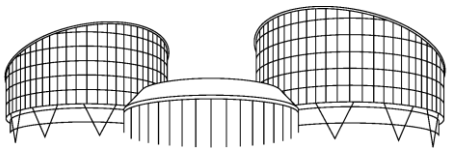

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SEMIKHVOSTOV v. RUSSIA

(Application no. 2689/12)

JUDGMENT

STRASBOURG

6 February 2014

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 Semikhvostov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 14 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 2689/12) 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 Aleksandr Yuryevich Semikhvostov ("the applicant"), on 28 December 2011.

2. The applicant, who had been granted legal aid, was represented by Ms N. Radnayeva, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the conditions in a correctional facility had been grossly unsuitable for the detention of wheelchair-bound inmates such as himself, and that he did not have an effective remedy to complain about that violation of his rights.

4. On 30 August 2012 the application was communicated to the Government. Further to the applicant's request, the Court granted priority to the application (Rule 41 of the Rules of Court).

5. Subsequently, the President of the Chamber granted leave to two non-governmental organisations, the European Disability Forum and the International Disability Alliance, to make a joint written submission as third parties in accordance with Rule 44 § 3 (b) of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in the Leningrad Region.

A. The applicant's version of events

7. On 9 February 2001 the Solnechnogorsk Town Court of the Moscow Region found the applicant guilty of torture and manslaughter and sentenced him to thirteen and a half years' imprisonment.

8. As is evident from medical documents provided by the applicant, prior to his arrest in October 1999 he completely lost the vision in his left eye, while the vision in his right eye was substantially impaired. In 1984 he was registered as Category 3 disabled on account of his poor eyesight.

9. In 2001, during his detention in correctional facility IK-1 in the Mordoviya Republic, the applicant was severely beaten up by warders, and sustained a serious spinal injury leading to partial paralysis of his lower extremities. He started using crutches. According to him, subsequent ill-treatment, inadequate conditions of detention and a lack of proper medical assistance caused his health to deteriorate drastically: he developed an intervertebral hernia and intravascular tumor which, in turn, resulted in the lower part of his body being completely paralysed. He became wheelchair-bound. He supported his allegations with medical certificates issued in penal medical facilities.

10. From 1 January 2006 to 27 January 2010 the applicant served his sentence in correctional facility IK-7 in the Mordoviya Republic. In January 2010 he was transferred to correctional facility IK-11 in the Mordoviya Republic, where he was detained until his release on 14 January 2013.

11. Having made no complaints about the conditions of his detention in facility IK-7, the applicant provided the following description of the conditions of his detention in facility IK-11 supporting his arguments with handwritten statements by a former inmate, D. On his arrival to the facility the applicant was assigned to Unit 5, which was not equipped to house wheelchair-bound inmates. A large number of two-tier beds were installed in the dormitory. The unit was dimly lit as the beds blocked the windows. Ninety inmates occupied the dormitory.

12. The lavatory in the dormitory was not adapted for disabled people, as the lavatory pans were not at floor level and did not have rails. The applicant always asked for assistance from at least two other inmates, as he was unable to use the lavatory on his own. Not every inmate was willing to help, which made a sensitive situation even more frustrating and embarrassing for him, since he suffered from enuresis and encopresis (bladder and bowel incontinence). Relying on D.'s statement, the applicant

argued that he had received assistance from inmates in the facility in exchange for cigarettes and money. Without payment, inmates had refused to help him. The applicant stressed that in addition to their unwillingness to help him, the inmates also had to perform their own daily duties in the unit. They therefore had had no free time to help him to move around the facility. The facility administration had not taken any steps to rectify the situation. The applicant cited, as an example, behavior by two inmates, Ya. and Z., appointed by the administration of the facility to assist him. The applicant insisted that they had created "acute" situations to force him to pay more for their services. When he could not pay, he had been left without any assistance, unable to go to the lavatory and forced to defecate in his underpants. The applicant also submitted that in November 2012, once the Court had communicated his application to the Russian Government, he had only been provided with a special chair to use in a lavatory room.

13. The applicant then proceeded to describing the procedure for using the bathhouse. He had been able to use a communal bathhouse once a month when an inmate had agreed to take him there in his wheelchair. Passages throughout the correctional facility grounds had been separated by barriers approximately 20 cm high. The applicant had required assistance from at least two inmates to carry him over. In December 2010 and January 2011 he had been unable to find anyone willing to take him to the bathing facility. On the occasions he had been able to find inmates willing to help him and had paid for their services, he had been taken to the bathhouse, undressed, and carried by his hands into the cabin where he had been placed on a chair. He had showered leaning on a wall that he would not fall over. The bathing facility had not had any equipment to accommodate a disabled person such as the applicant. The shower heads had been installed too high and he had again needed to ask a detainee to help him to take a shower. Once again help had not been given willingly, as inmates had only been afforded fifteen minutes to take a shower themselves and had not wanted to spend that time helping him.

14. Citing the handwritten statement by inmate D., the applicant stressed that inmates who had wanted to use the shower cabins in the dormitories had to pay. The shower cabin had been locked and only the supervising inmates had had access to the key.

15. The applicant was not allowed to use the electric water heaters, which he needed to keep clean, in view of his suffering from bladder and bowel incontinence. He could not go to eat in the facility canteen, so was forced to eat in the dormitory, with food having been brought to him by inmates from the canteen. In November 2010 he did not eat for seven days as the food was served in dirty tableware.

16. In January 2011 the applicant did not receive his daily quota of three meals a day. A cook was assigned the task of taking food to the applicant from the facility canteen. However, given that the cook was often too busy

with his usual tasks, and the fact that the food was scarce, he frequently did not receive anything. In September 2011 the applicant started receiving food in a plastic mayonnaise bowl, which was never washed or cleaned. He experienced food poisoning and stomach pain and his face, legs and arms became swollen. His requests for food to be served in suitable tableware were disregarded.

17. On 13 December 2011 the applicant was registered as Category 1 disabled, having been diagnosed with paraplegia.

18. According to the applicant, in the end of January 2012 he was sent to a prison hospital to determine whether he was fit to continue serving his sentence. On his return to facility IK-11 several days later the applicant was again assigned to Unit 5. He provided an identical description of the conditions of his detention, save for minor details. In particular, he argued that a hundred inmates shared the dormitory, which measured 60 sq. m. Thirty-five inmates suffered from HIV, various stages of tuberculosis or had various disabilities. He could not take exercise in the open air, as he could not get into his wheelchair without assistance and could not leave the dormitory as the passageway was too narrow. Lavatory pans were installed on a pedestal 40 cm above the floor and were separated from each other with partitions. He always received cold food in plastic bowls, and there was no way of heating food in the dormitory. His wheelchair was taken from him in the dormitory for security reasons.

19. The applicant and his representatives lodged a large number of complaints with various authorities. On 10 December 2010 a deputy prosecutor of the Dubravnaya District prosecutor's office sent a letter to the applicant, informing him that the regulations concerning conditions of detention in prison facilities did not cover the provision of access ramps. However, on the prosecutor's request ramps had been installed at the entrance to the dormitory building where the applicant was being held. The deputy prosecutor further stated that the applicant received food in the dormitory, being served by an inmate on duty who took it to him from the facility canteen. He was not asked to pay for that service and the food was served in the proper tableware and was adequate.

The applicant received similar letters from various officials in 2010 and 2011.

20. On 16 January 2012 a request to institute criminal proceedings was sent to the Investigation Department in the Mordoviya Republic. That request was forwarded to the local investigation unit and the prosecutor's office. No response followed.

21. On 14 January 2013 the applicant was released from detention. Two facility officials escorted him to St. Petersburg where, according to him, he did not have family or a home. The applicant was admitted to a hospital in the Leningrad Region, where he has remained ever since, despite his efforts to find a place to stay a charity hostel.

B. The Government's version of events

22. Relying on certificates issued by the governor of correctional facility IK-11, photos of the applicant's dormitory in that facility and handwritten statements by inmates from facilities IK-7 and IK-11, the Government provided a lengthy description of the conditions of the applicant's detention. In particular, while describing the conditions of the applicant's detention before his transfer to facility IK-11, they argued that the applicant had been able to use his legs and had therefore not needed assistance to move around, although he had allegedly attempted to conceal that fact from the authorities.

23. The Government continued with the description of the detention conditions in facility IK-11.

1. Unit 8 in facility IK-11

24. On his arrival at facility IK-11 on 27 January 2010 the applicant had been assigned to Unit 8 where he had stayed for a month. A certificate issued by the governor of correctional facility IK-11 showed that the entrance to the dormitory building of Unit 8 had been equipped with a wheelchair ramp when the applicant had stayed there. Following the applicant's transfer from the unit, that ramp had been dismantled.

25. The Government stated that inmates had had at least 2 sq. m of personal space. As is evident from a handwritten statement by the head of Unit 8, the applicant's dormitory had 70 sleeping places. The Government also provided the Court with dormitory plans. According to the plan, Unit 8 was on the second floor, with at least ten stairs leading to it from the first floor. A long corridor of 32 sq. m led to the sleeping room of 142 sq. m where there were seventy bunks, seventy chairs and thirty-five bedside tables. A lavatory of 7.5 sq. m, a shower room of 5.5 sq. m and a dormitory kitchen of 14 sq. m were accessible from the corridor.

26. A photo submitted by the Government showed the applicant's metal bed in a corner near a window. In a certificate the facility governor provided an explanation about the photo, indicating that 1.3 m of free space separated the applicant's bed from the neighbouring bunk.

2. Unit 5 in facility IK-11

27. On 28 February 2011 the applicant had been transferred to Unit 5 where he remained until his release. Unit 5 had been on the first floor of the facility dormitory block. The dormitory had been easily accessible to the applicant. Doorways had been sufficiently wide for him to enter and move around. The Government produced handwritten statements by inmates Z. and Sem. who confirmed that the applicant had been able to enter the dormitory building without any difficulties, as the entrance door step was no more than 5 cm high. In a certificate submitted to the Court the facility

governor stated that it had not been necessary to install the ramp at the entrance of the dormitory building of Unit 5, as the entrance door step had been less than 5 cm high.

28. The Government again reiterated that at least 2 sq. m of personal space had been afforded to inmates. The dormitory of Unit 5 had 53 sleeping places and was divided into three sleeping rooms. The applicant's room measured 63.5 sq. m and contained eighteen bunks, nine bedside tables and eighteen chairs. A large square corridor of 46 sq. m separated the sleeping rooms from the remaining part of the dormitory. Six doors from the corridor led to a lavatory of 9 sq. m, a shower room of 6 sq. m, a locker room, a dormitory kitchen of 16 sq. m, a store room, and an office for the unit head.

29. The Government also submitted four photos of the dormitory, which showed rows of two-tier bunks separated by a narrow passageway. The applicant's single-tier bed was installed by a wall in the corner near the window. According to explanations given by the facility governor, the space between the applicant's bed and the neighbouring bunks was 1.2 m wide.

3. Bathing and lavatory facilities

30. The Government further described the bathing facilities. Photos of the bathhouse showed a narrow tile-covered long room with at least ten high partitions dividing the room into a number of small cubicles with a shower head installed in each of them, but no handrails or other similar equipment. The bathhouse was equipped with 16 shower heads installed 2 m above the floor. A shower handle was placed 1 m above the floor. Each inmate had twenty minutes to use the bathhouse. In view of the fact that the applicant had been registered as Category 1 disabled, he had been given an additional twenty minutes to take a shower. Relying on a handwritten statement by inmate Ya., the Government observed that that inmate had helped the applicant to use the bathhouse.

31. The dormitories of Units nos. 5 and 8 were equipped with shower cabins with electric water heaters. Photos provided by the Government showed clean shower rooms which were tiled floor to ceiling. A curtain separated the shower from the remaining part of the room. The shower heads were installed at least 2 m above the floor. No handrails were installed in the rooms. The applicant had been allowed to use the cabins without any restrictions. The Government relied on statements by four inmates. As is evident from a handwritten statement by inmate G., the applicant had needed assistance of other inmates, including when using the shower cabins. Inmate Ya. also wrote that he and inmate G. had helped him to use them.

32. The lavatory of Unit 8 was equipped with four squatting pans installed on pedestals 15 cm above the floor. Partitions separated the pans from each other creating cubicles 80 cm wide. The lavatory of Unit 5 had

three squatting pans. The remaining description of the facilities was similar to that of Unit 8. The Government stressed that after his arrival at facility IK-11 the applicant had been given a special chair to use in the lavatory. They provided photos of the two lavatories and of the special chair the applicant had used. The photos showed several cubicles with plastic walls and full-size doors. The cubicles with lavatory pans were separated from the remaining part of the room by a high step. Rows of sinks with taps and mirrors above them were installed along a wall. The equipment was installed at a height suitable for use by able-bodied inmates. A photo of the lavatory in Unit 5 also showed a tile-covered basin with a tap above it. Given the height of the tap, the basin had been accessible to the applicant. One of the photos showed a special chair that had been made from an ordinary wooden chair, from which the base had been removed and replaced with a toilet seat.

4. Eating arrangements

33. As is evident from a certificate issued by the governor of facility IK-11, the applicant had always eaten in the kitchens of the dormitory buildings during the entire period of his detention. The Government stated that he had been given hot food three times a day. The facility medical personnel had checked the quality of the food daily and had kept a record of it in the log. Food had been taken to him from the canteen by inmates. According to a statement given by the facility's chief cook, he had supervised the process of taking food to the applicant from the canteen. The food had always been served in clean dishes and had been hot. It had been taken to the applicant by inmates Sa. and G. Those two inmates confirmed that the food had been served in thermos flasks which had been clean, and that the applicant had never made any complaints about quality or quantity of the food. Nor had he ever refused it.

5. Assistance by inmates and other aspects of detention

34. The Government stressed that the applicant had been assisted by inmates, among them Sa., G., Ya. and Z. Those inmates had helped the applicant "willingly and free of charge" in moving around the correctional facility grounds, using the lavatory and bathhouse, and visiting the facility shop, medical unit and library. They had regularly taken food to the applicant and had fulfilled his other requests. The Government cited statements by several inmates in support of those submissions. As is evident from the inmates' handwritten statements, the applicant had not needed assistance to move around the dormitory, as the space had been wide enough for his wheelchair. At the same time two inmates had always accompanied him if he needed to move around the facility grounds.

35. As to other aspects of detention, the applicant had also remained under permanent medical supervision, having been provided with medical care of requisite quality, subjected to necessary diagnostic and clinical procedures and consulted by specialists in respect of his illness, although he had not always complied with medical advice. The Government also stated that the applicant had had "a tendency to exaggerate his condition".

C. Attempts to ensure the applicant's release on health grounds

36. According to the applicant, on 21 December 2011 his representatives from an NGO, the Fund in Defence of Inmates' Rights, lodged an application with the Polyanskiy District Court of the Mordoviya Republic, seeking his release on health grounds. The representatives enclosed with their application a long list of illnesses from which the applicant suffered, including paraplegia, atrophy of the left eye, astigmatism in the right eye, a renal cyst, epilepsy, acute viral hepatitis C, and osteochondrosis of the lumbosacral section of the spine, complicated by the formation of a hernia and tumour. Following receipt of the complaint, the District Court authorised a forensic medical examination of the applicant to determine whether he was fit to continue serving his sentence. At the end of January 2012 he was transferred to a prison hospital for that purpose. Despite remaining there for several days, he was sent back to the correctional facility without any examination having been carried out. He further alleged that the facility officials had misplaced his documents and the court had had no choice but to discontinue the proceedings.

37. The Government disputed the applicant's submission, having explained that a request for the applicant to be released on health grounds had been lodged at the end of December 2011 by a representative of an NGO, the Fund in Defence of Inmates' Rights. That request had been redirected to the governor of facility IK-11 to comply with the statutory requirements. On a number of occasions between January and May 2012 facility officials had asked the applicant to sign his application for early release or to sign a power of attorney authorising a representative of the Fund to act on his behalf in court proceedings. The applicant had refused to undergo the medical examination required under Russian law to support the release application and to sign it. Given the applicant's refusal to comply with those requirements, the court had adjourned examination of the matter and had instructed the facility officials to provide documents showing that the applicant's state of health had called for his release. When asked again by the officials to undergo a medical examination in a prison hospital, the applicant had refused. He had notified the authorities that he had already stayed in the hospital on a number of occasions, having undergone inpatient treatment there. In June 2012 the facility governor had asked the applicant to lodge another release application. The applicant had allegedly told him

that his representative had lodged a complaint with the Court and that he would be generously compensated for every day he had been detained in the correctional facility.

II. RELEVANT DOMESTIC LAW

A. General conditions of detention

38. The relevant provisions of domestic law governing conditions of detention in correctional facilities in the Russian Federation and provisions establishing the legal avenues for complaining about detention conditions are set out in the cases of *Dirdizov v. Russia* (no. 41461/10, §§ 47-62, 27 November 2012) and *Reshetnyak v. Russia* (no. 56027/10, §§ 35-47, 8 January 2013).

B. Detention of disabled detainees

39. The Russian Penitentiary Code sets out certain requirements for the detention of disabled detainees. While Article 99 § 1 of the Code provides for a minimum standard of 2 sq. m of personal space for male convicts in correctional colonies and of 3 sq. m of personal space in prison healthcare facilities, Article 99 § 6 indicates that inmates having a Category 1 or 2 disability are entitled to "improved accommodation and living conditions". Article 88 § 6 provides disabled detainees with a right to buy food and articles of primary necessity without any limitations. Article 90 allows ill or disabled inmates to receive additional parcels or packages, including those with medication, the content and quantity of which are to be determined by medical specialists. Disabled inmates are provided with food, clothes and individual hygiene items free of charge. They are also entitled to an enriched diet (Article 99 §§ 6 and 7).

40. Under the Rules of Internal Order in Correctional Facilities, adopted by Order no. 205 of the Russian Ministry of Justice on 3 November 2005, disabled inmates are exempted from having to participate in daily facility roll calls. Their presence is noted wherever they are at the time, be it their dormitory, cell, and so forth.

41. Russian law does not contain specific rules or requirements regulating the detention of wheelchair-bound detainees.

III. RELEVANT INTERNATIONAL MATERIAL

42. The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol were adopted by the United Nations

General Assembly on 13 December 2006. Russia ratified the Convention on 25 September 2012. It did not ratify the Optional Protocol.

Article 1 provides that:

> "The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.
>
> Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

The relevant part of Article 14 provides that:

> "2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation."

The relevant part of Article 15 provides that:

> "2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment."

The requirements regulating personal mobility are laid down in Article 20, which reads as follows:

> "States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:
>
> Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
>
> Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
>
> Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
>
> Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities."

43. In Interim Report of 28 July 2008 (A/63/175), the then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Manfred Nowak, noted as follows:

> "50. ... Persons with disabilities often find themselves in [situations of powerlessness], for instance when they are deprived of their liberty in prisons or other places ... In a given context, the particular disability of an individual may render him or her more likely to be in a dependant situation and make him or her an easier target of abuse ...
>
> ...
>
> 53. States have the further obligation to ensure that treatment or conditions in detention do not directly or indirectly discriminate against persons with disabilities. If

such discriminatory treatment inflicts severe pain or suffering, it may constitute torture or other form of ill-treatment. ...

54. The Special Rapporteur notes that under article 14, paragraph 2, of the CRPD, States have the obligation to ensure that persons deprived of their liberty are entitled to 'provision of reasonable accommodation'. This implies an obligation to make appropriate modifications in the procedures and physical facilities of detention centres ... to ensure that persons with disabilities enjoy the same rights and fundamental freedoms as others, when such adjustments do not impose disproportionate or undue burden. The denial or lack of reasonable accommodation for persons with disabilities may create detention ... conditions that amount to ill-treatment and torture."

IV. RELEVANT COUNCIL OF EUROPE MATERIAL

44. The relevant extracts from the 3rd General Report (CPT/Inf (93) 12; 4 June 1993) by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

e. Humanitarian assistance

"64. Certain specific categories of particularly vulnerable prisoners can be identified. Prison health care services should pay especial attention to their needs."

...

iv) prisoners unsuited for continued detention

"70. Typical examples of this kind of prisoner are those who are the subject of a short-term fatal prognosis, who are suffering from a serious disease which cannot be properly treated in prison conditions, who are severely handicapped or of advanced age. The continued detention of such persons in a prison environment can create an intolerable situation. In cases of this type, it lies with the prison doctor to draw up a report for the responsible authority, with a view to suitable alternative arrangements being made."

...

g. Professional competence

"76. To ensure the presence of an adequate number of staff, nurses are frequently assisted by medical orderlies, some of whom are recruited from among the prison officers. At the various levels, the necessary experience should be passed on by the qualified staff and periodically updated.

Sometimes prisoners themselves are allowed to act as medical orderlies. No doubt, such an approach can have the advantage of providing a certain number of prisoners with a useful job. Nevertheless, it should be seen as a last resort. Further, prisoners should never be involved in the distribution of medicines.

77. Finally, the CPT would suggest that the specific features of the provision of health care in a prison environment may justify the introduction of a recognised professional speciality, both for doctors and for nurses, on the basis of postgraduate training and regular in-service training."

45. Recommendation no. R (98) 7 of the Committee of Ministers of 8 April 1998 concerning the ethical and organisational aspects of health care in prison, provides, in so far as relevant:

III. The organisation of health care in prison with specific reference to the management of certain common problems

C. Persons unsuited to continued detention: serious physical handicap, advanced age, short term fatal prognosis

"50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment. ..."

46. Recommendation CM/Rec (2012) 5 of the Committee of Ministers of 12 April 2012 on the European Code of Ethics for Prison Staff, provides, in particular:

IV. Guidelines for prison staff conduct

D. Care and assistance

"19. Prison staff shall be sensitive to the special needs of individuals, such ... disabled prisoners, and any prisoner who might be vulnerable for other reasons, and make every effort to provide for their needs.

20. Prison staff shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

21. Prison staff shall provide for the safety, hygiene and appropriate nourishment of persons in the course of their custody. They shall make every effort to ensure that conditions in prison comply with the requirements of relevant international standards, in particular the European Prison Rules.

22. Prison staff shall work towards facilitating the social reintegration of prisoners through a programme of constructive activities, individual interaction and assistance."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

47. The applicant complained that the conditions of his detention in facility IK-11 from 27 January 2010 until his release on 14 January 2013 had been inhuman and degrading, given that the facility premises had been unsuitable for the detention of wheelchair-bound inmates. He further complained and that he did not have an effective remedy at his disposal for

the violation of the guarantees against ill-treatment. He relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

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

A. Submissions by the parties

1. The Government

48. The Government stressed that the detention of disabled or seriously ill inmates in "ordinary" correctional penal facilities was not an established practice in the Russian Federation. They further submitted that a disabled or seriously ill inmate could lodge a court application for early release. Such applications had to be submitted through the penal facility administration and accompanied by a medical opinion showing that the inmate's illness was included in "The List of Illnesses Precluding [a detainee] from Serving a Sentence" (as adopted by Decree no. 54 on 6 February 2004 by the Government of the Russian Federation) which could warrant an early release. The medical opinion supporting the release application could be given by at least three medical specialists from the penal system. The Government repeated their submissions related to an attempt to have the applicant medically examined to determine his application for early release (see paragraph 37 above).

49. The Government further stressed that the administration of correctional facility IK- 11 had taken every necessary step to safeguard the applicant's health and to ensure that he had been detained in appropriate conditions. They argued that the detention conditions had corresponded to the specific needs of the applicant, a wheelchair-bound inmate. He had had sufficient personal space, had been assisted by inmates specifically assigned to him by the facility administration for that purpose, had been free to move around the correctional facility grounds and had even been given certain privileges because of his special needs, such as an additional twenty minutes to take a shower. He had received the necessary medical care and the facility personnel had monitored his condition closely.

50. The Government continued by raising an argument of non-exhaustion of domestic remedies. In their view, the following avenues could have provided the applicant with an effective protection of his rights: a complaint to the facility governor, a prosecutor, a court, the Ombudsman,

the President of the Russian Federation, the Government, or the Russian Parliament. They drew the Court's attention to three judgments of Russian courts allowing negligence claims by former inmates. In particular, in 2007, 2009 and 2010 courts in the Yaroslavl, Kaliningrad and Smolensk Regions had awarded damages to three inmates on account of the authorities' failure to provide them with adequate medical assistance. Relying on a number of the Court's judgments in cases concerning the alleged failure by detention authorities to render effective medical services to applicants, the Government further submitted that on a number of occasions the Court had already examined and dismissed complaints related to the quality of medical care in detention. They concluded by arguing that the applicant's complaints under Articles 3 and 13 of the Convention were manifestly ill-founded.

2. The applicant

51. The applicant submitted that Russian law did not provide for any specific conditions for detention of disabled or ill inmates. He stressed that since there were no regulations requiring physically impaired inmates to be detained in prison hospital, they were sent to serve their sentences in "ordinary" detention facilities. In addition, there were no regulations requiring special equipment to be installed in facilities where disabled inmates were detained.

52. With reference to the Government's submissions about the conditions of his detention, the applicant argued that the Court should not accept as evidence handwritten statements by his fellow inmates, as they had been unable to express their views freely, having been under the control of the facility administration. He further maintained his description of the conditions of his detention in facility IK-11, relying on handwritten statements by the former inmate.

53. The applicant argued that he had attempted to send a large number of complaints about the conditions of his detention in the facility, as could be seen from the letters he had received from various State officials in response. However, they had been seized by the facility administration and he had to use "unofficial" ways to send them. In addition, his representative from the Fund in Defence of Inmates' Rights had also complained to various State bodies about the appalling conditions of his detention. The domestic authorities had been made sufficiently aware of his precarious situation, but had taken no steps to make his detention humane. He stressed that the Government's argument of non-exhaustion of domestic remedies was devoid of substance. He disputed the Government's argument that the facility officials had asked him to undergo a medical expert examination or to take any other steps to support a release application. At the same time he confirmed that he had refused another transfer to a prison hospital in February 2012, as he had already been sent to the hospital in January 2012 to undergo a medical expert examination. However, he had been sent back

to the correctional facility several days later without any examination having been performed. Each trip to the hospital had been particularly difficult for him, as the prison vans had not been equipped to transport disabled inmates and he had been unable to care for himself while travelling.

54. The applicant also stated that the Government had tried to mislead the Court. He noted that an application for his release had been lodged by his representative from the NGO, whom he had authorised to act on his behalf by way of a power of attorney executed in 2009. The applicant provided the Court with a copy of that power of attorney and a copy of a court decision redirecting his application to the facility officials. No additional requests or documents from the applicant had been necessary. The court had sent the release application to the correctional facility to collect evidence of the applicant's medical condition. The facility officials, however, had failed to do so and had never sent the file back to the court.

3. The third parties: the European Disability Forum and the International Disability Alliance

55. The two organisations submitted that disabled inmates were often at a significant disadvantage as regards their access to general facilities, in cells and common areas, canteens, lavatories and shower rooms. They faced several obstacles in being autonomous and leading their daily lives with respect to their health, hygiene, nutrition and mobility. They could not participate in prison life, such as in work programmes, education and recreation, on an equal footing with other inmates. Disabled inmates were often dependent on the goodwill of their fellow inmates for their mobility and hygiene, which rendered their situations precarious and aroused in them feelings of powerlessness, indignity and humiliation which exceed the expected level of distress and hardship associated with detention. Drawing the Court's attention to the latest international standards on human rights of persons with disabilities, the third parties stressed that the new paradigm in disability rights focused on removing barriers – physical, environmental, communicational, or attitudinal – which hindered the full and equal participation of persons with disabilities in the community and the enjoyment and exercise of their rights, including the right to health, personal mobility, and freedom from torture, inhuman or degrading treatment or punishment.

56. Having focused on the State's responsibility to provide reasonable accommodation to remove specific disadvantages to which disabled individuals would otherwise be exposed, the third parties stressed that the Court had already found violations of the rights of persons with disabilities under the Convention for the failure by the State to take steps to provide alternatives or to adapt to the individual's circumstances and needs in the prison environment. They stressed that the right to personal mobility should

be guaranteed even in confined environments such as prisons, as that right was a precondition to living in dignity, increasing the independence of persons with disabilities, including prisoners with disabilities, and enhancing their equal opportunities to individual subsistence and participation. States were under an obligation to make appropriate modifications in the procedures and physical facilities in detention centres to ensure that persons with disabilities enjoyed the same rights and fundamental freedoms as others when such adjustments did not impose a disproportionate or undue burden. The denial or lack of reasonable accommodation for persons with disabilities could create detention and living conditions that amount to ill-treatment and torture.

57. To establish a link between torture and ill-treatment and the failure to provide reasonable accommodation to persons with disabilities, the organisations relied on the Court's judgments in cases where it had to review measures taken by the authorities with respect to the specific circumstances and needs of individual prisoners, persons with disabilities and/or persons with chronic illnesses. The third parties stressed that in those cases, the Court had found that the authorities' failure to take measures to ensure that the applicants had been accommodated in terms of accessible or adapted facilities had amounted to treatment exceeding the minimum level of severity necessary for a finding of a violation of Article 3 of the Convention. In the third parties' view, that case-law pointed to the fact that disabled persons had been disadvantaged in comparison to their able-bodied inmates and that the appropriate steps had not been taken to remove the disadvantage that had caused them suffering and distress beyond that associated with detention. They also reminded the Court that while the central element of reasonable accommodation required that the State, as the duty bearer, did not bear a disproportionate or undue burden, a lack of financial resources or financial difficulties could not be relied on by the State to justify its failure to guarantee a disabled inmate conditions of detention in compliance with the safeguards enshrined in Article 3 of the Convention.

58. The third parties concluded by noting that given the serious distress and hardship experienced by persons with disabilities in the context of detention, failure to provide reasonable accommodation may constitute inhuman and degrading treatment, and may even amount to torture.

B. The Court's assessment

1. Admissibility

59. The Government raised an objection of non-exhaustion of domestic remedies by the applicant. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's

complaint that he did not have at his disposal an effective remedy for the complaint that he had been subjected to inhuman and degrading treatment by being detained in inadequate conditions. The Court thus finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

60. The Court further notes that the applicant's complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention

61. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against the State before the Court to first use the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

62. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). 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, was one which was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. However, once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that

there existed special circumstances absolving him or her from the requirement.

63. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically: in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means, amongst other things, that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

64. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law, in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła*, cited above, §§ 157-158, and *Wasserman v. Russia* (no. 2), no. 21071/05, § 45, 10 April 2008).

65. Where the fundamental right to protection against torture and inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 of the Convention. Indeed, the particular importance attached by the Convention to that provision requires, in the Court's view, that the States Parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any such treatment rapidly. Had it been otherwise, the prospect of future compensation would have legitimised particularly severe suffering in breach of this core provision of the Convention (see *Vladimir Romanov v. Russia*, no. 41461/02, § 78, 24 July 2008).

66. Turning to the facts of the present case, the Court reiterates the Government's argument that the applicant had not attempted to make use of any avenues for exhausting remedies proposed by them as effective. It,

however, is not convinced by those submissions. In particular, some of the documents produced by the applicant, such as copies of letters from various domestic authorities, show that he complained to prosecutors, the Service for the Execution of Sentences, the facility governor, and even applied to a court for early release. The applicant employed those remedies in his attempts to draw the authorities' attention to his state of health and the conditions in which he was detained in the correctional facility.

67. However, the Court observes that its task in the present case is to examine the effectiveness of various domestic remedies suggested by the Russian Government and not merely to determine whether the applicant had made his grievances sufficiently known to the Russian authorities. In this connection, the Court observes that it has already examined on many occasions the effectiveness of the domestic remedies suggested by the Government. It found, in particular, that in deciding on a complaint concerning breaches of domestic regulations governing the conditions of detention, the prison authorities would not have a sufficiently independent standpoint to satisfy the requirements of Article 35 of the Convention (see *Dirdizov v. Russia*, no. 41461/10, § 75, 27 November 2012, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 101, 10 January 2012). Even though the supervising prosecutors' review plays an important part in securing appropriate conditions of detention, a report or order by a prosecutor are primarily a matter between the supervising authority and the supervised body not geared towards providing preventive or compensatory redress to the aggrieved individual (see *Dirzidov*, § 76, and *Ananyev and Others*, § 104, both cited above). A civil claim for compensation under the tort provisions of the Civil Code, such as those cited by the Government by way of example, cannot offer the applicant any other redress than a purely compensatory award and cannot put an end to a situation of an on-going violation, such as for instance lack of personal space or lack of specific accommodation in a given detention facility. Furthermore, the Court has noted that, even in cases where the Russian courts have awarded compensation for conditions of detention that were unsatisfactory in the light of the domestic legal requirements, the level of the compensation has been unreasonably low in comparison with the awards made by the Court in similar cases (see *Ananyev and Others*, cited above, §§ 113-118). The Court has also dismissed as ineffective a judicial complaint of infringement of rights and freedoms under Chapter 25 of the Russian Code of Civil Procedure or an application for early release (see, for instance, *Reshetnyak v. Russia*, no. 56027/10, §§ 74-79, 8 January 2013, and *Koryak v. Russia*, no. 24677/10, §§ 87-93, 13 November 2012), finding that the Government were unable to illustrate the practical effectiveness of those remedies with examples of domestic case-law. In the present case, the Government also failed to explain how those procedures would work in respect of inmates' complaints, particularly when they concern very specific

problems of conditions of detention. The absence of established, clear and accessible judicial practice in this regard appears all the more clear given the parties' very confusing description of the procedure by which the applicant had sought his early release (see paragraphs 36 and 37 above). Similarly ineffective, in the Court's view, was a complaint to the Ombudsman, given the latter's lack of powers to issue a legally binding decision to improve the complainant's situation or to serve as a basis for obtaining compensation (see *Dirdizov*, cited above, § 79). As regards the remaining remedies proposed by the Government, such as a complaint to the Russian President or Parliament, the remedial powers of those avenues remain for the Court entirely unclear.

68. In the light of the above considerations, the Court concludes that none of the legal avenues put forward by the Government, and none of the remedies employed by the applicant, constituted an effective remedy that could have been used to prevent the alleged violations or their continuation and provide the applicant with adequate and sufficient redress in connection with the complaints of unsatisfactory conditions of detention. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies and finds that the applicant did not have at his disposal an effective domestic remedy for his complaints, in breach of Article 13 of the Convention.

(b) Alleged violations of Article 3 of the Convention

(i) General principles

69. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

70. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3

(see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

71. The Court further reiterates that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a public hospital, even if he is suffering from an illness that is particularly difficult to treat. However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI; *Melnītis v. Latvia*, no. 30779/05, § 69, 28 February 2012; and *Savičs v. Latvia*, no. 17892/03, § 130, 27 November 2012).

72. Moreover, the Court has considered that where the authorities decide to place and keep a disabled person in continued detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability (see *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004; *Jasinskis v. Latvia*, no. 45744/08, § 59, 21 December 2010; and *Z.H. v. Hungary*, no. 28937/11, § 29, 8 November 2012).

73. In the above-cited case of *Farbtuhs*, the Court noted that the prison authorities had permitted family members to stay with the applicant for twenty-four hours at a time and that this took place on a regular basis. In addition to the applicant, who had a physical disability, being cared for by his family, he was assisted during working hours by the medical staff and outside working hours was helped by other inmates on a voluntary basis. The Court expressed its concerns in the following terms (§ 60):

> "The Court doubts the appropriateness of such a solution, leaving as it did the bulk of responsibility for a man with such a severe disability in the hands of unqualified prisoners, even if only for a limited period. It is true that the applicant did not report having suffered any incident or particular difficulty as a result of the impugned situation; he merely stated that the prisoners in question sometimes 'refused to cooperate', without mentioning any specific case in which they had refused. However, the anxiety and unease which such a severely disabled person could be expected to feel, knowing that he would receive no professional assistance in the event of an emergency, in themselves raise a serious issue from the standpoint of Article 3 of the Convention."

74. The Court has also held that detaining a disabled person in a prison where he could not move around and, in particular, could not leave his cell independently, amounted to degrading treatment (see *Vincent v. France*, no. 6253/03, § 103, 24 October 2006). Similarly, the Court has found that leaving a person with a serious physical disability to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or

undressed, contributed to its finding that the conditions of detention amounted to degrading treatment (see *Engel v. Hungary*, no. 46857/06, §§ 27 and 30, 20 May 2010).

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

75. The Court observes that the crux of the applicant's complaint relates to the material conditions of his detention in facility IK- 11 in view of his physical disability. There was no particular discrepancy in the parties' description of the applicant's state of health during his detention in that facility. Plainly, the applicant, a wheelchair-bound person with numerous health problems, including complete paralysis of the lower part of his body and extremely poor eyesight, was detained in facility IK- 11 for almost three years between January 2010 and January 2013.

76. The Court does not lose sight of the Government's argument that during his detention in facility IK-7 the applicant had faked his condition, having been able to make full use of his legs. However, the applicant did not complain about the conditions of his detention in facility IK- 7. The Court therefore finds that the applicant's state of health before 27 January 2010, when he was transferred from facility IK-7 to facility IK-11, is irrelevant for the purposes of the present complaint under Article 3 of the Convention. It will not attach any importance to the Government's submissions about the applicant feigning ill health, particularly since his diagnosis of paraplegia and resulting Category 1 disability were confirmed by the facility medical personnel. Had there been any imprecision on the part of the national authorities in establishing an accurate diagnosis, or indeed had they subsequently failed to detect any changes in the applicant's condition, the State would have to bear responsibility for such an omission, as it is its obligation to ensure that persons deprived of their liberty receive the requisite medical assistance (see, for identical reasoning, *Grimailovs v. Latvia*, no. 6087/03, § 155, 25 June 2013).

77. Turning to the material conditions of the applicant's detention in facility IK-11, the Court notes that it is common ground between the parties that he was detained for nearly three years in a regular detention facility that was not adapted for a wheelchair-bound person. The Government submitted that following his admission to facility IK-11 the applicant had been assigned to Unit 8 where he had remained for slightly over a year until his transfer to Unit 5 on 28 February 2011. According to the Government, a ramp had been installed to facilitate the applicant's access to the recreation yard from the dormitory building occupied by Unit 8. No ramp had been required during the applicant's detention in Unit 5, as the height of the entrance door step had not exceeded 5 cm. At the same time, the Court notes that other areas in the correctional facility grounds, such as the canteen, bathhouse, library, medical unit and shop, remained inaccessible for the applicant in a wheelchair if unassisted. The applicant submitted that 20 cm

high barriers, over which he had had to be carried in a wheelchair by his inmates, had cut through the facility grounds. The Government did not deny that fact. Moreover, the Court interprets their statement that the applicant had always been assisted by inmates when he had moved around the facility grounds as confirmation that the facility territory had been full of environmental barriers impeding the applicant's access to the premises. No special installations had been put in place to alleviate the hardships of the access-related problems, including in relation to the canteen and the bathhouse. While it appears that the applicant was not locked up during daytime and could move inside the dormitory unit, his ability to use any facilities outside the dormitory building was severely restricted owing to his paraplegia. The latter finding will be taken by the Court as the starting point for the assessment of whether the conditions of the applicant's detention run counter to the guarantees of Article 3 of the Convention.

78. The applicant argued that during his detention in the facility he had spent most of his day in the dormitory unit confined to his wheelchair or his bunk. He had had less than 2 sq. m of personal space, with inmates' space having been limited to their sleeping place and a narrow passageway between the bunks. The Government argued that the applicant had had an individual sleeping place at all times and had been afforded no less than 2 sq. m of personal space during the entire period of his detention. The Court, however, does not need to settle the differences between the parties' submissions for the following reasons.

79. The Court reiterates that in a number of cases the lack of personal space afforded to detainees in Russian remand centres was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention. In those cases, applicants were usually afforded less than 3.5 sq. m of personal space (see, among others, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007). At the same time, the Court has always refused to determine, once and for all, how many square metres should be allocated to a detainee in terms of the Convention, having considered that a number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise, the physical and mental condition of the detainee and so forth, play an important part in deciding whether the detention conditions complied with the guarantees of Article 3 of the Convention (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007). When assessing post-trial detention facilities such as correctional colonies in Russia, the Court has considered that personal space should be viewed in the context of the applicable regime, providing for detainees in correctional facilities to benefit from a wider freedom of movement during the daytime than those subject to other types of detention regime and their resulting unobstructed access to natural light and air. In a number of cases, the Court has found that the freedom of movement allowed to inmates in a facility and unobstructed access to natural light and air have served as sufficient compensation for the

scarce allocation of space per convict (see, among others, *Valašinas v. Lithuania*, no. 44558/98, §§ 103 and 107, 24 July 2001; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004; and *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009).

80. The present case is, however, different from the cases cited above. Even proceeding on the assumption that the Government's submissions pertaining to the personal space afforded are more accurate, the Court finds that there was no other aspect of the applicant's detention which could have compensated for the cramped living conditions in the dormitory. It has already established that for three years of his detention in facility IK-11 the freedom of the applicant's movement was mostly limited to his dormitory unit where he could use narrow passageways to move among the bunks or go to other rooms in the dormitory building, such as a small kitchen or a corridor. While accepting the Government's argument that the applicant could have used the recreation yard outside the dormitory building, the Court does not lose sight of the fact that they never submitted that the recreation yard had been equipped to accommodate the applicant. The Court also notes that the limitations on the applicant's personal mobility were so severe that he was unable to eat at the facility canteen together with his fellow inmates. The Government submitted that the food had been taken to the applicant from the canteen and that he had eaten in the dormitory kitchen. While having no means of proving the applicant's allegation that on certain occasions food had been taken to him in dirty tableware or that he had received none at all, the Court finds that his formal segregation from the rest of the inmate population stigmatised him and alone served as the main restriction on his leading a dignified life in the already harsh environment of a penal facility.

81. The Court further observes that the accessibility of the sanitation facilities raises a particular concern under Article 3 of the Convention (see, in a more complex context, *D.G. v. Poland*, no. 45705/07, §§ 147 and 150, 12 February 2013). In the present case, the applicant submitted that his physical disability had prevented him from being able to access the lavatory rooms and bathhouse, a fact that was not denied by the Government. While, according to the Government, those facilities had been adapted to the applicant's special needs, the Court notes that it can hardly be considered as alleviating his hardship, given that these facilities themselves remained inaccessible without the help of other inmates. The 15 cm high pedestal under the lavatory pans installed inside the 80 cm wide cubicles was plainly too high and too narrow an arrangement for a wheelchair-bound person. Moreover, it appears that the only specific equipment installed by the authorities to adapt the facilities to the applicant's needs was a special chair in the lavatory. The Court cannot accept that arrangement as a replacement for a wheelchair-accessible toilet, particularly since the use of the chair did not solve the applicant's problem of having to depend on his inmates for

assistance. There is also no indication in the case file whether any accessibility improvements had been made in the bathhouse or the dormitory shower rooms to take into account the applicant's physical impairment. Neither facility had a handrail and the equipment, such as the shower hoses, mirrors, taps and sinks were mostly positioned at a level too high for the wheelchair-bound applicant to reach easily. Those arrangements once again had served as a limitation on the applicant's activities, had made him even more dependent on the goodwill of other inmates and could hardly be considered compatible with respect for his human dignity.

82. The Court further reiterates that the parties disputed whether the applicant had been able to use the dormitory shower rooms. The applicant argued that the only way he had been able to wash himself had been during his visits to the bathhouse once or twice a month, as he had had no means to pay to use the shower room. He supported his submissions with a handwritten statement by a former inmate. The Government disputed that account, insisting that the applicant had been free to use the shower room whenever necessary. They also relied on handwritten statements by inmates and certificates issued by the facility governor. The Court, however, is unable to establish the veracity of the parties' submissions.

83. Turning to the second point in its analysis, the Court notes that the applicant was in need of daily assistance with his mobility around the facility. While the Court recognises that the facility administration had made certain efforts to increase his ability to move, the fact remains that he had had to rely on the help of other inmates as soon as he wished to leave the dormitory; he also had to rely on the help of other inmates to access various facilities, such as the lavatory, bathhouse, library, shop and medical unit, as they were inaccessible to him in a wheelchair. Neither the facility officials nor medical staff provided any assistance to him with his daily routine.

84. The Court observes that the fellow inmates whose assistance the applicant depended on for his daily routine and mobility had not been trained nor had the necessary qualifications to provide such assistance. The Government argued that the inmates had voluntarily agreed to assist the applicant when necessary. The Court is not persuaded by such an argument, and does not consider that the applicant's special needs were thereby attended to or that the State has complied with its obligations under Article 3 of the Convention in that respect (see, for similar reasoning, *Grimailovs v. Latvia*, no. 6087/03, § 161, 25 June 2013). The Court has already stressed its disapproval of a situation in which prison staff feel relieved of their duty to provide security and care to more vulnerable detainees by making their cellmates responsible for providing them with daily assistance or, if necessary, with first aid (see, *mutatis mutandis*, *Kaprykowski v. Poland*, no. 23052/05, § 74, 3 February 2009). It is clear that in the present case the help offered by the applicant's fellow inmates did not form part of any organised

assistance by the State to ensure that the applicant was detained in conditions compatible with respect for his human dignity. It cannot therefore be considered suitable or sufficient in view of the applicant's physical disability (see the above-cited cases of *Farbtuhs*, § 60, and *D.G. v. Poland*, § 147).

85. The Court considers that the State's obligation to ensure adequate conditions of detention includes provision for the special needs of prisoners with a physical disability such as the present applicant, and the State cannot absolve itself from that obligation by shifting the responsibility to other inmates (see, *Grimailovs*, § 161, cited above). By appointing fellow inmates to care for the applicant the State did not take the necessary steps to remove the environmental and attitudinal barriers which seriously impeded the applicant's ability to participate in daily activities with the general prison population which, in its turn, precluded his integration and stigmatised him even further. The Court observes that many of the applicant's access problems could have been solved by reasonable accessibility improvements which needed neither be costly nor complicated. However, the facility officials' response to his needs was restricted to the temporarily installation of an entrance ramp, the provision of a chair to use in the lavatory and assigning inmates to assist the applicant. Those arrangements could not ensure the applicant's autonomy or promote his physical and moral integrity. The Court cannot but conclude that the restrictions on the applicant's personal mobility in the facility and lack of reasonable accommodation during his three-year long detention must have had a dehumanising effect. The domestic authorities failed to treat the applicant in a safe and appropriate manner consistent with his disability.

86. In the light of the foregoing considerations and their cumulative effects, the Court holds that the conditions of the applicant's detention in view of his physical disability and, in particular, his inability to have access to various premises in the correctional facility independently, including the canteen and sanitation facilities, and in such a situation the lack of any organised assistance with his mobility around the facility or his daily routine, must have caused him such unnecessary and avoidable mental and physical suffering, diminishing his human dignity, that this amounts to inhuman and degrading treatment. There has, accordingly, been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

88. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

89. The Government submitted that the claim was excessive and manifestly ill-founded. They noted that should the Court find a violation of the applicant's rights under the Convention, the finding of the violation would constitute sufficient just satisfaction.

90. The Court observes that it has found violations in the present case, resulting in the applicant being exposed to prolonged mental and physical suffering diminishing his human dignity and his having no effective remedy to complain about a violation of his rights. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Having regard to all the above factors, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

91. The applicant also claimed EUR 2,000 in costs for legal services incurred in the proceedings before the Court.

92. The Government stressed that the applicant did not provide any evidence in support of his claim to show that those expenses had actually been incurred by him.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria and to the fact that the applicant was granted legal aid in the amount of 850 euros from the Court, it awards the applicant EUR 1,150 under this head.

C. Default interest

94. The Court considers it appropriate that the default interest rate 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. *Joins* the Government's objection as to the alleged non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 3 to the merits of his complaint under Article 13 and *rejects* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy with which to raise claims of inadequate conditions of detention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 1,150 (one thousand one hundred and fifty euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable to the applicant on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President