape of the urinary bladder, pyelectasis on the left, and liquid masses in the prostate of 6-7 mm. The patient also complained about blood in his urine. Another ultrasound scan conducted in December 2003 showed thickening of the walls of the urinary bladder up to 8 mm.

5. Written opinion of the uro-oncologist [Dr M.] of 7 September 2004 to the effect that the signs of chronic pyelonephritis and anaemia might be a consequence of the treatment conducted. Conclusive answer as to the presence (absence) of recurrent cancer might only be given by cystoscopy. In the opinion of 9 September 2004

[Dr M.] clarified that the doctors of the medical unit of [remand prison] SIZO 77/1 did not inform him about the suspicion of a neoplasm in the urinary bladder according to the results of the ultrasound scan.

6. Certificate of the Head of the medical unit of [the YaCh-91/5 prison] of 19 March 2004 concerning [Mr] Popov's complaints about the pain in his loins and strangury, and [a certificate] of 30 August 2004 concerning the impossibility of examining [Mr] Popov in [the prison] conditions because of the absence in the medical unit of a urologist, an oncologist and other specialists.

Before coming to a conclusion, it should be noted that at the current stage of development of medical science no treatment of cancer of the urinary bladder at the T3N0M0 stage can guarantee ... [absence of] recurrent cancer of the urinary bladder or of ... remote metastasis. In case of a lack of regular medical supervision of the patient by an ... uro-oncologist after the special treatment of cancer of the urinary bladder, belated diagnosis increases the chances of finding recurrent cancer spreading to adjacent organs, i.e., when radical surgery would no longer be possible.

In the present case, on the basis of the [above] documents, taking into account that [the patient] had haematuria, secondary anaemia, thickening and deformation of the walls of the urinary bladder according to ultrasound scanning and pyelectasis on the same side, the recurrent cancer of the urinary bladder can not be excluded. More accurate conclusions concerning the state of health of the patient [Mr] Popov may only be made upon his physical examination in a specialised uro-oncological institution with compulsory cystoscopy and biopsy."

138. 11 September 2005, consultation of Dr D., a urologist of Sarapul Town Hospital No. 1, at the medical unit of the YaCh-91/5 prison.

"At the time of the examination of 11 September 2005 – no complaints. On 7 September 2005 there was frequent urination with strangury (from [the applicant's] words – with concretion). [The applicant] refused physical examination. Taking into account the anamnesis and the entries in the medical file the patient might have urolithiasis, secondary chronic pyelonephritis, chronic prostatitis, cyst of the prostate.

According to the latest urine tests ... there is an exacerbation probably related to the discharge of the concretion.

Recommended: antibacterial therapy; uroseptics; control urine tests; ultrasound scanning of kidneys, urinary bladder, prostate; consultation of a uro-oncologist. Recommended treatment: notroxolin..., furadonin...

As regards the refusal of a physical examination [the patient] wrote a statement in the presence of [the prison officials].

139. 16 September 2005, consultation of Dr K., a uro-oncologist of the oncological dispensary in Izhevsk:

"...Fibrocystoscopy: The urinary bladder stretches satisfactorily. On the left wall there is a postoperative scar – no special characteristics. Mucosae around the neck of urinary bladder is moderately hyperaemic. The orifices of the ureters have no special characteristics. No areas of tumour growth can be determined visually. The urethra has no special characteristics. Conclusion: no indication of recurrent tumour of the

urinary bladder. Sign of chronic cystitis outside exacerbation (lavage fluids are sent for oncocytological research).

Results of the oncocytological research: quantity 200 ml, yellow colour, neo elements (neoplasm) not found, insignificant quantity of epithelial cells with no special characteristics. Recommended: dispensary supervision with control cystoscopy once a year.

Ultrasound scan... conclusion: no sonographic signs of a tumour of the urinary bladder. Echo-producing dredge of the urinary bladder. Ultrasonic signs of the chronic prostatitis. Cyst of the prostate...

Conclusion: Cancer of the urinary bladder. Condition after the combined therapy. No signs of progressing oncological disease. At present [the patient] does not require treatment in a specialised institution."

140. 30 December 2005, written opinion of Dr S., Deputy Chief Medical Officer of the Institute of Urology approved by Dr L., the Director of the Institute of Urology of the Ministry of Health, obtained upon the request of the applicant's representative:

"Further to your request of 30 December 2005 I have studied the following documents:

1. A copy of a protocol of the fibrocystoscopy of 16 September 2005.

2. A copy of the research of the lavage fluids ... of 16 September 2005.

3. A copy of the protocol of the ultrasound scan of the urinary bladder and prostate of 16 September 2005.

4. A copy of the opinion of [the uro-oncologist of the oncological dispensary in Izhevsk] of 16 September 2005.

5. A copy of the certificate ... of 30 September 2005 signed by [the uro-oncologist of the oncological dispensary in Izhevsk].

Having regard to the information contained in your request and on the basis of the submitted documents I can inform you of the following:

1. It is not possible to make a judgment concerning the possibility of transformation of the internal contour of the urinary bladder and changes to the thickness of the walls of the urinary bladder only on the basis of the ultrasound scan since there is no data on the ultrasound scan dynamics. The protocol does not contain information about the size of the pelvis of the left kidney. The most objective information about the condition of the wall of the urinary bladder and surrounding tissues may only be obtained from computer or magnetoresonance tomography.

2. The submitted results of the cystoscopy and the cytological research ... may not constitute a sufficient basis to exclude recurrent cancer of the urinary bladder or continued tumour growth.

3. Regular outpatient examination of patients with musculo-invasive cancer (stage T2-T4) includes mandatory performance of the following examinations: cystoscopy and biopsy at least once a year, computer tomography of the abdominal cavity and the small pelvis, ultrasound scanning of the kidneys, urinary bladder, prostate and liver, and radiography of the thorax."

C. Relevant domestic law

Code of Criminal Procedure of 2001

141. Article 49 § 2 of the Code provides that an advocate is admitted to participate in the proceedings as defence counsel. At the same time a court may admit the accused's close relative or other person indicated by him to act as his counsel along with the advocate.

142. Article 220 provides that a bill of indictment should contain information about, *inter alia*, the place and time of the offence, the manner in which it was committed, the motives, the aims and consequences of the offence and other relevant circumstances. It should also list prosecution and defence evidence.

143. Article 234 concerns preliminary hearings. Paragraph 5 provides that when a party moves to exclude certain evidence and the other party has no objections, the judge should grant the motion.

Code on Execution of Sentences of 1997

144. Under Article 118 of the Code, detainees held in a disciplinary cell should be allowed a one-hour daily walk outside the cell.

Medical activity and medical information

145. Under Article 17 of the Federal Law on Licensing of Certain Types of Activity, medical activity is licensed. Under the Regulations on Licensing of Medical Activity adopted by Government Decree no. 499 of 4 July 2002, a licence is required for each type of medical activity listed in the nomenclature. The nomenclature of medical work and services was adopted by the Ministry of Health Decree no. 238 of 26 July 2002. According to the nomenclature, urology and oncology are separate types of medical activity requiring a licence.

146. Article 61 of the Fundamentals of Legislation on the Protection of Citizens' Health no. 5487-1 of 22 July 1993, provides that information about a person's state of health and other information obtained as a result of his examination and treatment constitute medical secrets. Such information may be disclosed without the person's consent, *inter alia*, upon a request of the investigating authorities, a prosecutor or a court in connection with an investigation or judicial proceedings.

D. Relevant Council of Europe documents

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

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

"43. ...The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling. ...

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

Extracts from the 3rd General Report [CPT/Inf (93) 12]

"a. Access to a doctor

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

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

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

37. Whenever prisoners need to be hospitalised or examined by a specialist in a hospital, they should be transported with the promptness and in the manner required by their state of health."

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

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

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

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

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

Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the CPT from 24 November to 6 December 2002

“189. ...cell occupancy rates [in the investigative isolators] should be reduced, with the objective of offering at least 4 m² of living space per prisoner.”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

148. In the Government's view the applicant's contentions that the medical examination conducted under Rule 39 of the Rules of Court had not been complete or conclusive amounted to an abuse of the right of application within the meaning of Article 35 § 3.

149. Article 35 § 3, in so far as relevant, reads as follows:

“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers ... an abuse of the right of application.”

150. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 53-54; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X).

151. Having regard to the statements made by the applicant in the present case, the Court does not consider that they amount to an abuse of the right of petition. Accordingly the Government's objection is dismissed.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

152. The applicant made a number of complaints under Article 5 of the Convention concerning his pre-trial detention.

A. Admissibility

153. The Court reiterates that the six-month time-limit provided for by Article 35 § 1 of the Convention starts to run, in connection with a period of pre-trial detention, from the date on which the charge is determined by a court at first instance, not the date on which a conviction becomes effective (see *Daktaras v. Lithuania* (dec.), no. 42095/98, 11 January 2000). However, where the applicant had challenged the lawfulness of his pre-trial detention in separate proceedings, in which a final decision was delivered after his conviction at first instance, the six-month time-limit runs from the date of that decision.

154. The Court notes that the applicant was convicted at first instance on 10 September 2003. The final decision concerning his appeal against the extension of his pre-trial detention was delivered on 4 November 2003. However, the application was not lodged until 14 July 2004, which is more than six months later. The Court finds, therefore, that the applicant failed to comply with the six-month time-limit laid down in Article 35 § 1 of the Convention.

155. It follows that this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

156. The applicant complained under Article 6 § 1 of the Convention alleging a violation of his right to a fair hearing by an impartial tribunal within a reasonable time. In particular, he complained that the bill of indictment had not been drawn up in accordance with the law in that it had not specified the particular circumstances of the offence with which he had been charged or the evidence against him. The applicant alleged that such defects of the bill of indictment had effectively placed on him the burden of having to prove his innocence in subsequent judicial proceedings. He also complained about the dismissal on 19 May 2003 of his application to have certain evidence declared inadmissible. The applicant complained under Article 6 § 3 (c) of the Convention about the dismissal on 18 June 2003 of the motion to admit his uncle to participate in the proceedings as his representative. He further complained under Article 6 § 3 (d) of the Convention about the dismissal of his motion to call Mrs R. at the hearing and to adjourn the hearing in order to call Mr Kh.

157. Article 6 of the Convention, in so far as relevant, provides as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

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

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

158. The Government submitted that on 8 September 2003 the applicant's counsel had applied to call Mrs R. at the hearing, to confirm the applicant's alibi and provide information about his personality. The prosecutor had objected on the ground that the information about the applicant's personality would be obtained from his relatives. For these reasons the judge of the Preobrazhenskiy District Court dismissed the application. Furthermore, the Government averred that the circumstances to which the applicant's counsel had referred in his application for the examination of Mrs R. had been established on the basis of the statements of Mrs P., Miss K. and Mrs K. The Government further submitted that Mr Kh. had not appeared at the hearing of 8 September 2003 and neither of the parties had applied to adjourn the hearing.

159. The applicant insisted that the failure of the investigative authorities to specify in the bill of indictment the circumstances of the offence and the evidence against him had placed on him the burden of proof of his innocence. At the same time, the fact that the trial court had accepted his case for consideration with the deficient bill of indictment proved that it had not been impartial and had effectively assumed the functions of the prosecution. According to the applicant, this was further evidenced by the fact that the court had dismissed all his applications for release pending trial. Furthermore, while the prosecutor had raised no objections against the applicant's motion of 19 May 2003 to have certain evidence declared inadmissible, the trial court had not granted the motion. The court had thereby breached Article 234 § 5 of the Code of Criminal Procedure, which provided that in the absence of objections from the other party the court should grant the motion to exclude evidence. The applicant contended that this had violated the equality of arms and undermined the fairness of the proceedings. The applicant averred that the trial court had also refused his motion to adduce certain additional evidence. Furthermore, the minutes of the hearings had not been accurate and some statements had either been misinterpreted or not reflected in the minutes at all. The applicant also contended that his right to legal assistance of his choosing had been violated

by the trial court's decision of 17 February 2003 to disallow his uncle further participation in the proceedings as his representative.

160. As regards the witnesses Mrs R. and Mr Kh., the applicant submitted that his application to have them examined during the preliminary investigation had been granted by the Deputy Prosecutor on 2 July 2002. However, the examination had never taken place. Later Mrs R. had been summoned to a court hearing. This is confirmed by her signature on the document dated 9 September 2003 in which she acknowledged that as a witness she had been notified about criminal responsibility for giving false evidence. However, she had not been given the opportunity to testify at the trial. In any event, the denial of her examination at the hearing for the reason that the information about the applicant's personality had been provided by his relatives had been arbitrary since the defence had applied for the examination of Mrs R. in order to confirm his alibi. As for Mr Kh., the defence had sought adjournment of the hearing of 9 September 2003 in order to call him as a witness, as reflected in the minutes of the hearing. In sum, the applicant contended that his right to a fair hearing within a reasonable time by an impartial tribunal, as guaranteed by Article 6, had been violated.

A. Admissibility

1. Length of the proceedings

161. In so far as the applicant may be understood to complain about the length of the criminal proceedings against him, the Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

162. The Court notes that the proceedings in question commenced on 14 May 2002 and ended on 20 January 2004. They thus lasted one year, eight months and eight days, at two levels of jurisdiction. The Court considers that this period does not exceed a reasonable time within the meaning of Article 6 § 1 and does not find that the conduct of the domestic authorities led to any significant delays in the proceedings.

163. 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.

2. Other complaints under Article 6 of the Convention

164. The Court notes that the remainder of the applicant's complaints under Article 6 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged defects of the bill of indictment

165. Inasmuch as the complaint concerns the presumption of innocence guaranteed by Article 6 § 2, the Court considers that there is no indication that any alleged defects of the bill of indictment led to the applicant's being presumed guilty of a criminal offence before he was convicted by a court of competent jurisdiction. Inasmuch as the complaint concerns the fairness of the proceedings before the trial court, it will be examined by the Court below.

2. Admissibility of the identification reports

166. The Court reiterates that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46). It is not the role of the Court to determine, as a matter of principle, whether particular types of evidence may be admissible. The Court's task is to ascertain that the rights of the defence have been respected, by examining in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see, *mutatis mutandis*, *Allan v. the United Kingdom*, no. 48539/99, § 43, ECHR 2002-IX).

167. The Court notes that on 19 May 2003 the applicant filed a motion to have the record of his interview on 14 May 2002 and the records of the identification parades excluded from the body of evidence as inadmissible. The court dismissed the motion on the grounds that the issue was to be decided when it came to examining the applicant's case on the merits. In its judgment of 10 September 2003 the Preobrazhenskiy District Court dismissed the applicant's motion on the grounds that the evidence had been obtained in accordance with domestic law. The court reached this conclusion having regard, *inter alia*, to witness statements made at the hearing as to the absence of any irregularities in the conduct of the identification parades. These findings of the trial court were confirmed on appeal by the Moscow City Court on 20 January 2004. Therefore, the evidence the applicant sought to exclude was subject to adversarial

proceedings and the applicant was able to challenge it before the courts at two levels of jurisdiction, which found no breaches of domestic procedure in the way the evidence had been obtained.

168. In these circumstances the Court finds that there has been no violation of Article 6 § 1 of the Convention in this respect.

3. Right to legal assistance of one's own choosing

169. The Court first notes that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial in criminal proceedings as set forth in paragraph 1 of the same Article. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Benham v. the United Kingdom,* judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 756, § 52).

170. The Court reiterates at the outset that, read as a whole, Article 6 guarantees the right of an accused to participate effectively in a criminal trial. In general this includes not only the right to be present, but also the right to receive legal assistance, if necessary, and to follow the proceedings effectively. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c) and (e) of Article 6 § 3 (see, among other authorities, *Stanford v. the United Kingdom,* judgment of 23 February 1994, Series A no. 282-A, pp. 10–11, § 26).

171. The Court reiterates that Article 6 § 3 (c) entitles an accused to be defended by counsel "of his own choosing". Notwithstanding the importance of a relationship of confidence between lawyer and client, the right to choose one's own counsel cannot be considered to be absolute (see *Croissant v. Germany*, judgment of 25 September 1992, Series A no. 237-B, § 29).

172. The Court notes that Article 49 § 2 of the Code of Criminal Procedure provides that the court may allow the accused to be represented, along with the advocate by a close relative or another person chosen by him. The Court observes, however, that this power is discretionary. It is for domestic courts to ensure in each particular case that the accused is properly defended and to decide whether such leave should be granted.

173. The Court further notes that in the proceedings before the trial court the applicant was represented by an advocate of his choosing. On 17 February 2003 the applicant sought leave to have his uncle admitted to the proceedings as his representative. The leave was refused by the trial court on the grounds that the applicant was represented in the proceedings by an advocate.

174. The Court finds that the trial court's refusal to admit the applicant's uncle to the proceedings as his representative while he was represented by an advocate of his choosing did not lead to a violation of his rights under Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention.

4. Attendance of defence witnesses Mrs R. and Mr Kh.

175. As the guarantees of paragraph 3 (d) of Article 6 are specific aspects of the right to a fair trial set forth in paragraph 1 of this Article, the Court will consider the complaint concerning the failure to examine Mrs R. and Mr Kh. in the hearing under the two provisions taken together (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, p. 10, § 25).

176. The Court reiterates that the admissibility of evidence is primarily governed by the rules of domestic law. As a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain*, judgment of 6 December 1988, Series A no. 146, p. 31, § 68). More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, p. 10, § 25); it "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words 'under the same conditions', is a full 'equality of arms' in the matter" (see, among other authorities, *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, pp. 38-39, § 91, and *Bricmont v. Belgium*, judgment of 7 July 1989, Series A no. 158, p. 31, § 89).

177. The Court reiterates that the principle of equality of arms implies than the applicant must be "afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent" (see *Bulut v. Austria*, judgment of 22 February 1996, *Reports of Judgments and Decisions* 1996-II, § 47).

178. The concept of "equality of arms" does not, however, exhaust the content of paragraph 3 (d) of Article 6, nor that of paragraph 1, of which this phrase represents one application among many others. The task of the Court is to ascertain whether the proceedings at issue, considered as a whole, were fair as required by paragraph 1 (see, among other authorities, *Delta v. France*, judgment of 19 December 1990, Series A no. 191, p. 15, § 35, and *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, § 33).

179. Therefore, even though it is normally for the national courts to decide whether it is necessary or advisable to call a witness, there might be exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness was incompatible with Article 6 (see *Bricmont v. Belgium*, cited above, § 89, and *Destrehem v. France*, no. 56651/00, § 41, 18 May 2004).

180. In order to decide whether the applicant in the instant case was afforded the opportunity to present his case without being placed at a disadvantage vis-à-vis the prosecution, and whether the proceedings were

conducted fairly, the Court will first examine what constituted the basis of the applicant's conviction (see, *mutatis mutandis*, *Destrehem v. France*, cited above, § 43).

181. The Court notes that the applicant's conviction for murder rested on statements of four schoolboys, M., Z., F. and Sh., from a school for children with impaired hearing. The schoolboys were not eyewitnesses to the murder, but on 26 September 2001, the date of the murder, they had seen two young men fighting and had subsequently learned that one of them had been found dead later that day. At the identification parade held half a year after the event M. had recognised the applicant as one of the men he had seen on 26 September 2001 and later confirmed this statement at a hearing on 8 September 2003 before the Preobrazhenskiy District Court. Z. had stated at the identification parade that he recognised the applicant. At the hearing he submitted that he could no longer remember what the offender had looked like. F. had stated at the identification parade that he had not been quite sure he could recognise the applicant and at the hearing he stated that he did not recognise him. Sh., who was not examined at the hearing, had stated at the identification parade that he had never seen the applicant before. The schoolboys' teacher, examined at the hearing, submitted that they suffered from certain memory problems or forgetfulness, because of which they could not adequately recollect a situation after half a year. The trial court accepted the schoolboys' statements as evidence that the applicant had fought with the victim on the date of murder. The identification evidence before the court thus comprised the conflicting evidence of four schoolchildren who had difficulties in recollecting events after half a year, and the identification parade itself had taken place more than half a year after the fight to which the identification related.

182. The Court notes that in the judgment of 10 September 2003 the Preobrazhenskiy District Court held that the applicant's guilt was also confirmed by other evidence. Among the other evidence the court listed the victim's post-mortem reports; crime scene reports; inspection reports concerning the victim's computer and diskettes; inspection reports concerning the computer and diskettes of a certain Mr X.; inspection reports concerning the applicant's personal items; references of Internet providers; the statement of the computer expert, Mr G., to the effect that the password and log-in identification of each user were individual and allowed the location of the user and his correspondence with other users to be determined; and the statement of Mr B., who submitted that on the Internet the applicant had used the nickname “Spencer” and that he had a black leather jacket. The Court notes, however, that the trial court gave no explanation as to how the above items proved the applicant's guilt, nor indeed why they were relevant to the case at all, save for the victim's post-mortem and the crime scene reports, the relevance of which is obvious, but they do nothing more than confirm the death. At the same time the trial

court established neither the reason for the quarrel that took place on 26 September 2001 nor the murder weapon. The court of appeal did not make its own assessment of the facts. Therefore, in the Court's view, the applicant's murder conviction was to a decisive degree based on the assumption that the applicant had been involved in a fight with the victim near the crime scene, which the trial court found to be corroborated by the schoolboys' statements.

183. The Court observes that in circumstances where the applicant's conviction was based primarily on the assumption of his being in a particular place at a particular time, the principle of equality of arms and, more generally, the right to a fair trial, implied that the applicant should be afforded a reasonable opportunity to challenge the assumption effectively.

184. The Court notes that the applicant sought leave to call before the trial court several witnesses who, according to him, could have confirmed his alibi. This included Mrs P., his mother, Miss K., his girlfriend, Mrs K., his girlfriend's mother, Mrs R., his neighbour, and Mr Kh., a carpenter who was performing certain work in his flat on the relevant date. The trial court heard evidence from Mrs P., Miss K. and Mrs K., who gave details of the applicant's whereabouts on 26 September 2001. They stated that he had spent the day at home with his mother and the evening with his girlfriend. However, the court dismissed the witnesses' statements on the ground that being the applicant's relatives they had tried to help him.

185. The Court further notes that during the preliminary investigation the applicant's counsel applied to have Mrs R. and Mr Kh., who were not the applicant's relatives, examined as witnesses. On 2 July 2002 the Deputy Prosecutor granted the application. However, neither Mrs R. nor Mr Kh. was ever examined. On 17 February 2003 the Preobrazhenskiy District Court granted the applicant's counsel's motion to call Mrs R. at the hearing. However, she was not examined. On 8 September 2003 the applicant's counsel again applied to have Mrs R. examined at the hearing in order to confirm the applicant's alibi and to provide information about his personality. The prosecutor objected on the ground that the information about the applicant's personality would be provided by his relatives. The judge dismissed the motion without giving any reasons. It appears that Mrs R. was present at the hearing on the next day; however, she was never examined before the court.

186. As regards Mr Kh., the Government submitted that on 8 September 2003 neither party had applied to have the hearing adjourned in order to call him. The Court notes firstly that Mr Kh. appeared at the hearing of 17 February 2003. However, the hearing was adjourned and he was not examined. The minutes of the hearing on 8 September 2003 stated that the witnesses "appeared". The minutes of the hearing on 9 September 2003 did not specify whether the witnesses appeared. However, at the end of the hearing the applicant's counsel sought leave to

supplement the pleadings by summoning and hearing evidence from Mr Kh. Such leave was refused on the ground that Mr Kh. had been notified about the hearing and had failed to appear. Therefore, Mr Kh. was clearly present at the hearing on 17 February 2003, there is no evidence of his absence at the hearing on 8 September 2003, and on 9 September 2003 the defence sought to supplement the pleadings by calling him. In these circumstances the Court finds that the failure to examine Mr Kh. in the trial court cannot be attributed to the defence's own omission.

187. The Court further notes that in refusing to examine Mrs R. and Mr Kh. the trial court did not consider whether their statements could have been important for the examination of the case. However, from the fact that the defence's previous motions to have them examined were formally granted a number of times both during the preliminary investigation and the court proceedings, it follows that the domestic authorities agreed that their statements could have been relevant.

188. Clearly, it is not the Court's function to express an opinion on the relevance of the evidence or, more generally on the applicant's guilt or innocence. However, it is for the Court to ascertain whether the proceedings in their entirety, including the way in which the evidence was taken, were fair (see *Asch v. Austria*, cited above, § 26). Taking into account that the applicant's conviction was founded upon conflicting evidence against him, the Court finds that the domestic courts' refusal to examine the defence witnesses without any regard to the relevance of their statements led to a limitation of the defence rights incompatible with the guarantees of a fair trial enshrined in Article 6 (see *Vidal v. Belgium*, cited above, § 34).

189. Having regard to the particular circumstances of the present case, the Court considers that there has been a violation of Article 6 § 3 (d) in conjunction with Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE ILL-TREATMENT IN REMAND PRISON SIZO 77/1 IN MOSCOW

190. The applicant complained that in remand prison SIZO 77/1 in Moscow he had regularly been beaten by his cellmates and threatened with murder, allegedly with the consent or even under the instructions of the prison and investigative authorities, who had tried to force him into self-incrimination. The Court shall examine the complaint under Article 3 of the Convention, which reads as follows:

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

191. The Government submitted that during the applicant's detention in the remand prison he had not been subjected to any form of ill-treatment and had sustained no injuries.

192. The applicant insisted on his allegations of having been ill-treated in the remand prison. He submitted that he had systematically been beaten and threatened with death by his cellmates, with the encouragement of the investigative authorities and the support of the remand prison administration. He alleged that they had tried to force him into self-incrimination in order to obtain some substantiation of the manifestly unfounded criminal charges against him. The applicant contended that he had provided the Court with an accurate description of the ill-treatment to which he had been subjected and the injuries he had sustained. He claimed that in the remand prison he had not been examined by a doctor in this connection and his applications and complaints had not reached the addressees. The applicant drew the Court's attention to the entry in his medical file recording healing paraorbital haematomas and other entries stating his complaints about the pain in his loins, strangury and haematuria. He argued that they constituted evidence of his being ill-treated in the remand prison. On 10 September 2004, after his transfer to the YaCh-91/5 prison in Sarapul, his mother had applied to the Department for the Execution of Sentences to have him examined, *inter alia*, by a traumatologist. However, the examination was never conducted.

A. Admissibility

193. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has adopted the standard of proof "beyond reasonable doubt", but has added that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34).

194. The Court notes that, according to the applicant, despite his requests a medical examination of the injuries he had allegedly sustained was never conducted. However, the applicant has not provided the Court with any other evidence, such as witness statements, nor any documents to show that he had actually requested a medical examination in remand prison SIZO 77/1 in order to record his injuries.

195. The Court further notes that the applicant's medical file contains the entry of 1 September 2002 recording healing paraorbital haematomas. Neither his medical file nor other documents contain any information as to the nature and origin of the haematomas. The Court considers that on the basis of this entry it is unable to conclude that the injuries observed unequivocally constituted outward signs of the use of physical force towards the applicant (see, by contrast, *Tomasi v. France*, cited above, § 113).

196. Furthermore, from the materials of the case it appears that the applicant did not bring his allegations to the attention of domestic authorities at the time when they could reasonably have been expected to take measures in order to ensure his security and to investigate the circumstances in question. As for the argument raised in the applicant's observations that his applications and complaints had not reached their addressees, the Court notes that the applicant did not submit any evidence that he had sent any complaints concerning the alleged ill-treatment in remand prison SIZO 77/1 to the competent domestic authorities. Moreover, in his letter of 26 August 2004 the applicant expressly wrote to his representative that he had not made any complaints in this regard because he had been threatened with murder. The Court observes, however, that the applicant presented no evidence, such as witness statements, that he had actually received such threats. The Court cannot regard the entry of 1 September 2002 as evidence of death threats the applicant had allegedly received or induce that he was otherwise prevented from lodging relevant complaints before domestic authorities.

197. Accordingly, there is an insufficient evidentiary basis to conclude beyond reasonable doubt that the applicant was subjected to ill-treatment in remand prison SIZO 77/1 in Moscow, as alleged by him, or that the authorities failed to ensure his security in custody or to comply with the procedural obligation under Article 3 to conduct an effective investigation into his allegations.

198. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF CONDITIONS OF DETENTION IN REMAND PRISON SIZO 77/1 IN MOSCOW

199. The applicant complained that the medical assistance available to him in remand prison SIZO 77/1 in Moscow had been inadequate. In particular, he alleged that after his arrest he did not receive regular medical supervision, including examination by specialists and specialised tests, as required following the resection of the tumour of the urinary bladder that he

had undergone in 1994. He also alleged that he was not receiving the treatment appropriate to his condition and was only occasionally given painkillers. The applicant further complained about allegedly appalling material conditions of detention in remand prison SIZO 77/1 in Moscow. The applicant relied on Articles 2 and 3 of the Convention. The Court will examine the complaint under Article 3 of the Convention.

(a) Medical assistance

200. The Government submitted that during the applicant's detention in remand prison SIZO 77/1 he was placed for examination and treatment in the medical unit on several occasions. Between 23 January and 21 March 2003 he had been examined by a urologist, a surgeon and a physician. The applicant had undergone an electrocardiogram and two ultrasound scans of the urogenital system. He had also had general and biochemical blood tests and a urine test. Between 6 and 19 August 2003 the applicant had undergone a similar course of treatment. On 15 August 2003 he had been examined by a urologist who had found no signs of a recurrent tumour. The applicant had again been placed in the medical unit between 25 August and 3 September 2003. The examination had showed no signs of anaemia and he had been released in a satisfactory state. The specialists who had examined the applicant had been suitably qualified. The examination and treatment provided had been appropriate to his condition. The Government noted that the applicant had not lodged any complains concerning the medical assistance available to him before the domestic courts.

201. The applicant disagreed with the Government's submissions. He noted that the medical unit of remand prison SIZO 77/1 in Moscow did not have a medical licence to practice either urology or oncology. Therefore, the specialists who had examined him had not been qualified to assess his condition, let alone to provide adequate treatment. He further submitted that after the operation performed in 1994 he had been under the supervision of oncological dispensary no. 3 in Moscow. He had undergone regular medical examinations, including examination by a uro-oncologist and a cystoscopy, once every three to six months, and had required the same scope of supervision after his arrest. However, during his detention in remand prison SIZO 77/1 the medical personnel had only consulted his uro-oncologist by telephone and had not provided the latter with complete information about the applicant's health. In particular, they had not informed his doctor about the neoplasm in his prostate. He had not been physically examined by a uro-oncologist and had not undergone specialised tests. He contended that the medical assistance had not been adequate.

(b) Material conditions of detention

202. The Government submitted that in remand prison SIZO 77/1 in Moscow the applicant had been provided with an individual bed, bedding

and clothing in conformity with prison standards. The light in the cells had also met prison standards and the artificial light had been turned on and off upon the inmates' requests. The cells had had natural and artificial ventilation. The applicant had been able to take a shower at least once a week. The applicant had not shared accommodation with inmates infected with tuberculosis or HIV. He had received hot meals three times a day. The Government also noted that between 2002 and 2004 the cells in remand prison SIZO 77/1 in Moscow had been renovated. At present the sanitary condition of the cells was satisfactory. In most of the cells a lavatory pan was separated from the living area by a concrete partition. In cell no. 143 it is placed in an isolated cabin. All the cells had cold running water; some of them had hot running water as well. The temperature in the cells was 19ºC. and they had central heating. The cells were fitted with bunk beds and the inmates were provided with appropriate bedding. There were neither insects nor rodents in the cells. The Government also noted that the applicant had not lodged any complaints concerning the conditions of detention in remand prison SIZO 77/1 before the Moscow courts. In the Government's view, the complaint was manifestly ill-founded.

203. The applicant noted firstly that the information provided by the Government concerning the numbers of the cells where he had been held, their surface area and the number of inmates held therein differed from his submissions in that connection. He presumed that the difference as to the cell numbers might be due to the fact that during his detention in remand prison SIZO 77/1 the doors of some cells had been repainted and their numbers changed. The applicant pointed out that his submissions in this regard were confirmed by the envelopes of his letters to his mother where the numbers of the cells had been indicated. He also surmised that the Government had provided the information about the cells' surface area and the number of the inmates held therein in relation to their state after the renovation. Overall he insisted on the accuracy of his account of the conditions of detention in remand prison SIZO 77/1 and contended that they had been in breach of Article 3.

A. Admissibility

204. Inasmuch as the Government may be understood to claim that the applicant has not complied with the rule of exhaustion of domestic remedies, the Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v.*

France (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

205. The Court observes that the Government merely noted that the applicant had not lodged any complaints concerning the conditions of detention and medical assistance available to him in remand prison SIZO 77/1 before the Moscow courts. The Government neither specified what type of claim would have been an effective remedy in their view, nor provided any further information as to how such a claim could have prevented the alleged violation or its continuation or provided the applicant with the adequate redress. In the absence of such evidence and having regard to the above-mentioned principles, the Court finds that, inasmuch as the Government may be understood to raise the plea of non-exhaustion, they did not substantiate that the remedy the applicant had allegedly failed to exhaust was an effective one (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003).

206. For the above reasons, the Court finds that the complaint cannot be rejected for non-exhaustion of domestic remedies. It considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

207. The Court recalls 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, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity 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 *Valašinas v. Lithuania*, no. 44558/98, §§ 100–101, ECHR 2001-VIII).

208. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, as a recent authority, *Labzov v. Russia*, no. 62208/00,

§ 42, 16 June 2005). Measures depriving a person of his liberty may often involve such an element. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of 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 by, among other things, providing him with the requisite medical assistance (see *Kudla v. Poland*, cited above, §§ 92-94).

209. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

2. Application in the present case

210. The Court notes that in 1994 the applicant underwent a resection of the cancerous tumour of the urinary bladder and subsequent chemotherapy.

211. The Court observes that given the nature of the applicant's ailment, his condition required specialised medical supervision for timely diagnosis and treatment of possible recurrent cancer. In order to establish the scope of such supervision, the Court must have regard to the medical documents submitted by the parties. According to the records in the applicant's medical file, after the resection of the cancerous tumour in 1994 he was recommended supervision by a uro-oncologist. Since that time until his arrest the applicant was under the supervision of the oncological dispensary no. 3 in Moscow, where he was regularly examined by Dr M. According to the opinion of Dr M. of 7 September 2004, a conclusive answer as to the presence or absence of the recurrent cancer could only be obtained by a cystoscopy. According to the opinion of Dr L., Director of the Institute of Urology of the Ministry of Health, of 28 October 2004, such an answer could be obtained from cystoscopy and biopsy. During the applicant's placement in the medical unit of remand prison SIZO 77/1 of Moscow between 23 January and 21 March 2003, examination by a uro-oncologist and a cystoscopy were recommended for him. On 1 September 2005 Dr D., a urologist from Sarapul Town Hospital No. 1 who examined the applicant at the medical unit of the YaCh-91/5 prison recommended consultation with a uro-oncologist. Dr K., a uro-oncologist of the oncological dispensary in Izhevsk, who examined the applicant on 16 September 2005 within the framework of the medical examination under Rule 39 of the Rules of Court, recommended dispensary supervision with follow-up cystoscopy once a year. Having regard to the above, the Court concludes that the minimum scope of medical supervision required for the applicant's condition included regular examinations by a uro-oncologist and cystoscopy at least once a

year. The Court will further examine whether this scope of medical supervision was available to the applicant.

212. From the medical documents submitted by the parties it appears that during his detention in remand prison SIZO 77/1 the applicant often complained about the pain in his loins and kidneys. He was regularly examined by a physician and a medical assistant of the remand prison medical unit. He underwent a number of blood and urine tests and ultrasound scans and was prescribed certain medication. The applicant was also placed on three occasions in the medical unit for examination and treatment. During his placement at the medical unit between 23 January and 21 March 2003 he was regularly examined by the Head of the unit's surgical department. An examination by a uro-oncologist and cystoscopy were recommended for him. The examination was scheduled a number of times but did not take place because the applicant had to attend court hearings that coincided with the medical appointments. The applicant was released on 21 March 2003 without the examination having been conducted. It was recommended within one month but never in fact took place. On 15 August 2003 the applicant was examined by a urologist. On a number of occasions the prison doctors consulted the applicant's uro-oncologist, Dr M., by telephone. However, according to Dr M.'s statement of 9 September 2004 he was provided with incomplete information concerning the applicant's condition. In particular, he was not provided with the information concerning the neoplasm detected by the ultrasound scan. In the Court's view, the fact that the information concerning the applicant's state of health made available to Dr M. was incomplete made it impossible for him to make an accurate diagnosis of the applicant's condition and recommend appropriate treatment.

213. Therefore, over a period of one year and nine months during his detention the applicant underwent neither examination by a uro-oncologist nor cystoscopy. Having regard to its findings in paragraph 211 above, the Court considers that in remand prison SIZO 77/1 the applicant was not provided with the medical assistance required for his condition.

214. The Court further notes that in the present case the parties have disagreed as to the material conditions of the applicant's detention at remand prison SIZO 77/1 in Moscow. However, in the present case the Court does not consider it necessary to establish the truthfulness of each and every allegation of the parties, because it may find a violation of Article 3 on the basis of the facts that have been presented or are undisputed by the respondent Government, for the following reasons.

215. The main characteristic, which the parties have in principle agreed upon, is the applicant's allegation that the cells were overpopulated, although they gave differing accounts of the numbers and surface areas of the cells and the exact numbers of inmates held therein simultaneously. From the figures submitted by the Government it appears that for almost a

year and a half of the applicant's detention in remand prison SIZO 77/1, excluding the periods when the applicant was placed in the medical unit, at any given time there was 0.9 to 2.34 sq. m of space per inmate in the applicant's cell.

216. The Court recalls that in the *Peers* case a cell of 7 sq. m for two inmates was noted as a relevant aspect in finding a violation of Article 3, albeit in that case the space factor was coupled with an established lack of ventilation and lighting (see *Peers v. Greece*, no. 28524/95, §§ 70–72, ECHR 2001-III). The applicant's situation was also comparable to that in the *Kalashnikov* case, where the applicant had been confined to a space measuring less than 2 sq. m. In that case the Court held that such a degree of overcrowding raised in itself an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, §§ 96–97, ECHR 2002-VI). The Court reached a similar conclusion in the *Labzov* case, where the applicant was afforded less than 1 sq. m of personal space during his 35-day period of detention (see *Labzov v. Russia*, cited above, §§ 41-49), and in the *Mayzit* case, where the applicant was afforded less than 2 sq. m during over 9 months of his detention (see *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

217. By contrast, in some other cases no violation of Article 3 was found, as the restricted space in the sleeping facilities was compensated for by the freedom of movement enjoyed by the detainees during the day-time (see *Valašinas*, cited above, §§ 103, 107, and *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). According to the applicant, apart from his placement in the medical unit when walks were not permitted, he was allowed 40-minute daily walks outside the cell. The information was not contested by the Government. Accordingly, the applicant was confined to his cell for more than 23 hours a day. In these circumstances, the Court considers that the extreme lack of space weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned conditions of detention were "degrading" from the standpoint of Article 3. The fact that the applicant was obliged to live, sleep, and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him the feelings of fear, anguish and inferiority capable of humiliating and debasing him (see the *Peers*, *Kalashnikov* and *Labzov* cases, cited above; see also the CPT's 11th General Report [CPT/Inf (2001) 16], § 29).

218. The Court further refers to its finding in paragraph 213 above that the applicant was not provided with the requisite medical assistance. The Court notes that since his operation in 1994 the applicant had been well informed about his medical condition and the risks associated with it. He knew that in case of further development of the cancer, any delay in diagnosis could have fatal consequences as even surgical treatment would

no longer be possible. In the Court's view, this must have given rise to considerable anxiety on the applicant's part, especially as he was aware of a neoplasm in his prostate detected by an ultrasound scan and could not have recourse to a qualified specialist for a conclusive diagnosis (see *Sarban v. Moldova*, no. 3456/05, §§ 87-91, 4 October 2005).

219. In the light of the above, the Court finds that the applicant's conditions of detention combined with the length of time for which he was held and his state of health, exacerbated by the failure to provide him with adequate medical assistance, amounted to inhuman and degrading treatment.

220. Therefore, there has been a violation of Article 3 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF CONDITIONS OF DETENTION IN THE YaCh-91/5 PRISON IN SARAPUL

221. The applicant complained that the medical assistance available to him in the YaCh-91/5 prison in Sarapul was inadequate. In particular, he was not getting the regular medical supervision required, including examination by specialists and specialised tests. He also alleged that he was not getting any adequate treatment and was only occasionally given painkillers. The applicant further complained about the material conditions of detention in the disciplinary cells of the YaCh-91/5 prison in Sarapul. He also alleged that upon admission to the YaCh-91/5 prison all newcomers were shaved with the same shaving set that was used for prisoners infected with HIV. The applicant relied on Articles 2 and 3 of the Convention. The Court will examine the complaint under Article 3 of the Convention.

(a) Medical assistance

222. The Government maintained that the medical unit of the YaCh-91/5 prison in Sarapul was staffed by qualified personnel, including the Head of the medical unit, qualified in resuscitation and therapy, a psychiatrist, a physician, a dentist and three medical assistants. Upon the applicant's admission to the prison in March 2004 he had been diagnosed with the operated cancer of the urinary bladder and chronic prostatitis. The applicant had undergone periodical medical examinations at the prison medical unit and had been receiving adequate treatment. Between 7 and 13 September 2004 the applicant had been placed for examination in the hospital at the YaCh-91/8 prison. The applicant had undergone blood and urine tests and an ultrasound scan of the abdominal cavity. He had been diagnosed with chronic prostatitis in remission and a cyst of the prostate and released from the hospital in a satisfactory state. At the moment of the applicant's release from the hospital there had been no symptoms that might require further examination with the use of a cystoscopy or a biopsy. The

Government also submitted that the applicant had a number of times refused the examination or treatment offered. They averred that during the applicant's detention in the YaCh-91/5 prison he had been provided with the requisite medical care. The Government also submitted that the examination in an independent medical institution indicated under Rule 39 had been properly conducted fully in accordance with the Court's instructions. They argued that the applicant's contentions about the inadequate medical assistance had been refuted by the results of the examination. The Government noted that the applicant had not lodged any complaints before the domestic courts concerning the medical assistance available to him.

223. The applicant disagreed with the Government's submissions. He noted than neither the medical unit of the YaCh-91/5 prison in Sarapul nor the hospital at the YaCh-91/8 prison had a medical licence to practice either urology or oncology. Therefore, the specialists who had examined him had not been qualified to assess his condition, let alone provide adequate treatment. He admitted that on several occasions he had refused the examination precisely because of the absence of qualified personnel in the medical units. He further submitted that while in prison he had had neither regular examinations by a uro-oncologist nor the specific tests required for monitoring his condition. As shown by the letters of the medical officers of the Department for the Execution of Sentences dated 1 and 29 November 2004, they considered that the applicant did not require any specialised medical examination. Such a conclusion clearly contradicted the opinions of the applicant's uro-oncologist, Dr M., and the Director of the Institute of Urology of the Ministry of Health, Dr L.

224. The applicant also contested the results of the medical examination conducted under Rule 39. He claimed that his representative's telegram of 7 September 2005 informing him of the application of Rule 39 had been handed over to him with a five-day delay. During this time the prison officials had been attempting to mislead him, first trying to obtain his refusal to undergo the examination, then trying to examine him in the prison's medical unit, and lastly telling him that he would only be examined at his expense, without giving any details of the proposed examination or the amount to be paid. When eventually he had been taken for the examination at the oncological dispensary in Izhevsk, he had not been allowed to take his medical records with him and the documents sent by his representative for this purpose had only been handed over to him after the examination. At the oncological dispensary in Izhevsk, on 16 September 2005, he had been accompanied by the prison convoy and the Head of the prison medical unit. The applicant had not been allowed to talk to the uro-oncologist who had examined him. All information about the applicant's health had been provided by the Head of the prison medical unit, who had also instructed the doctor what to write in the report of the examination. He had also told the uro-oncologist that a biopsy had not been required. The

applicant contended that *de facto* the examination had not been independent from the prison authorities and had been aimed at discrediting him before the Court. Furthermore, its results had not been conclusive since a definite diagnosis as regards the development of oncological disease could only be made on the basis of a biopsy, confirmed by two opinions of leading specialists from the Institute of Urology of the Ministry of Health. The applicant averred that the medical assistance had not been adequate.

(b) Material conditions of detention

225. The Government provided photographs of the disciplinary cells where the applicant had been held. They submitted that the disciplinary cells had been equipped in conformity with prison standards. The inmates had had no less than 2 sq. m of space per person. The cells had had natural and artificial light in accordance with prison standards, and natural ventilation. According to the report of the Government's inspection conducted on 27 January 2005, the temperature in the cells was 20ºC. and the level of humidity 59%. There was running cold water in the cells. The inmates were not allowed to boil water since it was forbidden to install electrical sockets in the cells. However, they were provided with boiling water during the day at mealtimes. Meals were cooked in the prison canteen and delivered in thermos-flasks three times a day. The inmates were taken for a one-hour walk once a day. During his placement in the disciplinary cells the applicant had been provided with clothing adapted to the season and had been allowed to wear glasses. In accordance with prison regulations he had not been allowed to wear a wristwatch. He had been allowed to take with him a towel, soap, toothpaste and a toothbrush, toilet paper, magazines and newspapers that he subscribed to, as well as religious literature and cult objects. The Government submitted that no inmates infected with tuberculosis or HIV had been held together with the applicant. They also stated that the inmates underwent medical examination upon their placement and after their release from the disciplinary cells. They could have a medical examination by request as well. Urgent medical aid could also be sent for by the prison officials on duty. During the regular checks of the disciplinary cells the applicant had made no complaints about the state of his health. The Government also noted that the applicant had not lodged any complaints concerning the conditions of detention in the YaCh-91/5 prison in Sarapul before the Sarapul courts. The Government argued that the complaint was manifestly ill-founded.

226. The applicant insisted on the accuracy of his account of the conditions of detention in the YaCh-91/5 prison in Sarapul and contended that they had been in breach of Article 3.

A. Admissibility

227. Inasmuch as the Government may be understood to claim that the applicant has not complied with the rule of exhaustion of domestic remedies, the Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof (see the case-law cited in paragraph 204 above).

228. The Court observes that the Government merely noted that the applicant had not lodged any complaints concerning the conditions of detention and medical assistance in the YaCh-91/5 prison in Sarapul before the Sarapul courts. The Government neither specified what type of claim would have been an effective remedy in their view, nor provided any further information as to how such a claim could have prevented the alleged violation or its continuation or provided the applicant with the adequate redress. In the absence of such evidence and having regard to the above-mentioned principles, the Court finds that, inasmuch as the Government may be understood to raise the plea of non-exhaustion, they did not substantiate that the remedy the applicant had allegedly failed to exhaust was an effective one (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003).

229. For the above reasons, the Court finds that the complaint cannot be rejected for non-exhaustion of domestic remedies. It considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

230. The general principles are set out in paragraphs 207-209 above.

2. Application in the present case

231. The Court has found above that the applicant's condition after the resection of the cancerous tumour in 1994 required regular medical supervision including examinations by a uro-oncologist and cystoscopy at least once a year (see paragraph 211 above). The Court will further examine whether the applicant was provided with the requisite supervision in the YaCh-91/5 prison in Sarapul.

232. From the medical documents submitted by the parties it appears that during his detention in the YaCh-91/5 prison the applicant made complaints about the pain in his loins and kidneys. Upon his requests he

was seen by the prison doctor and once was placed for examination at the hospital of the Department for the Execution of Sentences at the YaCh-91/8 prison. He underwent certain laboratory tests which were apparently blood and urine tests and an ultrasound scan. On 11 September 2005 Dr D., a urologist of Sarapul Town Hospital No. 1 arrived at the medical unit of the YaCh-91/5 prison to examine the applicant. The applicant, however, refused physical examination.

233. On 1 September 2005, under Rule 39 of the Rules of Court, the Court indicated to the Government, *inter alia*, to secure an independent medical examination of the applicant in a specialised uro-oncological institution. On 16 September 2005 the applicant was examined at the oncological dispensary in Izhevsk by a uro-oncologist, Dr K., and underwent a cystoscopy. According to the results of the medical examination conducted under Rule 39, the applicant did not have recurrent cancer and did not require treatment in a specialised institution. At the same time he was recommended dispensary supervision and a cystoscopy once a year.

234. The Court notes that the applicant contested the results of the examination. Firstly, he claimed that the examination had effectively not been independent because the Head of the medical unit of the YaCh-91/5 prison had been present at the examination and the uro-oncologist Dr K. had written his report under the latter's instructions. Secondly, he claimed that the results of the examination had not been conclusive because a biopsy had not been performed.

235. As regards the first argument, the Court observes that the oncological dispensary in Izhevsk is a civilian medical institution not affiliated to the prison system. Consequently, the dispensary itself and the uro-oncologist who examined the applicant, Dr K., were institutionally independent from both the medical unit of the YaCh-91/5 prison and the Department for the Execution of Sentences. As for the allegations that Dr K. had written his report under the instructions of the Head of the medical unit of the YaCh-91/5 prison, they are not corroborated by any evidence. Accordingly, the Court is satisfied that the examination was independent.

236. As regards the second argument, the Court again refers to its findings, in paragraph 211 above, to the effect that the minimum scope of medical supervision required by the applicant's condition included examination by a uro-oncologist and cystoscopy. The Court accepts that, in addition to this minimum scope, other tests, e.g. a biopsy, might be required or recommended depending on the applicant's actual state of health. However, the Court considers that it was for the uro-oncologist who physically examined the applicant to assess whether such tests were required to supplement the examination conducted. The Court notes that his recommendations were confined to dispensary supervision and cystoscopy.

In these circumstances the Court has no grounds to doubt the completeness and reliability of the examination conducted.

237. The Court observes that the applicant was admitted to the YaCh-91/5 prison on 18 March 2004. He was examined by a uro-oncologist and underwent a cystoscopy at the oncological dispensary in Izhevsk on 16 September 2005, that is one year and a half after his admission to the prison and only after such an examination was ordered by the Court under Rule 39. Furthermore, from the applicant's medical file it should have been clear to the prison doctors that the applicant had not undergone the required examination for the preceding one year and nine months of his detention in the remand prison. This should have prompted the prison authorities to make adequate medical arrangements without undue delay. Having regard to its finding in paragraph 211 above, the Court considers that in the YaCh-91/5 prison in Sarapul the applicant was not provided with the medical assistance required for his condition.

238. The Court further notes that in the present case the parties have disputed certain aspects of the applicant's material conditions of detention at the YaCh-91/5 prison in Sarapul. However, in the present case the Court does not consider it necessary to establish the truthfulness of each and every allegation of the parties, because it is entitled to find a violation of Article 3 on the basis of the facts that have been presented or remain undisputed by the respondent Government, for the following reasons.

239. From the information submitted by the Government it appears that when detained for 15 days in disciplinary cell no. 5 the applicant was afforded 2.03 sq. m, for 5 days in disciplinary cell no. 6 he was afforded 3 sq. m and for 15 days in disciplinary cell no. 6 he was afforded 2.36 sq. m. From the description of the cells and photographs submitted by the Government it appears that the cells were equipped with collapsible bunk beds, a table, two narrow benches without backs, a wash basin, a lavatory pan, a shelf and a radio, and that disciplinary cell no. 7 also had a cupboard. The applicant submitted that during his detention in the disciplinary cells he had been taken for a daily walk. Under Article 118 of the Code on Execution of Sentences the walk had to last one hour. The applicant further submitted that the bunk beds had been unfolded only for seven hours at night, which was not contested by the Government. Therefore, the applicant, who regularly complained about pain in his loins and was diagnosed by the prison doctors as having a number of urological diseases, had to remain in his cell for 23 hours a day, out of which for 16 hours he was practically confined to a narrow bench with no back. He spent over one month of his detention in such conditions, including two periods of 15 days in a row.

240. In the light of the above and having regard to its case-law cited in paragraphs 216-217 above, the Court finds that the applicant's conditions of detention in the disciplinary cells, combined with the time he spent therein and his physical condition, exacerbated by the failure to provide him with

the requisite medical assistance for his condition, amounted to inhuman and degrading treatment. In view of this finding the Court sees no need to decide separately on the issue of the alleged breach of sanitary norms as regards detention of HIV infected prisoners.

241. Accordingly, there has been a violation of Article 3 of the Convention under this head also.

VII. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

242. The applicant complained under Article 34 of the Convention that on a number of occasions State officials had threatened him in connection with his complaints concerning the conditions of detention and medical assistance in the YaCh-91/5 prison in Sarapul. In particular, he alleged that he had been approached by officials of the Department for the Execution of sentences and by prison officials on 25 and 27 January 2005, as well as on 14 and 17 February 2005. He claimed that the officials had questioned him with regard to his application before the Court and tried to force him to withdraw first his complaints related to the conditions of detention and then the allegations of having been threatened. The applicant also complained that prison authorities had interfered with his correspondence with his representative in connection with his application before the Court.

243. Article 34 of the Convention reads, in so far as relevant, as follows:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

244. The Government submitted that on 14 February 2005 officials of the YaCh-91/5 prison had talked to the applicant in connection with an inspection relating to the complaints communicated by the Court. They also talked to him on 17 February 2005 in connection with the Court's request to provide additional factual information. On 14 February 2005 the applicant had stated that the prison administration had treated him in an unbiased manner and that his correspondence had not been restricted. He had not requested a consultation with his counsel prior to making this statement. On 17 February 2005 the applicant had refused to answer questions concerning the alleged threats from State officials without having previously consulted his counsel. The Government also submitted that the applicant's correspondence with his representative had not been subjected to censorship or otherwise interfered with. All the letters that the applicant had sent from the prison had been dispatched in due course and the applicant had been notified accordingly.

245. The applicant maintained his allegations that prison officials had put pressure on him in connection with his complaints concerning the YaCh-91/5 prison in Sarapul. He averred that for his refusal to withdraw the

complaints he had been threatened, *inter alia*, with placement in a disciplinary cell. He noted that the situation had improved significantly after the visit of the Deputy Prosecutor of the Republic of Udmurtia on 21 April 2005 before whom the applicant had confirmed his complaints. The applicant further contended that several letters sent to his representative had not reached their addressee. Furthermore, a number of letters from his representative had been remitted to him with undue delay and some of them showed signs of having been opened.

1. Contacts by State officials

246. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, cited above, § 105, and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2288, § 105). In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1192, § 159).

247. Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see the *Akdivar and Others* and *Kurt* judgments, cited above, p. 1219, § 105, and pp. 1192-93, § 160, respectively). The applicant's position might be particularly vulnerable when he is held in custody with limited contacts with his family or the outside world (see *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003).

248. The Court notes that the applicant alleged that he had been contacted by State officials on four occasions in January and February 2005. He submitted that the officials had questioned him with regard to his application before the Court and had tried to force him to withdraw the complaints related to the YaCh-91/5 prison in Sarapul. The Government admitted that prison officials had talked to the applicant on two occasions in February 2005, first in connection with the complaints communicated by the Court and then in connection with the Court's request to provide additional factual information. In the circumstances of the present case the Court does not consider it necessary to establish whether any contacts between State officials and the applicant actually took place in January 2005; the facts that

have been presented or remain undisputed by the respondent Government enable it to decide that the State has not complied with its obligations under Article 34, for the following reasons.

249. According to the Government, the officials of the YaCh-91/5 prison in Sarapul talked to the applicant on 14 February 2005 in connection with an inspection relating to the complaints communicated by the Court. They also talked to the applicant on 17 February 2005 in connection with the Court's request to provide additional factual information concerning, *inter alia*, the applicant's allegations of having been threatened by the prison officials. The Government thus claimed that the applicant had been contacted by the prison officials within the framework of a domestic investigation into the complaints which the applicant raised before the Court. The Court notes, however, that the Government did not furnish any documents to show that such an investigation had ever been instituted in accordance with domestic procedure, let alone any documents concerning its conduct or findings. Therefore, in the absence of any evidence of such an investigation being conducted and, furthermore, in the absence of any transcripts of the meetings between the applicant and the State officials, the Court is not satisfied that the applicant was contacted in connection with a domestic investigation (see *Dulaş v. Turkey*, no. 25801/94, §§ 80-81, 30 January 2001).

250. The Court further notes that on both occasions the applicant was contacted with regard to his complaints concerning various aspects of the conditions of detention in the YaCh-91/5 prison in Sarapul. Furthermore, as shown by the Government's submissions, on 17 February 2005 the applicant was contacted with regard to his allegations of having received threats from the officials of the prison administration. In these circumstances the Court finds it unacceptable that the applicant was contacted by officials of the very same prison administration, and such contacts, moreover, occurred repeatedly. The Court considers that the applicant must have felt intimidated as a result of his contacts with the authorities, especially as he was detained and would have to remain in the YaCh-91/5 prison for a lengthy period, which might give rise to a legitimate fear of reprisals. In the Court's view, such contacts constituted illicit pressure which amounted to undue interference with the applicant's right of individual petition.

251. The respondent State has therefore failed to comply with its obligations under Article 34 of the Convention.

2. Censorship of the applicant's correspondence with his representative

252. In view of the above finding that the respondent State has failed to comply with its obligations under Article 34 of the Convention, the Court considers that in the circumstances of this case there is no need to examine separately the other complaint under Article 34 of the Convention.

VIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

253. Lastly, in his observations the applicant complained that he had had no effective remedy in respect of the excessive length of the proceedings which had led to his allegedly unlawful and unreasonably long detention. The applicant relied on Article 13 in conjunction with Article 6 § 1 of the Convention.

254. Article 13 of the Convention reads as follows:

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

A. Admissibility

255. The Court recalls that the applicant was convicted on 20 January 2004 by a final judgment of the Moscow City Court, whereas the complaint was raised for the first time on 5 June 2005, more than six months after the criminal proceedings against the applicant had terminated. Accordingly, the applicant failed to comply with the six-month time-limit laid down in Article 35 § 1 of the Convention.

256. It follows that this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

257. 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. Pecuniary damage

258. The applicant claimed compensation for loss of earnings in the amount of 730,080 Russian roubles (RUR). This amount represented his loss of earnings as an employee of a company working in the field of information technology and earnings from computer services he provided on a private basis.

259. The Government contested this claim. They stated that the reasonableness of the national authorities' actions on charging a person with a criminal offence was not subject to a review within the framework of the proceedings before the Court. Furthermore, the Government noted that the

applicant's earnings allegedly in return for rendering services on a private basis had not been confirmed by any official documents.

260. The Court cannot speculate as to what the outcome of the criminal proceedings against the applicant might have been if the violation of the Convention had not occurred (see, among other authorities, *Schmautzer v. Austria*, judgment of 23 October 1995, Series A no. 328-A, § 44 and *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, § 85). Therefore, the Court finds it inappropriate to award the applicant compensation for pecuniary damage.

B. Non-pecuniary damage

261. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He submitted that lengthy detention in appalling conditions without adequate medical assistance severely deteriorated his health, posed a risk to his life, humiliated him and caused him intense physical and moral suffering. He claimed that even when released he would have to undergo serious medical treatment with no guarantee of complete recovery. He would be unlikely to succeed in pursuing his professional career because during the period of his detention there would be a significant development in information technology with which he would hardly be able to catch up because of his deteriorating eyesight and loss of working capacity. Furthermore, the lengthy detention had already ruined his plans to start a family.

262. The Government contested the applicant's claim. They submitted that it was based on the fact that the applicant had been charged with a criminal offence, which was beyond the Court's review. They considered the claim unsubstantiated and excessive. In the Government's view, the finding of a violation would constitute sufficient just satisfaction in the present case.

263. Inasmuch as the applicant's claim relates to the finding of a violation of Article 6 § 3 (d) in conjunction with Article 6 § 1, the Court reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, if requested (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV). The Court notes, in this connection, that Article 413 of the Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court finds a violation of the Convention.

264. The Court further notes that in the present case, apart from a violation of Article 6, it has also found grave violations of Article 3 of the

Convention on account of degrading conditions of detention and lack of adequate medical assistance in both the remand prison and the prison where the applicant has been serving his sentence, combined with a violation of Article 34 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 25,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

C. Costs and expenses

265. The applicant also claimed RUR 154,439.78 (approximately EUR 4,600) for the costs and expenses incurred before the domestic courts and RUR 83,808.60 (approximately EUR 2,500) for those incurred before this Court. The latter include RUR 6,000 for studying the applicant's criminal file by his representative before the Court, RUR 6,600 for translation of documents received from the Court, RUR 3,500 for printing and copying of documents submitted to the Court, RUR 26,810 for postal expenses related to correspondence with the Court, and RUR 40,898 for postal, transport and other expenses related to communication between the applicant in the YaCh-91/5 prison in Sarapul and his representative.

266. The Government argued that expenses connected with the examination of the applicant's criminal case by domestic courts were not relevant, since the proceedings were not aimed at the restoration of the applicant's allegedly violated rights. Furthermore, they considered the amount claimed in respect of postal expenses for correspondence with the Court excessive and unnecessary. As for other postal expenses, the Government pointed out that no evidence had been provided that they actually related to the correspondence between the applicant and his representative in connection with the present application. In the Government's view, the claim should be rejected altogether.

267. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 in respect of costs under all heads, less the sum already paid under the Court's legal aid scheme (EUR 715). Consequently, the Court awards the final amount of EUR 3,285 for legal costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

268. 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 complaints concerning the fairness of the proceedings, the conditions of detention and lack of medical assistance in remand prison SIZO 77/1 in Moscow, the conditions of detention in disciplinary cells and lack of medical assistance in the YaCh-91/5 prison in Sarapul, and the interference with the right of individual petition, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 2 of the Convention in respect of the alleged defects of the bill of indictment;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the use of the identification reports;

4. *Holds* that there has been no violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention in that the domestic courts refused the motion to admit the applicant's uncle to participate in the proceedings as his representative;

5. *Holds* that there has been a violation of Article 6 § 3 (d) in conjunction with Article 6 § 1 of the Convention in that the domestic courts failed to examine defence witnesses Mrs R. and Mr Kh.;

6. *Holds* that there has been a violation of Article 3 of the Convention in respect of conditions of detention and lack of adequate medical assistance in remand prison SIZO 77/1 in Moscow;

7. *Holds* that there has been a violation of Article 3 of the Convention in respect of conditions of detention in disciplinary cells and lack of adequate medical assistance in the YaCh-91/5 prison in Sarapul;

8. *Holds* that the State has failed to fulfil its obligation under Article 34 not to hinder the effective exercise of the right of individual petition;

9. *Holds* that there is no need to examine the complaint concerning the alleged interference with the applicant's correspondence with his representative;

10. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty five thousand euros) in respect of non-pecuniary damage and EUR 3,285 (three

thousand two hundred and eighty-five euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President