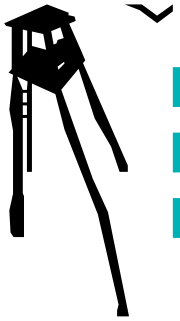
INTERNATIONAL MONITORING MISSION

ON THE TRIAL OF PRISONERS WHO PROTESTED AGAINST TORTURE AND EXTORSION IN KOPEYSK PENITENTIARY COLONY NO. 6, RUSSIA

INTERMEDIARY REPORT

22 JUNE 2016



PRISON LITIGATION NETWORK

Authors:
E. Mezak, A. Laptev.
Editors:
A. Bartolini, H. Suremain, J. Krikorian
Design:
K. Potapov

@ Prison Litigation Network, 2016

www.prisonlitigation.org

With the financial support of the
Swiss Federal Department of Foreign Affairs

PRISON
LITIGATION
NETWORK

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

TABLE OF CONTENT

GENERAL OVERVIEW OF THE TRIAL

THE PARTIES

Seventeen persons stand trial:

1. Mr. A. A. R. (defended by privately retained lawyer Mr. Kharlanov V. L., Transcript of preliminary court hearing (hereinafter "Transcript", p.3)[1]

2. Mr. B. V. F. (defended by legal–aid lawyer Ms Vladova E.E., Transcript, p.4)

3. Mr. V. Y. I. (defended by legal–aid lawyer Ms Nikitina L. A., Transcript, p.4)

4. Mr. K. N. R. (defended by legal–aid lawyer Ms Teryokhina M.S., Transcript, p.5)

5. Mr. K. A. S. (defended by legal–aid lawyer Ms Kotletsova L. A., Transcript, p. 5)

6. Mr. L. O. M. (defended by privately retained lawyer Ms Kalinina S. N., Transcript, p. 6)

7. Mr. M. K. B. (defended by legal–aid lawyer Mr. Kornev I. O., Transcript, pp. 6–7)

8. Mr. N. Y. N. (defended by legal–aid lawyer Ms Bakunina N. A., Transcript, p. 7)

9. Mr. S. S. A. (defended by legal–aid lawyer Mr. Matveyev V .A., Transcript, p. 8)

10. Mr. T. Y. F. (defended by privately retained lawyer Mr. Zhdanov B. S., Transcript, p. 9)

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

11. Mr. R. A. S. (defended by legal–aid lawyer Ms Maksimova V. G., Transcript, p. 8)

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

12. Mr. A. R. F. (defended by legal–aid lawyer Ms Karaput A. R., Transcript, p. 25)

13. Mr. G. S. V. (defended by legal–aid lawyer Ms Bayanova A.S., Transcript, p.11)

[1] *In the course of the investigation and of the court hearings the lawyers of the defendants changed frequently. Furthermore, even if the lawyer did not formally change, he/she was often replaced by the lawyer of another defendant upon an agreement between the lawyers and the client of the absent lawyer (see Table of lawyers' participation).*

14. Mr. K. A. A. (defended by legal–aid lawyer Ms Starochkina S. V., Transcript, p. 11)

    accused of committing a criminal offence under Article 212 § 2 of the Criminal Code (participation in mass riots);

15. Mr. L. S. V. (defended by legal–aid lawyer Mr. Belyavtsev V. M., Transcript, p. 12)

16. Mr. P. M. A. (defended by legal–aid lawyer Ms Kuznetsova N. V., Transcript, p. 10)

    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) of the Criminal Code.

17. Mr. K. D. V. (defended by privately retained lawyer Ms Mukhamadieva O. V., Transcript, p. 9),

    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) of the Criminal Code.

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. 6 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.

Two defendants are currently at liberty: Mr. P. (no. 16)[2] and Mr. K. (no. 17)[3] . Four defendants were also at liberty at the start of the trial: Mr. A. (no. 12)[4], Mr. G. (no. 13)[5], Mr. K. (no. 14)[6] and Mr. L. (no. 15)[7], Transcript, p. 2. However, during adjudication the judge changed their measure of restraint to remand in custody on the grounds that they did not appear in court without any valid reason. With regards to three defendants who were due to be released during these proceedings, as they had served their pre–existing sentences, the judge chose custody as a preventive measure for the given criminal case: Mr. T. (no. 10)[8], Mr. K. (no. 4)[9] and Mr. N. (no. 8)[10]. 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 regards to the other defendants such a measure as detention on remand was not chosen, as they continue to serve their pre–existing sentences. The defendants are detained in remand prisons of Chelyabinsk no. 1 (7 people) and no. 3 (also 7 people). Mr. K. (defendant no. 14) was recently arrested in Kopeysk and placed in remand prison no. 3 in Chelyabinsk, as he failed to report for the court hearings. However, the reasons of his failure to appear were valid (he did not appear due to illness, producing a medical certificate); he is currently in the medical ward of the remand prison, and already three hearings were adjourned, as he could not participate in them due to his health state (he was taken to the courthouse, where he complained about sharp pains in the kid-

[2] *He was in custody in connection with this criminal case during the investigation 25 April – 20 September 2013 (4 months 25 days), (Transcript, p. 10).*

[3] *He was in custody in relation with this criminal case during the investigation 17 March – 12 July 2013 (3 months 25 days), (Transcript, p. 9).*

[4] *He was in custody in connection with this criminal case during the investigation 10 July 2013 – 30 May 2014 (10 months 20 days), (Transcript, p. 25). During the trial he has been held in custody since 17 April 2015 (slightly over one year), (Transcript, p. 28).*

[5] *He was in custody in connection with this criminal case during the investigation 26 March – 12 July 2013 (3.5 months), (Transcript, p. 10). During the trial he has been held in custody since 21 July 2015 (approximately 10 months), source: defence*

[6] *He was in custody in connection with this criminal case during the investigation 1 August 2013 – 31 July 2014 (one year), (Transcript, p. 11). During the trial he has been held in custody since May 2016, source: Mezak E.*

[7] *He was in custody in connection with this criminal case during the investigation 10 June – 14 August 2013 (slightly over 2 months), (Transcript, p. 11). During the trial he has been held in custody since 29 October 2015 (approximately 7 months), source: defence..*

[8] *He has been in custody in connection with this criminal case since 24 February 2014 (over 2 years and 2 months), (Transcript, p. 9).*

[9] *He has been in custody since 4 March 2014 (over 2 years and 2 months), (Transcript, p. 5).*

[10] *He has been in custody since 8 July 2015 (over 10 months), (Transcript, p. 7).*

neys; the judge ordered an ambulance, whose medics found that he could not take part in the hearings) – source:defence.

There are 15 victims in this criminal case. Among them are 13 individuals, notably eight OMON (Special Purpose Police Unit) officers: (1) Mr. B. A. A.[11], (2) Mr. V. A. R.[12], (3) Mr. D. D. N.[13], (4) Mr. Z. D. O.[14], (5) Mr. L. A. S.[15], (6) Mr. M. A. E.[16], (7) Mr. S. A. S.[17], (8) Mr. T. A. V.[18]; two convicts: (9) Mr. A. P. A. A. P .A.[19] and (10) Mr. B. E. S. B. E. S.[20]; as well as (11) Mr. S. V. V. (Director of the Department for interaction with law enforcement authorities of the Kopeysk City District)[21], (12) Mr. S. S. G. (Head of the Kopeysk Police Department)[22], (13) Mr. P. P. P. (officer of the Kopeysk Police Department, driver of a "UAZ" car)[23]. Furthermore, two legal entities have been granted victim status, as according to the investigation, they suffered pecuniary damage during the riots: (14) Kopeysk Police Department (represented by Ms. Korenkova R. N.)[24] and (15) Penal Colony no. 6 (represented by Ms. Polyakova E. M.)[25]. The victims are 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.

[11] *«... an unidentified person, acting deliberately, with the aim to attack violently Mr. B., threw at least twice a stone toward the OMON officer, hitting the areas of the right leg and the left arm, thus using physical force that is not life– or health–threatening and causing physical pain», Decision on granting victim status, 06.12.2012 (vol. 3 pp. 143–144).*

[12] *«... unidentified persons, acting deliberately, with the aim to attack violently Mr. V., carried out an incursion directed at the OMON officer, hitting the area of the right leg, thus using physical force that is not life– or health–threatening and causing physical pain», Decision on granting victim status, 17.12.2012 (vol. 4 pp. 6–7).*

[13] *«... an unidentified person, acting deliberately, with the aim to attack violently Mr. D., carried out an incursion directed at the OMON officer, thus using physical force and causing physical pain», Decision on granting victim status, 06.12.2012 (vol. 4 pp. 34–35).*

[14] *«... an unidentified person, acting deliberately, with the aim to attack violently Mr. Z., threw at least once a stone toward the OMON officer, hitting the area of the head, thus using physical force that is not life– or health–threatening and causing physical pain», Decision on granting victim status, 17.12.2012 (vol. 3 pp. 172–173).*

[15] *«...unidentified persons, acting deliberately, with the aim to attack violently Mr. Lavrenchuk, threw at least twice stones toward the OMON officer, hitting the area of the right leg, thus using physical force that is not life– or health–threatening and causing physical pain», Decision on granting victim status, 07.12.2012 (vol. 3 pp. 199–200).*

[16] *«...an unidentified person, acting deliberately, with the aim to attack violently Mr. M., delivered at least once a blow to the area of the head with an unidentified item to OMON officer Murashkin, thus using physical force that is not life– or health–threatening and causing physical pain», Decision on granting victim status, 30.11.2012 (vol. 4 pp. 97–98).*

[17] *«...an unidentified person, acting deliberately, with the aim to attack violently Mr. S., delivered at least once a blow to the area of the body with an unidentified item to OMON officer Suldin, thus using physical force that is not life– or health–threatening and causing physical pain», Decision on granting victim status, 12.12.2012 (vol. 4 pp. 129–130).*

[18] *«...an unidentified person, acting deliberately, with the aim to attack violently Mr. T., threw at least once a stone toward the OMON officer, hitting the area of the right leg, thus using physical force that is not life– or health–threatening and causing physical pain», Decision on granting victim status, 06.12.2012 (vol. 4 pp. 62–63).*

[19] *«... it is established that during the mass riots Mr. A.P.A.A. suffered physical and moral harm», Decision on granting victim status, 15.04.2013 (vol. 5 pp. 78–80).*

[20] *«...it is established that during the mass riots Mr. B. E. S.B. suffered physical and moral harm», Decision on granting victim status, 20.12.2013 (vol. 5 pp. 11–13).*

[21] *«… bodily injuries were inflicted which caused him physical pain», Decision on granting victim status, 16.10.2013 (vol. 5 pp. 145–147).*

[22] *«... the participants of the mass riots, through their actions, limited Mr. S.'s physical liberty, as he did not have the possibility to leave the vehicle for 10 minutes, thus using against him physical force", Decision on granting victim status, 26.05.2014 (vol. 5 pp. 176–177).*

[23] *«... the participants of the mass riots, through their actions, limited Mr. P.'s physical liberty, as he did not have the possibility to leave the vehicle for 10 minutes, thus using against him physical force», Decision on granting victim status, 16.12.2013 (vol. 6 p.15).*

[24] *«… the participants of the mass riots caused the Kopeysk police department a damage amounting to RUR 9,950», Decision on granting victim status, 16.12.2013 (vol. 6 p.15).*

[25] *«… the participants of the mass riots in Colony no. 6, Chelyabinsk Region, caused a material damage amounting to RUR 250,540.24», Decision on granting victim status, 16.12.2013 (vol. 6 p.40).*

[26] *Transcript, p.2.*

GENERAL OVERVIEW OF THE PRE–TRIAL INVESTIGATION/PREVIOUS STEPS OF THE PROCEEDING BEFORE THE COURT

What was the general political background surrounding the events in Colony no. 6 in November 2012 and the period leading up to it? How has the political climate vis–à–vis the trial evolved since then?

According to authoritative reports published by human rights activists[27], in the run–up to the Nov. 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. 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 cell, subjected to strict detention conditions (SUS), in cell–type premises (PKT) etc. They were also subjected to torture and beatings.

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 demands, 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». 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 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[28], 8 OMON officers were injured[29]. 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. It should be noted that after the protest all extortion, torture and beatings on a mass scale in Colony no. 6 stopped (source: defendant no. 6).

On 4 December 2012 the Russia's Presidential Civil Society and Human Rights Council held a session in Chelyabinsk during which several witnesses were heard (relatives of prisoners of Colony no. 6), who confirmed the detainees' version. The first Deputy Director of the Federal Penal Correction Service (hereinafter – "FSIN"), Lieutenant General Petrukhin E.V., who attended the session, acknowledged the guilt of the Colony's administration as well as the Chelyabinsk branch of the FSIN and stated that his agency is in need of a systemic reorganization (Later, however, the FSIN declared that his assessment "does not reflect the opinion of the agency's management")[30]. The represen-

---

[27] *«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, 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, http://uraldem.ru/archives/1402/.*

[28] *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.*

[29] *Ibid., p.71.*

[30] *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/.*

tative 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[31]. However, despite the active resistance faced by the investigators (refusal of access by the investigators to the Colony's territory, destruction of evidence etc.), the head of the Colony, Mr. Denis M.M., as well as his deputies Mr. Z. E. and Mr. S. K. were removed from office only in late December 2012[32]. On 25 December 2012 Mr. M.M. 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".[33]

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[34]. As a consequence, several officials of the Colony and the Regional Penal Service, including its Director Mr. Turbanov V., were also forced to retire, transferred to another working place etc. However, until now only the former director of Colony no. 6, Mr. M., was criminally prosecuted – his case was separated from the case opened into the allegations of torture of the prisoners.

On 22 December 2014 the Kopeysk City Court of the Chelyabinsk Region convicted Mr. M. 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)[35]. According to the sentence, Mr. M. "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. M. was convicted for organizing an illegal manufacturing of knives, sabers etc. on the Colony's territory (Articles 33 § 3 and 223 § 4 of the 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. M. was equally proven guilty of exceeding official powers (extortion of money from prisoners and their relatives) on several other occurrences.[36] This criminal case was considered in special proceedings – without examination of evidence – in accordance with Chapter 40 of the Code of Criminal Procedure 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

[31] *Ibid., p.57.*

[32] *Ibid., p.68.*

[33] *Ibid., pp. 68, 71.*

[34] *Ibid., pp. 71, 79.*

[35] http://bsa.chel–oblsud.ru/db/GetDoc.php?id=1482110

[36] http://gulagu.net/news/8133.html

link between Mr. M.'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).[37] The judge refused to attach to the case file the abundant evidence of torture of detainees that had been gathered by human rights activists.[38] As for the reports by the Presidential Civil Society and Human Rights Council and by the Chelyabinsk Region Ombudsman 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 of the Russian Federation "M.'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".[39] It should also be noted that in the conviction judgment of 5 June 2015 the judge stated that with his actions Mr. M. substantially violated constitutional rights of citizens, including right to life, human dignity, prohibition of torture and right to liberty and security (p. 15).

Remarkably, after the events of November 2012 neither convicts, nor their relatives or friends, were prosecuted for a long time, and the convicts did not even face disciplinary sanctions (source: defendant no. 6). However, on 18 February 2013, that is almost three months after the events, a criminal case was initiated into mass riots (Article 212 of the Criminal Code). According to lawyer Kalinina S., 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). The Investigative Committee refused to open any criminal cases against OMON officers, while several participants of the protest were subjected to criminal prosecution.

On 20 August 2014 the Chelyabinsk Regional Court issued a judgment against Mr. A.A. A.V., who was found guilty of organizing the mass riots on 24 and 25 November 2012 in Colony no. 6 and on the adjacent territory, being detained in the Colony at the material time.[40] This criminal case was considered in special proceedings – without examination of evidence – in accordance with Chapter 40.1 of the Code of Criminal Procedure, due to the fact that Mr. A.A. entered a pre–trial agreement to cooperate with the prosecution. The criminal acts committed by Mr. A.A. were qualified by the judge 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. The given sentence was not appealed against and took legal effect on 5 September 2014.[41]

Moreover, on 29 January 2016 the Kopeysk Town Court issued a conviction judgment against Mr. K. V.M., who was found guilty of participating in the mass riots that took place on 24–25 November 2012 near Colony no. 6 in Kopeysk. However, in the sentence the judge established that the mass riots took place not only outside but also inside of it. According to the judgment, Mr. K., who was at liberty at the material time, arrived at the territory adjacent to the Colony and participated in the mass riots, in particular by

---

[37] http://bsa.chel–oblsud.ru/db/GetDoc.php?id=1482110

[38] *Report "Kopeysk as a future Nuremberg and for contemporary human rights defenders", p.73.*

[39] *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/

[40] http://bsa.chel–oblsud.ru/db/GetDoc.php?id=1407117

[41] http://www.chel–oblsud.ru/index.php?html=cases&inst=11&caseid=11925433

throwing stones, sticks etc. at the OMON officers. Mr. K. was sentenced to 2 years and 3 months of imprisonment (the sentence took legal effect on 12 May 2016, after the case was considered by the appellate court).[42] It should be noted that in the trial the judge questioned only 4 OMON officers who had victim status and 7 witnesses, out of 15 victims and 225 prosecution witnesses listed in the bill of indictment, because Mr. K. or his lawyer did not ask for their examination (source: defendant no. 6).

It can be added that, while the events of 24-25 November 2012 received a lot of media coverage and had a broad echo in the public, the criminal cases of Mr. M., Mr. A.A. and Mr. K. went broadly unnoticed. The current trial is also taking place in the absence of any interest on the part of the media.

What are the charges and the main elements of the investigation/Key moments of the previous stage of the hearing?

The defendants are 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. According to the prosecution, the 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 the adjacent territory mass riots, and to furthermore take part in the organized mass riots".[43]

"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".[44]

Timeline of the criminal prosecution of civilians in connection with the events of 24– 25 November 2012 (source: defendant no. 6):

On 27 November and 6 December 2012 the Investigative Committee of Kopeysk, Chelyabinsk Region, initiated 8 criminal cases pursuant to Article 318 § 1 of the Criminal Code into allegations of the use of violence against a public official (8 OMON officers) on 24–25 November 2012 near Colony no. 6. Subsequently, they were joined and on 9 January 2013 the competence for investigating them was transferred to the Investigative Department of the Ural Federal Circuit in Yekaterinburg.

On 18 February 2013 the Investigative Department of the Ural Federal Circuit 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. The joined case was given no. 1605232.

On 27 December 2013 case no. 4901232 (against Mr. K. under Articles 212 § 2 and 318 § 2 of the Criminal Code) was separated from main case no.1605232.

On 25 April 2014 case no. 4901274 (against Mr. A.A. under Article 212 § 1 of the Criminal Code) was separated from main case no. 1605232.

On 12 May 2014 the Investigative Department of the Ural Federal District opened a criminal

[42] http://bsa.chel–oblsud.ru/db/GetDoc.php?id=1608431

[43] *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.*

[44] *See for instance bill of indictment of Mr. L. (defendent no.6), p.4.*

case under Article 321 § 1 of the Criminal Court against Mr. R. into the allegations of beatings inflicted on an inmate, which was merged with case no. 1605232. The merged case retained no. 1605232.

On 26 May 2014 the Investigative Department of the Ural Federal District initiated a criminal case under Article 318 § 1 of the Criminal Code against Mr. L. (defendent no.15) and Mr. p.(defendent no.16) on the basis of allegations of damage to the police's "UAZ" vehicle, which was joined with case no. 1605232, and given no. 1605232.

On 24 June 2014 case no. 4901299 was separated from case no. 1605232; it is currently being examined by the Chelyabinsk Regional Court under Article 212 of the Criminal Code etc. ("the present case").

On 5 August 2014 case no. 4901232 (against Mr. K. under Articles 212 § 2 and 318 § 2 of the Criminal Code) was joined with the present case; the merged case retained no. 4901299.

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

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

Since 15 June 2015 up to the present the given case is being considered on the merits by the Chelyabinsk Regional Court.

It should be noted that case no. 1605232, from which the present case was separated, has retained all material denying the prosecution's version that mass riots took place; nevertheless, the defense's petitions to gain access to the material of this case were rejected, both during the investigation and the trial (source: defendant no. 6). On 27 September 2014 the investigation of initial case no. 1605232 was suspended.

On 6 April 2015 the investigation of case no. 1605232 was resumed.

On 6 May 2015 the investigation of case no. 1605232 was suspended.

On 13 May 2015 the investigation of case No. 1605232 was resumed.

On 24 June 2015 case no. 4901413 (against Mr. K. under Article 212 § 2 of the Criminal Code) was separated from case no. 1605232. It appears that the investigation of case no. 1605232 is currently suspended.

Were the actions taken by the law enforcement personnel taken into account during the investigation / previous steps of the proceeding before the court? Are the documents relating to the proceedings against Mr. M. (the then Head of Colony no. 6) included in the current file?

In the material of the present case there are copies of the pre investigation inquiry file, conducted under Articles 144–145 of the Code of Criminal Procedure into citizens' allegations of unlawful actions on the part of the OMON officers near Colony no. 6 in the night from 24 to 25 November 2012. The Investigative Committee eventually refused to open a criminal case against the OMON officers, despite the fact that several refusals (vol. 17, pp. 55–59, 68–73, 77–81, 119–123, 129–132, 147–151, 166–170, 187–190, 218–222, 250–254 and others) were annulled due to the incompleteness of the conducted inquiry (vol. 17 pp. 50–51, 66–67, 74–75, 87–88, 125–126, 143–144, 162–163, 183–184, 215–216, 240–241, 255–256 and others). It should be noted that this inquiry was carried out by the very same investigators who were in charge of the criminal case concerning mass riots under Article 212 of the Criminal Code (source: defendant no. 6). Therefore, the actions of the OMON officers were formally taken into consideration. No actions of other law enforcement agencies were taken into consideration, as there is no information to this effect in the criminal case file.

The file of the present case contains both of Mr. M.'s guilty verdicts. They were requested by the trial court upon a petition by the

defense (so far the judge has not examined them). No other material was requested by the trial court or the investigator from the file of the criminal case against Mr. M.

1) THE CONCRETE GENERAL SITUATION IN THE COLONY NO. 6 AT THE TIME OF THE RIOT

It is possible to highlight the following evidence that was produced to the court by the prosecution, and which concern the general situation in Colony no. 6 at the time of the riots:

(1) testimonies by senior officials of Colony no. 6: former Colony director Mr. M., questioned on 3 July 2013, 25 December 2013, 18 March 2014 and 22 June 2014 (bill of indictment, p.200–206); former deputy director in charge of security and operational work Mr. Zyakhor, questioned on 4 July 2013, 24 December 2013, 18 March 2014 and 5 June 2014 (bill of indictment, pp. 225–231); former head of the security unit Mr. Shchogol, questioned on 4 February 2013, 20 March 2014 and 5 June 2014 (bill of indictment, pp. 220 –225); head of the security unit Mr. Pichkov, questioned on 26 February 2013 and 20 May 2013 (bill of indictment, pp. 253–257); deputy head of the operational unit Mr. Akhmatnurov, questioned on 25 December 2013 (bill of indictment, pp. 209–214);

(2) testimonies by other employees of Colony no. 6, who were present on the territory of the Colony during the riots: heads of units, duty inspectors, investigators etc.;

(3) testimony by the prosecutor for the supervision of compliance with the law in the correctional institutions of Chelyabinsk Region Ms Yakovleva, questioned on 21 August 2013 and 23 August 2013, who took part in the negotiations with the detainees during the riots (bill of indictment, pp. 341–343);

(4) testimonies by the detainees of Colony no. 6, mainly among the so–called "activists" collaborating with the administration (bill of indictment, pp. 343–400);

(5) testimonies by the detainees of Colony no. 6, whose identities are kept secret, in accordance with Articles 11 § 3 and 166 § 9 of the Code of Criminal Procedure: no. 1 (conventional numeration, pseudonym – "Gabdullin I."), questioned on 29 March 2013 and 19 April 2014 (bill of indictment, pp. 400408); no. 2 (pseudonym – "Sidorov A."), questioned on 17 June 2013 and 19 April 2014 (bill of indictment, pp. 408–411); no. 3 (pseudonym – "Abrosimov V."), questioned on 26 March 2013 (bill of indictment, pp. 411–415);

(6) testimonies by several defendants: Mr. Bayazitov, questioned as a witness on 8 April 2013 (bill of indictment, pp. 2062–2064); Mr. M. (defendent no. 7), questioned as a witness on 11 June 2013 (bill of indictment, pp. 8677–8579).

All the indicated witnesses, with the exception of Mr. Bayazitov and Mr. M. (defendent no. 7), are prosecution witnesses, their testimonies are used – sometimes clearly tendentiously – to confirm the version according to which the detainees organized the mass riots both inside Colony no. 6 as well as on the adjacent territory.

A document that presents the court with an alternative point of view is the "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" from 6 December 2012,[45] drafted by members and experts of the Presidential Civil Society and Human Rights Council, which was attached to the case file by the investigator. However, when a petition was filed in court to attach it to the file of the criminal case, the judge, who apparently did not know that the report had already been attached to the file by the investigator, rejected the petition on the ground that the report has no substantial importance for the present case (source: defendant no. 6).

[45] http://web.archive.org/web/20160417230547/http://president–sovet.ru/documents/read/249/

According to the information obtained from defendant no. 6, the investigator dismissed all petitions regarding attaching any documents, video material, conducting any investigative measures etc., which could shed light on the general situation in Colony no. 6 before and during the riots. A similar petition requesting to attach to the file of the criminal case several documents (minutes of interviews with witnesses etc., conducted by defense lawyers; materials characterizing the personality of the defendants; DVDs) and to examine several defense witnesses, which was filed by the defense at the preliminary court hearing, was equally dismissed by the judge as being premature (Transcript, pp. 122–124).

2) THE CURRENT SITUATION IN THIS FACILITY

In the case file there is virtually no material concerning the current situation in Colony no. 6. This can be explained by the fact that the subject of the trial are the events that occurred in November 2012.

3) THE EVENTS THAT SURROUNDED THE INMATE UPRISING IN NOV 2012 AND KOROVKIN'S DEATH CASE

The investigator has not attached any documents concerning Mr. Korovkin's death case to the case file (he is also not mentioned in the bill of indictment), and the judge has not demanded to obtain them. However, in the judgment against Mr. M. of 5 June 2015 attached to the file of the present case the fact that the latter extorted money from the detainee Mr. Korovkin was established (pp. 8–12).[46] Employees and detainees of Colony no. 6 also reveal some details concerning his death in their testimonies.

Some video recordings of the events in question are attached to the case file. For example, the case file includes a CD–R disc, which was presented to the investigation with a letter dated 1 April 2013 from the Federal Penal Correction Service of Chelyabinsk Region. The said compact disc contains three small files with videos filmed through two CCTV cameras: video file 44444_CH–05–1353940024, no sound, duration 8 min., where in the daytime the process of the detainees breaking the gate of some areas of the Colony is allegedly recorded; video file 44444_CH–06–1353940024, no sound, duration 7 min. 45 sec., where in the daytime the movements of the detainees in the living and manufacturing areas of the Colony are allegedly recorded; video file 121212_CH–05–1353940987, no sound, duration 2 min. 58 sec., where at night the detainees are allegedly recorded on the roof of a building in the Colony.

According to the information obtained from defendant no. 6, the data from the video files actually confirm the absence of any mass riots in Colony no. 6 or beyond its perimeter. Furthermore, the file of the criminal case includes an "act" dated 5 November 2015, stating that on 9 October 2015 the room of the courthouse where evidence is stored was flooded, and as a consequence the DVDs and CDs got wet, after which they were dried (vol. 141 pp. 21–23). Therefore, there is a risk that they were damaged. Moreover, the said "act" was drafted without the defense being present, and the flooding itself seems to be suspicious taking into account that the court house's storage rooms for evidence are built in a very reliable manner – they are built in a manner that excludes flooding in principle – (source: defence).

4) THE INTERVENTION OF GUFSIN AND OMON SPECIAL FORCES

The file of the criminal case includes a certificate issued by the Deputy Head of the Chelyabinsk Region Police Department on the orders that were given to OMON officers during the events of 24–25 November 2012, and who of them was engaged therein — a total of 100 officers (vol. 6 pp. 60–98). The certificate reveals in particular that the OMON

[46] http://gulagu.net/news/8133.html/

officers arrived at Colony no. 6 not with the aim to stop the mass riots, but to "secure public order and personal security during the staging of possible public actions" (vol. 6 p. 60); the task of the cordon group was to "prevent the participants of the event not to leave the territory assigned for the conduct of the public action, and also to prevent aggressive citizens from joining the action so as to avoid any provocation" (vol. 6 p. 63). The case file also includes the testimonies of the OMON officers including those who were granted victim status (testimonies given in court and during the investigation). Other OMON officers were questioned during the investigation but not yet examined in court. For example, the investigator interviewed the commander of the OMON unit Mr. L. V. on 30 January 2013 (bill of indictment, pp. 429–432).

As for the material regarding the participation in the events of officers of the special forces of the Federal Penal Correction Service, they consist mainly of the testimonies given by some officers thereof: head of the special purpose unit Mr. S., questioned on 4 March 2014 (bill of indictment, pp. 317–319); deputy head of the unit Mr. R., questioned on 27 February 2014 (bill of indictment, pp. 319–321); head of the 1st assault section Mr. V., questioned on 1 March 2014 (bill of indictment, pp. 321–323) and some others (in total around 20). Interestingly, none of the officers of the unit was to be found on the enclosed territory of the Colony on 24–26 November 2012, whereby their competencies comprise first and foremost upholding public order and suppression of any unlawful acts committed by individuals in correctional institutions, such as mass riots or hostage taking. The officers of the special purpose unit were deployed only within the cordon around the Colony. Moreover, it is indicative that none of them not only suffered any injuries during the clashes between the citizens and OMON, but they did not even directly take part in the said clashes. Clarifications about the deployment of the special purpose unit were given also by the Head of the Chelyabinsk branch of the FSIN, Mr. T., who was questioned as a witness on 17 October 2013 (bill of indictment, pp. 196–199).

IN REGARD TO THE PRELIMINARY INVESTIGATION/PREVIOUS STAGE OF THE HEARING, ALLEGED BREACHES OF LAW

Were there any problems related to lawyers, both free legal aid lawyers and paid for ones? Have all the defendants had unimpeded access to the assistance of any lawyer?

Access to lawyers was not always provided (source: defense): in the detention centre 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.). Besides, cases were documented when lawyers were not allowed to meet their clients (defendants Mr. T. (defendent no. 10) and Mr. M. (defendent no. 7)) at the stage of investigation, on the grounds of a decision by investigator[47] which appears to be incompatible with the international standards (Moiseyev v. Russia, no. 62936/00, §§ 202–207, 09.10.2008).

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 acts. Even though, in principle, it did not breach the Russian 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 (see, however, 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 criminal case of their defendant. Besides, the lawyers' standpoints were often not agreed with their defendants.

Sometimes, investigator invited legal–aid lawyers to participate in investigation actions, even though the defendant had a privately–retained lawyer (Transcript, p.87–88). If this information is true, these actions by the investigator can be regarded as incompatible with Russian law,[48] as well as with the decision of the Council of the Federal Bar Association from 27 September 2013 "About double legal aid" (Protocol no. 1) prohibiting a parallel participation in criminal proceedings of a legal–aid lawyer when there is already a lawyer appointed by the defendant.[49] Apart from this, they may be incompatible with the international standards if there are no justified grounds for participation of legal–aid lawyers, and the overall fairness of the criminal proceedings was undermined (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.[50] 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…"[51] Since legal aid was 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 (Ruling by the judge of the Chelyabinsk Regional Court of 1 June 2015 about listing the case for trial (hereinafter – «Ruling of 1 June 2015»), p. 7).

---

[47] *Address of human rights activists of Chelyabinsk region to Ombudsperson and Presidential Human Rights Council regarding Kopeysk prisoners of 09.04.2014, http://pravo–ural.ru/2014/04/09/obrashhenie–kupolnomochennomu–i–vspch–po–povodu–kopejskix–uznikov–ocherednoe/*

[48] *See, for example, appellate judgment by Moscow City Court of 16.04.2007, case no. 22–2971: "The investigator broke the requirements of criminal–procedural law which guarantees a defendant the right to use the services of an advocate of his own choosing and appointed as legal–aid lawyer for Mr I. an advocate registered with the Bar association of Udmurt Republic who has no right to take part in investigative actions on the territory of Moscow, as stipulated in Article 51 of the Code of Criminal Procedure and Federal Law "On Advocacy and the Bar in the Russian Federation", Bulletin of Moscow Bar Association. 2007. Issue nos. 6–7 (44–45). pp. 139–141.*

[49] *http://www.fparf.ru/documents/council_documents/council_resolutions/1842/*

[50] *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/*

[51] *See decision of the Council of the Federal Bar Association of 02.04.2010, appendix 1, http://apno.ru/content/view/313/56/*

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 (see Table of lawyers' participation). 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. It is worth noting that the trial court granted the defendants' petition for dismissal of lawyer Ms Sborodova, who had defended Mr. L. (defendent no. 6) during the investigation and Mr. p.(defendent no.16) during the trial. Although the positions of both defendants in court coincided – they both denied their guilt in the incriminated offence – during the investigation Mr. p.(defendent no.16) had pleaded guilty, while Mr. L. (defendent no. 6) had claimed to be innocent. Under these circumstances the court found that there was a conflict of interest (Ruling of 10 July 2015). However, the court dismissed all further petitions for dismissal of lawyers made under similar circumstances (source: defence).

At court hearings an absent lawyer is often replaced by a lawyer of another defendant. The replacement is made by lawyers on mutual agreement. The trial court also asks for the opinion of the defendant whose lawyer is missing. But the trial court does not ask for the opinion of the defendant whose lawyer is replacing the missing lawyer (Transcript, p.32). As a result, one cannot say about these defendants that they gave their consent for their lawyers to provide legal aid to other defendants on the same case. Although this time the standpoints of the defendants coincide on the essence – all of them plead not guilty – the details may still vary. Moreover, some defendants' standpoints had earlier been different on the main issue as well. And there's no guarantee that the same situation will not happen in the future. This kind of situation can also be a sign of the conflict of interest and poor quality of the legal aid provided.

Finally, as a result of the defendants' transfer from one region to another (from Chelyabinsk to Sverdlovsk Region and back), and also due to long investigation procedures, defendant Mr. L. (defendent no. 6) encountered the following problem: While in Sverdlovsk Region, he signed an agreement with lawyer Ms Kalinina, who was registered as an advocate in that region. The agreement was concluded only for the period of the preliminary investigation. When the trial in Chelyabinsk started, at the preliminary hearing he asked for the appointment of Ms Kalinina to work on his case as a legal–aid lawyer, on the following grounds: he had no more money or possibility to keep paying her services on his own, he was satisfied with her performance, she knew his case well, and he would not want to have another lawyer (Transcript, p.14). However the court dismissed this petition referring to a regulation adopted by the Council of the Chelyabinsk Bar Association, according to which "a lawyer has no right to carry out the duties of a legal–aid lawyer in criminal or civil cases which fall within the jurisdiction of the courts of the Chelyabinsk Region" (Transcript, p.29). At the same time the trial court, notwithstanding the defendant's objections, appointed a legal–aid lawyer who was not familiar with the case. Although this decision does not contradict the national legislation in force and seems to be compatible with international standards, it could nevertheless have a negative impact on the efficiency of the legal aid provided.[52]

Have the defendants obtained access to their case file or other relevant documents and how?

If the information is true that the defense was deprived of access to the materials (evidence)

[52] *It is worth noting that the court implicitly granted the petition by allowing lawyer Kalinina to take part in the hearing and to represent her client for two days. (A relevant petition was made at the start of the first day of the court hearing, and the decision refusing the petition was taken only at the end of the second day, and that immediately after her objections to the actions of the presiding judge to be entered in the transcript of the hearing. It follows that the court implicitly granted the petition and then changed its decision, which is not provided for in the Code of Criminal Procedure). Later on, Mr. L. (defendent no.6) and Ms Kalinina signed an agreement on which basis the court allowed the latter to take part in the proceedings again. As a result, Mrs Kalinina works on the case practically pro–bono.*

contained in criminal case file no. 1605232 (from which the present case was separated) and that could support the standpoint of the defense, in particular, as regards the absence of any mass riots on 24–25 November 2012, this will be a breach of international standards. Thus, in accordance with the case–law of the European Court of Human Rights (hereinafter – "ECtHR"), Article 6 of the European Convention on Human Rights (hereinafter – "the Convention") requires that the prosecution authorities disclose to the defense all material evidence in their possession for or against the accused (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). The same applies to the criminal case which was investigated into the allegations of torture of prisoners by officers of the Colony.

Besides that, the defendants and their lawyers had access to their case files. Some problems did arise, but it seems they could not significantly affect the overall fairness of the proceedings. In particular, it appears that defendant Mr. L. (defendent no.15) was not provided with the bill of indictment at the investigation stage. The investigator, claiming the opposite (Transcript, p.19), gave it to him once again during the preliminary hearing (Transcript, p.17). Defendant Mr. L. (defendent no. 6) received his bill of indictment with some missing pages (Transcript, p.35), but later on he apparently received them (Ruling of 1 June 2015, p.10). Moreover, the court noted that the defendants may additionally study the case file during the trial upon request (Ruling of 1 June 2015, p.7).

Given the large volume of the bill of indictment (it consist of 12 186 pages) weighing about 60 kg,[53] the defendants and their lawyers are 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. The court also dismissed the request that the prosecutor name in advance the witnesses to be examined at the next court hearing, which makes it impossible to prepare thoroughly for their questioning (source: lawyer Ms Kalinina). 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. However, the part of the bill of indictment concerning every single defendant is about 700 pages, i.e. it weighs about 3.5 kg, which in principle allows a defendant or his lawyer to bring it to the court.

Have any of the defendants been subjected to reprisals?

It appears that the defendants were pressurized with the aim of forcing them to give confession statements. Defendants who served their sentence in correctional colonies (convicted defendants) were moved to remand prisons in other regions, so called "torture regions" (source: defendant no. 6). The term of their "business trip" often exceeded the two–month period set by Article 77.1 § 1 of the Russian Penal Code 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[54] who had visited Mr. L. (defendent no. 6), Mr. N. (defendent no.8)N. (defendent no.8) and some other defendants.[55] 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

[53] *12 186 pages x 5 g (weight of one page) = 60,930 kg.*

[54] *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.*

[55] *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/*

TV, to go to a library or mass cultural events etc.). Also there have been complaints about threatening, body injuries were recorded on some defendants.[56] Along with that, it is worth noting that none of the defendants who were inside Colony no. 6 on 24–26 November 2012 has made confession.

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 the following defendants confessed: Mr. A. (defendent no.12) (bill of indictment, p.1373), Mr. G. (defendent no.13) (ibid., p.3441), Mr. L. (defendent no.15) (ibid., p. 7747), Mr. p.(defendent no.16) (ibid., p. 9958). Although this in itself is not in breach of the Russian legislation or international standards, given the inadequate conditions of detention etc., this may testify to the fact that confessions were made under pressure. All of them later retracted their confessionary statements made during the investigation as being given under duress (source: defense).

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". What was the reason to convoy defendants from Chelyabinsk region (place of the imputed crime) to Sverdlovsk region remains unclear. 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.

What were the pre–trial detention conditions?

As it was noted above, conditions of detention during the pre–trial investigation period were often inadequate. Moreover, the defendants who are currently in detention pending trial are transported to the court house in conditions which do not correspond to Article 3 of the Convention. In particular, they are often transported in prison vans, in individual compartments measuring 0.4 sq. m., which is unacceptable in principle (Khudoyorov V. Russia, no. 6847/02, § 118, 08.07.2005).

[56] *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/*

THE PARTIES' POSITIONS

1) PUBLIC PROSECUTOR:

According to the prosecutor, 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. M.) 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 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. (defendent no. 10) from his disciplinary punishment cell (that caused the Colony damage in the amount of 8,088 RUR). Defendant R. (defendent 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, 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, 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. (defendent no.15) L. (defendent no.15) and Mr. p.(defendent 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 22:30hrs 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).

The charges against the defendants are mainly based on witness statements given by the police and the prison officers, prisoners collaborating with the administration as well as self–incriminating statements given by some of the defendants during the investigation. The defendants are also concerned with the judgments issued in the cases of Mr. A. and Mr. K., since they could be used by the prosecution in the proceedings against them to prove that the mass riots took place. If this happens and the trial court admits findings of fact made in those judgments without full and proper examination in the present case, the fairness of the proceedings would be undermined (Navalnyy and Ofitserov v. Russia, No. 46632/13 and 28671/14, § 105, 23.02.2016).

2) DEFENDANTS AND THEIR LAWYERS:

It appears that the defendants and their lawyers are of the opinion that no mass riots took place at all. Instead, there was a peaceful protest against the practice of extortion, slave labor, humiliation, beatings and conditions amounting to torture at the Colony because authorities had ignored massive and well–founded complaints of prisoners for a long time. As to the events outside the Colony, there was dispersal of a peaceful and spontaneous assembly of visitors who were not being allowed to see their relatives and friends. The dispersal was accompanied by disproportionate use of force by the riot police.

3) VICTIMS:

The victims support the version of events presented by the prosecution. In particular, they claim that the OMON officers received injuries from participants of the mass riots. The latter also used force against other victims and damaged property belonging to the Colony and the Kopeysk police department. It should be noted that the broken gates in the metal fences separating different units in the residential zone of the Colony account for the most part of the incriminated damages. The gates were indeed broken by the prisoners. However, according to Valeria Prikhodkina, a member of the Public Monitoring Commission of the Chelyabinsk Region, the fences were installed in breach of Russian law in force.

DIRECT OBSERVATIONS: OBSERVING PROCEEDINGS WITHIN THE COURTROOM

PARTIES TO THE PROCEEDINGS:

The defendants and the lawyers involved in the hearing

The description of the defendants and of their lawyers is included in point 1.1 of this table.

The observers attended two hearings of the Chelyabinsk Regional Court on 15–18 December 2015 and three hearings on 25–29 April 2016.

The hearing of 15 December 2015 began with statements and petitions of a procedural character. In substance this was a continuation of the process of examination of the statements and petitions of defendant Mr. L. (defendent no. 6) , which had begun during the hearing of 14 December 2015.

On 15 December 2015 Mr. L. (defendent no. 6) made approximately 15 statements and petitions, notably:

— a statement on the recusal of the presiding judge, Ms Davydova, due to alleged violations of his procedural rights during the appeal proceedings concerning the Ruling of 1 June 2015;

— a statement on the recusal of the prosecutor, Mr. Garina, who allegedly does not wish to note the procedural violations committed during the investigation, and objects in court to the defendants' well–founded petitions;

— a statement on renouncing legal aid lawyer Mr. Mokhirev, who according allegedly was appointed unlawfully, ignoring Mr. L. (defendent no. 6)'s request to appoint as his legal aid lawyer Ms Kalinina, who until 23 November 2015 represented him by arrangement;

— a petition to record the trial by means of the official audio–video recording system for court hearings "Femida", which is set up in several rooms of the Regional Court;

— a petition on granting the participants of the court hearing an authorization to record (audio–video) the court hearing by means of their own equipment;

— a petition about requiring from the Ural Federal District Investigative Department all items (among them, the "UAZ" police vehicle damaged during the alleged mass riots) and documents that were admitted as substantial evidence in the case, and ensuring their storage in the Regional Court;

— a petition about returning the criminal case to the Prosecutor's office with the aim to solve the issue of joining the present case with the one of defendant Mr. K., given that both cases concern the same facts, and the separate examination of Mr. K.'s case is a breach of the procedural rights of the defendants in the present case;

— a petition about returning the criminal case to the Prosecutor's office with the aim to add to volume no. 17, which contains materials on the refusal to open a criminal case against the OMON officers in connection with the use of physical force against the people who had gathered around Colony no. 6, nine pages, which allegedly were unlawfully removed from the case file by someone of the investigators in order to whitewash the OMON officers;

— a petition about requiring from the Ural Federal District Investigative Department the materials relative to 18 pre–investigation inquiries on the OMON officers in connection with the use of physical force against the people who had gathered around Colony no. 6;

– several petitions about excluding from the case file several pieces of evidence that allegedly were obtained unlawfully.

All of Mr. L. (defendent no. 6)'s statements and petitions were rejected by the court, as a rule referring to the fact that similar statements and petitions had already been previously examined and rejected by the court, in particular while the court was conducting the preliminary hearing.

On 15 December 2015, after the stage of considering statements and petitions, the court at last moved on to the judicial investigation (the main stage in the examination of the criminal case). Pursuant to Article 273 of the Code of Criminal Procedure, the judicial investigation began with the presentation by the public prosecutor, Mr. Garin, of the charges imputed to the defendants.

The presentation of the charges, i.e. reading out the indictment act, continued on 17 December 2015, after which yet another protracted break was announced in the court hearing. It should also be noted that at the very beginning of the court hearing on 17 December 2015 our observer, Mr. Mezak, tried to submit to the court an oral petition about video recording the proceedings by means of the video camera in his possession. However, the presiding judge, Ms Davydova, did not accept the given petition on the grounds that it should have been submitted before the presentation by the prosecutor of the charges. The court's decision in this regard was apparently arbitrary, since Article 120 § 1 of the Code of Criminal Procedure establishes that "a petition may be filed at any moment of the proceedings in a criminal case", and Article 241 § 5 of that Code states that "taking photographs, video recording and/or cinema shooting shall be admissible only with the permission of the presiding justice of the court session", without specifying when a person who is present in court can ask for such authorization. Equally, the court did not react whatsoever on the written petition by Mr. Mezak to video record the proceedings by means of the video camera in his possession, which was submitted to the court's registry on 17 December 2015 before the beginning of the hearing (see the copy of the said document attached hereto).

On 25–29 April 2016 all court hearings were postponed due to the absence of one of the defendants' lawyers (due to illness or because he/she had to attend another court hearing) or one of the defendants (due to illness). All three hearings followed the same pattern: the lawyers and members of the audience were let into the room (the only member of the audience was our observer, Mr. Laptev), while the defendants and prosecutor were already in the room. Then the judges would enter the room and announce which case is being considered. The clerk read out the list of those attending the hearing. The court asked the parties whether they deemed it possible to continue the proceedings in the given composition. Both the prosecutor and the defendants would concur that it was necessary to postpone the hearing. The court would then adjourn the hearing.

General atmosphere within the courtroom

During the court hearings observed by Mr. Mezak and Mr. Laptev the atmosphere was business–like. The defendants' attention was attracted by the presence in the courtroom of the independent observer.

On the days when the court examines victims the situation in the courtroom becomes more tense, as the court rejects any petitions, allows the persons being questioned not to answer etc.

1) PROSECUTION

Did it use evidence that was obtained using unlawful procedures or prohibited methods?

The position of the prosecution in the trial is 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 Sergey Vladimirovich, who is an experienced prosecutor, awarded with the title "Honored worker of the Prosecutor's Office of the Russian Federation" through Presidential Decree of 2 January 2011 no. 15).

During the court hearings of 2016, whenever they are not postponed, victims are questioned. Therefore, the trial has not yet reached the phase when the prosecutor could use substantial evidence which was possibly obtained through unlawful procedures or unlawful methods.

2) DEFENSE:

If some of accused persons are not attending the hearing, what are the reasons given by the authorities

All defendants are present during court hearings. If one of the defendants is absent the court postpones the hearing.

3) VICTIMS

The victims report to the court only on the days when their examination is scheduled. To the best of our knowledge, after the questioning the victims immediately leave the courtroom and are not summoned to the court anymore. Because of that the defendants are deprived of the possibility to ask the victims further questions that can occur to them while a next victim is 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, are rejected by the court without any reasons given.

4) KEY WITNESSES

There are 231 witnesses brought by the prosecution (91 OMON officers, 46 officials of the Federal Penal Correction 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 court has questioned no prosecution or defense witnesses, yet. It should be noted that during the investigation not a single witness proposed by the defense was questioned. 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 employees of Colony no. 6, 8 free citizens (among them media representatives), 86 convicts. The court has not yet made any decision concerning the said petition.

5) OTHER PARTICIPANTS:

Around ten officers of the police escort service were also present in the courtroom. They ensure the transportation of the defendants in custody and monitor 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, as well as members of the Public Monitoring Commission, are currently not attending any of the court hearings.

THE COURT

Independence and impartiality of the judge, at the institutional as well as at the personal level. Was there any expression of bias and infringement to the presumption of innocence during the hearing?

The case is being heard by a panel of three judges of the Chelyabinsk Regional Court, who are 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.

At the institutional level, the independence and impartiality of the court seem to be guaranteed. At the personal level the conduct of the court raises questions as to its impartiality. In this respect, according to information received from defendant no. 6, during the examination of the victims the court, on a number of occasions, did not allow the defense to pose important questions, notably 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…".

The court refuses to consider new petitions on the court's recusal, either by motivating it with the fact that they were already resolved – even though the defense points to new circumstances – or referring to the fact that the defense, while filing a recusal petition, is actually questioning the court's procedural decisions. This practice may be viewed as a breach of the requirements of Articles 120–121 of the Code of Criminal Procedure.[57]

Was there any case in which the judges declared themselves unfit to try a case?

There are no occurrences of a recusal of the court (judges).

[57] *Such practice may be considered to be in breach of the requirements of Article 120 of the Code of Criminal Procedure of the Russian Federation (as has been already mentioned above, Article 120, part 1 of the Code establishes that "a petition may be filed at any moment of the proceedings in a criminal case", while part 2 states that "rejection of the petition shall not deprive the applicant of the right to file a petition again").*

CONDUCT OF THE HEARING & OBSERVANCE OF THE RIGHTS AND JUDICIAL GUARANTEES

How were the hearings and legal debates conducted by the court? Do they comply with Russian Federation legislation and international fair trial standards?

Formally, the court conducts the trial in accordance with the requirements of the Code of Criminal Procedure. However, the court refused, under various pretexts, to grant virtually all of the dozens of petitions filed by the defense. In this regard it is indicative that during the preliminary court hearing the court rejected the defense's petition to hear as witnesses two investigators, while later on it granted a request by the prosecution to hear the very same two investigators.

With a pretext that seems to be far–fetched, the court refuses to use the official audio–video recording system of the court hearings "Femida", which is set up in several rooms of the Regional Court, the pretext being that it is ostensibly technically impossible to move it from the room where it is installed to the room where the given case is being heard, although the defendants regularly point to the fact that the transcript of the preliminary court hearing is unreliable, as it contains distortions. At the same time the court deprived, as was already mentioned, a member of the audience, Mr. Mezak, of the possibility to file an oral petition to video record the proceedings independently of the court.

First and foremost, the rejection by the court of the petition to draft the transcript of court hearings in sections raises some perplexity – according to information received from defendant no. 6, the court motivated such a decision with the fact that it was not technically possible to draft the transcript in sections, a pretext that seems to be clearly far–fetched. At the same time, drafting the transcript in sections would allow the defendants to analyze and make notes on it on the many days when no hearings take place.

Moreover, the court refuses to accept the petitions filed through the administration of the pre–trial detention center, and even those submitted to the court registry (source: defence), which is a breach of the letter and the spirit of the Code of Criminal Procedure. According to Article 120 § 1 thereof, "A petition may be filed at any moment of the proceedings in a criminal case", while there is no provision in the Code mandating that petitions be filed only during the court hearings. However, the said restrictions on the right of the defense are compensated by the fact that the court allows the submission of petitions during the court hearings.

1) PUBLICITY

At some time, were proceedings hold in camera and the grounds given for this?

Only the preliminary court hearing was held in camera, which is in line with the requirements of Article 234 § 1 of the Code of Criminal Proceedings. All the other court hearings were open. There were no issues regarding the public's access to the hearings.

2) COMMUNICATION WITH LAWYERS

Have the defendants adequate possibility to talk privately with their lawyers?

It is not possible to speak confidentially to the lawyers in the courtroom, as the majority of the defendants – those who are in custody – are held in an "aquarium" (a separate part of the courtroom, see attached photograph), by which members of the escort service stand guard. This is problematic in light of the

ECtHR judgment in the case of 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 (with regards to this problem see also the communicated case Valyuzhenich v. Russia, no. 10597/13, question no. 4.c).

The communication between the defendants who are in custody and their lawyers is made even more difficult by the fact that they are held in the "aquarium", on benches in three rows, and the lawyers are seated three desk rows away. Therefore, some defendants and their respective lawyers are 3–4 meters apart.

It should be noted that even those defendants who are not in custody are 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 (see the attached photograph).

3) FACT FINDING

How the right to present evidence and to examine and cross–examine witnesses is respected?

So far no evidence presented by the defense was attached to the case file or considered during the investigation or the trial. The defense 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. The witnesses announced by the defense during the investigation were not examined. The court attached the list of the said witnesses to the case file, but so far it has not examined any of these witnesses. Two witnesses, investigators Mr. Y. and Mr. P., were examined by the court only upon a petition by the prosecutor, and the court rejected the defence's petitions to examine witnesses, among them Mr. Y. and Mr. P., as well as some legal aid lawyers (who, according to the defense, unlawfully participated in the proceedings during the investigation).

During the examination of the victims who are, in essence, the prosecution's witnesses, the court impedes their full–fledged cross–examination (this issue is addressed above, under paragraph 2.3).

Was the principle of legal evidence respected (was evidence obtained and presented by authorized persons/officials)? If not, was the evidence thrown out by the court?

The prosecution's evidence which is essential for solving the case has not yet been considered in court.

Was the principle of legitimacy of evidence respected (was evidence obtained through methods prohibited under international law, such as torture and international law)? If not, was the evidence thrown out by the court?

The prosecution's evidence which is essential for solving the case has not yet been considered in court.

In this regard, how the context of the general situation in the Colony no. 6 the events documented by the report of the HR Council are taken into account by the court?

The report by the Presidential Civil Society and Human Rights Council has not been examined, but it is included in the criminal case file.

Is there a precise examination of the chronology of events? What weight is given to the HR Council's Report?

The events are not being considered in a chronological order. As has already been mentioned, the prosecutor reads out volumes and pages selectively, without analyzing them, which confuses the trial's participants. The report by the Presidential Civil Society and Human Rights Council has not been considered

yet; it is not yet clear what weight the court will give to this report.

Who are the witnesses/experts heard by the court?

During the preliminary hearing the court examined the interpreter, an attesting witness and two investigators. Their examination concerned procedural issues, and not the merits of the charges.

Currently, the victims are being examined. According to lawyer Ms Kalinina, seven out of eight OMON officers have been questioned, as well as the driver of the police car, Mr. P., and representatives of the Kopeysk Town Police and of Colony no. 6 – the examination of the representative of the Colony is not yet finished. The court has not yet examined persons with a different procedural status, i.e. witnesses, experts.

Were there refusals to hear witnesses and experts and what were grounds raised by the court?

As has been already mentioned, during the preliminary court hearing the court rejected the defense's petitions to examine several witnesses, and also the legal aid lawyers who, according to the defense, unlawfully took part in investigation activities during the preliminary investigation. The court deemed the said petitions unfounded, explaining its decision by stating that questioning these persons is inappropriate.

Are witnesses/experts for the prosecution and the defense treated equally? Any use of anonymous witnesses?

The case comprises some anonymous witnesses from among the prisoners of Colony no. 6, whose testimonies are of the utmost importance. Nevertheless, the court has neither examined them nor has it questioned any defense witnesses.

Were there any problems related to translation?

The defendants Mr. V. (defendent 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. (defendent 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. (defendent 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). As there is no evidence to the contrary, there are no reasons to assume that their rights were violated, as 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 hearing an interpreter is present who knows Azeri. However, he is at a distance of 3–4 meters from the "aquarium", where Mr. V. (defendent no.3) and Mr. R. (defendant no.11) are held, and translates into Russian only if the defendants say something in Azeri. Therefore, he does not translate into Azeri anything of what the trial participants say. It seems that the defendants in question have a good enough command of Russian to be able to understand what is happening in court. They also sometimes communicate with the court without the aid of the interpreter. However, if they cannot understand something, they apparently have no possibility to resort to the interpreter in real time. Therefore, it would be useful to provide them with such possibility and have the interpreter sit next to them. However, the given defendants did not file a relevant petition, nor did they file any complaints about the quality of the interpreter's work.

POSITION OF THE COURT AND THE PROSECUTION BODY TOWARD TORTURE

What is the attention dedicated to the restoration of public order conducted by GuFSIN and OMON special forces? What is the attention dedicated by the court to the current situation in the Colony no. 6?

The examined OMON officers all testified that they did not use any physical force or means of restraint. They also maintain that they were attacked by an angry crowd that they later on gently pushed away and dispersed.

According to lawyer Ms Kalinina, while questioning OMON officer Mr. M., she asked him to draw a map of the surroundings of the Colony and to mark on it the spot where he was at the time. The court intervened to prohibit posing such a question to the witnesses directly, explaining that only the court, after receiving a relevant petition, can oblige a witness to draw any map. After the lawyer filed a petition with the court to oblige the witness to draw the map, the court rejected the said petition. This seems to indicate that the court is not interested in establishing whether there was excessive and/or unfounded use of force and means of restraint on the part of OMON officers vis–à–vis peaceful protesters.

ADDITIONAL COMMENTS REQUIRED BY THE PROCEEDINGS OBSERVATION

Are there any other relevant information regarding the fairness of the procedure / the general prohibition of torture and other inhuman and degrading treatment or punishment?

Holding the defendants in the "aquarium" possibly amounts to inhuman or degrading treatment and might therefore be in breach of Article 3 of the Convention (see communicated case Akimenkov v. Russia, no. 50041/14, and 4 other applications, question no. II.4). The ECtHR has already found in the case of Svinarenko and Slyadnev v. Russia [GC] (nos. 32541/08 and 43441/08, 17.07.2014) that holding defendants in a metal cage during court hearings is a violation of Article 3 of the Convention. Possibly, the Court could reach the same conclusion concerning an "aquarium".

Furthermore, the defendants in the "aquarium" have no tables, unlike the other trial participants, particularly the prosecutor, which is possibly a breach of the principle of equality of arms in the proceedings. This makes it also difficult for them to take notes, use documents for the defense (put them in a particular order etc.), which is possibly indicative of a lack of adequate facilities for the preparation of defense, which is guaranteed by Article 6 § 3 (b) of the Convention (see communicated case Valyuzhenich v. Russia, no. 10597/13, question no. 4b). Lastly, the defendants constantly complain that they cannot hear everything that the trial participants are saying from behind the glass. This seems also problematic.

Some defendants have been held in detention on remand for over a year. Every time, the court gives 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).