



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

FIRST SECTION

CASE OF ARUTYUNYAN v. RUSSIA

(Application no. 48977/09)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

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

In the case of Arutyunyan v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 48977/09) 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 Armen Vladimirovich Arutyunyan (“the applicant”), on 6 August 2009.

2. The applicant was represented by Mr O. Ivanov, a lawyer practising in Krasnodar. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been denied adequate medical assistance during an unreasonably long pre-trial detention, that a certain period of his pre-trial detention had lacked any legal basis and that the conditions of his detention had been unsuitable for a person in his state of health.

4. On 11 March 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Further to the applicant’s request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lived until his arrest in Krasnodar.

A. Applicant's state of health prior to his arrest

6. In 2004 the applicant had two operations: a retinal laser coagulation of the left eye and amputation of toes of the right foot. In the same year, unsuccessful surgery led to the entire loss of sight in the applicant's right eye. Two years later, he underwent a kidney transplantation. In August 2007 he was admitted to Krasnodar Regional Clinical Hospital no. 1 where he underwent a number of tests and received treatment for diabetes.

7. In 2008 the applicant's hip joints were replaced with prostheses in the Heidelberg Town University Clinique in Germany. As follows from a letter issued on 22 July 2008 by the head of the Clinique Medical Service, the applicant was required to make multiple monthly visits to the Clinique for check ups and medical treatment. The first such appointment was scheduled for August 2008.

8. Extract no. 46707 of the applicant's medical record drawn up on 22 December 2008 by a medical commission in Krasnodar Regional Clinical Hospital no. 1 reads as follows:

“[The applicant]... is a disabled person [officially recognised as having a] 1st degree disability; [he] underwent inpatient treatment from 12 to 22 December 2008.

Clinical diagnosis: subcompensated type 1 insular diabetes, severe state. Diabetic micro- and macroangiopathy. Diabetic glomerulosclerosis. End stage chronic renal failure, terminal stage.

Diabetic retinopathy of both eyes; retinal detachment of the right eye. Dysmetabolic encephalopathy. Gastroenteropathy. Myelotoxic anaemia. Polyneuropathy. Polyserositis. Diabetic foot. Condition after amputation of the 4th and 5th toes on the right foot. Allotransplantation of a donor kidney (November 2006). Permanent immunosuppression therapy. Osteochondritis deformans juvenilis of hips. Condition after total hip replacement. Acute respiratory disease.

Because of his main illness and associated complications, the state of the patient's health is serious ...

...

The patient was informed about the seriousness of his condition and was warned that if he failed to comply with the strict fluid balance, diet, mandatory lab control,

[and in the absence of] strict and regular use of medicines (particularly the immunosuppressive drugs) kidney transplant rejection and diabetes could occur.”

B. Criminal proceedings against the applicant and detention

9. On 1 February 2009 the Novorossiysk Town Investigative Department of the Krasnodar Regional Prosecutor’s Office instituted criminal proceedings against the applicant on suspicion of involuntary manslaughter.

1. Arrest and authorisation of detention on remand

10. Eleven days later, the applicant was arrested. According to the prosecution authorities, on 1 February 2009 in a local restaurant the applicant, a prominent criminal leader, organised an assault in which five individuals were severely injured. One of the victims died as a result.

11. On 14 February 2009 the applicant’s detention on remand was authorised and he was placed in temporary detention facility no. 5 in Krasnodar. The facility occupied the ground and last floors of a four-storey building constructed in 1938. The administrative offices and technical facilities were located on the ground floor of the building while the cells were located on the fourth floor. The building was not equipped with a lift.

12. On the applicant’s admission, the acting director of the facility issued a report allowing the applicant to have a number of objects usually prohibited for detainees. The list included a wheelchair, a glucometer, a tonometer, specific medicines, disposable masks, napkins, an additional mattress and a cushion for the wheelchair.

13. A week later the applicant was charged with having organised aggravated involuntary manslaughter.

14. On 21 February 2009 the applicant’s lawyers lodged a request with a senior investigator of the Krasnodar Regional Investigative Department, asking for the applicant to be transferred to a specialised prison medical facility and to have him examined by a number of medical specialists practising in the Krasnodar Region. They alleged that the detention facility was unequipped to accommodate the applicant’s needs. In support of their request the lawyers relied on medical certificates issued prior to the applicant’s arrest and argued that the applicant was a seriously ill person whose state of health was bound to deteriorate drastically in the conditions of the detention facility.

15. The investigator dismissed the request on the same day, finding that prison doctors had examined the applicant on his admission to temporary detention facility no. 5 and had found him fit to be detained in a regular detention facility and to participate in investigative procedures. The investigator also stressed that the applicant was under constant medical

supervision by prison doctors and that he received medical advice from other qualified and experienced medical specialists. According to the investigator, the applicant received the medicines necessary to maintain his health.

16. On 24 February 2009 the head of the Krasnodar Regional Nephrological Centre (hereinafter – the Centre), assisted by another doctor from the Centre, examined the applicant. They found that, in addition to the illnesses listed in extract no. 46707 drawn up on 22 December 2008, the applicant suffered from gonarthrosis, cardiac dropsy, secondary hyperparathyroidism, hyperuricaemia, hypercholesteremia, viral hepatitis type C and chronic cytomegalovirus [salivary gland virus] infection. The doctors also concluded that the applicant's diabetes was in the decompensation phase. They laid down a long list of recommendations to be followed, medical tests and examinations to be performed and drug regimens to be complied with, indicating, *inter alia*, the frequency and dosage of each medicine prescribed to the applicant.

17. In March 2009 the applicant's lawyers, relying on extensive medical evidence, including extract no. 46707 from the applicant's medical history, complained to the Oktyabrskiy District Court about the investigator's refusal to admit the applicant to a prison hospital. On 6 March 2009 the lawyers amended their claims, citing paragraph 9 of Decree no. 54 issued by the Government of the Russian Federation on 6 February 2004, by virtue of which individuals suffering from diabetes whose 24-hour dose of insulin exceeds 60 units may be relieved from serving sentences in correctional institutions. The counsel argued that the applicant's 24-hour regimen required 71 insulin units and therefore his detention in a regular detention facility ran contrary to the domestic legal requirements.

18. The applicant's medical history, submitted by the Government, shows that on 5 March 2009 he refused to submit to blood glucose level testing and to take an evening dose of prescribed medicines, including insulin, arguing that his treatment was inadequate. Between 6 and 20 March 2009 the applicant occasionally refused to take an increased dosage of medicines, complaining about side-effects such as nausea and fatigue.

19. On 10 March 2009 a medical assistant of temporary detention facility no. 5 issued a medical certificate describing the applicant's health. The relevant part of the certificate read as follows:

“[The applicant] does not have any complaints at the time of the examination.

...

2. Objective examination data: At the time of the examination [the applicant's] state of health is satisfactory [and] corresponds to his existing illnesses ...

3. Diagnosis: subcompensated type 2 insular diabetes; serious condition; [the applicant is receiving] insulinotherapy. Allotransplantation of a donor kidney (November 2006).

4. Conclusion: no restrictions to [the applicant's] detention in temporary detention facility ...”

The applicant submitted that no medical tests or analyses had been performed during the examination on 10 March 2009. A simple observation by “three women wearing white coats” had resulted in a finding that his illnesses were not an obstacle to his detention in the detention facility.

20. On 11 March 2009 the Oktyabrskiy District Court of Krasnodar dismissed the lawyers’ complaint, repeating verbatim the text of the investigator’s decision of 21 February 2009. In addition, the District Court noted that a medical commission had confirmed the applicant’s diagnoses but noted that he did not need urgent medical assistance and that his state of health did not preclude his participation in investigative procedures. The District Court concluded that the applicant could be effectively provided with medical assistance and treatment in the temporary detention facility.

21. The applicant’s lawyers appealed.

22. On 20 March 2009 the applicant went on a hunger strike and refused to take his medicines, notifying the authorities that the hunger strike was his last attempt to draw their attention to his situation. Three days later the applicant’s lawyers asked a senior prosecution investigator to authorise a complex medical examination of the applicant by specialists of the Health Ministry of the Krasnodar Region and to transfer him to a prison hospital. Similar requests were sent by those lawyers to various domestic authorities. The lawyers also complained about the conditions of the applicant’s detention, in particular the absence of daily outdoor recreation and physical exercise due to the impossibility for the applicant to descend in his wheelchair from the fourth floor of the detention facility, where his cell was, to a recreation yard.

23. As follows from the applicant’s medical record, on 24 March 2009 he resumed taking the prescribed medicines and stopped his hunger strike. Between 10 and 29 April 2009 the applicant again refused to take his medicines, complaining of a rapid deterioration in his health and an absence of adequate medical attention.

24. On 22 April 2009 the Krasnodar Regional Court upheld the decision of 11 March 2009, endorsing the District Court’s reasoning.

25. A week later a medical commission comprising medical specialists of the detention facility and doctors from the Centre examined the applicant and issued the following report:

“Having studied the health complaints, the medical history, objective data and results of the medical examination ..., the commission is bound to confirm that [the applicant’s] kidney transplant has been rejected as a result of his refusal to take prescribed immunosuppressants.

The commission's attention was drawn to the fact that despite numerous discussions about the consequences of such a refusal, [the applicant] firmly continued refusing to take the above-mentioned medicines. He also stated that he would refuse any treatment provided in detention facility no. 5 in respect of any complications arising from his refusal [to take the medicines].

[The applicant] stated that he had refused to take medicines prescribed by the doctors from the Centre because he considered that he had not received effective medical assistance in respect of his complaints about toothache, pain in the area of his hip replacements and problems with his eyes.

In an efficient manner, [the applicant] was once again informed that the deterioration of his health was entirely due to his intentional refusal to take the medicines (immunosuppressants) prescribed by the specialists from the Centre and did not result from any other illnesses.

The commission's conclusion is as follows:

1. The final diagnosis is:

Type 2 insulin diabetes in an advanced form, [the patient is receiving] insulinotherapy. Diabetic nephropathy, nephroangiosclerosis, chronic renal failure [in the end stage], condition after the donor kidney transplant (2006). Kidney transplant rejection crisis on 28 April 2009 caused by an intentional refusal to take immunosuppressants.

Diabetic proliferative retinopathy, condition after surgery on the retinal detachment of the right eye, partial massive hematopsia of the left eye, condition following laser coagulation of the left eye.

Diabetic angiopathy of the vessels of the lower extremities, diabetic foot, condition following the amputation of the fourth and fifth toes of the right foot.

Condition following complete hip replacement (2008).

Morbid obesity (extreme condition).

2. It is imperative that [the patient] starts undergoing outpatient haemodialysis and resumes taking the necessary medicines, in particular, immunosuppressants.

[The applicant] was offered an outpatient course of the haemodialysis which is to be administered by specialists from the Centre with special medical equipment in [detention facility] no. 5. He was also notified that his refusal to take [medicines], irrespective of his decision to undergo haemodialysis, would lead to a full rejection of the transplant.

Following this discussion [the applicant] gave his firm consent to undergo haemodialysis [and] a subclavian insertion and to take medicines in accordance with the course of immunosuppressants prescribed.

Due to the fact that [the applicant's] eyesight is very poor, a text of the document confirming his consent to undergo haemodialysis [and] a subclavian insertion and to

take medicines in accordance with the course of immunosuppressant treatment prescribed was prepared and read out in the presence of the members of the commission and was signed by [the applicant].”

26. On 30 April 2009 the applicant had his first session of haemodialysis which was performed in a specially equipped room on the ground floor of facility no. 5. The haemodialysis was carried out by specialists from the Centre, as the prison doctors were not licensed to perform the procedure. According to medical documents provided by the Government, the applicant received haemodialysis at least once every two days, with each session lasting from four to six hours. Prison medical personnel examined the applicant daily, recording his blood pressure, body temperature and blood glucose level, monitoring the fluctuation of his body weight (between 149 and 136 kilograms), controlling his intake of insulin, adjusting the drug regimen to meet his needs, and so on.

The medical documents show that the applicant frequently underwent various X-ray exams and ultrasound scans, and was taken to the Centre and a civil hospital for clinical testing and examinations by various medical specialists. He also underwent a number of minor operations involving insertion and replacement of catheters and endured lengthy procedures, lasting for hours at a time, required to administer medicines intravenously. The medical personnel of the detention facility consulted specialists from the Centre on a daily basis, including its head, for advice on adjusting the applicant's treatment to the changes in the state of his health and to his complaints.

27. In the meantime, on 9 April 2009 the Oktyabrskiy District Court extended the applicant's detention until 12 June 2009, having considered that the gravity of the charges, as well as the applicant's liability to abscond, re-offend and obstruct justice warranted such an extension. On 12 June 2009 his detention was extended for an additional two months, until 12 August 2009, with the District Court using identical reasoning to that in its decision of 9 April 2009. The detention order of 12 June 2009 became final on 8 July 2009 when the Krasnodar Regional Court concluded that the District Court had correctly linked the applicant's liability to abscond and interfere with the investigation to the gravity and the character of the charges against him.

28. On 11 August 2009 the Oktyabrskiy District Court again extended the applicant's detention for an additional two months, finding that the gravity of the charges against him, information about his personal history and his liability to abscond warranted the extension. Having heard a prison doctor and studied medical certificates issued by the medical personnel of the detention facility, the District Court also found that the applicant's state of health was stable and did not preclude his detention in the temporary detention facility. The decision was upheld on appeal on 26 August 2009.

29. On 24 September 2009 the applicant's scheduled haemodialysis session was interrupted due to the breakdown of the catheter. The catheter

could not be replaced until the following day, when haemodialysis was resumed. On 5 October 2009 an ophthalmologist from the microsurgical department of the Regional Clinical Hospital, having examined the applicant and studied his medical history, found that given the deterioration of the applicant's eyesight surgery had no prospects of success.

30. On 9 October 2009 the Oktyabrskiy District Court examined an investigator's request for a further extension of the applicant's detention until 24 November 2009. Having accepted the investigator's request, the District Court ruled as follows:

"[The applicant] organised a particularly serious criminal offence, as a result of which [the] victim ... died and serious health damage was caused to Mr P. and Mr V.

Following an examination of [the applicant's] personal history, it was established that on 20 June 1994 the Prikubanskiy District Court of Krasnodar had found him guilty of criminal offences proscribed by Article 218 § 2 and Article 224 § 1 of the RSFSR Criminal Code; the record of the criminal conviction had expired; previously [he] had been charged on a number of occasions with having committed criminal offences proscribed by Article 163 § 2 [and] Article 330 § 3 of the Russian Criminal Code; he was absolved from criminal responsibility on the basis of amnesty acts.

Taking into account the information pertaining to [the applicant's] personal history and having regard to the serious nature of the criminal offence committed by [the applicant], the investigation rightfully considers that, if released, [the applicant] will take active steps to influence witnesses, victims and other parties to the criminal proceedings, and that [he] will destroy evidence or, by other means, obstruct the objective investigation in the case. Moreover, [the applicant] may flee the territory of the Russian Federation to avoid criminal responsibility, rendering his criminal prosecution impossible.

In this connection, the investigator concluded that there were no grounds to change the preventive measure [applied to the applicant] to one which did not involve him being isolated from society and being detained ...

The defence lawyers and [the applicant] argued against the investigator's request. [They] considered that the investigation had not put forward any item of evidence showing that [the applicant] could influence the witnesses and victims or [that he] could obstruct the investigation in any other way. [They] asked to take into account the impossibility for [the applicant] to continue being detained as he was very ill and relied on a wheelchair for mobility. He had a kidney transplant which functioned poorly and underwent haemodialysis four times a week. [They] asked for the applicant to be provided with adequate medical assistance in a medical facility under doctors' supervision.

Having studied the material presented [and] having heard the parties to the proceedings, the court finds that it is necessary to extend [the applicant's] detention as [the applicant] is charged with having organised a particularly serious criminal offence, there is sufficient information to conclude that, if released, he may abscond during the investigation and trial or [he] may obstruct the criminal proceedings by other means. The investigator has still to perform a number of investigative procedures in the case.

The information about the circumstances of the case which were presented to the court, the gravity of the charges, [and] the personal history of the accused, who has been criminally charged before [and] who is the breadwinner for a minor child, confirm the court's conclusion that it is impossible to change the preventive measure [applied to the applicant] to a more lenient one. The court is of the opinion that detention is the sole preventive measure corresponding to the requirements of the criminal proceedings and ensuring the thoroughness and objectivity of the pre-trial investigation having regard to the particular seriousness of the criminal offence committed by [the applicant].

The court was not provided with material evidence showing the presence of extenuating circumstances which could have been taken into account by the court when it determined the issue of the extension of [the applicant's] detention."

31. On 19 October 2009 the head of the Centre examined the applicant and issued the following conclusion: "[his] condition corresponds to the severity of the main and concomitant illnesses, in general [it] is stable and relatively satisfactory".

32. The applicant's lawyer requested a senior investigator of the Krasnodar Regional Investigative Department to transfer the applicant to a prison hospital, arguing that his health had continued to deteriorate in the absence of adequate medical assistance. Three days later the senior investigator dismissed the request, stating that the deterioration of the applicant's health was the direct result of his refusal to accept medical assistance and to follow the recommendations given by the medical personnel of the detention facility. The senior investigator also noted that the current state of the applicant's health was stable and did not call for his admission to a prison hospital.

33. Having decided to obtain an independent expert opinion on the applicant's state of health, his lawyers submitted available medical records, including those drawn up in the detention facility, to the State-owned Scientific Research Institute of Transplantology and Artificial Organs in Moscow (hereinafter – the Institute).

34. On 12 November 2009 they received a letter from the head of the Kidney and Liver Transplants Department of the Institute, which, in so far as relevant, read as follows:

"... it is impossible to make a firm conclusion about [the applicant's] state of health on the basis of the medical documents presented. However, it is plainly evident that at the present time the kidney transplant is not functioning and the patient's life is supported by the haemodialysis prescribed. The non-functioning transplant may have to be removed if it is a source of intoxication. Another kidney transplantation is not warranted. Having regard to the severity of the [applicant's] primary and corresponding illnesses, the presence of the non-functioning transplant, and [the applicant's] detention in the temporary detention facility in the absence of adequate clinical instrumental laboratory control, there is a real risk that acute complications leading to [the applicant's] death will develop. A full examination, preferably in a hospital, is advisable to determine the further course of medical treatment to be taken, namely, the provision of medicines and potential surgery."

35. On 20 November 2009 the Oktyabrskiy District Court authorised a further extension of the applicant's detention until 24 January 2010, finding that the grounds warranting his detention, including the gravity of the charges and the applicant's liability to abscond, had not changed. The District Court concluded that the defence lawyers' arguments pertaining to the applicant's health did not outweigh the grounds calling for his detention.

36. On 3 and 15 December 2009 the District Court examined the lawyers' requests for the applicant's release and for his transfer to a medical institution respectively. Both requests were dismissed as the District Court considered that the applicant was receiving sufficient medical assistance in detention facility no. 5. A similar request for the applicant's placement in a prison hospital was dismissed by the senior investigator on 16 December 2009.

37. In the meantime, on 9 December 2009 the applicant was examined by a cardiologist and a phlebologist from civil hospitals. He was diagnosed with ischemic heart disease, diabetic angiopathy and thrombosis of the lower extremities. Treatment was prescribed. A week later the applicant again experienced problems with the intravenous catheter, making it impossible for him to complete the haemodialysis scheduled for that day. In the following week, urgent consultations between the medical personnel of the detention facility and specialists from the Centre took place for the purpose of finding a solution to the problem. On 25 December 2009 four leading medical experts from the Centre and a civil hospital performed surgery on the applicant in the detention facility with a view to installing a twenty-centimetre central vein catheter. Following a number of unsuccessful attempts, the doctors were finally able to insert it. Three days later the applicant refused to undergo haemodialysis, complaining of pain in the area of the catheter insertion and extreme fatigue and weakness. On the following day, given the serious deterioration of his health, the applicant agreed to go down to the ground floor to undergo haemodialysis.

The applicant's medical records show that whenever his catheter malfunctioned and was replaced, he was provided with a course of antibiotics to prevent infection.

38. On 25 December 2009 a prison physician examined the applicant and issued a medical certificate describing his state of health. The relevant part of the certificate reads as follows:

"Since the beginning of his detention in [detention facility no. 5] the patient has been under constant medical supervision; the level of glucose in his blood (before every meal), blood pressure, fluid balance, body temperature and other indicators are monitored daily. An examination of all the relevant biochemical blood parameters, including at cyclosporine level, and all additional medical examinations authorised by medical specialists (ultrasound scanning of the heart, vessels, abdominal cavity, kidneys ..., adrenal glands, bladder and prostate; X-ray examinations of the chest and hip joints, and electrocardiogram) are performed whenever necessary, but no less than once a week. On a number of occasions the patient has been examined by medical

specialists (an endocrinologist, a urologist, a surgeon, a traumatologist-orthopaedist, an ophthalmologist, a vascular surgeon and a cardiologist) from municipal health institutions.

The patient is under ongoing supervision by doctors from the Nephrological Centre, who perform scheduled outpatient haemodialysis three or, if necessary, four times a week. On a number of occasions [the applicant] was examined by a specialist in kidney transplantology – Professor Ya., Doctor of Medicine, in the detention facility; [Dr Ya.] is also constantly informed of the results of the clinical supervision, and of complex biochemical and other examinations. Medical specialists regularly organise consultations with Dr Ya.'s participation (the most recent one [took place] on 15 December 2009); the course of future medical treatment and necessary diagnostic measures are determined during [those consultations].

The patient is also under constant supervision by an endocrinologist; the level of glucose in his blood is measured daily before every meal; a log is kept of the dosage of glycaemia [and] insulin [he receives]; [and] consultations about the insulin dosage regimen take place.

During his detention in [detention facility no. 5] [the applicant] constantly violated his dietary regimen [and] refused to keep a “dietary diary”; on a number of occasions [he] refused to take insulin and medicines; after 10 April 2009 he completely refused to take immunosuppressive medicines, which are necessary for his kidney transplant to function. [The applicant] willingly and knowingly impaired his health, despite regular discussions about the necessity of renewing the course of the immunosuppressive medicines and the patient's awareness of the consequences of his refusal of the treatment ... As a result of those actions [the patient's] kidney transplant stopped functioning and since 30 April 2009 [he] has been undergoing permanent haemodialysis, despite the fact that he has resumed taking medicines and begun complying with the [recommended] dietary regime.

The haemodialysis is performed by specialists of the Regional Nephrological Centre in a special cell in [detention facility no. 5]. [The applicant] is afforded an opportunity to rest for the necessary period of time in a special armchair after each scheduled session of haemodialysis. After the glucose level in his blood has been checked ..., with the warders' help and in the presence of a medical specialist [the applicant] ascends a staircase to his cell with the wheelchair.

When ascending the staircase in small steps being held by the arms, [the applicant] rests in his wheelchair after every 2 or 3 flights of stairs for as long as necessary. If necessary, the above-mentioned parameters are measured. On the upper floor of the detention facility building [the applicant] is taken to his cell in the wheelchair, where he is examined by medical personnel if necessary.

...

Medical specialists – an endocrinologist, ophthalmologist, traumatologist-orthopaedist, vascular surgeon and specialists of the Nephrological Centre – consider that at the present time the patient's health is stable, despite his existing serious chronic illness. [The applicant's] health does not at present call for urgent medical assistance or inpatient treatment. The necessary medical and diagnostic procedures prescribed by medical specialists are performed *in corpore* and timeously.

Therefore, the deterioration of [the applicant's] health was entirely caused by his willing and knowing actions. The administration of the detention facility and the medical unit of the detention facility, with the participation of medical specialists in the fields connected to [the applicant's] illnesses, implemented an entire set of medical measures necessary to maintain [the applicant's] health and to eliminate the consequences of his wilful actions. As a result of those measures [the applicant's] state of health is stable and does not preclude his detention in [detention facility no. 5]."

39. In January and February 2010 the applicant received haemodialysis at least once every two days. On 14 January 2010 a surgeon was called in to examine the applicant in response to his complaints of severe pain in the right knee, which intensified during physical activity. The applicant was diagnosed with degenerative arthritis of the right knee joint and prescribed treatment. On 22 January 2010 he underwent another replacement of the catheter in the detention facility. Another replacement was carried out in the detention facility a month later.

40. In the meantime, in the beginning of January 2010 the prosecution authorities closed the investigation and transferred the case file to the trial court. On 21 January 2010 the Oktyabrskiy District Court scheduled the first trial hearing and held that the trial proceedings were to be conducted *in camera* because the applicant and his five co-defendants had criminal records and were liable to threaten witnesses and other parties to the proceedings. The District Court also examined the lawyer's petition for the applicant's release and dismissed it, finding that the applicant's health did not preclude his detention on remand and concluding that "the preventive measure applied in respect of [the applicant] should remain unchanged". However, it agreed to call two medical experts proposed by the defence to determine whether the applicant was in need of a complex medical examination or any specific medical procedures.

41. The applicant's lawyers appealed, arguing that the applicant's detention after 24 January 2010 had been unlawful, as the District Court had failed to extend his detention officially and its decision to dismiss the request for the applicant's release could not substitute a proper detention order.

42. At the hearing on 28 January 2010 the lawyers again asked the District Court to release the applicant as there were no grounds for his continued detention. They also argued that the time-limit for the applicant's detention had expired on 24 January 2010 and that his detention after that date had been unlawful as it was not covered by a proper legal order. A prosecutor lodged a counter-claim, asking to extend the applicant's and his co-defendants' detention until 11 July 2010. The District Court accepted the prosecutor's request and collectively extended the applicant's and his co-defendants' detention until 11 July 2010, noting that there were no grounds for their release.

43. On 17 February 2010 the Krasnodar Regional Court upheld the decision of 28 January 2010, having dismissed the argument that the applicant's detention between 24 and 28 January 2010 had been unlawful. While acknowledging that on 21 January 2010 the District Court had examined the matter at the applicant's lawyer's request, the Regional Court reasoned that the examination constituted a *de facto* extension of the detention.

44. On 18 May 2010 the Oktyabrskiy District Court found the applicant guilty as charged and sentenced him to eleven years' imprisonment.

45. As follows from the applicant's medical history submitted by the Government, since March 2010 the applicant has fully complied with the prescribed course of drug treatment and has occasionally failed to adhere to the dietary recommendations of the prison's medical specialists. He occasionally refused to submit to examinations by medical specialists from the Centre and civil hospitals, citing extreme weakness, fatigue and his poor state of health as reasons for those refusals. In the second half of April 2010 the amount of haemodialysis was intensified, becoming a daily procedure. As follows from the applicant's medical history, the only days when he did not have haemodialysis were the days on which trial hearings took place. In May 2010 the applicant was examined by a surgeon, an ophthalmologist, a urologist and an endocrinologist, who, having confirmed the previous diagnosis and having noted no major changes in the applicant's state of health, concluded that it did not preclude his detention in facility no. 5.

46. According to the Government, since the first day of his detention the applicant had lodged at least thirty complaints with the director of the detention facility concerning the conditions of his detention and quality of medical care. He had also lodged numerous similar complaints with various State authorities, including the prosecutors' offices and the Federal Security Service. In particular, the Government provided a copy of the applicant's complaint of 29 May 2009 in which he informed the director of his refusal to continue haemodialysis in view of his inability to continue to endure the "inhuman treatment" accompanying that procedure. He asked to notify his relatives of his wish to be buried in Yerevan. The complaint bears a handwritten note by the facility director stating that a discussion with the applicant had resulted in his consent to go on with the treatment. The applicant's repeated complaints to the facility director regarding his inability to descend the stairs for his haemodialysis sessions either resulted in the applicant agreeing to continue the haemodialysis or the director's promise to consult engineers on the subject of equipping the facility with a mechanism which would allow the applicant to descend and ascend the stairs more easily. One of the applicant's complaints to State authorities brought a response from the Federal Supervision Service for the Health and Social Development Sectors. By a letter of 17 August 2010 the acting director of the service informed the applicant that "the performance of ...

haemodialysis either in a temporary detention facility or in a correctional colony does not have any legal basis”.

47. Another certificate provided by the Government shows that during the entire period of the applicant’s detention he was taken for a walk in the recreation yard of the facility twice: on 16 and 17 May 2010. The Government alleged that the applicant had consistently refused to leave the cell to be taken for a walk.

C. Current state of the applicant’s health

48. The applicant provided the Court with an expert report issued on 21 May 2010 by two leading forensic medical experts. Having studied his complete medical history, the experts concluded as follows:

“... as a result of his main illness (insular diabetes) [the applicant’s] central nervous system, cardiovascular system, visual organs, kidneys, stomach [and] thyroid body were damaged.

Progress of type-one insular diabetes is, usually, gradual; [however, it becomes] more rapid if stress or other illnesses are present ...

[The applicant’s] body movement is restricted as he suffers from osteochondrosis of the whirl bones and has undergone a complete hip replacement.

[The applicant’s] hepatitis C ... and chronic Wyatt’s syndrome substantially aggravate his main illness.

... the severity of the [applicant’s] main and concomitant illnesses, his non-functioning renal transplant, and his detention in facility no. 5 in the absence of proper clinical, instrumental and laboratory supervision make the risk of development of lethal complications very real.

The fact that [the applicant] suffers from the listed illnesses leads to the conclusion that he is in need of constant supervision and treatment by medical specialists which could only be provided in specific hospitals ...

It is virtually impossible for [the applicant] to receive the required [medical care] in the conditions of detention facility no. 5 ...

Type-one insular diabetes and chronic renal failure in the terminal stage, from which [the applicant] suffers, are included in the List of Illnesses Precluding [a detainee] from Serving a Sentence, as adopted by Decree no. 54 on 6 February 2004 by the Government of the Russian Federation.”

The experts were also under impression that the medical personnel caring for the applicant had “deliberately understated the seriousness of [his] condition and [had] deliberately amended [the] diagnosis previously confirmed by specialised clinical medical facilities”.

49. On 5 July 2010 the applicant was sent to serve his sentence in correctional colony no. 2 in the Astrakhan Region. On arrival at the colony

he was immediately admitted to the prison hospital. However, two days later, given the assessment of his state of health by the prison doctors, the applicant was transferred to the resuscitation department of the Aleksandro-Mariinskiy Regional Clinical Hospital where he started receiving daily haemodialysis and extensive insulin and immunosuppressive therapy. Having examined the applicant on 6 August 2010 the medical commission, comprising a number of medical specialists, including those from the colony hospital, issued a report which, in its relevant part, read as follows:

“The general condition of the patient is serious ...

The patient suffers from obesity of the third degree – he weighs over 130 kilograms; it is clearly insufficient to [treat him] with haemodialysis as an out-patient three times a week; on days when haemodialysis is not performed [the applicant] suffers from excessive hydration, hyperpotassemia, and increasing uremic intoxication, which can only be treated with haemodialysis in the conditions of a resuscitation department in a hospital. Given the severity of his main illness, [the applicant’s] excessive body weight (insufficient haemodialysis) haemodialysis often has to be performed urgently outside the schedule ... in the conditions of the resuscitation department. The most appropriate schedule [for the applicant] is daily haemodialysis in the resuscitation unit. The presence of a non-functioning transplant requires regular instrumental control (ultrasound exams ...), examinations by a transplantologist, adjustment of dosage of immunosuppressants, [and] a well-timed decision concerning the removal of the transplant. The presence of the haemodialytic catheter in the external jugular vein requires constant care with the aim of preventing infection and thrombosis of the life-supporting vascular access for haemodialysis. Given the fact that [the applicant] underwent a complete hip replacement with an endoprosthesis he is unable to move without assistance and to care for himself which, in its turn, requires that [the applicant] should be permanently assisted by carers.”

The commission’s conclusion was that the applicant was suffering from illnesses which should preclude his serving the sentence, as declared by the Government’s Decree no. 54 of 6 February 2004.

50. The colony director applied to the Leninskiy District Court of Astrakhan seeking the applicant’s release given his inability to serve the remaining part of his sentence. The director’s request was supported by the medical personnel of the colony hospital, the head of the Astrakhan Town Haemodialysis Centre and the head of the endocrinology department of the Aleksandro-Mariinskiy Regional Clinical Hospital. The doctors argued in open court that the applicant could not stay in the colony and should be permanently admitted to a hospital for life-supporting therapy.

51. On 25 August 2010 the District Court dismissed the request for release, having found that the applicant’s health problems partly resulted from his own careless decisions not to take medicines on certain occasions. The Court also took into account that the applicant was receiving full medical assistance and that he had only served a month and a half of his long-term sentence.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND REPORTS

52. Russian law does not contain specific rules or requirements regulating the detention of disabled individuals, including wheelchair-bound detainees.

53. The relevant provisions of the domestic and international law on general health care of detainees are set out in the following judgments: *Pakhomov v. Russia*, no. 44917/08, 30 September 2011; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, 27 January 2011; and *Enea v. Italy* [GC], no. 74912/01, § 48, 17 September 2009.

54. The Russian legal regulations of detention matters are explained in the judgment of *Isayev v. Russia*, no. 20756/04, §§ 67-80, 22 October 2009.

55. The Government's Decree no. 54 of 6 February 2004 regulates medical examinations of convicts eligible for an early release in view of their state of health. The same Decree contains a list of illnesses that preclude a convict from serving the sentence. In particular, the Decree indicates that individuals suffering from a grave form of diabetes whose 24-hour dose of insulin exceeds 60 units may be relieved from serving sentences in correctional institutions (§ 9).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION AND THE QUALITY OF MEDICAL CARE

56. The applicant complained that his detention in a regular detention facility, in view of his state of health, amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. He further complained that the authorities' refusal to transfer him to an outside hospital had stripped him of the opportunity to receive effective medical care. Article 3 reads as follows:

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

A. Submissions by the parties

57. The Government put forward a two-fold argument submitting that the applicant's complaint is both manifestly ill-founded and inadmissible due to his failure to exhaust domestic remedies. In particular, they insisted

that the applicant, while having lodged numerous complaints with the detention facility administration and various executive authorities, had not taken “full advantage of the domestic remed[ies]”. In the Government’s opinion, a tort action against the detention facility could have provided the applicant with the desired relief in the form of “the restoration of his allegedly violated rights or compensation for non-pecuniary damage”. The Government supported their submission with a reference to two judgments issued by Russian courts in favour of former inmates who had obtained compensation for damage resulting from the inadequate conditions of their detention or ineffective medical care. Citing Resolution no. CM/ResDH(2010)35 adopted on 4 March 2010 by the Committee of Ministers of the Council of Europe, they further stressed that there was a developing judicial practice in Russia “of awarding compensation for non-pecuniary damage caused by poor detention conditions”.

58. The second line of the Government’s argument devoted to the ill-founded character of the applicant’s complaint was based on the opinion of various prison medical authorities, as well as medical specialists of the Centre, who had found the applicant fit to be detained in a regular temporary detention facility. The Government argued that the applicant had received adequate medical care comprising regular examinations and clinical testing by a large number of prison and civilian medical personnel and a life-supporting chemotherapy regimen. The administration of the detention facility had taken every possible step to safeguard the applicant’s health. Doctors from the Centre had provided him with medical services in a special room on the ground floor of the facility where the necessary medical equipment had been installed. The Government noted that it had been impossible to transfer the applicant to any prison hospital in the Krasnodar Region as they had not had the medical equipment to perform haemodialysis. The Government firmly believed that the sole reason for the deterioration of the applicant’s health was his irresponsible behaviour, namely, occasional refusals to take medicines, including insulin and immunosuppressants.

59. While describing the conditions of the applicant’s detention in facility no. 5, the Government particularly stressed the efforts which the facility administration had undertaken to accommodate the applicant, a wheelchair-bound detainee. For instance, the director of the facility had allowed the applicant to have certain items, including a wheelchair and medical equipment, which inmates were not normally allowed to have in prison. The facility staff had also tried to make his walk to and from the haemodialysis room as comfortable as possible. Having acknowledged that although it was not possible to install a lift in the facility or transfer the applicant to a cell on the ground floor of the facility, the Government noted that warders and a prison nurse had always helped the applicant up and down the stairs, and allowed him to rest in the wheelchair between the

flights of stairs for as much time as he had needed to recover his strength. According to the Government, the fact that the applicant had refused the warders' proposal to be carried on a stretcher whenever he had needed to leave his cell clearly demonstrated that the applicant had not experienced any suffering during those walks. It had also been the applicant's own choice not to leave his cell for daily walks in the recreation yard of the detention facility.

60. Relying on the reports issued by various civil medical experts, the applicant argued that the facility administration had amended his diagnosis, understating the seriousness of his condition, and had deliberately treated him in a manner meant to cause him additional suffering. His refusals to take medicines or to undergo certain medical procedures, as well as his going on hunger strikes, had been measures of last resort meant to attract attention to his case and to force the facility administration to provide him with medical care of a proper quality. The applicant insisted that in violation of the requirements of the domestic law and despite the absence of qualified medical personnel and necessary medical equipment, the Russian authorities had refused to admit him to a prison hospital and had kept him in the detention facility, where only healthy inmates should have been detained. Every day he had been forced to endure the walk from the fourth to the ground floor of the building to receive lengthy haemodialysis, to undergo testing or other medical procedures, to take part in court hearings or to meet his lawyers. The warders' assistance during those walks could not alleviate the suffering, pain, humiliation and distress which he had experienced. The applicant noted that it should not have come as a surprise to the facility authorities that he had refused to descend the stairs to take a daily walk in the recreation yard.

61. The applicant considered that the strongest evidence of the unlawful and cruel attitude of the facility administration had been the fact that merely days after his transfer to the correctional colony he had been admitted to the civil hospital, as the doctors had considered his condition to be life threatening. The applicant insisted that there had been no change in the state of his health in the period preceding his transfer to the colony. However, the colony personnel had been more honest in assessing the seriousness of his condition. Moreover, the colony authorities, supported by the medical personnel of both the prison hospital and civil clinics, had applied for his early release, arguing that his state of health was so poor that his further detention had been impossible.

B. The Court's assessment

1. Admissibility

62. As to the Government's argument pertaining to the applicant's failure to lodge a tort action against the facility administration, and, thus, to exhaust domestic remedies, the Court reiterates that, apart from lodging a large number of complaints with the facility administration and various law-enforcement and executive authorities (see paragraph 46 above), the applicant tried to avail himself of judicial protection. His counsel lodged a number of complaints with the court, unsuccessfully arguing that the conditions of detention in facility no. 5 were inappropriate for a seriously-ill inmate such as the applicant, and seeking his transfer to a prison hospital or conditional release (see paragraphs 17, 28, 30, 35 and 36 above).

63. The Court notes that the domestic courts took cognisance of the merits of the lawyers' complaints, sought the investigator's opinion on the possibility for the applicant to be detained in the conditions of the regular temporary detention facility, examined the reasonableness of the investigator's decisions to refuse the applicant's transfer to a prison hospital or to authorise his release and based their conclusions on medical reports and the facility authorities' assurances, taking the view that the conditions in facility no. 5 were appropriate for the detention of the applicant.

64. The Court observes that the Government did not argue that, in pursuing this avenue of judicial review, the applicant had removed from the courts the option of examining the relevant issues. They merely insisted that a tort action was the proper formal judicial avenue for the applicant. The Court, however, does not find it unreasonable that in a situation where the domestic courts had analysed, a number of times, the applicant's complaint of inadequate conditions of detention, he did not lodge a separate action with the same court following the formal tort procedure as required by the Russian Civil Code. In circumstances where the domestic courts at two levels of jurisdiction had examined and dismissed the applicant's complaints, having found that the conditions of his detention fully complied with the domestic legal norms, it is not apparent that a tort action before the same courts would have been any more successful, would have been decided on the basis of any other issues or could have even passed the admissibility stage (see *Guliyev v. Russia*, no. 24650/02, § 55, 19 June 2008, and *Valašinas v. Lithuania* (dec.), no. 44558/98, 4 March 2000). The Court does not lose sight of the fact that the Government have not argued otherwise.

65. In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government could have been effective in the particular circumstances of the

present case (see, *mutatis mutandis*, *Vladimir Romanov v. Russia*, no. 41461/02, §§ 50-52, 24 July 2008).

66. The Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. It has already held on a number of occasions that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-VI). The objection of non-exhaustion of domestic remedies cannot be raised against an applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *Skalka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Metropolitan Church of Bessarabia and Others v. Moldova* (dec.), no. 45701/99, 7 June 2001; and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000). The Court therefore finds that since the same domestic courts, to which a tort action laid, examined the substance of the applicant's complaints about the inadequate conditions of his detention, he cannot be said to have failed to exhaust domestic remedies. The Court therefore dismisses the Government's non-exhaustion objection.

67. The Court further notes that this part of the application 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

68. In accordance with the Court's settled case-law, ill-treatment must 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, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; and *Naumenko v. Ukraine*, no. 42023/98, § 108, 10 February 2004). Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and

concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25, and *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

69. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-IX).

70. With particular reference to persons deprived of their liberty, Article 3 imposes a positive obligation on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Rivière v. France*, no. 33834/03, § 62, 11 July 2006). Hence, a lack of appropriate medical care and, more generally, the detention in inappropriate conditions of a person who is ill may in principle amount to treatment contrary to Article 3 (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Naumenko*, cited above, § 112).

71. The Court often faces allegations of insufficient or inadequate medical care in places of detention. Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees or place them in a civil hospital, even if they are suffering from an illness which is particularly difficult to treat (see *Mouisel*, cited above, § 40), it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court cannot rule out the possibility that in particularly serious cases situations may arise where the proper administration of criminal justice requires remedies to be taken in the form of humanitarian measures (see *Matencio v. France*, no. 58749/00, § 76, 15 January 2004, and *Sakkopoulos v. Greece*, no. 61828/00, § 38, 15 January 2004). In exceptional circumstances, Article 3 may go as far as requiring the conditional liberation of a prisoner who is seriously ill or disabled. In applying these principles, the Court has already held that the detention of an elderly sick person over a lengthy period may fall within the scope of Article 3 (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI; *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI; and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001). For instance, in *Farbtuhs v. Latvia*, (no. 4672/02, 2 December 2004), the Court concluded that the detention of a disabled seventy-nine-year-old applicant was in breach of Article 3 on account of “his age, infirmity and health situation”. Furthermore, the Court has held that detaining a person

suffering from tetraplegia in conditions inappropriate to her state of health amounted to degrading treatment (see *Price*, cited above, § 30).

72. In deciding whether or not the detention of a seriously ill person raised an issue under Article 3 of the Convention, the Court has taken into account various factors. Thus, in *Mouisel v. France* (no. 67263/01, §§ 40-42, ECHR 2002-IX) the Court examined such elements of the case as (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant. This test was further developed in the case of *Gelfmann v. France* (no. 25875/03, 14 December 2004), where the Court took into account, among other relevant factors, the dynamics of the applicant's health condition, the possibility of conditional release or parole for a seriously ill detainee if his health deteriorated, and the applicant's own attitude (namely, his persistent refusal to cooperate with the doctors). In the cases of *Henaf v. France* (no. 65436/01, §§ 49 et seq., ECHR 2003-XI) and *Mouisel* (cited above) the Court also analysed whether the application of handcuffs or the shackling of a seriously ill detainee to his bed was justified by any security risks. The applicant's potential "dangerousness" was also taken into account in the case of *Sakkopoulos v. Greece* (no. 61828/00, § 44, 15 January 2004) in order to decide whether his continuous detention was justified.

(b) Application of these principles to the present case

73. In the present case the question arises whether the conditions of the applicant's continued detention in facility no. 5 were compatible with his state of health and whether that situation attained a sufficient level of severity to fall within the scope of Article 3 of the Convention.

74. The Court observes that there is no particular discrepancy in the parties' description of the conditions of the applicant's detention or his state of health during his detention in facility no. 5. Plainly, the applicant, a wheelchair-bound person with numerous health problems including a failing renal transplant, extremely poor eyesight, severe obesity and a serious form of insular diabetes, was detained in a regular detention facility for almost seventeen months, between February 2009 and July 2010. The Court further notes that, while it appears that the judge who authorised the applicant's placement in custody took no steps, before committing him to a regular detention facility, to ascertain where he would be detained or to ensure that it would be possible to provide adequate facilities given his severe level of disability, on every other occasion when the question of the extension of the applicant's detention arose or when he complained about the conditions of his detention, the courts considered the detention facility suitable for accommodating his needs as a disabled detainee. However, the Court finds it significant that the documentary evidence submitted by the parties,

including medical records and expert reports, indicate that the detention authorities were unable to adequately cope with the applicant's special needs.

75. Following his arrest, the applicant was kept in detention facility no. 5, having been placed in a cell on the last floor of the four-storey facility building without a lift. On admission he was allowed to have a wheelchair and a number of medical items, usually forbidden on the facility premises but which the authorities considered indispensable for his daily life. The Court reiterates the applicant's allegations that a variety of conditions at facility no. 5 interfered with his ability to be an independent functioning human being. Among the conditions he complained of were the inaccessibility of the facilities on the ground floor, counting the recreation yard and visiting rooms, the inappropriate sanitary conditions for a person of his state of health, hazardous access to life-supporting medical facilities installed on the ground floor and the existence of impediments on his way to court hearings, medical procedures performed outside the detention facility, and so on.

76. The list of the applicant's grievances may be divided into two major groups, with the first one concerning his access to the administrative, technical, recreational and medical facilities in the building or to those outside, such as the courthouse or hospitals, and the second one being based on his general dissatisfaction with the fact that he was kept in the conditions of a regular detention facility rather than in a prison hospital.

77. As to the first group of complaints, the Court reiterates that the applicant's access to all the facilities listed above lay down four flights of stairs. While the frequency of his trips to the ground floor during the first three months of his detention cannot be ascertained, it appears that after the failure of his renal transplant and initiation of haemodialysis at the end of April 2009, his use of the stairs became a daily occurrence. The Court observes that at least four times a week for almost fifteen months the applicant, a disabled and extremely overweight individual who depended on a wheelchair for mobility, had to descend and ascend four flights of stairs on his way to and from the lengthy, complicated and tiring vital medical procedure of haemodialysis. He had to endure similar trips whenever he needed to visit the medical unit, see his lawyer, undergo clinical testing in the Centre, take part in investigative procedures or attend a court hearing. Although assisted by the warders and an inmate nurse and allowed to take short breaks in the wheelchair between the stair flights, the applicant had to rely largely on his weak legs and extremely poor eyesight to negotiate the hazardous flights of stairs, clearly inadequate to address the needs of wheelchair-bound inmates. These forced walks undoubtedly inflicted unnecessary pain on the applicant and subjected him to an unreasonable risk of serious health damage. In these circumstances, the Court does not find it surprising that he refused to add up yet another trip, to the recreation yard,

to his daily routine of climbing the stairs. As a result he did not have an outdoor recreation walk during the entire period of his detention in facility no. 5, save for two occasions in May 2010, remaining confined within the walls of the detention facility twenty-four hours a day. In this respect, the Court reiterates that it has already had an occasion to find Article 3 violated by the lack of opportunity for outdoor exercise (see *Poltoratskiy v. Ukraine*, no. 38812/97, § 146, ECHR 2003-V). However, the Court finds it more striking that the applicant was so frustrated, exhausted and unable to cope with the stress and humiliation resulting from the absence of a lift in the facility that he occasionally refused to leave his cell to take life-supporting haemodialysis or to submit to medical examinations.

78. Although the Government argued that the suffering the applicant could have endured through the inaccessibility issue did not rise to the level of an Article 3 violation, the Court cannot agree. It observes that while the absence of a lift and the resulting necessity to take four flights of stairs at least once a day, standing alone, will not be sufficient to run afoul of Article 3 requirements, applied to an inmate of the applicant's state of health they impose an atypical and significant hardship within the context of the detention facility. The sheer frequency with which the applicant had to use the stairs, not to mention the physical suffering, as well as the psychological burden that he experienced in attempting to reach the inaccessible facilities, indicates that he has been subjected to treatment running contrary to the requirements of Article 3 of the Convention, having been incarcerated under conditions posing a substantial risk of serious harm to his health and having been denied the minimal civilized measure of life's necessities.

79. There is no evidence in this case of any positive intention to humiliate or debase the applicant. However, the Court cannot overlook the applicant's claim that the detention authorities were indifferent to his accessibility needs. The prison management made no improvements which could have mitigated his access to the medical, recreational or administrative facilities over time, although the frequency with which the applicant needed to use the stairs indicated that the authorities should have taken action to address his needs. Additionally, given the number of grievances the applicant appears to have lodged regarding the conditions of his detention, the Court finds it undisputable that the authorities were aware of the applicant's unusual distress. While reiterating its constant jurisprudence, according to which a State has a sufficient margin of discretion in defining the manner in which it fulfils its obligation to protect the physical well-being of persons deprived of their liberty, *inter alia*, by choosing an appropriate facility, taking into account "the practical demands of imprisonment", as long as the standard of chosen care is "compatible with the human dignity" of a detainee (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008, and most recently, *Vasyukov v. Russia*, no. 2974/05, § 79, 5 April 2011), the Court finds it inexplicable

that the Russian authorities persistently dismissed the applicant's pleas for a transfer to another detention facility or a prison hospital, given, and it was not disputed by the Government, that detention facility no. 5 was initially unprepared to accommodate an inmate of the applicant's needs, lacking the medical licence, equipment and personnel to provide him with the required medical care, including haemodialysis. Although the necessary medical equipment was subsequently installed in the facility and the applicant started receiving treatment from licensed medical staff from outside hospitals, it did not alleviate his situation as regards his access to the facilities. The Court reiterates the Government's argument that accommodation suitable for prisoners in the applicant's unfortunate condition did not exist in the Krasnodar Region at the time. However, it is not the Krasnodar Region but the Russian Federation which is the Party responsible under the Convention for ensuring compliance with its standards. The Court is concerned to find that, despite a number of requests to that effect from the applicant, no attempt was made to find a place of detention appropriate for the applicant in another region of Russia (see, for similar reasoning, *Mathew v. the Netherlands*, no. 24919/03, §§ 204 and 215, ECHR 2005-IX).

80. In this regard, the Court also reiterates the second group of the applicant's complaints, containing allegations of inadequate sanitary and hygienic conditions in the facility. Although the standard of medical care is another matter for the Court to examine, it does not lose sight of the fact that the majority of the medical examinations and procedures, and numerous operations, the applicant underwent were performed in the conditions of an ordinary room which, as the Government pointed out, had been transformed into a special unit when the medical equipment from the Centre had been installed there.

81. In summary, the Court finds that the domestic authorities failed to handle the applicant in a safe and appropriate manner consistent with his disability, denying him effective access to the medical facilities, outdoor exercise and fresh air. The conditions of detention the applicant had to endure must have caused him unnecessary and avoidable mental and physical suffering, diminishing his human dignity and amounting to inhuman treatment. Therefore, there has been a violation of Article 3 of the Convention.

82. Having reached the above conclusion, the Court does not need to examine additionally whether there has been a violation of Article 3 on account of the medical care provided to the applicant in that facility (see *Aleksanyan*, cited above, § 220, and *Isayev and Others v. Russia*, no. 43368/04, § 135, 21 June 2011).

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

83. The applicant complained under Article 5 § 1 (c) that his detention from 24 to 28 January 2010 had been unlawful. The relevant parts of Article 5 provide:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...”

A. Submissions by the parties

84. The Government argued that the applicant’s detention had been lawful, complying with the requirements of Article 5 § 1 (c) of the Convention. The District Court’s decision of 21 January 2010 constituted the lawful basis for the detention until 28 January 2010, when the District Court had clarified the previous order by setting a time-limit.

85. The applicant submitted that his detention had lacked any legal basis. The District Court’s decision of 21 January 2010 was issued in response to his lawyer’s application for his release. It was not until 28 January 2010 that the District Court issued the formal order extending his detention until 11 July 2010.

B. The Court’s assessment

1. Admissibility

86. 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

87. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the

substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

88. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

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

89. The Court reiterates that on 24 January 2010 the period of the applicant’s detention authorised by the order of the Oktyabrskiy District Court on 20 November 2010 expired. A further decision on his detention was taken on 28 January 2010 when the District Court extended it until 11 July 2010.

90. According to the applicant, between 24 and 28 January 2010 there was no decision authorising his detention. The Government argued that the applicant’s detention during that period was based on the District Court’s decision of 21 January 2010 (see paragraph 40 above) which had a legal effect equivalent to that of a formal extension order and, therefore, constituted sufficient legal basis for his detention.

91. The Court notes that on 21 January 2010 the District Court ruled on the application for release lodged by the applicant’s lawyers. It dismissed the application on the ground that the applicant was receiving the necessary medical attention in detention and ordered that he remain in custody. The Court observes that the application for release filed by the applicant did not exempt the domestic authorities from the obligation to authorise his detention “in accordance with a procedure prescribed by law” by issuing a formal detention order, as provided by Article 5 § 1. Finding otherwise would place on the applicant, rather than the authorities, the burden to ensure a lawful basis for his continued detention (see, among other authorities, *Melnikova v. Russia*, no. 24552/02, § 62, 21 June 2007; *Shukhardin v. Russia*, no. 65734/01, § 81, 28 June 2007; and *Matyush*

v. Russia, no. 14850/03, § 63, 9 December 2008). The Court is not convinced that the decision of 21 January 2010 could be construed as a formal order authorising the applicant's detention until 28 January 2010.

92. However, even proceeding on the assumption that the Government's argument to that effect is valid, the Court cannot overlook the fact that the decision of 21 January 2010 did not give any reasons for the necessity to continue keeping the applicant in custody. It also failed to set a time-limit for the continued detention or for a periodic review of the preventive measure. The Court has already found violations of Article 5 § 1 (c) of the Convention in a number of cases against Russia concerning a similar set of facts (see, for example, *Solovyev v. Russia*, no. 2708/02, §§ 95-100, 24 May 2007; *Shukhardin*, cited above, §§ 65-70; and *Belov v. Russia*, no. 22053/02, §§ 80-83, 3 July 2008). In particular, the Court has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for an unspecified period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see also *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, 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 *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X).

93. The Court sees no reason to reach a different conclusion in the present case. It considers that the order of 21 January 2010 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the "lawfulness" of detention within the meaning of Article 5 § 1.

94. The Court therefore considers that there was a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 24 to 28 January 2010.

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

95. 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 founded 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

96. The Government argued that the applicant's arrest was warranted by a reasonable suspicion that he had organised an assault in the context of a financial conflict that had existed between him and the victims. The courts' decisions to remand the applicant in custody and subsequently to extend his detention were based on valid considerations, such as the applicant's personal history, his criminal record, his ties to the criminal underworld, his financial resources, and so on. The courts correctly concluded that the applicant was liable to reoffend, abscond and obstruct the investigation. In the Government's opinion, the Russian courts carried out an effective exercise of balancing the applicant's right to liberty and the interests of justice, having also carefully studied his medical history and having been satisfied that he was receiving the necessary medical assistance in detention.

97. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

98. 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

99. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *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).

100. 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 to justify 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).

101. 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 requirement of public interest 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

102. The applicant was arrested on 12 February 2009. He was convicted by the trial court on 18 May 2010. The period to be taken into consideration therefore lasted for slightly more than fifteen months.

103. It is not disputed by the parties that the applicant’s detention was initially warranted by a reasonable suspicion that he had organised an aggravated assault causing serious injuries to four individuals and one death. It remains to be ascertained whether the judicial authorities gave “relevant” and “sufficient” grounds to justify his continued detention and

whether they displayed “special diligence” in the conduct of the proceedings.

104. The gravity of the charges was one of the factors for the assessment of the applicant’s potential to abscond, reoffend or obstruct the course of justice. However, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; see also *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov*, cited above, § 81). The Court will therefore examine whether the other grounds referred to by the domestic courts were sufficient to justify the applicant’s detention.

105. The judicial authorities relied, in addition to the gravity of the charges against the applicant, on information relating to his behaviour. In particular, they found that his criminal record and alleged authority in the criminal underworld made him particularly prone to reoffend, abscond or interfere with the course of the criminal proceedings. The authorities considered that the applicant’s ties to the criminal environment would give him an opportunity to influence witnesses and to destroy evidence if released. In these circumstances the Court is prepared to accept that at the initial stage of the proceedings the courts could have validly presumed the existence of a risk that, if released, the applicant might abscond, reoffend or interfere with the proceedings given the nature of his criminal activities (see, for similar reasoning, *Bak v. Poland*, no. 7870/04, § 62, 16 January 2007).

106. It remains to be ascertained whether that risk persisted throughout the entire period of detention. The Court notes in this respect that after the renal transplant failure in April 2009 the applicant was almost daily in need of hours-long haemodialysis sessions. His restricted ability to move, as well as the necessity for him to remain under constant medical supervision considerably reduced the risk of his absconding. However, the domestic courts failed to take the changed circumstances into account and continued to extend the applicant’s detention without any assessment of whether, considering the applicant’s medical condition, that risk remained real. In the Court’s opinion, particularly after April 2009 the risk of his absconding was mitigated by his medical condition, so that it was no longer sufficient to outweigh his right to a trial within a reasonable time or release pending trial.

107. However, as to the persistence of the risk of collusion, the Court does not accept that the change in the applicant’s medical condition in April 2009 negated that risk to the extent that it could no longer warrant the applicant’s detention. The decisions to extend the detention pending pre-

trial investigation and trial underlined the fact that the fears of collusion were founded on the applicant's particular status in the criminal underworld. The judicial authorities considered the risk of pressure being brought to bear on witnesses or of the obstruction of the proceedings by other unlawful means to be so real that they took the decision to hold the trial *in camera*. In this context the Court observes that the danger of perversion of justice 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, his assets, and so on (see *W. v. Switzerland*, 26 January 1993, 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 *Isayev and Others v. Russia*, no. 43368/04, § 148, 21 June 2011).

108. The Court believes that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants who had been charged with taking part in an organised criminal act. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the existence of the general risk flowing from the organised nature of the applicant's alleged criminal activities, constituted relevant and sufficient grounds for extending his detention for the time necessary to complete the investigation, to draw up the bill of indictment and to hear evidence from the accused and witnesses in court. The Court does not underestimate the fact that the domestic authorities had to take statements from witnesses in a manner which had to exclude any doubt as to their veracity. The Court thus concludes that, in the special circumstances of the case, the risk of the applicant interfering with the course of justice actually existed and justified holding him in custody for the entire relevant period (see, for similar reasoning, *Celejewski v. Poland*, no. 17584/04, 4 May 2006, and *Łaskiewicz v. Poland*, no. 28481/03, §§ 59-60, 15 January 2008).

109. The Court lastly observes that the proceedings were of considerable complexity, regard being had to the number of defendants, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. Nevertheless, the hearings in the applicant's case were held regularly and at short intervals. The courts also took proper measures to ensure the speedy progress of the proceedings. The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. The length of the investigation and of the trial was justified by the complexity of the case. It should not be overlooked 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 efforts of the judges to clarify fully the facts in issue, to provide both the defence and the prosecution with all the necessary facilities for putting forward their evidence and stating their case and to give judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed (see, for similar reasoning, *Bak*, cited above, § 64) .

110. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

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

A. Damage

112. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

113. The Government submitted that the sum claimed was excessive and lacked any substantiation.

114. The Court notes that it has found violations of the two Convention provisions in the present case. In these circumstances, it considers that the applicant’s suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

115. The applicant did not seek reimbursement of costs and expenses and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

116. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention concerning the quality of medical care;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 24 to 28 January 2010;
5. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President