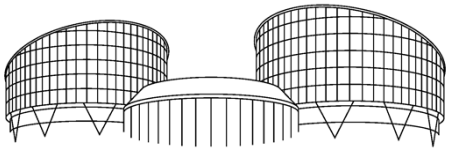

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHLOYEV v. RUSSIA

(Application no. 46404/13)

JUDGMENT

STRASBOURG

5 February 2015

FINAL

05/05/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khloyev v. Russia,

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

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

Having deliberated in private on 13 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 46404/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Ruslanovich Khloyev ("the applicant"), on 22 July 2013.

2. The applicant was represented by Mr S. Golubok and Mr D. Laktionov, lawyers practising in St Petersburg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not received adequate medical assistance while in detention and that he had been remanded in custody without valid reasons.

4. On 3 October 2013 the President of the First Section, acting upon the applicant' s request, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should be immediately examined by medical experts independent from the penitentiary system with a view to determining (1) whether the treatment he was receiving in the temporary detention facility was adequate for his condition; (2) whether his state of health was compatible with the conditions of his detention; and (3) whether his condition required his placement in a hospital.

5. On 18 November 2013 the application was communicated to the Government. Among other matters the Court asked the Government whether their response to the Court's decision to impose, on 3 October 2013, an interim measure under Rule 39 of the Rules of Court could entail a breach of Article 34 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lives in St. Petersburg.

A. The applicant's detention

7. On 28 February 2012 the applicant was arrested on suspicion of having organised a stable criminal group to commit several counts of aggravated kidnapping, extortion, robbery and possession and trafficking of firearms.

8. On the following day the Oktyabrskiy District Court of St. Petersburg accepted the investigator's motion for the applicant's remand in custody, having linked the necessity to detain him to the gravity of the charges against him and the risk of his absconding, reoffending and obstructing justice. In particular, the District Court noted the applicant's potential to influence his accomplice, Mr G. (the prosecution's main witness in the case against the applicant), and stressed that firearms had been found in the applicant's car during his arrest and that he was skilled in combat and fighting military techniques, as well as that he had a serious military experience. The District Court took into account the investigator's argument that there was a serious risk of the applicant tampering with witnesses, including with other members of his criminal group by mounting threats against them and their family members. In addition, the investigators argued, and the District Court found it convincing, that the applicant was attempting to contact other members of the criminal group to plot their defence, in particular taking into account his authority within the criminal group and his connections to the criminal underworld. The District Court linked the applicant's potential to reoffend to, among other things, the fact that, in addition to the firearms discovered in the applicant's car, a large arsenal of firearms had been found in the accomplices' houses. It finally noted the applicant's potential to abscond given his frequent travelling to various regions of the Russian Federation prompted by the nature of his activities. The District Court concluded that no alternative measure of restraint could mitigate the cited risks. That decision became final on 21 March 2012 when the St. Petersburg City Court upheld it on appeal having fully accepted the District Court's reasoning.

9. On 25 April 2012 the Oktyabrskiy District Court authorised the applicant's detention until 21 June 2012, having mainly cited the similar reasons as in its previous detention order. Having mentioned the risk of collusion and, in particular, possible threats to witnesses from the applicant, the District Court relied on handwritten statements by Mr G. and a Mr K. expressing fear for their lives and lives of their relatives. In addition, the

District Court noted that a number of members of the criminal group were on the run, which provided ground to conclude, that if released, the applicant could use his influence to interfere with the investigation. A month later the St. Petersburg City Court fully endorsed the District Court's reasoning and upheld the extension order on appeal.

10. By another detention order issued on 19 June 2012 the District Court extended the applicant's detention until 21 August 2012, having essentially relied on the same reasons as on the previous occasions. That detention order was also challenged on appeal and, with the appeal having been unsuccessful, became final on 10 July 2012.

11. Another extension followed on 17 August 2012 when the District Court accepted a request of an investigator to keep the applicant detained until 21 November 2012. The reasoning for the extension was slightly amended with the District Court citing the complexity of the case, the risk of the applicant's tampering with witnesses, in particular Mr G. and Mr K. who had expressed their fear of the applicant in view of murder threats they had received, the risk of his absconding in view of his having worked in another region of the Russian Federation with his work requiring a large number of trips, and a possibility for the applicant, if released, to contact other accomplices who had not yet been apprehended. That extension order was also supported by the St. Petersburg City Court, on 19 September 2012.

12. Subsequent extension orders were issued by the District Court on 12 November 2012 and 24 January 2013, respectively, with the reasons for the applicant's detention remaining the same as on the previous occasions. The detention order of 12 November 2012 was quashed on appeal by the City Court which on 10 January 2013, having remitted the matter back to the District Court, decided that it was necessary, in the meantime, to authorise the applicant's detention until 24 January 2013. The detention order of 24 January 2013 was upheld by the City Court on appeal. Each time the court concluded that no alternative measure could mitigate the risks of the applicant's absconding, reoffending or obstructing judgment. The District Court also was not convinced that the applicant's health warranted his release.

13. The following request for extension lodged by an investigator was examined by the St. Petersburg City Court on 28 February 2013. Referring to Article 5 of the European Convention on Human Rights, the City Court found it necessary to keep the applicant in detention given, in particular, the gravity of the charges against him and the particular complexity of the case. The applicant's arguments of a difficult family situation and precarious health condition which, in his eyes, called for his release, did not convince the City Court. That decision was upheld by the appellate division of the City Court a month later.

14. A detention hearing on 20 May 2013 before the City Court was adjourned following the applicant's complaints of poor state of health and

his having been attended to by an emergency medical team. Given that the applicant was unfit to continue participating in the hearing, he was taken back to the temporary detention facility.

15. On the following day the City Court authorised the applicant's detention until 28 August 2013, having cited the usual grounds, such as complexity of the case, the gravity of the charges, the applicant's combat skills, and fears of Mr G. and Mr K. for their life and limb should the applicant be released. Having addressed the defence argument pertaining to the applicant's extremely grave health condition, the City Court concluded that he could receive necessary medical attention in detention.

16. At a hearing held on 25 June 2013 in response to the defence appeal against the detention order of 21 May 2013, the appellate division of the City Court heard an expert who had supported the view that the applicant's health was rapidly deteriorating in detention and that urgent medical care was required to preclude any further grave consequences to his health. Having concluded that the necessary medical services could be provided to the applicant in detention and that the extension of his detention until 28 August 2013 was warranted by all the pertinent reasons cited in the detention order, the appellate division dismissed the appeal. A cassation appeal against the detention order of 21 May 2013, as upheld on 25 June 2013, was rejected by a City Court's judge without hearing on the merits on 26 August 2013.

17. Having noted that the applicant and his defence team were studying the case file, on 26 August 2013 the City Court authorised the applicant's custody until 28 October 2013. The remaining factors cited by the City Court as those warranting the continuation of the detention were the same: the gravity of the charges and the usual fears of the applicant colluding or reoffending. The defence arguments pertaining to the applicant's state of health were dismissed as unreliable given that the expert opinions confirming the dangers to the applicant's health in the absence of the proper medical assistance in detention were summoned in violation of "procedural requirements". The appellate division of the City Court dismissed the appeal against that detention order on 13 September 2013.

B. The applicant's medical condition

18. On 10 April 2012 the applicant was subjected to a medical examination in detention facility no. 1 where he stayed at the time. The examination also included a chest X-ray exam which did not reveal any pathology. During the following examination by a prison physician on 10 May 2012 the applicant acknowledged his suffering from chronic viral hepatitis C. On 14 September 2012 following complaints of stomach pain, nausea and vomiting, he was diagnosed with an acute attack of the chronic gastritis and received treatment. A week later his diagnosis was amended to

include diabetes. He was transferred to the Gaaza prison hospital for inpatient treatment.

19. The applicant stayed in the hospital until 11 October 2012 having received treatment in respect of the following diagnoses: sub-compensated first-type diabetes, diabetic polyneuralgia, chronic hepatitis C in the moderately active state. Having diagnosed the applicant with the left-sided pneumonia of the upper lobe of the lung, doctors suspected tuberculosis. The infiltrative pulmonary tuberculosis was confirmed by an X-ray examination on 26 September 2012. However, no bacteriological testing was performed to see whether the applicant was smear-positive. Another X-ray exam performed two weeks later did not show any dynamic in the illness process. The applicant received treatment with hepatoprotectors and antibiotics.

20. On his release from the Gaaza hospital the applicant was transferred to prison hospital no. 2 where he stayed until 18 October 2012 having continued treatment with antibiotics. A culture test performed in the hospital showed that the applicant was smear-positive. The applicant's transfer to tuberculosis hospital no. 3 followed. On his admission to that hospital the applicant was diagnosed with acute right-sided lower-lobe pneumonia, first-type diabetes and polyneuropathy of the lower extremities. The applicant's condition was considered satisfactory. An X-ray test performed on 19 October 2012 resulted in the applicant having been diagnosed with pleuropneumonia in the lower lobe of the right lung. He received antibacterial treatment with enlarged drug doses. The smear and culture testing produced negative results. The applicant also underwent clinical blood and urine testing. A tomography of the left lung performed on 25 October 2012 did not demonstrate any signs of the disintegration process. The applicant was transferred from the tuberculosis hospital to prison hospital no. 1 with his diagnosis having not been entirely confirmed. In particular, doctors placed a "question mark" in his medical record having cited such conditions as an abscess of the lung or empyema. At the same time, a medical certificate prepared in the tuberculosis hospital showed that between 23 and 28 October 2012 the applicant was subjected to another series of culture and sputum smear testing. However, the results of those tests which showed that the applicant was MBT positive were only received by the facility in December 2012 which led to his return to the tuberculosis hospital (see paragraph 22 below).

21. Another month and a half, until 26 December 2012, the applicant spent in prison hospital no. 1. His diabetes took a "moderately grave" course. He was still continued being diagnosed with pneumonia having tested sputum smear and culture negative. At the same time the doctors' reading of an X-ray exam performed on 7 November 2012 raised a suspicion of the applicant suffering both from the infiltrative tuberculosis of the upper lobe of the left lung and the right-sided pneumonia. The applicant

was seen by a tuberculosis specialist who prescribed treatment with four anti-tuberculosis drugs, including isoniazid, rifampicin, ethambutol and pyrazinamide. Twenty days later he was examined by an endocrinologist who amended his insulin therapy and introduced new hepatoprotectors in his regimen. Another exam performed in the first days of December 2012 showed a positive dynamic in the arrest of the pneumonia process and no dynamic in the infiltrative tuberculosis process in the left lung.

22. However, following a smear-positive test of the applicant, he was transferred back to tuberculosis hospital no. 3 on 26 December 2012 with the following diagnosis: smear-positive infiltrative tuberculosis, moderately grave course of the sub-compressive first-degree diabetes, diabetic polyneurologia and chronic hepatitis C. The applicant's condition on his admission to the hospital was considered "sufficiently satisfactory". As appears from the medical record, he continued receiving antibacterial chemotherapy with four first-line anti-tuberculosis drugs. His regimen also included hepatoprotectors, vitamins and insulin. An X-ray exam performed on 28 December 2012 disclosed the resolution of the infiltration process in the lower lobe of the lung. At the same time a test performed in October 2012 the results of which were received in January 2013 showed that the applicant developed multi-drug resistance, in particular to the majority of the first-line drugs, including streptomicin, ethambutol, isoniazid, rifampicin, cycloserine and rifabutin. That test led to the amendment of the applicant's chemotherapy regimen with the mentioned drugs having been excluded from his therapy and second-line anti-tuberculosis drugs having been introduced.

23. Tests performed in the tuberculosis hospital demonstrated that the applicant's tuberculosis was in the disintegration stage. Further X-ray tests performed each two months showed minimal dynamic of the tuberculosis process. The applicant continued being seen at least once a month by an endocrinologist who recorded the negative development of the applicant's diabetes which he linked to the tuberculosis process.

24. On 5 April 2013 the applicant's anti-tuberculosis treatment was interrupted given particularly negative results of the liver functions clinical tests. Three months later the applicant resumed antibacterial treatment with second-line anti-tuberculosis drugs. The applicant stayed in pre-trial detention facility no. 6 to which tuberculosis hospital no. 3 was attached. It appears that he was subsequently transferred between medical unit no. 78 of the detention facility and tuberculosis hospital no. 3.

C. The Court's request for information and Rule 39 request

1. Request for information

25. On 19 July 2013 the applicant asked the Court to apply Rule 39 of the Rules of Court and to authorise his transfer to a specialised civil medical facility as an interim measure.

26. The applicant claimed that the medical assistance he was receiving in detention was insufficient in view of his very grave diseases which required constant medical supervision by specialised medical staff. The prison doctors were incompetent to deal with a patient in his condition. According to the applicant, such inadequate medical assistance resulted in a brutal deterioration of his health.

27. On 22 July 2013 the Court decided to request the Government under Rule 54 § 2 (a) of the Rules of Court to submit information on the applicant's health, the amount of medical aid he received and the authorities' compliance with recommendations made by forensic medical experts in their report on 13 March 2013 (see paragraph 32 below).

28. Both parties responded to the Court's request for information, having provided a number of documents describing the applicant's condition and the quality of the medical care.

29. In particular, the Government produced a certificate prepared on 13 August 2013 by the director of the tuberculosis hospital where the applicant had remained until his release in November 2013. The certificate showed that the applicant was treated with the second-line antibacterial drugs. His diagnosis indicated in the certificate read as follows: "infiltrative pulmonary tuberculosis, [MBT smear-positive], multi-drug resistance, first-degree sub-compressive diabetes in the moderately grave course, polineuropathy of the lower extremities, chronic viral hepatitis C in the replication phase and moderately acute condition". The applicant's condition was considered "satisfactory". In another certificate issued in August 2013 the hospital director stressed that the applicant was subjected to necessary diagnostic and clinical testing, that he was placed on chemotherapy regimen having received full courses of drugs, including insulin, vitamins and antibacterial medicaments, and that he was seen by specialists, including a prison physician and tuberculosis specialist.

30. After 12 August 2013 the applicant was examined by a physician, a tuberculosis specialist, an endocrinologist, an ophthalmologist and a psychiatrist. He continued being subjected to clinical and biochemical blood and urine tests, smear sputum tests, X-ray exams, ultrasound-scanning, and electrocardiograms. The level of his glucose was measured daily. The applicant started gaining weight, having gone from 72 kilograms to slightly over 76. On 18 September 2013 an expert medical commission assigned the second-degree disability to the applicant.

31. According to the Government, given the quality of the applicant's treatment in detention the applicant's life and limb were not at risk.

32. At the same time, the applicant relied on a forensic medical report issued on 13 March 2013 by a commission of several experts, including, *inter alia*, a tuberculosis specialist, and endocrinologist, an infectious diseases specialist and a surgeon. As follows from that report, the applicant suffered from "insulin-dependent diabetes in a grave stage accompanied by the de-compensation of the carbohydrate metabolism ... with symptoms of polyuria and polydipsia in the presence of chronic complications: diabetic angiopathy and polyneuropathy of the upper and lower extremities, diabetic nephropathy and encephalopathy of the mixed genesis; ... infiltrative multi-resistant tuberculosis of the upper lobe of the left lung in the dissolution stage, in open form; chronic hepatitis C in the moderately active stage, toxic hepatitis as a result of [the applicant] taking large quantities of anti-tuberculosis drugs; kidney failure of the second degree".

33. The commission also concluded that given a high risk of the development of further grave complications, the applicant was in need of "constant dynamic medical supervision and treatment to restore and support his general state of health, which could only be done in the conditions of a specialised medical facility employing an endocrinologist, a hepatologist, an infectious diseases specialist, and a tuberculosis specialist". The commission also noted that the applicant could only stay in an ordinary detention facility if he remained under constant and dynamic supervisions of the mentioned specialists and received necessary treatment. Having been asked whether the applicant suffered from a condition precluding his detention in an ordinary detention facility, the experts repeated their finding that the applicant could not participate in investigative actions or be detained in a detention facility "without proper medical assistance".

34. The applicant also submitted two reports prepared by infectious diseases specialists from two very prominent Russian civil hospitals attached to medical universities. On the basis of the applicant's medical record, the specialists concluded that he required a far-more reaching assessment and treatment in a specialised civil hospital.

2. Application of Rule 39 of the Rules of Court

35. Following the receipt of the Government's submissions and the applicant's comments to them, on 3 October 2013 the Court decided to indicate to the Russian Government, under Rule 39 of the Rules of Court, that it was desirable in the interests of the proper conduct of the proceedings that the applicant be immediately examined by medical experts independent from the prison system with a view to determining: (1) whether the treatment he was receiving in the penitentiary facilities was adequate to his condition; (2) whether his current state of health was compatible with

detention in the conditions of a detention facility; and (3) whether his current condition required his placement in a hospital.

36. On 1 November 2013 the Government responded to the Court's letter of 3 October 2013, having submitted:

- a one-page copy of a report drawn up on 21 October 2013. The report indicated that it was issued by three doctors of "medical unit no. 78 hospital no. 3". A stamp in the corner of the report contained the name and address of St. Petersburg tuberculosis hospital. The main conclusion of the doctors was that the applicant did not suffer from any illness which was included on the list of illnesses precluding detention of suspects, as adopted by Governmental Decree no. 3 on 14 January 2011. In their finding the doctors referred to a medical opinion of 4 February 2013 (the content of which was not disclosed) and the applicant's medical records, including results of radiology scanning, the most recent of which had been performed in the end of August 2013. In addition to the general conclusion that the applicant did not suffer from an illness included in the Governmental Decree, the back-side of the report contained a short reference to a positive dynamic in the applicant's condition during the last year and "stable" results of the radiology exams;
- an extract from the copy of the applicant's medical record issued after August 2013;
- certificates issued by the head of the medical unit no. 78 of the Federal Penitentiary Service to which tuberculosis hospital no. 3 belonged, describing the applicant's condition and listing certain medical procedures to which he had been subjected.

37. The Government also provided the Court with copies of lists recording daily measurements of the glucose level, the results of a large number of clinical blood and urine tests, culture and smear sputum tests, as well as of ultrasound scanning to which the applicant was subjected. They further submitted extracts from the daily logs showing the intake of the drugs by the applicant under supervision of the medical personnel

38. The Government answered the three questions which, in its letter of 3 October 2013, the Court had asked them to address to independent medical experts. In particular, in their one-page response, the Government stressed that the applicant had been placed under a dynamic medical supervision in relation to his illnesses and was subjected to medical procedures necessary to safeguard his health. The Government submitted that the applicant received necessary medical attention and that no additional medical procedures were required. They further stressed that the applicant's condition did not call for his placement in a civil hospital. They relied on the report issued on 21 October 2013, having noted that the applicant did not suffer from a condition precluding his detention. They concluded that the applicant was undergoing necessary treatment in medical unit no. 78.

39. In a letter received by the Court on 6 November 2013 the applicant complained under Article 34 of the Convention that the Government had not organised his examination by civil experts and that the report prepared by the medical staff of medical unit no. 78 and/or tuberculosis hospital no. 3 had not contained answers to the three questions posed by the Court on 3 October 2013.

D. Developments following the application of Rule 39

40. On 4 November 2013 the applicant informed the Court that he had been released from detention on the basis of St. Petersburg City Court's decision of 28 October 2013. On that occasion the City Court dismissed the investigator's request to continue detaining the applicant. In its decision the City Court relied on the expert opinion of 16 May 2013, having cited at length the applicant's diagnosis and having repeated the experts' finding that the state of his health precluded his detention as he suffered from illness included in the List of Illnesses Precluding Detention of Suspects, as adopted by a Governmental Decree on 14 January 2011. The City Court further held as follows:

> « In view of the absence of the adequate medical supervision and [the applicant's complaint about the state of his health, as confirmed in open court by a an emergency doctor who testified to the impossibility for [the applicant] to participate in a court hearing ..., [the applicant] was relieved from an obligation to continue taking part in the hearing on 24 October 2013.
>
> Taking into account the abovementioned state of [the applicant's] health, the fact that the investigation in the case was completed, that the requirements of Article 217 of the Code of Criminal Procedure were complied with, ... the court is of the opinion that the circumstances which served as the ground for [the applicant's] arrest and the extension of his detention ceased to exist. At the court hearing the investigator did not put forward any evidence in support [of his argument] that [the applicant] may reoffend, abscond the investigation or the court or obstruct the proceedings in the case, given the gravity and the nature of the state of his health. [The applicant's] continuous detention poses threat to his life and limb, and moreover, will run counter to the requirements of Article 5 § 3 of the European Convention on Human Rights ... and the Russian Constitution. The length of [the applicant's] detention for more than 20 months ... will become unreasonable, and the examination of the criminal case will become protracted should the court accept the investigator's request for a further extension of [the applicant's] detention."

41. The applicant was released from detention on the following day. The decision of 28 October 2013 was upheld on appeal on 18 November 2013 by the St. Petersburg City Court, which also attributed particular attention to the expert findings in the report of 16 My 2013 commissioned by the investigation to determine the state of the applicant's health. The City Court restated the experts' conclusions that the applicant suffered from a number of particularly serious health conditions accompanied by a heightened risk of the development of acute and grave complications, and a need of

permanent and dynamic medical supervision which could only be provided in the conditions of a specialised medical facility employing specialists in several related fields of medicine with a view to subjecting the applicant to a surgical treatment which could not be ensured in the conditions of an ordinary detention facility. The court also noted that the applicant could no longer remain in detention in the absence of the proper medical treatment.

42. The applicant informed the Court that following his release from detention on 29 October 2013 he had been immediately admitted to St. Petersburg Research Institute of Phthisiopulmonology for in-patient treatment. It appears that the criminal proceedings against the applicant were stayed in view of his poor state of health.

43. The applicant's lawyers lodged a complaint with the Kuybyshevskiy District Court of St. Petersburg, having disputed the lawfulness of the report prepared by the doctors from medical unit no. 78 in response to the European Court's decision to apply interim measure under Rule 39 of the Rules of Court. On 20 May 2014, having studied the applicant's medical records, the District Court noted that his condition was included in the list of serious illnesses precluding detention of accused or charged persons as established by Governmental Decree no. 3 of 14 January 2011. The court therefore concluded that the expert findings in the report of 21 October 2013 were erroneous. Having turned to the essence of the examination of the applicant which had allegedly been perform on 21 October 2013 and which had served as the basis for the report issued on the same day, the District Court noted that the applicant had never been examined by the doctors in person, as he had not been transported to the examination nor he had been visited by the doctors who had issued the report. The court's final conclusions, in so far as relevant, were:

> "In these circumstances the court finds that there was a severe violation of the procedure of a medical examination as the latter had been performed in [the applicant's] absence and in the absence of necessary conditions, which leads to the report [of 21 October 2013] being declared unlawful.
>
> ...
>
> The court considers that the disputed [report] violated [the applicant's] right to his health being safeguarded and his being provided with the requisite medical care, as well as his right to seek the revocation of his measure of restraint as established by the criminal procedural law on the ground of [his] suffering from serious illnesses precluding his detention.
>
> Submission of the disputed report [of 21 October 2013] to the European Court on Human Rights could have also misled that Court in its assessment of evidence in the case".

That decision became final on 24 June 2014.

II. RELEVANT DOMESTIC LAW

A. Provisions governing the quality of medical care afforded to detainees

44. Russian law gives detailed guidelines for the provision of medical assistance to detained individuals. These guidelines, found in joint Decree no. 640/190 of the Ministry of Health and Social Development and the Ministry of Justice on the Organisation of Medical Assistance to Individuals Serving Sentences or Remanded in Custody ("the Regulation"), enacted on 17 October 2005, are applicable without exception to all detainees. In particular, section III of the Regulation sets out the initial steps to be taken by medical personnel of a detention facility on the admission of a detainee. On arrival at a temporary detention facility, all detainees should be subjected to a preliminary medical examination before they are placed in a cell shared by other inmates. The aim of the examination is to identify individuals suffering from contagious diseases and those in need of urgent medical assistance. Particular attention should be paid to individuals suffering from contagious conditions. No later than three days after the detainee's arrival at the detention facility he or she should receive an in-depth medical examination, including an X-ray. During the in-depth examination a prison doctor should register the detainee's complaints, study his medical and personal history, record any injuries and recent tattoos, and schedule additional medical procedures, if necessary. A prison doctor should also authorise laboratory analyses to identify sexually transmitted diseases, HIV, tuberculosis and other illnesses.

45. Subsequent medical examinations of detainees are performed at least twice a year or following a detainee's complaints. If a detainee's state of health has deteriorated, medical examinations and assistance should be provided by the detention facility medical staff. In such cases a medical examination should include a general check-up and additional tests, if necessary, with the participation of the relevant specialists. The results of the examinations should be recorded in the detainee's medical file. The detainee should be comprehensively informed about the results of the medical examinations.

46. Section III of the Regulation also sets out the procedure to follow in the event that the detainee refuses to undergo a medical examination or treatment. For each refusal, an entry should be made in the detainee's medical record. A prison doctor should comprehensively explain to the detainee the consequences of his refusal to undergo the medical procedure.

47. Any medicines prescribed to the detainee must be taken in the presence of a doctor. In a limited number of circumstances, the head of the detention facility medical department may authorise his medical personnel

to hand over a daily dose of medicines to the detainee to be taken unobserved.

48. The Internal Regulations of Correctional Institutions, in force since 3 November 2005, deal with every aspect of inmates' lives in correctional institutions. In particular, paragraph 125 of the Regulations provides that inmates who are willing and able to pay for it may receive additional medical assistance. In such a situation, medical specialists from a State or municipal civilian hospital are to be called to the medical unit of the correctional institution where the inmate is being detained.

49. Governmental Decree no. 3 of 14 January 2011 concerning the medical examination of individuals suspected or accused of criminal offences regulates the procedure for authorising and performing a medical examination of a detainee to determine whether he or she is suffering from a serious illness preventing his or her detention. It also contains a list of such serious illnesses. A decision on the medical examination of a detainee is taken by the director of the detention facility following a written request from a detainee or his or her legal representative or a request by the head of the medical unit of that detention facility. The examination is performed by a medical commission of a facility appointed by the health service executive body of the respective region of the Russian Federation. The activities of the medical commission are determined by the Ministry of Health and Social Development of the Russian Federation.

50. The examination is performed within five days of the medical facility receiving the relevant order. Following the examination, the medical commission issues a report stating whether the detainee is suffering from a serious illness listed in the Decree. If a detainee who was previously examined by the medical commission experiences deterioration in his or her health, a new medical examination can be authorised.

51. The list of serious illnesses preventing the detention of suspected or accused persons comprises diseases affecting various systems of the human body. The sections devoted to illnesses affecting the endocrinal and pulmonary systems read as follows:

> **"Illnesses affecting the endocrinal system, eating disorders and metabolic disorders**
>
> Serious forms of insular diabetes accompanied by complications or stable health impairment leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.
>
> Serious disorders of the thyroid gland (if their surgical correction is impossible) and of other endocrine glands accompanied by complications or stable health impairment leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.
>
> ...

Diseases of the respiratory apparatus

Purulent and necrotic conditions of the lower respiratory tract, as well as chronic illnesses of the lower respiratory tract with the third-degree pulmonary failure or the presence of complications or stable impairments affecting body functions, leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility."

B. Provisions governing detention

52. The relevant provisions governing detention are described in the judgment of *Pyatkov v. Russia* (no. 61767/08, §§ 48-66, 13 November 2012).

III. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

A. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies ("the European Prison Rules")

53. The European Prison Rules provide a framework of guiding principles for health services. The relevant extracts from the Rules read as follows:

"Health care

39. Prison authorities shall safeguard the health of all prisoners in their care.

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

...

41.4 Every prison shall have personnel suitably trained in health care.

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

...

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

..;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

...

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

...

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment."

B. 3rd General Report of the European Committee for the Prevention of Torture ("the CPT Report")

54. The complexity and importance of health-care services in detention facilities was discussed by the European Committee for the Prevention of Torture in its *3rd General Report* (CPT/Inf (93) 12 - Publication Date: 4 June 1993). The following are extracts from the Report:

"33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.

34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime ... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay ...

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

As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.

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

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

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.). ...

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

55. The applicant complained that the Government's failure to have his medical examination performed with a view to answering the three questions asked by the Court had been in breach of the interim measure indicated by the Court under Rule 39 and had thus violated his right to

individual application. He relied on Article 34 of the Convention, which reads as follows:

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

Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

A. Submissions by the parties

56. The Government opened their line of argument with the assertion that the legally binding force of the interim measure issued under Rule 39 of the Rules of Court may not be drawn from Article 34 of the Convention or "from any other source". They further stressed that the Rules of Court and accordingly the interim measure applied did not have a binding force on the State Party and that, accordingly, their failure to submit answers to the questions raised by the Court in its letter of 3 October 2013 did not entail a violation of Article 34 or any other provision of the Convention.

57. The Government continued by arguing that the applicant's right to communicate with the Court had in no way been interfered with. The applicant had retained counsel, who had submitted his application to the Court. The applicant and his counsel had continued to communicate freely with the Court and still did so. Lastly, the Government submitted that they had prepared the answers to the Court's three questions on the basis of the report prepared on 21 October 2013 by specialists of the St. Petersburg tuberculosis hospital. The Government stressed that those specialists were fully independent from the penitentiary system as required by the Court in its letter of 3 October 2013.

58. Having started with an argument against the Government's submission as to the legal force of the interim measure issued by the Court under Rule 39 of the Rules of Court, the applicant continued with the discussion of the report prepared on 21 October 2013 on which the Government relied in their assumption that they had complied with the interim measure. In particular, the applicant noted that despite the Government's argument to the contrary, report had not been prepared by

independent medical specialists as it clearly indicated that it was issued by three doctors from medical unit no. 78, a body belonging to the Federal Penitentiary Service in Russia. The applicant further stressed that the three doctors had not made "any credible attempt" to address the three questions asked by the Court. In the applicant's opinion, it was a clear sign of the Government's failure to comply with the Court's interim measure.

B. The Court's assessment

1. General principles

59. The Court reiterates that, pursuant to Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, and this has been consistently reaffirmed as a cornerstone of the Convention system (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005‑I). Although the object of Article 34 is essentially that of protecting an individual against any arbitrary interference by the authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there are positive obligations inherent in Article 34 requiring the authorities to furnish all necessary facilities to make possible the proper and effective examination of applications. Such an obligation will arise in situations where applicants are particularly vulnerable (see *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010; *Savitskyy v. Ukraine*, no. 38773/05, § 156, 26 July 2012; and *Iulian Popescu v. Romania*, no. 24999/04, § 33, 4 June 2013).

60. According to the Court's established case-law, a respondent State's failure to comply with an interim measure entails a violation of the right of individual application (see *Mamatkulov and Askarov*, cited above, § 125, and *Abdulkhakov*, cited above, § 222). The Court cannot emphasise enough the special importance attached to interim measures in the Convention system. Their purpose is not only to enable an effective examination of the application to be carried out but also to ensure that the protection afforded to the applicant by the Convention is effective; such measures subsequently allow the Committee of Ministers to supervise the execution of the final judgment. Interim measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention (see *Mamatkulov and Askarov*, cited above, § 125; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 473, ECHR 2005‑III; *Aoulmi v. France*, no. 50278/99, § 108, ECHR 2006‑I; and *Ben Khemais v. Italy*, no. 246/07, § 82, 24 February 2009).

61. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, only in truly exceptional cases and on the basis of a rigorous examination of all the relevant circumstances. In most of these cases, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. The vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands that the utmost importance be attached to the question of the States Parties' compliance with the Court's indications in that regard (see, *inter alia*, the firm position on that point expressed by the States Parties in the Izmir Declaration and by the Committee of Ministers in Interim Resolution CM/ResDH(2010)83 in the above-mentioned case of *Ben Khemais*). Any laxity on this question would unacceptably weaken the protection of the core rights in the Convention and would not be compatible with its values and spirit (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161); it would also be inconsistent with the fundamental importance of the right to individual petition and, more generally, undermine the authority and effectiveness of the Convention as a constitutional instrument of European public order (see *Mamatkulov and Askarov*, cited above, §§ 100 and 125, and, *mutatis mutandis*, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 75, Series A no. 310).

62. Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably be taken in order to comply with the interim measure indicated by the Court (see *Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009). It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see *Paladi*, cited above, §§ 92-106; and *Aleksanyan v Russia*, no. 46468/06, §§ 228-232, 22 December 2008, in which the Court concluded that the Russian Government had failed to honour their commitments under Article 34 of the Convention as a result of their failure to promptly transfer a seriously ill applicant to a specialised hospital and to subject him to an examination by a mixed medical commission including doctors of his choice, in disregard of an interim measure imposed by the Court under Rule 39 of the Rules of Court).

2. Application to the present case

63. Turning to the circumstances of the present case, the Court notes that on 3 October 2013 it indicated to the Russian Government, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, that the applicant should be immediately

examined by medical experts independent from the penal system with a view to determining three issues: (1) whether the treatment he was receiving in detention was adequate for his condition; (2) whether his state of health was compatible with the conditions of his detention; and (3) whether the applicant's condition required his placement in a hospital. The Government responded by submitting the medical report of 21 October 2013, prepared by the three doctors from "medical unit no. 78 hospital no. 3". The Government themselves also answered the three questions put forward by the Court (see paragraphs 36 - 38 above).

64. Following the communication of the case, the Government insisted that they had entirely complied with the interim measure by submitting the report of 21 October 2013 drawn up, as they argued, by civilian doctors and by providing detailed answers to the Court's questions in their letter of 1 November 2013. The Court is not convinced by the Government's argument. It reiterates that the aim of the interim measure in the present case, as formulated in the Court's decision of 3 October 2013, was to obtain an independent medical expert assessment of the state of the applicant's health, the quality of the treatment he was receiving and the adequacy of the conditions of his detention for his medical needs. That expert evidence was necessary to decide whether, as the applicant argued, his life and limb were at real risk as a result of the conditions of his detention, including the alleged lack of requisite medical care. In addition, the Court was concerned with the contradictory nature of the medical evidence submitted by the Government and the applicant in response to its request under Rule 54 § 2 (a) of the Rules of Court for provision of information on the applicant's health and the amount of medical aid he received in detention. The interim measure in the present case was therefore also meant to ensure that the applicant could effectively pursue his case before the Court (see, *mutatis mutandis*, *Shtukaturov v. Russia*, no. 44009/05, § 141, ECHR 2008).

65. Whilst the formulation of an interim measure is one of the elements to be taken into account in the Court's analysis of whether a State has complied with its obligations under Article 34, the Court must have regard not only to the letter but also to the spirit of the interim measure indicated (see *Paladi*, cited above, § 91) and, indeed, to its very purpose. The main purpose of the interim measure, as indicated by the Court in the present case – and the Government did not pretend to be unaware of it – was to prevent the applicant's exposure to inhuman and degrading suffering in view of his poor health and his remaining in the conditions of a detention facility that was unable to ensure that he received, as he argued, adequate medical assistance.

66. The Court cannot overlook the parties' dispute over the professional expertise of the doctors who prepared the medical report of 21 October 2013, as well as their independence from the penal system. However, it is dispensed from the necessity to rule on those issues in view of the decision

taken by the Kuybyshevskiy District Court of St. Petersburg. In particular, on 20 May 2014 the District Court declared the report of 21 October 2013 invalid, having criticised the doctors for having failed to correctly assess the applicant's medical condition, as well as for their decision to issue that report in the absence of the personal examination of the applicant (see paragraph 43 above). The District Court even went as far as to accentuate the possible damage which the report could have produced in the process of the assessment of the evidence by the Court in the present case. In these circumstances, the Court does not need to discuss the report of 21 October 2013 any further. It concludes that the report has little relevance to the implementation of the interim measure indicated to the Russian Government in the present case

67. The Government further argued that they themselves had responded to the three questions put forward by the Court in its decision of 3 October 2013. The Court notes in this respect that in view of the vital role played by interim measures in the Convention system, they must be strictly complied with by the State concerned. The Court cannot conceive, therefore, of allowing the authorities to circumvent an interim measure such as the one indicated in the present case by replacing the medical expert opinion with their own assessment of the applicant's situation. Yet, that is exactly what the Government have done in the present case (see paragraph 38 above). In so doing, the State has frustrated the purpose of the interim measure, which sought to enable the Court, on the basis of a relevant independent medical opinion, to effectively respond to and, if need be, prevent the possible continuous exposure of the applicant to physical and mental suffering in violation of the guarantees of Article 3 of the Convention (see *Salakhov and Islyamova v. Ukraine,* no. 28005/08, § 222, 14 March 2013.

68. The Government did not demonstrate any objective impediment preventing compliance with the interim measure (see *Paladi*, cited above, § 92). Consequently, the Court concludes that the State has failed to comply with the interim measure indicated by it in the present case under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicant complained that he had been unable to obtain effective medical care while in detention, which had led to a serious deterioration in his condition, put him in a life-threatening situation and subjected him to severe physical and mental suffering, in violation of the guarantees of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

70. Having referred to the general principles laid down by the Court in a number of judgments concerning the standards of medical care of detainees (among which *Aleksanyan v. Russia*, no. 46468/06, 22 December 2008; *Mirilashvili v. Russia*, no. 6293/04, 11 December 2008; *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI, and *Mouisel v. France*, no. 67263/01, ECHR 2002-IX), the Government stressed that the applicant had received comprehensive medical care in detention. They relied on evidence enclosed with their reply of 1 November 2013. The Government further challenged the reliability of the medical reports commissioned by the applicant from various medical experts. In particular, they argued that the biggest flaw of those examinations, in comparison with those provided to the Court by the Government, was that neither of the applicant's experts had examined him in person. They also stressed that although the applicant had provided the experts with various medical documents describing his health, those documents were not "official" records reflecting the essence of the medical treatment provided to him. The Government therefore proposed that the Court dismiss the expert reports as inadmissible and declare the applicant's complaint as manifestly ill-founded.

71. The applicant also started his reply with listing principles established by the Court in cases pertaining to inmates' access to medical assistance. He further relied on a number of expert reports, including the report issued on 16 May 2013 upon an investigators' order and cited by the Russian courts in their decision to release the applicant from detention on health grounds (see paragraphs 40 and 41 above). While having acknowledged that the reports commissioned by his counsel from civil experts had not been performed on the basis of his personal examination, he insisted that they had been issued by very respected civil medical specialists, including a doctor who had later participated in the preparation of the report of 16 May 2013. The reports were also prepared on the basis of his entire medical file. Furthermore, the reports prepared by the experts both in response to the request from the defence and those from the prosecution confirmed that the applicant did not have adequate access to necessary medical specialists, such as an infectious diseases doctor or herpetologist, he was not subjected to necessary testing, including fibroscopy, and he was not seen by medical personnel frequently enough as was required by his condition, including in the cases of medical emergencies. He also stressed that the Russian authorities had failed to comply with the recommendations of the medical experts. The applicant argued that the expert reports submitted by him disclosed serious failings in his medical care in detention. In his opinion, the Government did not submit any evidence which could have rebutted that conclusion. The applicant concluded that the Russian authorities violated his rights guaranteed by Article 3 of the Convention as they were unable to provide him with the

requisite level of medical services and were subjecting him to severe suffering and a significant risk of a fatal outcome.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the Court's evaluation of the facts and burden of proof

73. In cases in which there are conflicting accounts of events, the Court is inevitably confronted, when establishing the facts, with the same difficulties as those faced by any first-instance court. It reiterates that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is to rule not on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention - conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. In accordance with its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012, and the cases cited therein).

74. Furthermore, it should be pointed out that Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio*. The Court reiterates its case-law under

Articles 2 and 3 of the Convention to the effect that where the events at issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries, damage and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; and *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008). In the absence of such an explanation the Court can draw inferences which may be unfavourable for the respondent Government (see, for instance, *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002, and *Buntov v. Russia*, no. 27026/10, § 161, 5 June 2012).

(ii) As to the application of Article 3 and standards of medical care for detainees

75. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Verbinţ v. Romania*, no. 7842/04, § 63, 3 April 2012, with further references).

76. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

77. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most cases concerning the

detention of persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the State to provide detainees with the requisite medical assistance (see *Kudła*, cited above, § 94; *Kalashnikov v. Russia,* no. 47095/99, § 95, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

78. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 100, 27 January 2011; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; and, *mutatis mutandis*, *Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov*, cited above, § 211).

79. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

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

80. Turning to the circumstances of the present case, the Court observes that the applicant is a seriously ill person suffering from a number of grave conditions affecting his pulmonary, endocrine and alimentary systems, with the list of illnesses including advanced stage of insulin-dependent diabetes with progressing complications, infiltrative multi-drug resistant pulmonary-positive tuberculosis, chronic hepatitis C and kidney failure (see paragraphs 29, 32 and 40 above). Relying on a number of expert opinions issued by Russian medical specialists, the applicant argued that his condition was extremely serious, particularly given that he did not received adequate medical care in detention (see paragraphs 32 - 34 above). He submitted that neither the quality nor the quantity of the medical services he was provided with corresponded to his needs.

81. The Government disagreed. They drew the Court's attention to the report of 21 October 2013, as well as the medical certificates issued by the

Russian prison authorities. They insisted that the applicant was not suffering from a serious illness listed in the Governmental decree, that his condition did not therefore call for his release and that the quality of the medical services afforded to him was beyond reproach (see paragraphs 36 - 38 above).

82. The Court has already stressed its difficult task of evaluating the contradictory and even mutually exclusive evidence submitted by the parties in the present case (see paragraph 64 above). Its task has been further complicated by the need to assess evidence calling for expert knowledge in various medical fields. In this connection it emphasises that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a "particularly thorough scrutiny" (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010).

83. The Court has examined a large number of cases against Russia raising complaints of inadequate medical services afforded to inmates (see, among the most recent ones, *Koryak v. Russia*, no. 24677/10, 13 November 2012; *Dirdizov v. Russia*, no. 41461/10, 27 November 2012; *Reshetnyak v. Russia*, no. 56027/10, 8 January 2013; *Mkhitaryan v. Russia*, no. 46108/11, 5 February 2013; *Gurenko v. Russia*, no. 41828/10, 5 February 2013; *Bubnov v. Russia*, no. 76317/11, 5 February 2013; *Budanov v. Russia*, no. 66583/11, 9 January 2014, and *Gorelov v. Russia*, no. 49072/11, 9 January 2014). In the absence of an effective remedy in Russia to air those complaints, the Court has been obliged to perform the first-hand evaluation of evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention had been respected. In that role, paying particular attention to the vulnerability of applicants in view of their detention, the Court has called on the Government to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention.

84. Coming back to the medical reports submitted by the applicant in the present case, the Court is satisfied that there is *prima facie* evidence in favour of his submissions and that the burden of proof should shift to the respondent Government. The Court finds some merit in the Government's argument that the expert evidence produced by the applicant has the major defect of having been drawn up without the experts having examined the applicant in person. However, it does not consider that argument valid in the circumstances when the Government failed to organise a medical expert examination of the applicant in disregard of the interim measure indicated by the Court (see paragraph 68 above) and relied, in support of their own

arguments, on the report of 21 October 2013 also prepared by medical specialists who had not examined or even observed the applicant, as was established by the Russian courts (see paragraph 43 above).

85. Having regard to its findings under Article 34 of the Convention, the Court considers that it can draw inferences from the Government's conduct and is ready to apply a particularly thorough scrutiny to the evidence submitted by them in support of their position. It therefore finds that the Government have failed to demonstrate conclusively that the applicant had received effective medical treatment for his illnesses while in detention. The evidence submitted by the Government is unconvincing and insufficient to rebut the applicant's account of the treatment to which he was subjected in detention.

86. The Court thus finds that the applicant was left without the medical assistance vital for his illnesses. Thorough evaluation of his condition on the basis of the relevant diagnostic procedures, such as sputum smear or drug resistant tests, was significantly delayed or was entirely absent in respect of certain health problems (see paragraphs 19, 20 and 22 above). There was no adequate diagnosis in response to the increasing number of his health-related complaints. The treatment he received was incomplete, resulting in the applicant having developed complications, such as toxic hepatitis due to the overdose of anti-tuberculosis drugs (see paragraph 32 above). The medical supervision afforded to him was insufficient to maintain his health. The medical personnel of the detention facilities did not take sufficient steps to address his concerns and they did not apply the recommendations of the experts commissioned by the applicant, having, in so far as it concerned the development of the concomitant illness, limited their assistance to a mere recording of the negative dynamics (see paragraphs 23 and 34 above). The inability of the applicant to receive necessary medical services in detention was confirmed by the St. Petersburg City Court which, having relied on the expert report of 16 May 2013, stressed the applicant's need for the complex permanent and dynamic medical supervision and treatment, including a surgical one, which could only have been provided to him in a specialised medical facility by specialists in several related fields of medicine. The Russian court's unequivocal conclusion that the medical care the applicant received in detention was not capable of securing his health and well-being and preventing further aggravation of his condition served as the ground for his release.

87. To sum up, the Court believes that, as a result of the lack of comprehensive and adequate medical treatment, the applicant was exposed to prolonged mental and physical suffering that diminished his human dignity. The authorities' failure to provide the applicant with the medical care he needed amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

88. Accordingly, there has been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

89. The applicant complained of a violation of his right to trial within a reasonable time and alleged that the orders for his detention had not been based on sufficient reasons. He relied on Article 5 § 3 of the Convention, which provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Submissions by the parties

90. The Government argued that the Russian courts had authorised the applicant's arrest because they had sufficient reasons to believe that he had organised a stable criminal group which had committed a number of very serious criminal offences. When authorising or extending the applicant's detention, the Russian courts had taken into account the gravity of the charges, the complaints by victims and witnesses about instances of intimidations and threats made against them by the applicant and his accomplices, the nature of the criminal offences in question, the applicant's military experience, and his history of frequent travelling, which provided him with significant possibilities to obstruct the investigation by various means, as well as abscond or reoffend. The courts had examined the possibility of applying other, less strict measures of restraint, such as bail or house arrest, but had found them insufficient to counter-balance the above-mentioned risks. Similarly, the courts had paid attention to the defence's arguments concerning the state of the applicant's health, but given the medical evidence before them, had considered that his condition did not preclude his detention pending trial. The Government stressed that the applicant was released as soon as the grounds warranting his detention, such as threats to the proper course of justice, ceased to exist.

91. The applicant argued that the authorities had known of his serious illness, and that his state of health had warranted his release. His diagnosis had diminished the risk of his absconding or reoffending. However, the courts had continued to extend his detention on obviously far-fetched grounds. The investigator's assumptions that he was liable to abscond or obstruct the course of justice had not been supported by any evidence. The detention orders had been issued as a mere formality.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

93. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the lawfulness of his or her continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are found to have been "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV and *Suslov v. Russia*, no. 2366/07, §§ 93-97, 29 May 2012).

94. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons justifying his or her continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; McKay v. the United Kingdom [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

95. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one

that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine public interest requirement justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities which ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the established facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

96. The applicant was arrested on 28 February 2012 and was released on 28 October 2013 on an order of the St. Petersburg City Court. The period to be taken into consideration has therefore lasted for twenty months.

97. Turning to the circumstances of the present case and assessing the grounds for the applicant's detention, the Court notes that the competent judicial authorities advanced three principal reasons for not granting the applicant's release, namely that there remained a strong suspicion that he had committed the crimes of which he was accused; the serious nature of the offences in question; and the fact that if released, he was likely to abscond and pervert the course of justice, given the sentence he faced if found guilty as charged, his personality, his connections in the criminal underworld, and the likelihood that he would influence witnesses.

98. The Court accepts the existence of the reasonable suspicion, based on cogent evidence, that the applicant committed the offences with which he was charged. It also acknowledges the particularly serious nature of the alleged offences.

99. As regards the danger of the applicant's absconding, the Court notes that the judicial authorities relied on the likelihood that a severe sentence would be imposed on the applicant, given the serious nature of the offences at issue. In this connection, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. It acknowledges that in view of the seriousness of the accusations against the applicant, the authorities could justifiably have considered that such an initial risk was established (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). However, the Court reiterates that the possibility of a severe sentence alone is not sufficient, after a certain lapse of time, to justify continued detention based on the

danger of flight (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7, and *B. v. Austria*, 28 March 1990, § 44, Series A no. 175).

100. In this context the Court observes that the danger of absconding must be assessed with reference to a number of other relevant factors. In particular, regard must be had to the character of the person involved, his morals and his assets (see *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254 A). Having said that, the Court would emphasise that there is a general rule that the domestic courts, in particular the trial court, are better placed to examine all the circumstances of the case and take all the necessary decisions, including those in respect of pre-trial detention. The Court may intervene only in situations where the rights and liberties guaranteed under the Convention have been infringed (see *Bąk v. Poland*, no. 7870/04, § 59, ECHR 2007 II (extracts)). In the present case the national courts also relied on other circumstances, including the fact that the applicant had resources and connections in other regions of the Russian Federation, including through his work and previous experience of frequent traveler, and that he had a weighty military experience, and the flowing special skills which could have, presumably, helped him in concealing his whereabouts. While the Court doubts whether those circumstances, taken on their own, could have justified the domestic courts' finding that it was necessary to continue the applicant's detention, it is satisfied that the totality of those factors combined with other relevant grounds could have provided the domestic courts with an understanding of the pattern of the applicant's behaviour and the persistence of a risk of his absconding (see, for similar reasoning, *Sopin v. Russia*, no. 57319/10, § 42, 18 December 2012, and *Mkhitaryan v. Russia*, no. 46108/11, § 93, 5 February 2013).

101. The Court further observes that one of the main grounds relied on by the domestic courts in their justification for the applicant's detention was the likelihood of his tampering with evidence and influencing witnesses. The Court reiterates that, as regards the risk of pressure being brought to bear on witnesses, the judicial authorities cited statements by the witnesses who had complained to the investigating authorities about the threats mounted against them and their family members. The authorities also considered that the applicant's ties to the criminal underworld, including the fact that a number of members of the criminal group were still on the run, gave him an opportunity to influence witnesses and to destroy evidence if released. In these circumstances the Court is prepared to accept that the courts could have validly presumed that a risk existed that, if released, the applicant might abscond, reoffend or interfere with the proceedings, given the nature of his alleged criminal activities (see, for similar reasoning, *Bąk v. Poland*, cited above, § 62).

102. It remains to be ascertained whether the risks of the applicant absconding or perverting the course of justice persisted throughout the entire period of his detention. The Court reiterates the applicant's arguments

that the fact that he was seriously ill, with his state of health continuously deteriorating and the need to remain under constant medical supervision, considerably reduced the risk of his absconding. While not being convinced that the applicant's medical condition entirely mitigated the risk of his absconding so that it was no longer sufficient to outweigh his right to a trial within a reasonable time or release pending trial, the Court is of the opinion that the risk of collusion was such that it could not be negated by the changes in the applicant's state of health to the extent that his detention was no longer warranted.

103. In the decisions extending the detention it was emphasised that the fears of collusion were founded on the specific, fear-spreading and order-challenging nature of the crimes and the circumstances surrounding the criminal offences with which the applicant was charged. Those included the organisation of a stable criminal group to commit several counts of aggravated kidnapping, extortion, robbery and possession and trafficking of firearms. The national courts stressed the organised nature of the crimes, involving a number of apprehended defendants and a number of suspects still on the run. The authorities considered the risk of pressure being brought to bear on the parties to the proceedings to be real, and in such circumstances insisted on the necessity to keep the applicant detained in order to prevent him from disrupting the criminal proceedings. The Court reiterates that the fear of reprisal, justifiable in the present case, can often be enough for intimidated witnesses to withdraw from the criminal justice process altogether. The Court observes that the domestic courts carefully balanced the safety of the witnesses and victims who had already given statements against the applicant, together with the prospect of other witnesses' willingness to testify, against the applicant's right to liberty (see *Sopin,* cited above, § 44). It also does not escape the Court's attention that the Russian courts authorised the applicant's release with the specific reference to the fact that the proceedings against him had reached an advanced stage with the collection of evidence having been completed and thus the risk of collusion having been negated.

104. Having regard to the above, the Court considers that the present case is different from many previous Russian cases where a violation of Article 5 § 3 was found because the domestic courts in those cases had extended the applicant's detention by relying essentially on the gravity of the charges, without addressing specific facts or considering alternative preventive measures (see, among many others, *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); and *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006). In the present case, the domestic courts cited specific facts in support of their conclusion that the applicant might interfere with the proceedings, having assessed the evolving circumstances and the changes that affected the applicant's situation in the

course of his detention. They also considered the possibility of applying alternative measures, but found them to be inadequate (see, for similar reasoning, *Buldashev v. Russia*, no. 46793/06, § 99, 18 October 2011 and *Bordikov v. Russia*, no. 921/03, § 92, 8 October 2009.

105. The Court believes that the authorities were faced with the difficult task of determining the facts and the degree of responsibility of each of the defendants who had been charged with taking part in the organised criminal acts. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources within a lengthy time-frame to which the suspected criminal activities extended, coupled with the existence of a general risk flowing from the organised nature of the applicant's alleged criminal activities, constituted relevant and sufficient grounds for extending the applicant's detention for the time necessary to collect evidence, complete the investigation and proceed to the trial stage. The Court thus concludes that, in the circumstances of this case, the risk of the applicant interfering with the course of justice actually did exist, and it justified holding him in custody (see, for similar reasoning, *Celejewski v. Poland*, no. 17584/04, 4 May 2006, and *Łaszkiewicz v. Poland*, no. 28481/03, §§ 59-60, 15 January 2008). The Court concludes that the circumstances of the case as described in the decisions of the domestic courts, including the applicant's personality and the nature of the crimes with which he was charged, reveal that his detention was based on "relevant" and "sufficient" grounds.

106. The Court lastly observes that the proceedings were of considerable complexity, given the extensive evidentiary proceedings and the implementation of the special measures required in cases concerning organised crime. The time that elapsed between the commission of the crimes and the institution of the criminal proceedings was another factor that complicated the investigators' task. The Court is mindful of the fact that the authorities needed to balance the necessity to proceed with the investigation against an obligation to ensure that the applicant was fully fit to take part in it. The national authorities displayed diligence in the conduct of the proceedings. They completed the investigation, provided the defence team with an ample opportunity to study the case file and proceeded to the trial within less than twenty months. There is no indication that the authorities had, in any way, delayed that procedural action. In these circumstances, the Court reiterates that while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the authorities' efforts to clarify fully the facts at issue, to carefully reflect on whether the offences were in fact committed, to investigate every plausible version of events, including those which give the applicant the benefit of a reasonable doubt and to provide the defence with all the necessary facilities for putting

forward their evidence and stating their case (see, for similar reasoning, *Bąk*, cited above, § 64).

107. To sum up, having established that the authorities put forward relevant and sufficient reasons to justify the applicant's detention and that they did not display a lack of special diligence in handling the applicant's case, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. Article 41 of the Convention provides:

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

109. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the respondent State has failed to comply with the interim measure indicated by the Court under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 5 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro President