



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

THIRD SECTION

CASE OF URAZOV v. RUSSIA

(Application no. 42147/05)

JUDGMENT

STRASBOURG

14 June 2016

FINAL

17/10/2016

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

In the case of Urazov v. Russia,

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

Luis López Guerra, *President*,

Helena Jäderblom,

Helen Keller,

Johannes Silvis,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčeková, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 24 May 2016,

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

PROCEDURE

1. The case originated in an application (no. 42147/05) 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 Sergey Vladimirovich Urazov (“the applicant”), on 3 October 2005.

2. The applicant was represented by Mr V. Sazonov, a lawyer practising in Astrakhan. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant complained, in particular, that the conditions of his detention in a remand prison and the conditions of his transport between the remand prison and the courthouse had been inhuman and degrading, that no adequate medical assistance had been available to him in the remand prison, and that he had had no effective domestic remedy for the above violations. He further complained that his pre-trial detention had been unlawful and unjustified, and that he had been denied the right to a judicial review of his detention. Finally, the applicant complained about his confinement in a metal cage in the courtroom before the trial court.

4. On 14 September 2010 the above complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Astrakhan.

A. The applicant's arrest, detention and trial

6. At approximately 8 p.m. on 15 June 2004 the applicant was arrested on suspicion of attempted fraud. On the same day at 11.37 p.m. criminal proceedings were instituted against him.

7. On 16 June 2004 at 12.58 a.m. a record of the applicant's arrest was drawn up by the investigator. The record indicated that the applicant's arrest took place at 11.05 p.m. on 15 June 2004.

8. On 17 June 2004 the Leninskiy District Court of Astrakhan ("the District Court") authorised the applicant's detention pending investigation. The court noted as follows:

"[The applicant] is charged with a serious offence representing an increased danger to society; the material submitted contains sufficient data about [his] involvement in the crime, including the testimony of the victim ... [The applicant] is an acting police officer, and under such circumstances the court finds that the Prosecutor has made a well-founded argument about the necessity to isolate [the applicant] in view of the risk of [his] absconding and obstructing the establishment of the truth in the early stage of the investigation by putting pressure on witnesses using his [status]."

9. On 25 June 2004 the Astrakhan Regional Court ("the Regional Court") upheld the above decision on appeal. The appeal hearing was held in the applicant's absence. The applicant's lawyer was present.

10. On 13 August 2004 the applicant was informed that the investigation had been completed and that the case file had been submitted to the District Court for trial.

11. In the meantime, on 15 August 2004, the two-month time-limit for the applicant's detention pending investigation expired. The applicant, however, remained in detention.

12. On 25 August 2004 the District Court scheduled a preliminary hearing and ordered that the preventive measure applied to the applicant should remain unchanged until a date for the opening of the trial had been set.

13. The applicant challenged the above decision in a supervisory review procedure. He argued that since there had been no valid court order authorising his detention from 15 August to 25 August 2004, the decision to retain the custodial measure unchanged had been unlawful.

14. On 9 September 2004 the District Court scheduled the opening of the trial and ordered that the preventive measure remain unaltered.

15. On 16 February 2005 the District Court extended the applicant's detention pending trial for two months, until 16 April 2005, noting as follows:

“[The applicant] is charged with a serious crime, representing an increased danger to society. The crime, according to the charges brought, was committed in abuse of office. So far [the applicant] has not been suspended from [his post]. Under these circumstances, if released, [the applicant] may put pressure on the victim and the witnesses. The sanction for the offence with which [the applicant] is charged varies from 5 to 10 years' imprisonment; therefore the arguments of the prosecution that [the applicant] may abscond from justice and render the examination of the case on the merits impossible are well-founded.”

16. On 7 April 2005 the District Court dismissed the application for release and extended the applicant's detention pending trial for another two months, until 16 June 2005. The decision mentioned that an appeal could be lodged within three days to the Regional Court and the applicant appealed. However, on 20 May 2005 the Regional Court discontinued the examination of the applicant's appeal. Referring to Article 355 § 5 of the Code of Criminal Procedure, the Court held that rulings rendered by a court in the course of the trial were not amenable to separate appeal.

17. On 15 June 2005 the District Court extended the applicant's detention for three months, until 15 September 2005. The court applied the same reasoning as in its decision of 16 February 2005. On 21 July 2005 the Regional Court upheld the above decision on appeal.

18. On the same day, the Regional Court dismissed the applicant's application to quash the decision of 25 August 2004 by means of supervisory review. The court held, *inter alia*, that the applicant's detention from 16 August to 25 August 2004 had been lawful and that the decision of 25 August 2004 should stand.

19. On 14 September 2005 the District Court, applying the same arguments as in its previous decisions, extended the applicant's detention until 15 December 2005. During the hearing, the applicant requested that the court let his sister represent him. However, in view of the fact that the applicant was already represented by two professional advocates, the court dismissed the request. On 27 October 2005 the Regional Court upheld the above decision on appeal.

20. On 15 December 2005 the District Court extended the applicant's detention until 15 March 2006. The court again relied on the gravity of the charges against the applicant, his position and the risk of his putting pressure on the victim and witnesses, and of absconding and obstructing justice. One of the applicant's lawyers was absent from the hearing. On 26 January 2006 the Regional Court upheld the above decisions on appeal.

21. On 13 March 2006 the District Court extended the applicant's detention until 15 June 2006, noting that the grounds for detention had not changed.

22. The applicant lodged another application for release, relying on a deterioration of his health and the unavailability of adequate medical assistance in the remand prison. However, on 11 April 2006 the District Court dismissed the application.

23. The applicant appealed, but on 25 May 2006 the Regional Court, relying on Article 355 § 5 of the Code of Criminal Procedure, discontinued the appeal proceedings.

24. On 9 June 2006 the District Court extended the applicant's detention until 15 July 2006.

25. On 29 June 2006 the District Court convicted the applicant of attempted large-scale fraud in abuse of office and sentenced him to six years and six months' imprisonment and a fine. During the hearing the applicant was kept in a metal cage.

26. On 11 January 2007 the Regional Court upheld the judgment on appeal.

27. On 27 January 2009 the applicant obtained a conditional early release.

B. Conditions of the applicant's detention in IZ-30/1 and conditions of his transport to and from the courthouse

28. From 17 June 2004 to 22 January 2007 and from 5 May 2007 to 25 February 2008 the applicant was held in remand prison IZ-30/1 in the Astrakhan Region. He claimed that the facility had been severely overcrowded and that the cells had been in a poor sanitary condition.

29. In the above periods, the applicant was transported between the remand prison and the District Court on no less than one hundred occasions. He claimed that the conditions of his transport to and from the courthouse had been appalling.

C. Medical assistance in IZ-30/1

1. The Government's account

30. Upon the applicant's arrival at IZ-30/1 remand prison in June 2004 he underwent a mandatory medical examination, including clinical laboratory tests and an examination by medical specialists. No abnormalities were found. The applicant subsequently underwent scheduled health examinations.

31. On 16 April 2006 the applicant sought medical assistance. In connection with this application, on 21 April 2006 he was referred to the prison hospital in IK-2 correctional colony for examination and treatment. The examination showed that the applicant was suffering from the initial stages of a cardiovascular disease. He was prescribed and provided with the

necessary treatment and his condition improved. The applicant was discharged on 10 May 2006 in a satisfactory condition with a recommendation to continue outpatient supervision. Upon return to IZ-30/1 the applicant was put under outpatient supervision and given the recommended treatment.

32. From 30 August to 27 September 2006, from 30 May to 29 June 2007 and from 20 July to 27 August 2007 the applicant underwent subsequent scheduled courses of inpatient treatment in IK-2 correctional colony's prison hospital. The applicant's health condition remained satisfactory and no complications were noted.

33. Despite the Court's request to submit a copy of the applicant's medical file, the Government's account was not supported by any relevant documents.

2. The applicant's account

34. Several times during his detention in IZ-30/1 the applicant applied for treatment for acute toothache. However, he was informed on each occasion that there was no dentist on the medical staff of the remand prison. In October 2005 a dentist was recruited by the remand prison. The only treatment available was extraction and there was a three-week waiting list.

35. A medical certificate issued by the applicant's dentist (who had provided dental care to the applicant since 2001, up to his detention) confirmed in January 2009 that there were no traces of dental care having been provided to the applicant in the period between June 2004 and January 2009 and noted a serious worsening of the state of the latter's teeth. It also stated that the applicant needed treatment for tooth decay (nine teeth) and a dental prosthesis.

36. The applicant also complained on numerous occasions about hypertension. He was given unidentified pills and a prescription for a more effective and costly medicine, with reference to the facility's lack of finance. The applicant could not afford to buy the medication prescribed.

37. The applicant developed chronic gastritis while in remand prison.

38. At the request of the applicant's lawyer, on 14 December 2005 the doctor at IZ-30/1 remand prison issued a medical certificate reading as follows:

"During his detention in IZ-30/1 [the applicant] repeatedly turned to the medical unit of the [remand prison] for medical assistance. He was examined by a physician and diagnosed with neurocirculatory dystonia of a hypertonic type, and chronic gastritis of type B at the stage of unstable remission.

Appropriate treatment was prescribed with the medicine available at the remand prison. Furthermore, a prescription was given to the applicant to purchase more efficient medication.

At the present moment [the applicant's] state of health is relatively satisfactory.

In the event of a worsening of his state of health the applicant can be transferred to the regional prison hospital for inpatient treatment.”

39. An ambulance was called for the applicant at the court hearings on several occasions and he was given treatment for high blood pressure. The applicant submitted a medical certificate dated 14 December 2005, which shows that the ambulance was called for him on that date during the court hearing and that he was provided with the necessary medical assistance for a hypertensive crisis.

40. Following numerous complaints about inadequate medical assistance in the remand prison, the applicant was transferred on several occasions to the hospital in the IK-2 correctional colony in the Astrakhan Region. However, no effective treatment was available in the hospital either, because the applicant was not transferred there when his health required, that is following his hypertensive crises, but in accordance with an unclear schedule fixed by the administration of the remand prison.

41. As is apparent from the documents submitted by the applicant in support of his allegations, on 19 September 2006 an inspection of IZ-30/1 was carried out by the prosecutor’s office of the Astrakhan Region. The inspection revealed, *inter alia*, that there was a problem of deficient health care in the remand prison.

42. The applicant brought the issue of inadequate medical assistance before various domestic authorities, including the head of the remand prison, the Astrakhan regional prosecutor’s office, the Ombudsman and a judge of the District Court, but all to no avail.

II. RELEVANT DOMESTIC LAW

A. Medical care afforded to detainees

43. For the relevant provisions of domestic law and international reports and documents see *Patranin v. Russia* (no. 12983/14, §§ 33-40, 23 July 2015).

B. Legal avenues for complaints about the quality of medical assistance

44. For relevant provisions of domestic law see *Koryak v. Russia* (no. 24677/10, §§ 46-57, 13 November 2012); *Dirdizov v. Russia* (no. 41461/10, §§ 47-61, 27 November 2012); and *Reshetnyak v. Russia* (no. 56027/10, §§ 35-46, 8 January 2013).

C. Proceedings to examine the lawfulness of detention

45. For the relevant provisions of domestic law and practice see *Manerov v. Russia* (no. 49848/10, §§ 22-25, 5 January 2016).

D. Metal cages in courtrooms

46. For the relevant provisions of domestic law and practice and relevant international material and practice see *Svinarenko and Slyadnev v. Russia* ([GC], nos. 32541/08 and 43441/08, §§ 53-76, ECHR 2014 (extracts)).

E. Reopening of the proceedings following a finding of a violation by the Court

47. The Code of Criminal Procedure of the Russian Federation provides for the possibility of reopening criminal proceedings on the basis of a finding of a violation of the Convention made by the European Court of Human Rights (Article 413).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION IN REMAND PRISON AND CONDITIONS OF TRANSPORT TO AND FROM THE COURTHOUSE, AND ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

48. By a letter submitted on 30 September 2015, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised under Articles 3 and 13 of the Convention on account of the conditions of the applicant's detention in the remand prison, the conditions of his transport between the remand prison and the courthouse and the absence of an effective domestic remedy in this respect, as well as the issues raised under Article 5 §§ 1 and 3 of the Convention. The text of the declaration read as follows:

"I ..., the Representative of the Russian Federation at the European Court of Human Rights, hereby declare that the Russian Government acknowledge that Sergey Vladimirovich Urazov was detained from 17 June 2004 to 22 January 2007 and from 5 May 2007 to 25 February 2008 in the IZ-30/1 facility in the Astrakhan Region and was transported to the court, in conditions which did not comply with the requirements of Article 3 of the Convention; that between 15 August 2004 and 16 February 2005 he was detained without a judicial decision, in violation of Article 5 § 1 of the Convention; that between 16 June 2004 and 29 June 2006 he was

detained in violation of Article 5 § 3 of the Convention; and that he did not have effective domestic remedies, as required by Article 13 of the Convention.

The Government are ready to pay the applicant a sum of 15,925 euros (EUR) as just satisfaction.

The Government therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration be accepted by the Court as “any other reason” justifying the striking the case out of the Court’s list of cases, as referred to in Article 37 § 1 (c) of the Convention.

The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any applicable taxes. It will be payable within three months of the date of notification of the decision taken by the Court, pursuant to Article 37 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and shall be converted into Russian roubles at the rate applicable on the date of payment. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

This payment will constitute the final resolution of the case.”

49. By a letter of 23 November 2015 the applicant rejected the Government’s offer, insisting on the examination of his other complaints.

50. The Court reiterates that Article 37 § 1 (c) of the Convention enables it to strike a case out of its list if:

“... for any other reason established by the Court, it is no longer justified to continue the examination of the application.”

51. It also points out that, in certain circumstances, it may strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government, even if the applicant wishes the examination of the case to be continued.

52. To this end, the Court will examine the declaration in the light of the principles established in its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI, and *Kopanitsyn v. Russia*, no. 43231/04, §§ 23-32, 12 March 2015, with further references).

53. The Court is satisfied that the Government did not dispute this part of the allegations made by the applicant and explicitly acknowledged the breaches of Article 3, Article 5 §§ 1 and 3 and Article 13 of the Convention as claimed by him.

54. As to the redress intended to be provided to the applicant, the Government have undertaken to pay EUR 15,925 in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. The Court notes that this amount corresponds to the awards made by the Court in similar cases. The Government have committed themselves to effecting payment of that sum within three months of the Court’s decision, with default interest to be payable in case of a delay in settlement.

55. The Court notes that it has repeatedly found violations of Articles 3 and 13 of the Convention on account of inadequate conditions of detention in Russian remand prisons, inadequate conditions of transport between remand prisons and courthouses and the absence of an effective domestic remedy for such grievances (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012; *Idalov v. Russia* [GC], no. 5826/03, §§ 103-08, 22 May 2012; and *M.S. v. Russia*, no. 8589/08, §§ 74-77 and §§ 80-86, 10 July 2014).

56. The Court further notes that it has repeatedly found violations of Article 5 § 1 of the Convention on account of keeping defendants in detention without a specific legal basis or clear rules governing their situation (see *Khudoyorov v. Russia*, no. 6847/02, §§ 144-51, ECHR 2005-X (extracts), and *Moskovets v. Russia*, no. 14370/03, §§ 62-65, 23 April 2009) or without indicating any particular reason for the decision to maintain a custodial measure or setting a specific time-limit for the continued detention or for a periodic review of the preventive measure (see *Strelets v. Russia*, no. 28018/05, §§ 71-73, 6 November 2012, with extensive further references).

57. Furthermore, the Court has also repeatedly found violations of Article 5 § 3 of the Convention on account of pre-trial detention of applicants without relevant and sufficient reasons (see *Dirdizov*, cited above, §§ 108-11, with extensive further references).

58. It follows that the complaints raised in this part of the present application are based on the clear and extensive case-law of the Court.

59. The Court further notes that the Committee of Ministers remains competent to supervise, in accordance with Article 46 § 2 of the Convention, the implementation of the judgments concerning the same issues. Therefore, the Court is satisfied that the respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) does not require it to continue the examination of this part of the application. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, this part of the application to its list of cases should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and Others v. Russia* (dec.), nos. 75025/01 and 28 others, 23 March 2006). The Court thus considers that it is no longer justified to continue the examination of the case in this part.

60. In view of the above, it is appropriate to strike out of the list the part of the application concerning the inhuman and degrading conditions of the applicant's detention in remand prison IZ-30/1 in the Astrakhan Region between 17 June 2004 and 22 January 2007 and between 5 May 2007 and 25 February 2008, the inhuman and degrading conditions of his transport to and from the courthouse, the absence of an effective domestic remedy for the above grievances, the unlawfulness of the applicant's pre-trial detention

between 15 August 2004 and 16 February 2005 and the lack of relevant and sufficient reasons for the applicant's pre-trial detention between 16 June 2004 and 29 June 2006.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF MEDICAL ASSISTANCE PROVIDED TO THE APPLICANT DURING HIS DETENTION

61. The applicant complained that he had not been provided with adequate medical assistance while in remand prison, in breach of Article 3 of the Convention, which reads as follows:

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

He also claimed that he had had no effective domestic remedy at his disposal for the violation of the guarantee against ill-treatment, which is required under Article 13 of the Convention:

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

A. The parties' submissions

62. The Government argued that a number of effective remedies had been open to the applicant in order to complain about the alleged violation of his rights under Article 3 of the Convention on account of lack of adequate medical care in detention, in compliance with Article 13 of the Convention. They cited, in particular, “a possibility of lodging applications with the State authorities and courts”. However, the applicant had failed to use them. The Government further submitted that should the Court find that the applicant had exhausted domestic remedies, his complaint was in any event manifestly ill-founded as the applicant had been provided with appropriate medical assistance during his detention in remand prison.

63. The applicant argued that he had on many occasions had recourse to the domestic remedies available to him (see paragraph 42 above), however, none of them had proved to be effective. He drew the Court's attention to the fact that despite the Registry's request to submit a copy of the applicant's medical file concerning the period when he had been detained in IZ-30/1 remand prison, the Government had failed to do so. Therefore, all their submissions had been unsubstantiated.

B. The Court's assessment

1. Admissibility

64. The Court notes that the Government raised the objection of non-exhaustion of domestic remedies. This issue is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy whereby to express his dissatisfaction with the quality of the medical care afforded to him in detention. It is therefore necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

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

2. Merits

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

66. For a summary of the relevant general principles see *Reshetnyak* (cited above, §§ 56-60).

67. The Court notes the Government's argument that the applicant did not exhaust domestic remedies and that he should have raised his complaint before the State authorities and courts.

68. The Court reiterates that it has on many occasions examined the effectiveness of the domestic remedies suggested by the Government in cases of applicants complaining of ongoing inadequate medical treatment, such as in the present case. It has found, in particular, that in deciding on a complaint concerning breaches of domestic regulations governing the provision of medical care to detainees, the prison authorities would not have a sufficiently independent standpoint to satisfy the requirements of Article 35 of the Convention (see *Koryak*, cited above, § 79, and *Dirdizov*, cited above, § 75). The Court has also stressed that even though review by a supervising prosecutor plays an important part in securing appropriate medical care in detention, a complaint to the supervising prosecutor falls short of the requirements of an effective remedy because of the procedural shortcomings that have been previously identified in the Court's case-law (see *Koryak*, cited above, §§ 80-81). Having assessed a civil claim for compensation under the tort provisions of the Civil Code, the Court has held that such a claim could not offer an applicant any redress other than a purely compensatory award, and could not put an end to a situation where there is an ongoing violation, such as inadequate medical care (see *Reshetnyak*, cited above, §§ 65-73). Moreover, the Court has found that such a remedy

did not offer reasonable prospects of success, in particular because the award was conditional on the establishment of fault on the part of the authorities, which was extremely improbable in a situation where domestic legal norms prescribed the application of a certain measure, for instance certain conditions of detention or a certain level of medical treatment (see *A.B. v. Russia*, no. 1439/06, § 96, 14 October 2010).

69. Having declared the applicant's claim of inadequate medical care in detention admissible (see paragraph 65 above), and given the applicant's health problems and the seriousness of his allegations, the Court finds that it was arguable. Accordingly, the respondent State had an obligation to ensure the availability of an effective remedy to deal with the substance of his complaint. Taking into account the circumstances of the present case and the aforementioned case-law, the Court sees no reason to depart from its previous findings on the issue. It concludes that the legal avenues put forward by the Government did not constitute an effective remedy that could have been used to prevent the alleged violations or their continuation and provide the applicant with adequate and sufficient redress for his complaint under Article 3 of the Convention.

70. Accordingly, the Court rejects the Government's objection alleging non-exhaustion of domestic remedies and finds that the applicant did not have at his disposal an effective domestic remedy for his complaint, in breach of Article 13 of the Convention.

(b) Alleged violation of Article 3 of the Convention

71. For a summary of the relevant general principles see *Reshetnyak* (cited above, §§ 81-85).

72. Turning to the facts of the present case, the Court observes that the applicant complained of inadequate medical assistance in relation to his three conditions: toothache, hypertension and chronic gastritis.

73. The Court has examined a large number of cases against Russia raising complaints of inadequate medical assistance afforded to inmates (see, among recent ones, *Patranin*, cited above; *Gorelov v. Russia*, no. 49072/11, 9 January 2014; *Budanov v. Russia*, no. 66583/11, 9 January 2014; *Bubnov v. Russia*, no. 76317/11, 5 February 2013; *Dirdizov*, cited above; and *Reshetnyak*, cited above). In the absence of any effective remedy in Russia to address those complaints, the Court has been obliged to evaluate the evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention had been respected. In that role, paying particular attention to the vulnerability of applicants in view of their detention, the Court has called on the Government to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention.

74. The Court notes that despite the Court's request to submit a copy of the applicant's medical file concerning the period of his detention in remand

prison IZ-30/1, the Government failed to do so (see paragraph 33 above). In the absence of any explanation from the Government, the Court is unable to establish whether their failure is a product of the domestic authorities' inability to keep a comprehensive record concerning the applicant's state of health and the treatment he received (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII (extracts)) or their unwillingness to disclose the contents of the applicant's medical record which might contain information capable of corroborating the allegations put forward by the applicant. Irrespective of the reasons for that failure, the Court is prepared to draw inferences as to the well-foundedness of the applicant's allegations and the Government's conduct in the instant case (see *Bekirski v. Bulgaria*, no. 71420/01, § 115, 2 September 2010, with further references, and *Imakayeva v. Russia*, no. 7615/02, § 124, ECHR 2006-XIII (extracts)).

75. On the basis of all the material placed before it and taking into account the Government's failure to provide a copy of the applicant's medical file covering the period of his detention, the Court accepts the applicant's argument that he was not provided with adequate medical assistance while in the remand prison.

76. The Court finds therefore that the authorities' failure to provide the applicant with the requisite medical care amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 6 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONFINEMENT IN A METAL CAGE IN THE COURTROOM BEFORE THE TRIAL COURT

77. The applicant complained that his confinement in a metal cage in the courtroom before the trial court had been in violation of the principles of equality of arms and of the presumption of innocence. He relied on Article 6 of the Convention which, in so far as relevant, provides:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

The Court decided *ex officio* to examine the issues raised by the applicant also under Article 3 of the Convention and to obtain the parties' submissions thereon. Article 3 of the Convention provides:

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

A. The parties’ submissions

78. The Government submitted that when suspects and accused people who faced detention on remand as a preventive measure were escorted to courthouses they were placed before the court on benches “behind a barrier (metal enclosure/cage)” measuring 355 cm in length, 225 cm in height and 115 cm in width. The metal enclosure was primarily intended to enforce the restrictions associated with the custodial measure, that is, to exclude the risk of flight, influencing witnesses or otherwise obstructing the administration of justice. The applicant’s confinement in the metal cage had not violated the principle of equality of arms and the presumption of innocence. The applicant had been able to communicate freely with the court, his lawyers, the victim and other participants at the trial and exercise his procedural rights without restrictions. When the applicant had not wanted to communicate with his lawyer in the presence of the escort, the court adjourned. Under no circumstances had the applicant’s confinement in the metal cage meant that the court had been predisposed to deliver a finding of guilt. The Government further submitted that the applicant’s confinement in the metal cage in the courtroom had not amounted to a violation of the applicant’s right not to be subjected to inhuman or degrading treatment, because the measure in question had been a reasonable and indispensable restriction applied within the framework of the criminal procedure existing in Russia and had not reached the minimum level of severity to attain the threshold of Article 3 of the Convention.

79. The applicant submitted, first of all, that his placement in a metal cage during the trial had prevented his free and confidential communication with his lawyer because the escort officers had remained by the cage at all times and had made such communication impossible. Contrary to the Government’s assertion, the court had never adjourned so as to enable the applicant to discuss his position with his lawyer. Secondly, the applicant’s placement in the metal cage in the courtroom had influenced the witnesses, making them perceive him as being guilty and had thus put him at a disadvantage *vis-à-vis* the prosecution. Confinement in the metal cage had furthermore aroused feelings in the applicant of anguish, inferiority and that the outcome of the proceedings had already been decided, exceeding the unavoidable level of suffering inherent in detention.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Article 3 of the Convention

81. For a summary of the relevant general principles see *Svinarenko and Slyadnev* (cited above, §§ 113-18).

82. The Court reiterates its earlier findings in *Svinarenko and Slyadnev* (cited above), where it came to the conclusion that holding a person in a metal cage during a trial constituted in itself an affront to human dignity and amounted to degrading treatment in breach of Article 3 of the Convention. The Court held, in particular, as follows:

“122. The Court is confronted in the present case with a practice of placing defendants in metal cages when they appear before a court in criminal proceedings while remanded in custody ...

125. The Court observes, on the basis of photographs of a courtroom at the Magadan Regional Court, that the applicants were confined in an enclosure formed by metal rods on four sides and a wire ceiling (see paragraph 48 above), which can be described as a cage ...

127. The Court agrees with the Government that order and security in the courtroom are of great importance and can be seen as indispensable for the proper administration of justice. It is not the Court's task to discuss questions concerning the architecture of the courtroom, nor to give indications as to what specific measures of physical restraint may be necessary. However, the means chosen for ensuring such order and security must not involve measures of restraint which by virtue of their level of severity (see paragraph 114 above) or by their very nature would bring them within the scope of Article 3. For, as the Court has repeatedly stated, Article 3 prohibits in absolute terms torture and inhuman or degrading treatment or punishment, which is why there can be no justification for any such treatment.

128. The Court will therefore first examine whether the minimum level of severity referred to in paragraph 127 above has been reached in the circumstances. In doing so, it will have regard to the effects which the impugned measure of restraint had on the applicants.

129. In this respect, the Court observes that the applicants' case was tried by a court composed of twelve jurors, with two further substitute jurors present, and the presiding judge. It also notes the presence in the courtroom of other participants in the proceedings ..., as well as the fact that the hearings were open to the general public. It considers that the applicants' exposure to the public eye in a cage must have undermined their image and must have aroused in them feelings of humiliation, helplessness, fear, anguish and inferiority.

130. The Court further observes that the applicants were subjected to the impugned treatment during the entire jury trial before the Magadan Regional Court which lasted more than a year with several hearings held almost every month.

...

133. The Court takes the view that the applicants must have had objectively justified fears that their exposure in a cage during hearings in their case would convey to their judges, who were to take decisions on the issues concerning their criminal liability and liberty, a negative image of them as being dangerous to the point of requiring such an extreme physical restraint, thus undermining the presumption of innocence. This must have caused them anxiety and distress, given the seriousness of what was at stake for them in the proceedings in question.

...

135. Lastly, the Court finds no convincing arguments to the effect that, in present-day circumstances, holding a defendant in a cage (as described in paragraph 125, above) during a trial is a necessary means of physically restraining him, preventing his escape, dealing with disorderly or aggressive behaviour, or protecting him against aggression from outside. Its continued practice can therefore hardly be understood otherwise than as a means of degrading and humiliating the caged person. The object of humiliating and debasing the person held in a cage during a trial is thus apparent.

136. Against this background, the Court finds that the applicants' confinement in a cage in the courtroom during their trial must inevitably have subjected them to distress of an intensity exceeding the unavoidable level of suffering inherent in their detention during a court appearance, and that the impugned treatment has attained the minimum level of severity to bring it within the scope of Article 3.

137. The Court does not consider that the use of cages (as described above) in this context can ever be justified under Article 3 ...

138. Regardless of the concrete circumstances in the present case, the Court reiterates that the very essence of the Convention is respect for human dignity and that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. It is therefore of the view that holding a person in a metal cage during a trial constitutes in itself – having regard to its objectively degrading nature which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3.”

83. Turning to the present case and having examined the parties' arguments, the Court does not see any reason to depart from its findings in *Svinarenko and Slyadnev* (cited above) in this regard. It follows, therefore, that the applicant's confinement in a metal cage in the courtroom amounted to degrading treatment prohibited by Article 3 of the Convention. There has accordingly been a violation of that provision.

(b) Article 6 of the Convention

84. The Court reiterates that the principles of equality of arms and of the presumption of innocence are specific elements of the wider concept of a

fair trial in criminal proceedings. The former principle implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent, while the latter principle will be violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 136, 15 June 2010, with further references).

(i) *Communication with the lawyer during the trial*

85. Respect for lawyer-client confidentiality is very important in the context of Article 6 §§ 1 and 3 (c) of the Convention. An accused's right to communicate with his advocate out of the hearing of a third person is part of the basic requirements of a fair trial. If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, "his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective" (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 627, 25 July 2013, with further references).

86. An interference with the lawyer-client privilege does not necessarily require an actual interception or eavesdropping to have taken place. A genuine belief held on reasonable grounds that their discussion was being listened to might be sufficient, in the Court's view, to limit the effectiveness of the assistance which the lawyer could provide (see *Khodorkovskiy v. Russia*, no. 5829/04, § 232, 31 May 2011).

87. The Court observes that in the present case the applicant was confined in a metal cage throughout the trial. Escort officers remained standing in close proximity to the cage at all times. The applicant considered that such an arrangement did not enable him to have free and confidential exchanges with his lawyer during the trial.

88. The Government argued that when the applicant had not wanted to communicate with his lawyer in the presence of the escort officers the court adjourned to enable him to discuss his position with the lawyer in private. The Court notes, however, that the Government failed to provide any evidence in support of their argument or to furnish any information on the possible facilities for the applicant to communicate with his lawyer during such adjournments, if indeed there were any.

89. The Court observes that in *Khodorkovskiy and Lebedev* (cited above) it found a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of unnecessary restrictions on the applicants' right to confidential communication with their lawyers during the trial due to the permanent presence of escort officers near the metal cage and the minimal distance the

lawyers had to respect. It further held that the fact that the defence was able to request adjournments during the hearings had been irrelevant for its analysis as during those adjournments the lawyers were unable to discuss the case with their clients anywhere but in the hearing room, that is in the immediate vicinity of the prison guards (*ibid.* §§ 642-47).

90. The Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. It concludes, therefore, that there has been a breach of Article 6 §§ 1 and 3 (c) of the Convention on account of the lack of confidential communication between the applicant and his lawyer during the trial.

(ii) Presumption of innocence

91. In the present case the Court has already found that the conditions of the applicant's confinement in the courtroom throughout the trial were humiliating (see paragraphs 81-83 above). In finding a violation under Article 3 of the Convention on that account, the Court has given consideration to the fact that the applicant must have had objectively justified fears that his exposure in a cage during hearings in his case would convey a negative image of him to the judges as being dangerous to the point of requiring such extreme physical restraint, thus undermining the presumption of innocence (see paragraph 82 above). It has thereby already addressed the essence of the applicant's complaint under Article 6 § 2 of the Convention (*Khodorkovskiy and Lebedev*, cited above, §§ 743-44).

92. The Court considers, therefore, that it is not necessary to examine the applicant's complaint under Article 6 § 2 of the Convention separately.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

93. The applicant further complained that the examination of his appeals against the decisions of 7 April 2005 and 11 April 2006 dismissing his applications for release had been discontinued. He relied on Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. The parties' submissions

94. The Government submitted that the examination of the applicant's appeals against the decisions of 7 April 2005 and 11 April 2006 had been discontinued in compliance with domestic law, which did not provide for the possibility to challenge the rulings of a court rendered in the course of a

trial. The lawfulness of the applicant's continued detention had further been examined by the domestic court when the applicant had made subsequent requests for the alteration or termination of the custodial measure. The requirements of Article 5 § 4 of the Convention had therefore been respected.

95. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

97. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law, but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Grauslys v. Lithuania*, no. 36743/97, § 53, 10 October 2000). In order to satisfy the requirements of Article 5 § 4 of the Convention, a "review of the lawfulness of the applicant's detention" must comply with both the substantive and the procedural rules of the national legislation and moreover be conducted in conformity with the aim of Article 5 of the Convention, namely to protect the individual against arbitrariness (see *Keus v. the Netherlands*, 25 October 1990, § 24, Series A no. 185-C).

98. The Court observes that on 20 May 2005 and 25 May 2006 respectively the Regional Court discontinued its examination of the applicant's appeals against the decision of 7 April 2005 dismissing his application for release and extending his detention pending trial, and the decision of 11 April 2006 dismissing his application for release. The Regional Court reasoned that the court's rulings rendered in the course of the trial were not amenable to separate appeal (see paragraphs 16 and 23 above).

99. The Court has on several occasions examined similar issues in other Russian cases and found violations of Article 5 § 4 of the Convention on account of the failure of the domestic court to consider the substance of the applicants' appeals against the decisions rejecting their applications for

release (see *Manerov*, cited above, §§ 35-38; *Chuprikov v. Russia*, no. 17504/07, §§ 83-87, 12 June 2014; and *Makarenko v. Russia*, no. 5962/03, §§ 122-25, 22 December 2009). The Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to the appeal court's failure to examine the issue of the applicant's arrest and to take cognisance of any arguments concerning the aspects of the lawfulness of his detention, the Court considers that the applicant was unable to obtain an adequate judicial response for the purposes of Article 5 § 4 and that his right to bring proceedings by which the lawfulness of his detention would be decided was infringed.

100. It follows that there has been a violation of Article 5 § 4 of the Convention on account of the failure to consider the substance of the applicant's appeals against the decisions of 7 April 2005 and 11 April 2006.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

101. Lastly, the applicant raised further complaints under Articles 5 and 6 of the Convention. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, those complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 8,500 euros (EUR) in respect of pecuniary damage, which represents the approximate amount spent by the applicant's relatives for sending food parcels and money transfers to the applicant in order to maintain his health while he was detained in the remand prison. He further claimed EUR 1,370,250 in respect of non-pecuniary damage.

104. The Government made no comments on the applicant's claim for pecuniary damage. They further submitted that the claim in respect of non-pecuniary damage was excessive and that the finding of a violation would in itself constitute sufficient just satisfaction.

105. The Court considers that there is no causal link between the violations found and the pecuniary damage claimed. Consequently, it finds no reason to award the applicant any sum under this head.

106. As to the non-pecuniary damage, the Court notes that it has found a combination of serious violations in the present case. The applicant was not afforded adequate medical assistance while in detention, no effective domestic remedies were available to him in that regard, he was confined in a metal cage throughout the trial and could not enjoy confidential communication with his lawyer. Furthermore, he was denied the right to an effective review of his detention. In those circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, and having regard to the award made to the applicant under the unilateral declaration (see paragraphs 48 and 54 above), the Court awards the applicant EUR 3,575 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount. The Court further notes that Article 413 of the Russian Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court finds a violation of the Convention.

B. Costs and expenses

107. The applicant claimed EUR 2,500 for legal fees incurred before the domestic courts and the Court. He did not furnish any documents supporting his claim.

108. The Government did not submit any comments.

109. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicant's claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* having regard to the terms of the Government's declaration, and the arrangements for ensuring compliance with the undertakings referred to therein, to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerns the complaints:
 - (a) under Article 3 of the Convention about the inhuman and degrading conditions of the applicant's detention in remand prison IZ-30/1 in the

Astrakhan Region between 17 June 2004 and 22 January 2007 and between 5 May 2007 and 25 February 2008;

(b) under Article 3 of the Convention about the inhuman and degrading conditions of the applicant's transport to and from the courthouse;

(c) under Article 13 of the Convention about the absence of an effective domestic remedy in connection with the above complaints under Article 3 of the Convention;

(d) under Article 5 § 1 of the Convention about the unlawfulness of the applicant's pre-trial detention between 15 August 2004 and 16 February 2005; and

(e) under Article 5 § 3 of the Convention about the lack of relevant and sufficient reasons for the applicant's pre-trial detention between 16 June 2004 and 29 June 2006;

2. *Joins* to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about inadequate medical assistance in remand prison and rejects it;
3. *Declares* admissible the complaints:
 - (a) under Article 3 of the Convention about inadequate medical assistance in detention and under Article 13 of the Convention about the absence of an effective domestic remedy in this respect;
 - (b) under Article 3 of the Convention about the applicant's confinement in a metal cage in the courtroom;
 - (c) under Article 6 §§ 1 and 3 (c) of the Convention about the lack of confidential communication between the applicant and his lawyer during the trial;
 - (d) under Article 6 § 2 of the Convention about the breach of the applicant's presumption of innocence;
 - (e) under Article 5 § 4 of the Convention about the failure to consider the substance of the applicant's appeals against the decisions of 7 April 2005 and 11 April 2006 rejecting his requests for release;and the remaining complaints inadmissible;
4. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy to complain about the lack of adequate medical assistance in detention;
5. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of adequate medical assistance in detention;
6. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's confinement in a metal cage in the courtroom;

7. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the breach of the right to confidential communication between the applicant and his lawyer during the trial;
8. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 6 § 2 of the Convention;
9. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the failure to consider the substance of the applicant's appeals against the decisions of 7 April 2005 and 11 April 2006 rejecting his requests for release;
10. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,575 (three thousand five hundred and seventy-five euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
11. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Silvis is annexed to this judgment.

L.L.G.
J.S.P.

CONCURRING OPINION OF JUDGE SILVIS

I agree fully with the operative part of this judgment, but I wish to make a remark on the reasoning of the majority in regard to the applicant's complaint of confinement in a cage during trial. The judgment closely follows the reasoning in *Svinarenko and Slyadnev* ([GC], nos. 32541/08 and 43441/08, §§ 53-76, ECHR 2014 (extracts)). In that case the Court established that the applicants must have suffered intensely while being caged in a courtroom. The Court thus found a violation of Article 3 of the Convention, applying the threshold of severity test. However, the Court also stated the view that holding a person in a metal cage during a trial constitutes in itself – having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3. In the case of *Bouyid v. Belgium* ([GC], no. 23380/09, 29 September 2015) the Grand Chamber elaborated on the relationship between human dignity and degrading treatment and concluded that it was not necessary to establish a minimum level of suffering. Thereby the Court departed from the threshold of severity test. The case concerned police-officers slapping arrested persons in the face as a reaction to their disrespectful behaviour. The slap administered to each of the applicants by the police officers while they were under their control in the police station did not correspond to a recourse to physical force that had been made strictly necessary by their conduct, and had thus diminished their dignity. Applying that logic to the use of metal cages in courtrooms could have liberated the reasoning of the Court from the rather speculative effect of intense suffering of the applicant. Putting a person on trial in a metal cage without any necessity is degrading in its denial of human dignity. It is a pity that the Court did not depart from the threshold of severity test in the present case and that it even chose not to refer at all to the *Bouyid v. Belgium* case.