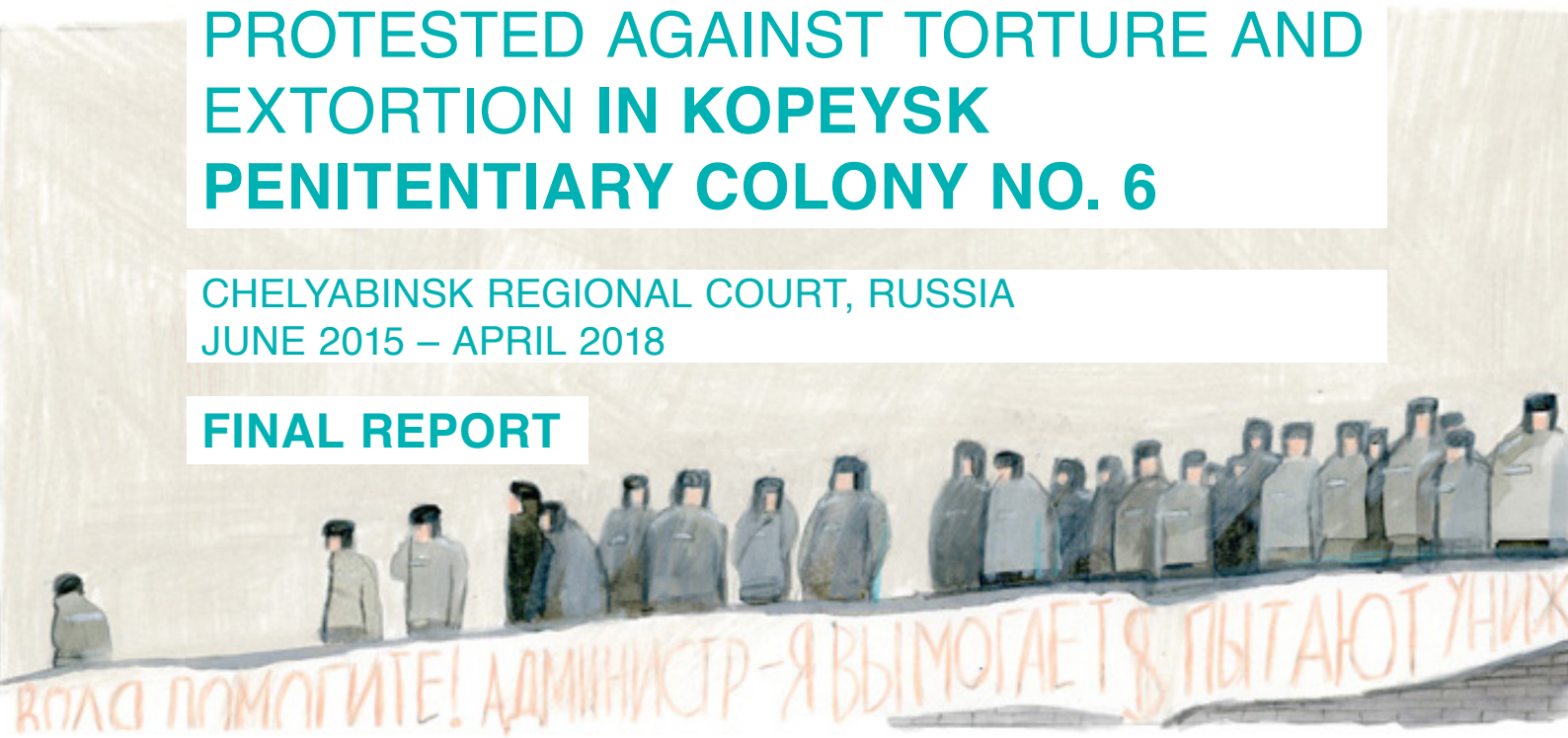
INTERNATIONAL MONITORING MISSION

ON THE TRIAL OF PRISONERS WHO PROTESTED AGAINST TORTURE AND EXTORTION **IN KOPEYSK PENITENTIARY COLONY NO. 6**

CHELYABINSK REGIONAL COURT, RUSSIA
JUNE 2015 – APRIL 2018

FINAL REPORT



EUROPEAN PRISON LITIGATION NETWORK

Editors :

E. Mezak,
A. Laptev,
A. Bartolini,
P. Baigarova,
J. Krikorian,
H. de Suremain

Cover illustration :

Konstantin Potapov

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Origin of the monitoring mission and methodology

This report is the outcome of a monitoring trial effort conducted by the European Prison Litigation Network (EPLN), upon being approached by human rights activists and lawyers in 2015 who expressed the need for an international organization monitoring the trial against 17 individuals accused of mass riots in connection with the protests held in Colony No. 6 on 24-25 November 2012.

The conduct and outcome of the trial is considered by the EPLN as of major importance as it could reveal the Russian authorities' position on ill-treatments in places of detention and the authority given to the recommendations of the Prison Public Monitoring Commissions in Russia[1].

Two Russian observers, the jurist Ernest Mezak and lawyer Alexey Laptev, were mandated by the EPLN to observe the hearings in compliance with a methodology set up by the EPLN and approved by the Steering Committee of the Monitoring Mission. The Steering Committee in charge of approving the observation methodology and supervising the trial monitoring progress, is composed of[2]:

- Anton Burkov, Director of the Department of European Law at the Free University of Human Sciences, Ekaterinburg
- Aurore Chaigneau, Dean of the Faculty of Law of the University of Picardie, France
- Leonard Hammer, Professor of Modern Israel Studies at the University of Arizona, and Associate Professor at the Hebrew University of Jerusalem
- Krassimir Kanev, Director of the Bulgarian Helsinki Committee and Professor of Philosophy at the University of Bucharest
- Sacha Koulaeva, at that time Head of Eastern Europe and Central Asia Office at the International Federation for Human Rights (FIDH)
- Mikael Lyngbo, Prosecutor in Denmark and expert at the Council of Europe for the reform of criminal justice in Ukraine
- Andrey Nikolaev, Professor of Constitutional Law and International Law at the Russian State University of Social Sciences
- Kirill Titaev, Researcher at the European University of Saint Petersburg, Russia

The methodology of the trial monitoring is based on:

- the analysis of case file materials
- a legal analysis of the bill of indictment
- the analysis of audio-records of hearings
- interviews with defence lawyers, human rights activists and former members of the Public Monitoring Commission of Chelyabinsk
- The direct observation of court hearings from 14 to 18 November 2016, from 23 to 27 January 2017, from 19 to 23 July 2017 and from 5 to 9 February 2018, when the key prosecution and defence witnesses were examined and the pleadings took place.

[1] A Public Monitoring Commission is established in accordance with applicable legislation in every region of the Russian Federation. They consist of representatives of domestic human rights NGOs and are entrusted with the task of monitoring observance of human rights in detention facilities. The Commissions have three main tasks: to perform inspections of detention facilities, prepare recommendations for improvement to the facility authorities and handle complaints by inmates. They have no power to issue binding decisions.

[2] The assessment and conclusions of the report on the fairness of the trial and respect for the fundamental rights of the defendants is the sole responsibility of the European Prison Litigation Network only.

1. The origins of the Kopeysk case: the incidents of November 2012 and their causes

1.1 The penitentiary colony n°6 of Kopeysk, a prison facility described as a place of torture

According to authoritative reports published by human rights bodies[3], in the run-up to the November 2012 events in Colony No. 6 the situation became critical in connection with systematic violations of the detainees' rights. Torture, ill-treatment of prisoners with the aim to extort money and material values from their relatives to the benefit of the Colony administration, violations of detainees' labor and other rights became widespread.

1.2 A climate of total impunity

Numerous complaints filed by the inmates to the Prosecutor's office and other competent bodies were to no avail; moreover, the complainants were subjected to reprisals: they were confined to the punishment wards, subjected to strict detention conditions (SUS), in cell-type premises (PKT) etc. They were also subjected to torture and beatings.

According to reports of the Prison Public Monitoring Commission of Chelyabinsk Region, which conducted three visits to the Colony before the events, there was a climate of fear in the Colony. Only a few prisoners were ready to talk about torture and they were beaten up thereafter for punishment.[4] The atmosphere was heated even more after the death of one prisoner (Mr. Korovkin) in June 2012, who, according to witnesses, was beaten to death by colony officers attempting to extort money from him.[5]

The administration was very unfriendly in respect of the members of the Commission visiting the colony before the events of 24-25 November 2012. On 14 August 2012 the Commission held a press-conference to attract public attention to the death of Mr. Korovkin and practices of torture and extortion in the Colony.[6] The law-enforcement agencies did not react.

[3] "Report on the outcomes of the public inquiry into the circumstances of the events that took place in Colony no. 6 in Kopeysk, Chelyabinsk Region", 06.12.2012, drafted by members and experts of the Russia's Presidential Civil Society and Human Rights Council, URL: <http://president-sovet.ru/documents/read/249/>; and the report "Kopeysk as a future Nuremberg and for contemporary human rights defenders", drafted by a group of independent observers under the leadership of N. Shchur, member of member of the Prison Monitoring Commission (PMC) for the Chelyabinsk Region at the material time URL: <http://uraldem.ru/archives/614>.
[4] Report "Kopeysk as a future Nuremberg and for contemporary human rights defenders", p. 24.
[5] Ibid. p. 27.
[6] Ibid. pp. 33-34.

1.3 A protest movement as a cry for help

On Saturday, 24 November 2012, on the "Open Doors Day", i.e. on the day of planned visits by relatives to the Colony's detainees, the latter gathered in the inner yard, and also climbed on the roofs of several buildings in the Colony, refused to disperse, to comply with any of the administration's orders, declared a hunger strike and hanged out banners with requests for assistance on the roofs of the Colony's buildings. The banners carried the following messages: "The administration is extorting $, they torture and humiliate (us)", "People, help us!", "Obtain access to US for the television", "There's 1500 of us".

The Colony administration gave contradictory information on what was happening in the Colony. According to the available information, the protest inside the Colony passed off peacefully. However, on the evening of 24 November 2012 clashes erupted between the OMON (riot police) officers who had cordoned off the Colony outside and the relatives/friends of the prisoners who had not been admitted inside the Colony. 38 people were arrested,[7] 8 OMON officers were injured.[8] The prisoners ended their protest on 27 November 2012 because they had achieved their goal: to draw the attention of the media, human rights activists, and the prosecutor's office to what was happening in the Colony. Members of the Prison Monitoring Commission were present at the spot, but they were granted access to the colony only on 27 November 2012.[9] It should be noted that after the protest all mass-scale extortion, torture and beatings in Colony no. 6 ceased.

2. The follow-up given by the authorities to the events of 2012

2.1 Institutional reactions to the revelations on the situation in the colony

Given considerable media attention to the events at colony no. 6, the Russia's Presidential Civil Society and Human Rights Council (the Presidential Human Rights Council) conducted a fact-finding mission from 28 November to 6 December 2012. Members and experts of the Council interviewed many prisoners and their relatives, heard the version of events presented by the Penitentiary Service and studied documentary evidence.

On 4 December 2012 the Presidential Human Rights Council held a public session in Chelyabinsk during which several witnesses were heard (relatives of prisoners of Colony no. 6), who confirmed

[7] The detainees were taken to the police departments of Kopeysk and Chelyabinsk in order to draw up administrative protocols. Later on, they were all convicted of an administrative offense and sentenced to a fine in the amount of RUR 1,000 each (roughly 25 EUR at that time), one of them was kept in custody for five days, Report "Kopeysk as a future Nuremberg and for contemporary human rights defenders", p. 70.
[8] Ibid. p. 71.
[9] Report of the Presidential Human Rights Council of 06.12.2012, p. 2

the detainees' version. The first Deputy Director of the Federal Penitentiary Service (hereinafter - "FSIN"), Lieutenant General Petrukhin E.V., who attended the session, acknowledged deficiencies of the FSIN, well-fondness of the prisoner's allegations and the need for a systemic reform. (Later, however, the FSIN declared that his assessment "does not reflect the opinion of the agency's management").[10] The representative of the Investigative Committee, General Cheurin P.V., stated during the session that a criminal case had been opened into the allegations of money extortion by the Colony's administration.[11]

According to the Presidential Human Rights Council's Report of 6 December 2012, during its fact-finding mission, prisoners submitted 358 complaints, of which 255 were related to torture, physical violence and other forms of harassment. It uncovered a large-scale corruption scheme based on the extortion of money from the prisoners' relatives and the widespread use of violence, which involved the Colony's management, the guards and a "disciplinary section" made of prisoners. The mission found out about practices including keeping detainees tied to a grid for all day and sometimes more. For instance, it reported that a prisoner was tied to the grid, with a bucket on the head and subject to pepper spray during about 16 hours, due to the fact that he wrote a lot of complaints about inadequate conditions of detention. Moreover, the mission established that the legal avenues for complaints had been completely ineffective. In addition, the mission criticized the shortcomings of the investigation into the death of a prisoner in summer 2012, allegedly caused by AIDS and described by witnesses as the result of his beating by colony wards. The Presidential Council came to the conclusion that "massive, systematic and flagrant violations of the rights and interests of prisoners" had existed in the prison. It found that "all these circumstances have led to a situation in which (…) the protection of rights and interests of the persons serving a sentence in Colony IK-6 was impossible. As a consequence, this pushed the prisoners to stage a protest, which received public attention not only in the Chelyabinsk Region, but also in the whole country."

2.2 The judicial treatment of cases of torture and other ill-treatments

However, despite this serious evidence and the active resistance faced by the investigators (refusal by the Colony administration of their access into the Colony on several occasions, destruction of evidence etc.), the head of the Colony, Mr. Mekhanov, as well as his deputies Mr. Zyakhor and Mr. Shyogol were removed from office only in late December 2012.[12] On 25

[10] Ibid., pp. 11, 55, 60-62. After the journey to Kopeysk he went on sick leave, and on 1 August 2013 the President of the Russia discharged him from his post. Experts link this decision to the criticism addressed at the reform of the Federal Penal Correction Service after the riots in Kopeysk. <http://www.gazeta.ru/social/2013/08/02/5538213.shtml>; <http://www.1obl.ru/news/politika/prezident-otpravil-v-otstavku-pervogo-zamestitelya-direktora-fsin-eduarda-petrukhina/>.
[11] Ibid., p. 57.
[12] Ibid., p. 68.

December 2012, Mr. Mekhanov was summoned as a witness and arrested, however, the judge decided to place him under house arrest, and after a few hours this measure was changed by the investigator to undertaking not no leave the town because he "agreed to cooperate with the investigation".[13]

After an inspection performed by the Prosecutor's office in connection with the events in Colony no. 6, disciplinary sanctions (warnings) were imposed on 12 officers of the Chelyabinsk branch of the FSIN.[14] As a consequence, several officials of the Colony and the Regional Penitentiary Service, including its Director Mr. Turbanov, were also forced to retire, transferred to another working place etc. However, until now only the former director of Colony no. 6, Mr. Mekhanov, was criminally prosecuted – his case was separated from the case opened into the allegations of torture of the prisoners.

On 1 August 2013 the President of Russia discharged the first Deputy Director of the FSIN, Mr Petrukhin, from his post. This decision was linked by the media to the criticism addressed at the reform of the Federal Penitentiary Service after the events in Kopeysk.[15]

On 22 December 2014 the Kopeysk Town Court of the Chelyabinsk Region convicted Mr. Mekhanov for exceeding official powers (Article 286 § 1 of the Criminal Code) and sentenced him to three years' suspended imprisonment – the sentence took legal effect on 23 April 2015 after the appeal trial)[16]. According to the sentence, Mr. Mekhanov "*elaborated a system of illegal collection of money and other assets from the prisoners and their relatives to the benefit of Colony no. 6 under the disguise of charity, whereby he, as a director of the institution, having ... the right to reward and discipline the prisoners, make decision whether to send files to the court for the conditional release of convicts, transfer convicts from one detention regime to another, grant permission to have a visit, would personally or through other people exert psychological pressure on convicts with the aim to incline them toward giving material assistance to Colony no. 6, in exchange for making a decision that is favorable to the convict. ... And in case of a refusal to give such assistance ... convicts will be subjected to disciplinary measures, among them illegal ones*" (judgment of 22 December 2014, p. 5).

This judgment established his guilt with regards to more than 10 occurrences of money and asset extortion. In the same proceedings, Mr. Mekhanov was convicted for organizing an illegal manufacturing of knives, sabers etc. on the Colony's territory (Articles 33 § 3 and 223 § 4 of the

[13] Ibid., pp. 68, 71.
[14] Ibid., pp. 71, 79.
[15] <http://www.gazeta.ru/social/2013/08/02/5538213.shtml>; <http://www.1obl.ru/news/politika/prezident-otpravil-v-otstavku-pervogo-zamestitelya-direktora-fsin-eduarda-petrukhina/>.
[16] <http://bsa.chel-oblsud.ru/db/GetDoc.php?id=1482110>.

Criminal Code). However, he was relieved of serving a sentence for this criminal offence, as the statute of limitations had expired.

On 5 June 2015 the Kopeysk Town Court handed down yet another judgment in which Mr. Mekhanov was equally proven guilty of exceeding official powers (extortion of money from prisoners and their relatives) on several other occurrences.[17] This criminal case was considered in special proceedings[18] - without examination of evidence – following his agreeing with the charge brought against him. This time he was sentenced to one and a half year of suspended imprisonment. However, due to an amnesty, he was released from the given punishment – the conviction was not appealed against and took legal effect on 16 June 2015.

It should be noted that in the given criminal cases the judges did not find any causal link between Mr. Mekhanov's criminal actions and the participation of the prisoners of Colony no. 6 in the mass riots of 24 and 25 November 2012 in the Colony and on the adjacent territory (appellate judgment of the Chelyabinsk Regional Court in his case of 23 April 2015, p. 16).[19] The judge refused to attach to the case file the abundant evidence of torture of detainees that had been gathered by human rights activists.[20] As for the reports by the Presidential Human Rights Council and by the Ombudsman for the Chelyabinsk Region attached to the case file, the judges reached the conclusion that they "do not have any importance as evidence in this case, as the facts described therein were not examined in criminal proceedings, and the indicated documents have the character of recommendations for the executive branch" (judgment in his case of 22 December 2014, p. 79). However, according to the Investigative Committee "Mekhanov's criminal acts had severe consequences, as they later served as the trigger for the convicts detained in the Colony to take part in the mass riots that took place on 24 and 25 November 2012 in the Penal Colony and on the adjacent territory".[21] It should also be noted that in the conviction judgment of 5 June 2015 the judge stated that with his actions Mr. Mekhanov substantially violated constitutional rights of citizens, including right to life, human dignity, prohibition of torture and right to liberty and security (p. 15).

[17] <http://gulagu.net/news/8133.html>.
[18] in accordance with Chapter 40 of the Code of Criminal Procedure
[19] <http://bsa.chel-oblsud.ru/db/GetDoc.php?id=1482110>.
[20] Report "Kopeysk as a future Nuremberg and for contemporary human rights defenders", p. 73.
[21] Press release of the Investigative Committee of the Russian Federation, 23.12.2014 "Head of Colony no. 6 proved guilty of abuse of power leading to mass riots in the Colony and on the adjacent territory", <http://sledcom.ru/news/item/886809/>.

2.3 The criminal proceedings introduced against the detainees

2.3.1 The triggering of criminal proceedings

On 27 November and 6 December 2012 the Investigative Committee of Kopeysk initiated 8 criminal cases into allegations of the use of violence against a public official (8 OMON officers) on 24-25 November 2012.

On 18 February 2013 the Investigative Department opened a criminal case under Article 212 § 1 of the Criminal Code (mass riots), which was joined with the criminal case into the allegations of the use of violence against the OMON officers. According to several defence lawyers, the given criminal case was opened only to justify the excessive force used by OMON against the citizens who gathered around the perimeter of Colony no. 6 on 24 November 2012 (because many victims thereof lodged criminal-law complaints against OMON).

2.3.2 The charges against the defendants

In these proceedings, the defendants were accused of organizing mass riots (organizers) or of participating in mass riots (participants), accompanied by violence, pogroms, the destruction of property, and also armed resistance to public officials, on 24-25 November 2012 in Colony no. 6 and on the adjacent territory[22].

According to the prosecution, these 17 defendants, "*who were unsatisfied with the detention conditions and the lawful limitations imposed on their rights by way of prohibition on the purchase and consumption by them, in Colony no. 6, of alcoholic beverages, narcotic drugs, the delivery of services that are not provided for by the Russian legislation in force, the use of means of mobile communication and of the Internet, decided, with the aim to breach the public order and undermine the functioning of the given correctional institution, to organize in Colony no. 6 and on*

[22] While this monitoring mission focuses on the trial of these 17 defendants, it has to be noted that two cases were considered separately. On 20 August 2014 the Chelyabinsk Regional Court found Mr. A.A. guilty of organizing the mass riots, being detained in the Colony at the material time.[22]. The criminal acts committed by Mr. A.A. were qualified as organization of mass riots accompanied by violence, pogroms, the destruction of property, and also armed resistance to public officials (Article 212 § 1 of the Criminal Code). The judge determined the punishment as 4 years' imprisonment, see <http://www.chel-oblsud.ru/index.php?html=cases&inst=11&caseid=11925433>. Moreover, on 29 January 2016 the Kopeysk Town Court found Mr. Kh., guilty of participating in the mass riots in the territory adjacent to the Colony Mr. Kh. was sentenced to 2 years and 3 months of imprisonment. See <http://bsa.chel-oblsud.ru/db/GetDoc.php?id=1608431>

the adjacent territory mass riots, and to furthermore take part in the organized mass riots"[23] ; "*With the aim to confer a veneer of justification to their actions and of legality to their demands, the organizers intended to use as a pretext for the mass riots the illegal demands by certain Colony officers to hand them over assets and money by the prisoners and their relatives under the disguise of charity, under threats of being unwarrantedly disciplined and subjected to violence*".[24]

As to the course of the event, according to the prosecution, in the period from January to July 2012 (the exact date has not been established) 11 defendants (from (1) to (11)) as well as other unidentified individuals (25 at least) who were serving their prison sentences in Colony no. 6 and were informal leaders among the majority of the Colony prisoners, being dissatisfied with the conditions of detention and lawful restrictions of their rights (in particular, the ban on the purchase and consumption of alcohol and narcotic drugs, use of mobile phones and the Internet), decided to organize mass riots in the Colony and on the adjacent territory, and personally took part in them. One of their goals was achieving the dismissal of the Colony director (Mr. Mekhanov) and his aides from their posts. They developed a plan for an upheaval with at least 1,400 participants, including family members and friends of prisoners who were at liberty. They decided to use cases of extortion committed by Colony officers vis-à-vis some prisoners and their relatives as an excuse for the mass riots. The crime had been staged on a visitors' day when about 100 family members of prisoners should have been admitted into the protected area of the Colony. In preparation for the crime, the conspirators made 48 objects to be used as cold steel arms (iron rods with sharp tips), 11 banners with protesting slogans, and also agreed with some of their relatives and friends about the personal involvement of the latter in the mass riots around the Colony.

In the morning of 24 November 2012, according to the prosecution, the prisoners, being armed with sticks, iron rods with sharp tips, stones etc., took control of a number of industrial, residential and social facilities of the Colony and began to attract public attention with the help of banners hanging on buildings and constructions, as well as with the help of the audio equipment they had captured in the Colony club. At the same time prisoners broke the gates of the metal fence surrounding Colony units nos. 6, 7, 8, 11, 12 and 13; units nos. 14, 15 and 16; units nos. 2 and 17 as well as unit no. 9; the local area gym club; and the locks installed on the gates (that caused the Colony pecuniary damage in the amount of 233,000 RUR). In addition, some unidentified prisoners destroyed 3 CCTV cameras installed in the unit with strict conditions of detention (SUS), having followed slogans shouted by defendant T. (defendant no. 10) from his disciplinary punishment cell (that caused the Colony damage in the amount of 8,088 RUR). Defendant R.

[23] See for instance the investigator's order on prosecution and charges against Mr. Teryokhin, 14.08.2013, p. 1, as quoted in the Report "Kopeysk as a future Nuremberg and for contemporary human rights defenders", p. 98; bill of indictment of Mr. L. (defendent no. 6), p. 3.
[24] See for instance bill of indictment of Mr. L. (defendent no.6), p. 4.

(defendant no.11) and at least five other unidentified rioters beat up a prisoner collaborating with the Colony administration, Mr. B. E. S., who received minor injuries. Another unidentified prisoner punched in the jaw prisoner A.P.A. refusing to take part in the mass riots (that caused the latter physical pain). The injuries inflicted on both prisoners did not entail any permanent damage to health or disability.

In parallel to this, according to the prosecution, identified and unidentified organizers of the mass riots, by means of landline and mobile phones, began to call relatives, friends and acquaintances of the prisoners and notify them of the need to come to the Colony armed with metal and wooden sticks, baseball bats, stones etc. and to take part in the mass riots as well as to prevent the penetration into the Colony of special police forces to suppress the mass riots. Verbal appeals to resist police forces from the roofs of the Colony buildings and constructions as well as banners placed on them had an additional impact on the prisoners' relatives and friends outside the Colony. The latter, in turn, seeing and hearing these appeals, collected stones, sticks etc. and gathered in a crowd of at least 250 people.

From 5 p.m. of 24 November 2012 to 5 a.m. of 25 November 2012, so is the accusation, with the intention to get into the Colony in order to participate in the mass riots together with the prisoners, the prisoners' relatives and friends threw stones, bottles filled with snow and ice pieces, sticks etc. at the OMON officers (riot police) who had cordoned off the Colony (which was qualified as a use of violence not endangering life or health against public officials in connection with the performance of their duties). Defendants from (12) to (17) and other unidentified individuals participated in that confrontation with the police. Moreover, Mr. L. (defendant no.15) and Mr. P. (defendant no.16) and other unidentified rioters attacked the police car of the Kopeysk police department, which caused damage to the car in the amount of 7,350 RUR and limited personal liberty of three police officers inside the car for 10 minutes. In addition, at about 10.30 p.m. of 24 November 2012, in the course of the mass riots, Mr. K. directed his car into the police cordon at a speed of not less than 29 km/hour and hit 2 OMON officers, Mr. V. and Mr. B., with the front part of his car, which caused injuries and short-term health disorder. Other unidentified persons also inflicted injuries on a number of OMON officers. Another police car belonging to the Kopeysk police department was damaged as well (amount of damage: 2,600 RUR). Thus, the total damage to the Colony amounted to 250,540 RUR (about 6,250 EUR at that time), while the damage to the Kopeysk police department amounted to 9,950 RUR (about 250 EUR at that time).

2.3.3 The criminal qualifications used

According to the Criminal Code, the criminal offence of mass riots belongs to crimes against public safety. Mass riots are a criminal form of manifestation of discontent with the activities (inactivity)

of government bodies and are directed against these bodies. This criminal offence often grows out of a legally conducted public events which transform into an illegal event, while the demands made by the participants in mass riots or part of them may be legitimate. Characteristic features of mass riots are:

- Mass character, i.e. participation in them of a significant number of people (an evaluation concept);
- Spontaneity of accumulation of a large mass of people and weak controllability of it, which nevertheless does not exclude the organizational beginning in initiating mass riots;
- They must be attended by the use of violence against other persons, pogroms, arson, destruction of property, the use of firearms, explosives or explosive devices, or resistance to public officials[25].

On 13 March 2015 the present case against 17 defendants was transmitted to the Chelyabinsk Regional Court for consideration on the merits.

2.4 The situation of the accused during the preparatory stages of the criminal proceeding

2.4.1 Allegations of mistreatment

The present observation mission did not have the means to examine retrospectively the allegations of ill-treatment made by some of the defendants during the preparatory phase of the criminal proceedings. However, it should be noted that according to recognized human rights organizations, some defendants were pressurized with the aim of forcing them to give confession statements. As a matter of facts, there have been complaints about threatening; body injuries were recorded on some defendants.[26] Defendants who served their sentence in correctional colonies (convicted defendants) were moved to remand prisons in other regions, so called "torture regions".[27] The term of their "business trip" often exceeded the two-month period set by the Penal Code (Article 77.1 § 1) of for investigative actions with the participation of convicted defendants (Ruling of 1 June 2015, p. 8). During the investigation the defendants were often kept in inadequate conditions of detention (no natural light in cells, no ventilation, overcrowding etc.), which is supported by reports of the members of the Public Monitoring Commission who had

[25] Commentary to the Criminal Code of the Russian Federation (article-by-article), ed. Chuchaev A.I., Moscow: Wolters Kluwer, 2011, p. 432-433.
[26] See Address of human rights activists of Chelyabinsk region of 09.04.2014, <http://pravo-ural.ru/2014/04/09/obrashhenie-k-upolnomochennomu-i-v-spch-po-povodu-kopejskix-uznikov-ocherednoe/>.
[27] See Address of human rights activists of Chelyabinsk region of 09.04.2014, <http://pravo-ural.ru/2014/04/09/obrashhenie-k-upolnomochennomu-i-v-spch-po-povodu-kopejskix-uznikov-ocherednoe/>; Trufanova O. Is the investigator working for the FSIN? (07.07.2014), <http://pravo-ural.ru/2014/07/07/sledovatel-shpilit-na-gufsin/>.

visited Mr. L. (defendant no. 6), Mr. N. (defendant no.8) and some other defendants.[28] Apart from this, due to different detention regimes, the defendants kept in pre-trial detention centers were deprived of the rights available to those in penal colonies (right to long-term – up to three days – family visits in private, possibility to move freely outside their cells, to watch TV, to go to a library or mass cultural events etc.).

What was the reason to convoy defendants from Chelyabinsk region (place of the imputed crime) to Sverdlovsk region remains unclear[29]. The trial court found this lawful without giving any explanation (Ruling of 1 June 2015, p. 8). These circumstances may be considered as an indirect support of the defendants' allegations about the pressure put on them.

Other defendants, who had been outside the Colony during the events, were arrested and detained on remand. They were released pending investigation only after having confessed to the imputed crimes. Thus, during the investigation, four of them confessed. All of them later retracted their confessionary statements made during the investigation as being given under duress. According to them, otherwise the investigator promised to keep them in detention for a very long time.

2.4.2 Breaches of the rights of the defence

Access to lawyers was not always provided: in the remand detention center where defendants were located, they didn't always have a chance to meet with their lawyer (due to, as they say, long waiting lists, lack of offices etc.). Preliminary investigation had lasted for more than two years, legal-aid lawyers often changed. They often took part in just one or a number of investigation actions. Even though, in principle, it did not breach the Code of Criminal Procedures or international standards, the quality of legal aid in such circumstances could not be high, because lawyers were not familiar with the criminal cases[30]. Sometimes, investigator invited legal-aid lawyers to participate in investigation actions, even though the defendant had a privately-retained lawyer (Transcript, p. 87-88).These actions by the investigator can be regarded as incompatible with Russian law,[3132] and be incompatible with the international standards if there are no justified grounds for participation of legal-aid lawyers[33].

[28] See, for example, video recording of visiting remand prison no. 3 of Chelyabinsk by members of Public Monitoring Commission on 12.12.2013, <https://www.youtube.com/watch?v=3-c6fUj3kqs>.
[29] Article 152 § 1 of the Code of Criminal Procedure provides for conducting investigation in a place other than the place of crime only "in the case of necessity".
[30] See *Sannino v. Italy*, no. 30961/03, §§ 50-52, 27.04.2006, where a breach of the right to a fair trial was found due to repeated changes of legal-aid lawyers during the trial, who were not familiar with the case
[31] See, for example, appellate judgment by Moscow City Court of 16.04.2007, case no. 22-2971.
[32] <http://www.fparf.ru/documents/council_documents/council_resolutions/1842/>.
[33] see *Dvorski v. Croatia* [GC], no. 25703/11, § 82, 20.10.2015

The repeated change of lawyers was a result of the fact that defendants were often transported from Chelyabinsk to Sverdlovsk Region at the investigation stage.[34] Since legal services were provided in most cases by a legal-aid lawyer, the removal of defendants from one region to another made it necessary to appoint new lawyers, not familiar with the case[35].

Apart from this, as a result of the constant change of lawyers, it often happened that one lawyer provided legal aid to several defendants at different stages of proceedings. In view of the fact that positions of defendants did not always coincide (thus, during preliminary investigations some defendants confessed and others pleaded not guilty), this can be a sign of conflict of interests and poor quality of the legal aid provided[36].

In addition, according to the defence, the later had presented documents, minutes of interviews with witnesses, conducted by defence lawyers, materials characterizing the personality of the defendants. These documents were either returned, since the investigation and/or court did not deem them to be relevant for the case or, in case the documents were presented as photocopies, they were deemed not to be duly certified.

[34] See Address of human rights activists of Chelyabinsk region of 09.04.2014, <http://pravo-ural.ru/2014/04/09/obrashhenie-k-upolnomochennomu-i-v-spch-po-povodu-kopejskix-uznikov-ocherednoe/>. In accordance with the legislation in force, a lawyer has the right to provide legal aid upon the appointment by an investigator or a court only on the territory of a region of the Russian Federation where he/she is registered as an advocate.

[35] Ruling by the judge of the Chelyabinsk Regional Court of 1 June 2015 about listing the case for trial, p. 7

[36] In view of the fact that positions of defendants did not always coincide (thus, during preliminary investigations some defendants confessed and others pleaded not guilty), this can be a sign of conflict of interests and poor quality of the legal aid provided.

3. The hearing phase

On 1 June 2015 the Chelyabinsk Regional Court completed the preliminary court hearing in the present case.

3.1 General presentation of the proceedings : the formation of the court, the parties

3.1.1 The Court

The case was heard by a panel of three judges of the Chelyabinsk Regional Court, who were assisted in their work by a court clerk. The presiding judge is Ms. Davydova Yelena Viktorovna, who was appointed a Regional Court judge by Presidential Decree no. 1474 of 25 November 2004.

3.1.2 The defendants

Seventeen defendants stood trial:

(1) Mr. A.A.R. (Transcript of preliminary court hearing (hereinafter "Transcript", p. 3),[37]
(2) Mr. B.V. F. (Transcript, p. 4),
(3) Mr. V.Y.I. (Transcript, p. 4),
(4) Mr. K.N.R. (Transcript, p. 5),
(5) Mr. K.A.S. (Transcript, p. 5),
(6) Mr. L.O.M. (Transcript, p. 6),
(7) Mr. M.K.B. (Transcript, pp. 6-7),
(8) Mr. N.Y.N. (Transcript, p. 7),
(9) Mr. S.S.A. (Transcript, p. 8),
(10) Mr. T.Y.F. (Transcript, p. 9),

- were accused of committing a criminal offence under Article 212 § 1 of the Criminal Code (organization of mass riots);

(11) Mr. R.A.S. (Transcript, p. 8),

– was accused of committing criminal offences under Article 212 § 1 (organization of mass riots), and Article 321 § 1 (disruption of penitentiary facilities' work);

(12) Mr. A.R.F. (Transcript, p. 25),
(13) Mr. G.S.V. (Transcript, p. 11),
(14) Mr. K.A.A. (Transcript, p. 11),

[37] see Table of lawyers' participation.

– were accused of committing a criminal offence under Article 212 § 2 (participation in mass riots);

(15) Mr. L.S.V. (Transcript, p. 12),

(16) Mr. P.M.A. (Transcript, p. 10),

– were accused of committing criminal offences under Article 212 § 2 (participation in mass riots) and Article 318 § 1 (violent acts not endangering life or health against a public official).

(17) Mr. K.D.V. (Transcript, p. 9),

– was accused of committing criminal offences under Article 212 § 2 (participation in mass riots) and Article 318 § 2 (violent acts endangering life or health against a public official).

Eleven defendants (nos. 1-11), at the time of committing the alleged crimes on 24-25 November 2012, were serving sentences in Penal Colony no. 6 of Kopeysk; accordingly, they are accused of committing crimes on the Colony's territory.

Six defendants (nos. 12-17) are former prisoners who in November 2012 were at liberty. They are accused of committing crimes on 24-25 November 2012 beyond the Colony's boundaries.

Six defendants were at liberty at the start of the trial.[38] However, only one last defendant remained at liberty on the day of pronouncement of the judgment (12 April 2018)[39].

When ordering and extending detention on remand the judge made reference to standard grounds under Article 97 of the Russian Code of Criminal Procedure: the risks of absconding, re-offending and interfering with the course of justice (threaten witnesses, other participants in criminal proceedings, destroy evidence or otherwise hamper the criminal proceedings). With

[38] Mr. A. (no. 12) was in custody in connection with this criminal case during the investigation from 10 July 2013 to 27 May 2014 (10 months 17 days); during the trial he has been held in custody from 17 April 2015 to 12 April 2018 (almost 3 years), see judgment of 12.04.2018, p. 143. Mr. G. (no. 13) was in custody during the investigation: 26 March - 12 July 2013 (3.5 months), 24 April – 14 November 2014 (6 months and 20 days); during the trial: 22 July 2015 – 12 April 2018 (2 years, 8 months and 20 days), ibid. Mr. K. (no. 14) was in custody during the investigation: 1 August 2013 - 31 July 2014 (1 year); during the trial: 24 May 2016 – 12 April 2018 (1 year, 10 months and 18 days), ibid. Mr. L. (no. 15) He was in custody during the investigation: 10 June - 14 August 2013 (slightly over 2 months); during the trial: 3 December 2015 – 12 April 2018 (2 years, 4 months and 9 days), ibid. Mr. P. (no. 16) was in custody during the investigation 24 April - 20 September 2013 (4 months 26 days); during the trial: 19 February -12 April 2018 (1 month and 25 days), ibid. Mr. K. (no. 17) was in custody in relation with this criminal case during the investigation 14 March - 12 July 2013 (3 months 28 days) and 13-14 August 2014 (2 days), ibid. p. 144.

[39] During adjudication of the case the court ordered placement of other defendants in custody on the grounds that they did not appear in court without any valid reason. With regards to five defendants who were due to be released during these proceedings, as they had served their pre-existing sentences, the court also chose custody as a preventive measure for the given criminal case: Mr. A. (no.1), was in custody in connection with this criminal case from 15 August 2016 to 12 April 2018 (almost 1 year and 8 months), ibid. p. 143. Mr. B. (no. 2): period of custody in connection with the case: 22 December 2016 – 12 April 2018 (1 year, 3 months and 20 days), ibid. Mr. K. (no. 4): period of custody in connection with the case: 4 March 2014 – 12 April 2018 (4 years 1 month and 10 days), ibid. (Soon after the pronouncement of the judgment he was released, having served the sentence imposed). Mr. N. (no. 8): period of custody in connection with the case: 7 July 2015 – 12 April 2018 (2 years, 9 months and 5 days), ibid. Mr. T. (no. 10): period of custody in connection with the case: 24 February 2014 – 12 April 2018 (4 years 1 month and 18 days), ibid.

regards to the other defendants such a measure as detention on remand was not chosen, as they continued to serve their pre-existing sentences. The defendants are detained in remand prisons of Chelyabinsk.

3.1.3 The prosecution

The position of the prosecution in the trial was represented by the senior prosecutor of the section of state prosecutors of the Criminal Justice Department of the Prosecutor's Office of Chelyabinsk Region, Mr. Garin S.V., an experienced prosecutor, awarded with the title "Honored worker of the Prosecutor's Office of the Russian Federation" through Presidential Decree in 2011. Due to his retirement, he was replaced by another experienced prosecutor, Ms. Aflitonova K.Yu.

3.1.4 The victims.

There were 15 ***victims*** in this criminal case. Among them were 13 individuals, notably eight OMON officers [40]. Furthermore, two legal entities have been granted victim status, as according to the investigation, they suffered pecuniary damage during the riots.[41] The victims were not represented by lawyers. OMON representative Ms. Solovyova N.V. also participated in the trial; however, neither the OMON unit nor the Main Police Department of the Chelyabinsk Region were granted official victim status.

3.1.5 The witnesses

There were 231 **witnesses** listed by the prosecution in the indictment act (91 OMON officers, 46 officials of the Federal Penitentiary Service, 61 free citizens, 33 convicts). All persons questioned are referred to as the prosecution's witnesses, even those who testify to the benefit of the defendants. The list of witnesses that was submitted in court by the defense through a petition to examine witnesses (vol. 137, p. 20-32) comprised the following: 25 attesting witnesses, 10 members of the Presidential Civil Society and Human Rights Council, 16 state officials (prosecutors, members of the Public Monitoring Commission of the Chelyabinsk Region etc.), 27

[40]: (1) Mr. B. A.A., (2) Mr. V. A.R., (3) Mr. D. D.N., (4) Mr. Z. D.O., (5) Mr. L. A.S., (6) Mr. M. A.E., (7) Mr. S. A.S., (8) Mr. T. A.V.; two convicts: (9) Mr. A.P.A.A. P.A. and (10) Mr. B. E. S.B. E.S.; as well as (11) Mr. S. V.V. (Director of the Department for interaction with law enforcement authorities of the Kopeysk Town District), (12) Mr. S. S.G. (Head of the Kopeysk Police Department), (13) Mr. P. P.P. (officer of the Kopeysk Police Department, driver of a "UAZ" car).

[41] (14) Kopeysk Police Department (represented by Ms. Korenkova R.N.) and (15) Penal Colony no. 6 (represented by Ms. Polyakova E.M.).

employees of Colony no. 6, 8 free citizens (among them media representatives), 86 convicts. The court examined only 58 prosecution witnesses (half of them testified to the benefit of the defendants) and 86 defence witnesses. The prosecution considered it unnecessary to call other prosecution witnesses.

3.1.6 Other participants

Around ten officers of the police escort service were also present in the courtroom. They ensured the transportation of the defendants in custody and monitored their compliance with courtroom conduct rules. The said officers did not take any action that may be described as intimidating.

Representatives of the media and the public (relatives of the defendants), as well as members of the Prison Monitoring Commission, attended some court hearings.

3.2 Conditions of appearances of the accused

3.2.1 Communication with lawyers during the hearings

It was not possible to speak confidentially to the lawyers in the courtroom, as the majority of the defendants – those who were in custody – were held in an "aquarium" (a glass cabin in the courtroom), by which members of the escort service stand guard. In the "aquarium" they were seating on benches in three rows, and the lawyers were seated three desk rows away. Therefore, some defendants and their respective lawyers were 3-4 meters apart. This is problematic in light of the ECtHR case law[42].

It should be noted that even those defendants who were not in custody were seated not next to their lawyers, but in the seats for the general audience that are separated from the lawyers' desks through a barrier. Some members of the escort service were seated in the very same seats.

3.2.2 Access to case material

Representatives of the defense stated that the later was deprived of access to the materials (evidence) contained in criminal case file no. 1605232 (from which the present case was separated) and in the criminal case, which had been investigated into the allegations of torture

[42] See *Khodorkovskiy and Lebedev v. Russia* (no. 11082/06 and 13772/05, §§ 646-647, 25.07.2013), in which the Court has found a breach of the right to a fair trial, *inter alia*, because the defendants who were in the cage could speak to their lawyers only in the presence of the escort officers, i.e. it was not confidential.

of prisoners by the Colony officers. These materials could support the standpoint of the defense, in particular, as regards the absence of any mass riots on 24-25 November 2012 and the real reasons for the protest action. This appears to be in breach of international standards.[43]

Apart from that, the defendants and their lawyers had access to the case file materials. However, given the large volume of the bill of indictment (it consists of 12 186 pages) weighing about 60 kg,[44] the defendants and their lawyers were physically deprived of the possibility to have it at hand during the trial and, therefore, to use it. The court refused the request to keep the bill of indictment in the courtroom.

3.2.3 Right to be assisted by a lawyer of his own choosing

As a result of the defendants' transfer from one region to another, and also due to long investigation procedures, defendant Mr. L. (defendant no. 6) appointed a lawyer from Sverdlovsk region when he was detained there. For procedural reasons, the court refused to appoint her as a legal aid lawyer at the stage of the trial, when this accused no longer had the means to finance his defence. At the same time the trial court, notwithstanding the defendant's objections, appointed a legal-aid lawyer who was not familiar with the case. This decision had inevitably a negative impact on the efficiency of the legal aid provided.

3.2.4 Translation

The defendants Mr. V. (defendant no.3) and Mr. R. (defendant no.11), who are Azeris, received a translation into Azeri of the bill of indictment, using the Cyrillic alphabet, and without asking them in which script they would like to receive it (Transcript, pp. 14, 36). In court they stated that they do not master Azeri in its Cyrillic script form, but in its Latin script. Upon filing a petition during the preliminary court hearing (Transcript, p. 36), Mr. V. (defendant no.3) received part of the bill of indictment in the Latin script version of Azeri (659 pages), which included the charges that were brought against him (Transcript, p. 41). Moreover, the court deemed that Mr. V. (defendant no.3) and Mr. R. (defendant no.11) master the Cyrillic script version of Azeri, as they attended school in Azerbaijan at a time when such script was in use there (Ruling of 1 June 2015, pp. 12-13)[45].

[43] *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, 16.02.2000; *Natunen v. Finland*, no. 21022/04, §§ 39-43, 31.03.2009; *Pichugin v. Russia*, no. 38623/03, §§ 207-213, 23.10.2012.
[44] 12 186 pages x 5 g (weight of one page) = 60,930 kg.
[45] Article 220 § 6 and Article 18 § 3 of the Code of Criminal Procedure prescribes that the defendant be given a translation of the bill of indictment "into the language of which he has a good command".

It should be noted that during all court hearings an interpreter was present who knows Azeri. However, he was at a distance of 3-4 meters from the "aquarium", where Mr. V. (defendant no.3) and Mr. R. (defendant no.11) were held, and translated into Russian only if the defendants said something in Azeri. Therefore, he did not translate into Azeri anything of what other trial participants said. Apparently, the defendants in question have a good enough command of Russian to be able to understand what is happening in court. They also sometimes communicated with the court without the aid of the interpreter. However, in cases of not understanding something, they apparently had no possibility to resort to the interpreter in real time. However, the given defendants did not file a relevant petition, nor did they file any complaints about the quality of the interpreter's work.

3.2.5 Conduct of court proceedings

The conduct of the court raises questions as to its impartiality. In this respect, the defence complaints that, during the examination of the victims, on a number of occasions, the court did not allow the defense to pose important questions to witnesses, for example, concerning the grounds on which the OMON officers came to the conclusion that mass riots had taken place, instead of a peaceful protest against widespread torture and extortion. In the court's view such questions are not related to the case. Furthermore, the court oftentimes helped the victims reply to inconvenient questions, for instance "… you do not recall, indeed a lot of time has passed since then…".

Two witnesses, investigators Mr. Y. and Mr. P., were examined by the court only upon a petition by the prosecutor after the court had refused to examine them on request of the defence. The court also dismissed several petitions to summon a number of witnesses (for example, former deputy head of the FSIN, Mr. Petrukhin) referring to absence of information about their address etc. On the other hand, the court examined many defence witnesses who appeared in court (including members of Prison Monitoring Commission, members of the Presidential Human Rights Council, former prisoners of Colony no. 6 etc.)

During the adjudication of the case the court removed 3 defendants from the courtroom (defendants nos, 4, 9 and 11) for breach of courtroom conduct rules. The grounds for the removal of defendants nos. 9 and 11 do not seem convincing, since, according to human rights activist, Ms. Prikhodkina V.Yu., defendant no. 11 fell asleep during the court hearing and snored, while the defendant no. 9 asked to go to the toilet, saying that he could not endure. In the light of case-law of the ECtHR, this can be assessed as a violation of the right to a fair trial in respect of these

defendants (see *Idalov v. Russia* [GC], No. 5826/03, §§ 167-182, 22.05.2012)[46]. All other defendants were present during court hearings. If one of the defendants was absent the court postponed the hearing.

The victims reported to the court only on the days when their examination was scheduled. It was reported that after the questioning the victims immediately leaft the courtroom and were not summoned to the court anymore. Because of that the defendants were deprived of the possibility to ask the victims further questions that could have occurred to them while a next victim was being examined. Moreover, as stated by lawyer Ms. Kalinina, her petition about having the victims stay in the courtroom after their examination, or the petition about a second – clarifying – examination of any victims, were rejected by the court without any given reasons.

The court also dismissed the request to the prosecutor to name in advance the witnesses to be examined at the next court hearing, which made it impossible to prepare thoroughly for their questioning. This kind of situation is problematic in light of Article 6 § 3 (b) of the Convention, which guarantees the right to have enough time and facilities to prepare one's defense.

3.2.6 Conditions in the courtroom

The defendants were held in an "aquarium", with no tables. This made it also difficult for them to take notes, use documents for the defense (put them in a particular order etc.). Lastly, the defendants constantly complained that they cannot hear everything that the trial participants are saying from behind the glass. This seems also problematic.

3.3 The debates at the court

From 5 to 9 February 2018, the Chelyabinsk Regional Court held a debate of the parties. Prior to the start of the debate, the defence requested permission for the defendants, who had been previously removed from the trial by the court before the end of the debate due to the breach of order in court sessions (no. 3, no. 4, no. 11)[47], to participate in the debate. The court refused to satisfy this petition referring to the lack of grounds for the return of the defendants.

[46] From 5 to 9 February 2018, the Court held a debate of the parties. Prior to the start of the debate, the defence requested permission from the defendant, who had been previously removed from the trial by the court before the end of the debate due to the breach of order in court sessions to participate in the debate. The court refused to satisfy this petition referring to the lack of grounds for the return of the defendants.

[47] The grounds for the removal of defendants no. 11 and no.9 do not seem convincing, since violations of the procedure for holding a court hearing, according to human rights activist V.Y. Prikhodkina, it was

3.3.1 Position of the public prosecutor

On 5 and 6 February 2018, the prosecutor read out her speech (earlier, due to the fact that prosecutor Garin had retired, he was replaced by prosecutor Aflitonova). She insisted that the defendants had committed the crimes they were accused of, i.e. that on 24th and 25th of November 2012, there had been mass disturbances in and around the correctional facility no. 6 (further: IK-6), accompanied by resistance to the authorities (using objects as weapons: stones, sticks, bottles, etc.) and destruction of property, and that the defendants had organized or participated in them. Despite the fact that all the defendants denied their guilt in court, the prosecutor considered their guilt to be fully proven by the set of evidence collected in the case.

In substantiating the fact that the mass riots took place, the prosecutor referred to:

- Documents according to which large forces of OMON were used to ensure public order in the case of mass gatherings of citizens, and 8 OMON officers received injuries qualified as minor harm to health;
- Video recordings of the events that were collected by the investigation authorities (which show a crowd of prisoners in the territory of the detention corridor of the colony, bent rods of fences of local areas, open doors of these areas, prisoners standing there shouting "AUE!" (Arrestant-Urkagan Unity), prisoners on the roofs of buildings with banners, a crowd of people near the colony, one of whom hides a bat under his jacket, etc.);
- Undermining the functioning of IK-6 and non-compliance with the legal requirements of the administration (cancellation of the “open doors day”; refusal to eat, to go to divisions, to get off the roofs of buildings, etc.);
- Damage to the property of IK-6 (mainly locks of local stations and broken video cameras) and to the property of the Kopeysk city police (2 damaged police vehicles);
- Documents according to which 15 bus links running along the route near IK-6 were cancelled;
- Testimonies of witnesses and victims, as well as confessions of four defendants, which were given at the investigation stage.

The prosecutor emphasized in her speech the role of human rights activist Oksana Trufanova in the organization of mass riots due to the fact that she urged the gathered at the correctional facility no. 6 not to disperse, otherwise all the prisoners would be "beaten up".

expressed in the fact that the first defendant fell asleep during the court hearing and snored, and the second asked to go to the toilet, saying that he could not bear it. In light of the practice of the ECtHR, this can be assessed as a violation of the right to a fair trial in respect of these defendants (see Idalov v. Russia [GC], no. 5826/03, §§ 167-182, 22.05.2012).

According to the prosecutor, the riots were aimed at removing the colony's leadership from its management, changing the regime (i.e. instead of a colony under control of the administration, prisoners tried to create a colony, which is informally controlled by the leaders of the criminal world). At the same time, she noted that, based on the disposition of Article 212 of the Criminal Code of the Russian Federation, the motives and objectives of the organizers and participants are not relevant to the qualification of this crime.

The prosecutor also analysed the evidence collected against each of the defendants. She considered all the evidence of their guilt to be reliable, in particular, the testimony of victims (OMON officers) and witnesses of the prosecution, since, according to the prosecutor, no grounds for the defendant's defamation had been established.

In the case of witnesses of the prosecution (mainly IK-6 prisoners who were cooperating with the prison administration, so-called "activists") who changed their testimonies in court, the prosecutor called on the court to base the verdict on their testimonies given during the investigation, as they were credible. The prosecutor considered the statements of these witnesses about forced testimonies or not given testimonies (signed without reading or signed a blank sheet of paper, etc.) as unconvincing and unfounded. The prosecutor also noted that during the events of 24th and 25th of November 2012 these prisoners (activists) were taken out of the residential area of the colony (where other prisoners were staying) and placed in the administrative building where they lived for more than a month after the events for security reasons. According to the prosecutor, the change in their testimony about the presence of mass riots in IK- 6 and the role of the defendants in these events is explained by the fears of these witnesses for their safety. The fact that the activists lived separately from other prisoners also proves, according to the prosecutor, that the events inside the colony were not peaceful.

The prosecutor explained the changes in the confessions of those defendants who admitted their guilt during the investigation by their desire to avoid responsibility for the committed crimes. As to the explanations of the defendants that the confessions were given under pressure from the investigation bodies and in exchange for changing the preventive measure in the form of detention, the prosecutor considered them unconvincing, i.e. unreliable. At the same time, the prosecutor referred to the fact that lawyers were present during the interrogation, no remarks were made in the interrogation protocols and other investigative actions (confrontation bets, on-site testimony checks, etc.), and the defendants did not appeal against the allegedly illegal actions of the investigator.

As to the sentences required, the prosecutor requested the court to consider the voluntary acknowledgement of guilt of the defendants no. 12 and no. 15, as well as the confession of guilt

in the preliminary investigation and active contribution to the investigation by the defendants no. 16 and no. 17 as mitigating circumstances.

At the end of her speech, the prosecutor asked the court to impose the following custodial sentences on the defendants:

(i) Regarding those who were detained at the time of the events:

- 8 years to each of the defendants no. 1 to 10 on charges of committing a crime under part 1 of article 212 of the Criminal Code (organization of mass disorders);
- 9 years against the defendant (11) on charges of committing crimes under part 1 of article 212 (organization of mass disorders) and part 1 of article 321 of the Criminal Code (disorganization of the activities of closed institutions);

(ii) Regarding those who were in the proximity of the colony at the time of the events:

- On charges of committing a crime under part 2 of article 212 (participation in mass disorders) - 5 years to the defendants no. 12 and no. 13 and 5 years 5 months for the defendant no. 14;
- On charges of crimes under part 2 of article 212 (participation in mass disorders) and part 1 of article 318 (use of violence not dangerous to life or health against a representative of the authorities) - 6 years for the defendants no. 15 and no. 16;
- On charges of crimes under article 212, part 2 (participation in mass disorders) and article 318, part 2 (use of violence dangerous to life or health against a representative of the authorities) - 7 years against the defendant no. 17.

The prosecutor also asked the court to jointly charge the defendants (all of them) to pay RUB 250,540 (about 6,250 EUR at the time) as a compensation for damage, caused to IK-6 and RUB 9,950 (about 250 EUR at that time) as a compensation for damage, caused to the police of Kopeysk.

It should also be noted that the prosecutor did not mention the "Report on the results of the public investigation into the circumstances of the events that took place in the IK-6 (Kopeysk)" of 06.12.2012[48], prepared by the members and experts of Presidential Council for Civil Society and Human Rights, which provides the court with an alternative point of view on the absence of mass disorder and the conduct of peaceful protest actions by the prisoners of IK-6 against the practice of torture, extortion and humiliation.

[48] URL: <http://web.archive.org/web/20160417230547/http://president-sovet.ru/documents/read/249/>.

3.3.2 Position of the defendants

On 7 and 9 February 2018, the defendants' lawyers took the floor in the debate, and then the defendants themselves began to speak.

According to the position of the defence, there were no mass disturbances in IK-6 on 24-25 November 2012. There was a peaceful protest action against gross violations of the rights of prisoners (the practice of extortion, slave labour, humiliation, beatings and torture), with the criminal inaction of the supervisory authorities and bodies, which did not respond to the massive and well-founded complaints of prisoners for a long time. A peaceful spontaneous assembly of relatives and acquaintances of the detainees outside the colony was dispersed, with a disproportionate use of force by OMON officers. In this regards, the defence referred to the Presidential Council for Civil Society and Human Rights report. It also noted that even if it is assumed that incidents involving the use of violence by individuals occurred near IK-6 or by prisoners of IK-6, it cannot be said that they were of a mass nature, and therefore no mass disturbances took place.

The most objective evidence, according to the defence, are the videos attached to the case file, which show that there were no signs of pogroms in the colony and that the convicts behave calmly. There were no weapons in the hands of the convicts or on the ground; there were no traces of arson and damage (except for broken arches on the gates of local sections and several bent rods). Convicts simply stand around and talk peacefully among themselves. You can see the colony staff, which is also freely moving inside the IK-6, without any fear for their health and life. Inmates do not use any violence against them. One can see that beyond the colony’s territory no one takes illegal actions against OMON. There is no video confirmation of the car hitting OMON and causing bodily harm to them. There are also no traces of sticks, fittings, stones, bottles, etc.

The defence considered testimony of the prison staff to be unreliable, as they are interested in concealing the true reasons for the protest action (systematic torture and extortion by the administration staff).

The defence referred to the judgment of the Kopeysk City Court of 22.12.2014 and 05.06.2015 in respect of the former head of IK-6, Mr. Mekhanov, by which he was found guilty of abuse of power due to the fact that he "developed a system of illegal collection of money and other material values from convicts and their relatives in favor of the IK-6 under the guise of providing charitable assistance". He was also found guilty of a number of episodes of extortion of money from the IK-6 detainees.

For the same reason, the testimony of the activist prisoners that mass riots took place (they participated in these crimes and were dependent on the administration) is inaccurate. In addition, most of them changed their testimony in court, which, in the view of the defence, was due to the fact that they were no longer under pressure from the administration. According to the defence, the convicted activists hid during the events and for a month afterwards in a separate administrative building of the colony, not because someone started beating them, but out of fear of being beaten up for their crimes against prisoners.

The defence also contested the certificate of November 13, 2013, according to which the amount of material damage caused by IK-6 was RUB 250,540 (about EUR 6,250 at the time). Most of the damage affected the fences in the residential area of the colony. However, as it was established in the court session, these metal structures were not on the balance sheet of IK-6 and were installed at the expense of the inmates of IK-6. Only a few bars and temples with padlocks were damaged in the fences. The prisoners themselves repaired these demolitions on 27.11.2012. The defence also referred to the fact that the fences enclosing the local precincts were erected by the administration illegally.

As for the people gathered near IK-6, the defence claimed that they came to the “open doors day” (to meet with prisoners) at the invitation of the administration. As a result of the cancelation of the “open doors day” (at first without any explanation, and with contradictory reasons, such as quarantine, trainings, football), the management of the IK-6 provoked the relatives to feel justified anxiety for their relatives in the correctional facility. In this regard, it is clear why they did not diverge. The arrived OMON not only agitated, but also frightened the relatives. In addition to relatives, curious citizens joined the crowd to see what was happening there. Also, people who were passing by in cars, but had to stop due to the fact that the road was blocked by the police cordon approached the crowd. The citizens' assembly was peaceful; they were unarmed, so the demands by OMON (to diverge) were illegal. The police cordon on the road was also illegal, as the corresponding order could only be given by the head of the Department of the Ministry of Internal Affairs of the Chelyabinsk region (part 2 of article 16 of the Federal Law of the Russian Federation "On Police"), and he did not give such an order (as it was established, such an order was given by Mr. Shchegol, deputy head of the IK-6). In addition, OMON was able to block off the doors of IK-6 gateway or IK-6 headquarters in case of urgency, without blocking the road. The defence also referred to the documents, according to which the territory adjacent to IK-6 is a municipal territory, and therefore there were no established restrictions on the presence of citizens there during the events.

The defence noted that none of the witnesses stated receiving a call from IK-6 on his cell phone and being involved into the riots. In addition, a number of defendants, who were at large during the events, had their cell phones and SIM cards confiscated, phone calls were detailed, contact lists were checked, etc. As a result, it was established that none of the other defendants (as well as other convicts) who had been in IK-6 had been in touch.

According to the testimonies of the prosecution's witnesses, people outside the IK-6 threw stones, pieces of ice, bottles, sticks, iron fittings, etc. at the OMON all night long. However, the video, which was also recorded during the whole night by the OMON and IK-6 officers, did not contain any fragments of anyone throwing any object at the employees, or attacking them, or causing bodily injuries, or insulting or threatening them, etc.

The defence noted the fact that, according to the prosecution, citizens wished to enter the territory of IK-6. But in court, the interviewed witnesses of the defence showed that no one was going to do so, and that the relatives, who arrived at the open house, tried to talk to the management of IK-6. The video shows that the relatives conveying their request to meet with the head of IK-6. At the same time, the video shows the OMON officers moving towards the citizens and accompanying them with batons on their shields, without a reason and without warning about the use of physical force, and then running at the people.

According to the map of the area attached to the case file, this beating occurs at a distance of 150-200 meters from the entrance to IK-6. So it is out of question that citizens wanted to penetrate the IK-6. This also follows from the testimony of the defence witnesses, who explained that they were passing by and did not commit any illegal actions, but who were also beaten by OMON. It follows from the case file that more than 60 persons complained about beatings by OMON. As not all of them reported to the police, there were supposedly much more people who were beaten up.

In the opinion of the defence, the criminal case was initiated to cover up the crimes committed by the OMON officers. The defence also noted that in their testimonies, OMON officers indicated that they had gone to IK-6 in order to prevent mass disturbances, and that they had achieved this goal, according to their own testimonies. Consequently, there was no mass disorder.

The defence also challenged, among others, the reports and other documents according to which the OMON officers received injuries.

The defendant no. 17 noted that the use of confessions obtained as a result of violation of Article 3 ECHR in criminal proceedings violates the right to a fair trial (he referred to paragraph 89 of the

ECtHR judgment of 06.10.2015 in the case of Turbylev v. Russia). He described his conditions of detention at the investigation stage (non-performing toilet, stench in the cell, lack of fresh air), which, in his opinion, violates the guarantees of Article 3 of the Convention. He explained his confession by his desire to stop his detention in inhuman conditions and return to his young wife and minor child. He also pointed out that the causal link between his confessions and the termination of his detention was clear, as he was released immediately after he had given them, and asked the court to declare his confession inadmissible as evidence.

Also, this defendant noted that according to the practice of the ECtHR, criminal responsibility for expressing one's opinion and exercising freedom of assembly (even if any unlawful acts were committed in their course) should be proportionate. He noted that the ECtHR found disproportionate and in violation of the guarantees of the ECHR the punishment of 2 years and 3 months' imprisonment for an offence under Article 212 of the Criminal Code (mass riots), ordered for participation in a public event on Bolotnaya Square in Moscow in May 2012[49]. Therefore, in his opinion, the sentences requested by the prosecutor cannot be recognized as proportional in any case.

In view of the above, all the lawyers and defendants asked the court to pass an acquittal verdict and to refuse to satisfy civil claims.

3.4 The verdict

On 12 April 2018 the court issued its judgment. The court excluded as ill-founded the following circumstances imputed on the defendants in the indictments act (pp. 125-126):

- The use by the convicts of objects as weapons during mass riots inside the colony,
- Preparation by the convicts of Molotov cocktails,
- Involvement in mass riots by defendant S.S.A. of his mother, by defendant A.A.R. – of his parents, by defendant B.V.F. – of his daughter,
- Visits by Ms. Trufanova (a journalist and human rights activist) to Colony No. 6 until 24 November 2012[50];
- Participation of defendant M.K.B. in preparation of the banners used during the mass riots,
- Participation of defendant A.A.R. in the breakage of a gate inside the colony

[49] judgment of 04.10.2016 in the case of *Yaroslav Belousov v. Russia*, complaints Nos. 2653/13 and 60980/14.

[50] Trufanova, who was a local parliamentary assistant at the relevant time, received the authorization to enter to the colony in order to discuss with the director on the ongoing event.

- Coordination by the defendants of actions with the people outside the colony by mobile phones,
- Negotiations with law-enforcement agencies by several defendants,
- Climbing on the roofs by defendants A.A.R., M.K.B. and N.Y.N. and urges from there to other convicts to take part in mass riots.

The court also excluded such qualifying feature of mass riots imputed on the defendants as armed resistance to public officials since the bottles, stones, sticks, etc. used by the crowd outside the colony cannot be considered as "arms" within the meaning of Article 212 of the Criminal Code (judgment of 12 April 2018, p. 130). Finally, the court excluded such qualified feature imputed on the defendants as destruction of property since, according to the court, it is covered by the concept of "pogroms" within the meaning of this Article (ibid.).

Nevertheless, the court found all the defendants guilty of organizing of and/or participation in mass riots attended by violence (against convicts who did not want to participate in mass riots inside the colony and public officials outside the colony) and pogroms (i.e. destruction and damaging of property of the colony and damaging police cars). The court dropped the charges against Mr. R.A.S. under Article 321 § 1 of the Criminal Code (disruption of penitentiary facilities' work) as well as against Mr. L.S.V. and Mr. P.M.A. under Article 318 § 1 of the Code (violent acts not endangering life or health against a public official) since the imputed actions are fully covered by Article 212 of the Code (mass riots). However, in addition to participation of mass riots the court found Mr. K.D.V. guilty of a criminal offence under Article 318 § 2 of the Criminal Code (violent acts against a public official endangering life or health) in relation to the charge of driving a car into a line of OMON officers.

In its judgment the court described the charges in respect of the defendants and summarized the evidence presented by the prosecution and defence. Its analysis of the evidence appears rather short (judgment of 12 April 2018, pp. 113-132). The court found the testimonies of the prosecution witnesses reliable, even though they refuted them at the hearings. To the contrary, the testimonies of the defence witnesses to the effect that there had been a peaceful preset action in the Colony, a system of extortion and torture in the colony, etc., the court found contradictory and unreliable. For example, most witnesses testified that it was not possible to send complaints from the colonies about extortion, beating etc. But the court referred to a few examples when the convicts succeeded in sending such complaints from the colony through lawyers and members of the Public Monitoring Commission and held that it was possible. The court found unproved the defendants' allegations about systematic torture and extortion, given that the law-enforcement agencies had not reacted to such complaints or issued decisions not no open criminal cases (in particular, into the murder of Mr. Korovkin). The judgment against the

colony director, Mr. Mekhanov, did not establish any cases of physical violence or ill-treatment of convicts, therefore, according to the court, the actions of the defendants could not be considered as taken in a state of necessity. The court did not mention the Report on fact-finding mission prepared by the Presidential Human Rights Council in 2012.

Taking into account their previous convictions, the court imposed on the defendants the following sentences (judgment of 12 April 2018, pp. 140-143):
(1) Mr. A.A.R. – 4 years and 1 day,
(2) Mr. B.V. F – 4 years and 3 days,
(3) Mr. V.Y.I. – 4 years and 3 months,
(4) Mr. K.N.R. – 4 years and 3 months,
(5) Mr. K.A.S. – 4 years and 2 months,
(6) Mr. L.O.M. – 5 years,
(7) Mr. M.K.B. – 4 years and 6 months,
(8) Mr. N.Y.N. – 4 years and 6 months,
(9) Mr. S.S.A. – 4 years and 6 months,
(10) Mr. T.Y.F. – 4 years and 3 months,
(the above defendants were convicted of organization of mass riots);
(11) Mr. R.A.S. – 4 years and 10 months,
(12) Mr. A.R.F. – 3 years and 11 months,
(13) Mr. G.S.V. – 3 years and 7 months,
(14) Mr. K.A.A. – 3 years and 4 months,
(15) Mr. L.S.V. – 3 years and 3 months,
(16) Mr. P.M.A. – 2 years and 8 months,
(the above defendants were convicted of participation in mass riots);
(17) Mr. K.D.V. – 3 years and 6 months (on probation),
(the above defendant was convicted of participation in mass riots) and violent acts endangering life or health against a public official).

4. Assessment of the respect of fundamental rights of the accused

4.1 Compatibility of prosecution and sentences with international law

The judicial treatment of the case ignores the state of necessity in which the detainees of the colony were held, given the routine use of torture and the climate of terror prevailing in this facility, which was favored by the impunity enjoyed by the perpetrators.

In this respect, the indictment act and the conviction judgment must be read in the light of the prohibition of torture, which constitutes a peremptory norm of international law (jus cogens) and as such, it is not subject to derogation. This prohibition includes an obligation on the State to take the necessary protective measures with regard to persons at risk of torture. Secondly, under international law, in the presence of credible reports of ill-treatment, the authorities are under an obligation to conduct prompt and thorough investigations that will lead to the identification and punishment of those responsible.

4.1.1 The Court's formal approach to dismissing allegations of torture

The Court dismissed the allegations of torture and ill-treatment as unfounded after a summary examination of the facts of the case and based in particular on the absence of court decisions finding such treatment.

This reasoning was made possible by the authorities' failure to conduct thorough investigations into the operating conditions of Colony No. 6. Investigations into regular ill-treatment have been very limited in scope and have not aimed to establish precisely the practices of torture, which were massively reported in the complaints of detainees. The sentences imposed, without any proportion to the seriousness of the facts, concerned only the prison director and concerned only peripheral aspects of the case. In this respect, light and suspended sentences, confined to peripheral aspects of the case, clearly disregard the obligations to identify and to punish those guilty of torture under Article 3 of the ECHR[51].

The authorities' failure to conduct a thorough and effective investigation into the practices of Colony No. 6 therefore affected the conditions under which the criminal responsibility of the 17 accused was assessed.

These conditions were, however, firmly established. In its investigation report of 11 March 2013, the Presidential Human Rights Council pointed out "massive, systematic and flagrant violations of the rights and interests of detainees", concluding that "all of these circumstances have led to a situation in which (...) the safeguarding of the rights and interest of the persons carrying out a sentence in the prison IK-6 was impossible". This situation had "consequently led the prisoners to carry out a protest action, which received public attention (...) throughout the country". The Council had detected a system of extortion and widespread use of violence, involving the prison management, guards and prisoners of the affiliated with the administration. In addition, it strongly criticized the shortcomings of the investigation of the death of an inmate during the

[51] See especially Saba v. Italy, no.36629/10, 01/07/2014

summer of 2012, allegedly due to AIDS, but attributed by the Chelyabinsk Public Monitoring Commission to a beating by the penitentiary staff. Beyond this case, the PMC regularly alerted about the ill-treatment in this colony.

The Court's very formal approach in considering that the accused's complaints were unfounded ignores the procedural requirements applicable under international law to defensible allegations of torture, which require a thorough examination. Such rules were necessary in the context of the examination of the condition of extreme necessity (condition of exemption from criminal liability, Article 39 of the Criminal Code)[52].

4.1.2 The disproportionate repression of the disobedience movement in the light of the tolerance shown towards the regular practice of torture

In the present case, the testimonies demonstrated that the population incarcerated in Colony No. 6 lived in a climate of terror, due to the routine and organized use of torture by the prison management or “activists” under its supervision, mainly to operate a system of racketeering the families of prisoners.

It is also established that the persons detained have activated all the mechanisms provided by the Russian law to prevent such practices, and that they have proved to be totally inopportune. The PMC has made numerous reports on the use of torture in this facility, and even organized a conference on the subject three months before the events. A State Duma deputy testified that in spring 2012 he received information on massive human rights violations in this prison and requested the Chelyabinsk prosecutor's office on the matter, which refuted all allegations. The day after the events, the Governor himself reported that he had been informed of allegations of this kind. In other words, the mechanisms available to detainees exposed to torture were either unable to stop the ill-treatment due to the lack of reaction of the authorities, or because the authorities were directly involved in the incidents.

Consequently, in the circumstances where the detainees had no other choice but to take action to attract the attention of the outside world and generate media coverage of their fate, in order to stop the situation of serious danger that they were in. Such action could only take the form of a mobilization of collective disobedience, given the control exercised over them by the prison administration.

[52] Similarly, the Court refrained from analyzing allegations of ill-treatment during the investigation phase by some defendants.

Thus, seeking to punish criminally an action to which detainees were forced because of the total dysfunction of the institutional and judicial control mechanisms is tantamount to the authorities invoking their own turpitude.

Secondly, the considerable resources deployed to punish detainees for acts that have caused limited harm are in stark contrast to the minimal judicial treatment of the exceptionally serious crimes attributed to the personnel of Colony No. 6.

In these circumstances, the judicial treatment imposed on the accused seems likely to cause them to feel arbitrary, unfair and powerless, in conditions that seem contrary to the prohibition of inhuman and degrading treatment.

4.1.3 The failure to take into account freedom of expression and freedom of assembly

The court failed to deal with the argument of the defense that the actions of the defendants were protected by Articles 10 and 11 of the Convention, which guarantee freedom of expression and freedom of assembly. This appears to be a fundamental shortcoming of the judgment. Even assuming that corpus delicti of mass riots has been committed, the imposed sentences do not appear proportionate in the light of case law of the ECtHR. For instance, in the case of *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, §§ 180-183, 04.10.2016, the ECtHR found that 2 years and 3 months of imprisonment was a disproportionate sanction for participation in mass riots in the context of realization of freedom of assembly.

Secondly, freedom of assembly also protects illegal gatherings, as long as they are non-violent. In addition, violence or disorder that is incidental to the holding of a peaceful assembly will not remove it from the protection of Article 11. It is the intention to hold a peaceful assembly that is significant in determining whether Article 11 is applicable.

In this respect, it should be recalled that "it is one of the precepts of the rule of law" that "citizens should be able to notify competent State officials about the conduct of civil servants which to them appears irregular or unlawful", and that violations of the rights of the persons concerned are assessed on this basis [53].

In the present case, it is established that the collective movement was intended to make the outside world aware of the situation prevailing within the colony and the intervention of an independent prosecutor. It is with this objective in mind that banners were unrolled from the roof of the colony. This is reflected in the report of the Presidential Council for Human Rights and in

[53] *Medžlis Islamske zajednice Brčko and o. v. Bosnia, no.17224/11,* 27/06/2017

the press release issued by the PMC on 25 November 2015, and in the numerous media reports made at the time of the events. Such an approach must be regarded, in the particular circumstances of the case, as legitimate and justifying enhanced protection of the rights of the persons concerned.

In addition, various authorities, such as the PMC, the Commission of the Presidential Council for Human Rights, the Governor of the Region, pointed out immediately after the events that the protest movement of the detainees had taken place in a peaceful manner.

Overall, taking into account the context within the institution, the objectives pursued by the prisoners, the modus operandi of the collective movement, the provisions of Articles 10 and 11 of the ECHR left little room for criminal proceedings. A fortiori, the sentences handed down appear to be highly disproportionate to the authorities' objective of maintaining order.

4.2 Pressure on some of the defendants

The present observation mission did not have the means to examine retrospectively the allegations of ill-treatment made by some of the defendants during the preparatory phase of the criminal proceedings. However, it should be noted that according to recognized human rights organizations, some defendants were pressurized with the aim of forcing them to give confession statements. As a matter of fact, defendants who served their sentence in correctional colonies (convicted defendants) were moved to remand prisons in other regions, so called “torture regions”.[54] The term of their “business trip” often exceeded the two-month period set by the law. In addition, during the investigation the defendants were often kept in inadequate conditions of detention.

4.3 Grounds for pre-trial detention

Some defendants have been held in detention on remand for over a year. Every time, the court gave the same formal reasons for extending their detention, which in the ECtHR’s view represents a structural problem in the Russian legal system (see *Zherebin v. Russia*, no. 51445/09, § 80, 24.03.2016, in respect of a detention on remand lasting less than 8 months). Therefore, with regards to these defendants there is a possible breach of Article 5 § 3 of the Convention (right to trial within a reasonable time or to release pending trial).

4.4 The overall fairness of the trial

It seems that the judicial authorities have been driven by a formal conception of the rights of the defence. The previous pages report violations of the procedural rights of the accused during the trial. Among the noted shortcomings, three are of such a nature and/or magnitude that they appear to have irreparably vitiated the overall fairness of the trial.

4.4.1 The turnover of lawyers

The quality of the defence has been greatly affected by the turnover of lawyers in the case, due in particular to the length of the proceedings and the frequent remoteness of the defendants.

The conditions of the conduction of the preparatory proceedings and the trial deprived the accused of effective representation. The quality of criminal defence has been significantly affected by the repeated change of lawyers (almost all of whom are remunerated through the legal aid system). As a result of these changes, the appointed lawyers were not involved in the previous phases of the investigations and were not aware of the case. This inevitably affected the practical possibilities of requesting further investigations during the preparatory phase of the trial and of ensuring an effective defence at the hearing. Given the levels of remuneration under the legal aid system, the newly appointed lawyers were not in a position to analyze the 12,993 pages of the indictment - although they were very repetitive - and the very numerous documents in the file (more than a hundred volumes) under adequate conditions, i.e. in a way that makes it possible to exploit the favorable elements and point out shortcomings and contradictions.

The authorities are directly responsible for these repeated changes of lawyers, since they essentially result from the way investigating authorities and the judicial authorities conducted the proceedings. First, the repeated change of lawyers was a result of the frequent transportation of the defendants from Chelyabinsk to Sverdlovsk Region at the investigation stage. No tangible justification has been given for this choice.

Second, the extreme staggering of the trial (under conditions raising serious questions from the point of view of the right to be judged within a reasonable time) also contribute to the high turn-over of lawyers. In addition, it inevitably forced lawyers to intermittently defend their clients and substitute for one another.

4.4.2 Summoning of witnesses and access to relevant evidence

The principles of adversarial proceedings and equality of arms have been violated due to the manner in which witnesses were summoned and the lack of access to relevant evidence

The absence of any notice to the witnesses summoned to a particular hearing prevented any meaningful preparation of the hearings. Given the number of witnesses and the volume of the file, the accused cannot be regarded as having had an adequate and sufficient opportunity to challenge the testimony of the prosecution and to question the witnesses. This process has led to a strong imbalance between the parties, with the prosecutor's office having the possibility to prepare the interrogations in advance. In addition, according to lawyers, during the examination of the victims the court, on a number of occasions, did not allow the defence to pose important questions to them.

Similarly, in such circumstances, the accused cannot be regarded as having had access to the relevant evidence, since the documents of the criminal proceedings concerning ill-treatment in Colony No. 6 were not included into the case file. Such an approach has led to the obliteration of an essential aspect of the judicial debate and obstructs the determination of the truth.

4.4.3 Participation of the accused in the proceedings and confidential communication with their lawyers

The configuration of the hearing room and especially the glass cabin did not allow for the effective participation of the accused in the proceedings and confidential communication with their lawyers

The impact of bias in the way the debates were conducted was amplified by the configuration of the courtroom. Due to their placement in a glass box, the detained accused could not communicate confidentially with their lawyer. The report points out that the accused have repeatedly reported that they cannot hear the exchanges because of the glass walls. However, no reasonable safety considerations required the use of such a box. With regard to accused persons who were not in custody, it appears that the confidentiality of exchanges with lawyers was weakly ensured, due to the positioning of the escort guards.

Ultimately, the breaches of essential procedural requirements that have accumulated since the beginning of the proceedings have deprived the accused of the opportunity to object, under acceptable conditions, to the charges brought against them by the prosecution.