



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

THIRD SECTION

CASE OF VASENIN v. RUSSIA

(Application no. 48023/06)

JUDGMENT

STRASBOURG

21 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 Vasenin v. Russia,

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

Luis López Guerra, *President*,

Helena Jäderblom,

Johannes Silvis,

Dmitry Dedov,

Branko Lubarda,

Alena Poláčeková,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 31 May 2016,

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

PROCEDURE

1. The case originated in an application (no. 48023/06) 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 Yevgeniy Igorevich Vasenin (“the applicant”), on 3 November 2006.

2. The applicant, who had been granted legal aid, was represented by Ms K. Moskalenko and Ms V. Bokareva, lawyers from the International Protection Centre in Moscow, and Ms V. Preobrazhenskaya, a lawyer practising in Strasbourg. 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 the detention authorities had not provided him with adequate medical assistance; that his detention in a temporary detention facility after the court order of 3 May 2006 for his compulsory treatment in a mental institution had been arbitrary; and that the criminal proceedings against him had been unfair. In particular, it had not been possible for him to attend the trial, the quality of legal aid had been poor, and he had been stripped of the right to appeal against the judgment of the trial court.

4. On 13 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 in Perm. He is currently detained in Kostroma Region.

A. Background

6. In 2002 a court found that the applicant, who suffered from schizophrenia, had committed a number of criminal offences, including possession of drugs and aggravated robbery, and ordered his admission to a psychiatric hospital. The applicant was placed in a mental institution in Leningrad Region, where he remained until 30 January 2005, when he escaped.

7. On 21 September 2005 he was arrested by the Ukrainian border police for an unlawful attempt to cross the border. On the same day the Lychakivsky District Court of Lviv sentenced him to fifteen days administrative detention. According to a certificate issued by the Ukrainian Border Service in Lvov, the applicant was detained from 21 September to 6 October 2005.

B. Criminal proceedings and detention

1. Investigation

8. In 2005 the police opened a criminal investigation into the arson of vehicles belonging to a private company.

9. According to the applicant, on 28 November 2005 he was arrested by the police in Belgorod, a town near the Ukrainian border, during a random identity search operation. He was taken to a police station and allegedly beaten up to force him to confess to the criminal offences. The following day the applicant confessed to having set a vehicle on fire on 9 August 2005.

10. A report indicated that the applicant was arrested on 29 November 2005. On the same day he wrote a statement, confessing to having burnt out a car together with an accomplice. The investigator assigned a legal-aid lawyer and questioned the applicant in his presence. The applicant again confessed to the arson attack. He also mentioned that several months earlier he had escaped from a psychiatric hospital, where he underwent treatment under a court's order.

11. On 30 November 2005 the investigator asked the Belgorod District Court of the Belgorod Region to order the applicant's placement in custody.

12. On 1 December 2005 the request was granted. The District Court held that the applicant was charged with a serious criminal offence punishable by up to five years' imprisonment. His escape from a mental hospital and his lack of a permanent place of residence demonstrated his liability to abscond. Furthermore, relying on statements by a witness who had testified to having been approached by the applicant with a view to "discussing charges against him", the court found that the applicant was prone to influencing witnesses and obstructing justice. It concluded that only detention could ensure the interests of justice.

13. The applicant was admitted to temporary detention facility no. IZ-31/1 in Belgorod. He shared a cell with other detainees. There is no evidence suggesting that the detention authorities had made an effort to accommodate the applicant's mental disorder.

14. The applicant submitted that after his admission to the detention facility the police officers who had allegedly beaten him up after the arrest had again driven him to the police station for questioning, had handcuffed him to a heating unit and had left him in that position until late evening. He had not been given food for the entire day and had only twice been allowed to use a toilet.

15. On 2 December 2005 the applicant confessed to having blown up a car with an accomplice on 5 October 2005. He later repeated the confession at the crime scene.

16. In January 2006 the investigating authorities charged the applicant with a robbery committed on 25 November 2005. They also asked the District Court to extend the applicant's detention pending investigation, claiming that the case was complex and that more time was necessary to complete the investigation. The defence argued that the applicant was in need of psychiatric treatment and that he therefore should be released and admitted to a mental institution. On 26 January 2006 the court extended his detention until 16 February 2006, having considered that there were no circumstances warranting the applicant's release.

17. Another extension, based on the same reasoning, followed on 9 February 2006. The applicant was to be detained until 16 April 2006.

18. In the meantime, the investigators authorised a psychiatric expert examination of the applicant. In a report issued on 15 February 2006, psychiatrists indicated that the applicant suffered from paranoid continuous progressive schizophrenia and the initial stage of paraphrenia. The doctors also noted that that serious emotional disorder made the applicant particularly dangerous and thus called for his detention under constant psychiatric supervision.

19. Acting in response to the psychiatrists' findings, the authorities appointed, on 16 March 2006, a legal guardian to assist the applicant in the proceedings.

20. On 30 March 2006 the pre-trial investigation was closed and the applicant was committed for trial before the Oktyabrskiy District Court of Belgorod. Referring to his diagnosis, the prosecution sought his admission to a psychiatric hospital.

2. Trial

21. On 7 April 2006 the applicant lodged an application with the Oktyabrskiy District Court asking for a preliminary hearing to be held in his case. He disputed the charges and declared his innocence. Without submitting documentary evidence the applicant argued that he had been detained in Ukraine between 22 September and 6 October 2005 and thus he had not committed any crime during that period. He also disagreed with the expert report of 15 February 2006, stating that a psychiatric hospital with a lighter security regime would be more appropriate for his condition. Lastly, he asked that his presence at the trial be ensured, as he doubted the efficiency of the legal aid. He noted that he had never met with his legal guardian.

22. On 13 April 2006 the court held the preliminary hearing. The applicant was present. The court was to decide on the applicant's continued detention and the need for his personal presence at trial.

23. The applicant and his legal-aid counsel expressed different opinions on several matters. While the applicant insisted on his transfer from the ordinary detention facility to a psychiatric hospital, his legal guardian and legal-aid lawyer agreed to the extension of his detention. As regards the necessity of his presence, the applicant's counsel argued that it was desirable, but not necessary. The legal guardian submitted that the issue could be discussed at a later stage. The applicant strongly insisted on his personal participation, as he was afraid that otherwise he could be convicted of crimes which he had not committed.

24. Having heard the parties, the court ordered the applicant's detention pending trial and stated that the trial was to be held in his absence, as the personal participation of persons suffering from a mental disorder was not provided for by the Russian Code of Criminal Procedure for cases such as the one to be decided.

25. The applicant challenged the decision of 13 April 2006, but ten days later his claim was returned without examination on the merits. The court held that his lawyer or legal representative only had a right, under Russian law, to lodge an appeal in such category of cases.

26. On 25 April 2006 the court held a trial hearing in the presence of a prosecutor, the victims, their lawyers, the applicant's counsel and legal guardian. The applicant himself was not brought to the court-house. The court read out records of the statements made by the victims at the pre-trial stage and heard testimony from one of the victims. It further read out statements by seven witnesses and studied the applicant's written

confessions made on 29 November and 2 December 2005. It examined other documents and material evidence. Neither the legal-aid counsel nor the legal guardian made any applications or objections. They did not ask any questions during the victim's cross-examination and did not challenge the admissibility of any item of evidence, including the applicant's confession. During their closing arguments the lawyer and the guardian acknowledged that the applicant had committed the impugned offences. They stated that owing to his mental disorder he should not bear criminal or civil responsibility and should be admitted to a high-security psychiatric hospital under intensive supervision.

27. On 3 May 2006 the District Court delivered its judgment. It established that on 9 August 2005 the applicant and his accomplice had set fire to a car; that on 5 October 2005 they had blown up another car and that on 25 November 2005 they had committed a robbery. Relying on the psychiatric report of 15 February 2006 the court ordered the applicant's treatment in a high-security psychiatric institution under intensive supervision. It held that the preventive measure in the form of the applicant's detention should remain unchanged until his admission to a psychiatric hospital.

3. Appeal

28. On 12 May 2006 the applicant appealed. He also asked the court to provide him with the trial records from the first-instance court proceedings. The applicant argued that he had been unlawfully convicted of crimes he had not committed, that his confession had been given under pressure and that his defence team, comprising the legal-aid counsel and the legal guardian assigned against his will, had been manifestly ineffective. The applicant submitted that on 5 October 2005 he had still been in detention in Ukraine and therefore he could not have blown up a car in Russia on the same day.

29. A similar complaint was filed with the Belgorod regional prosecutor's office.

30. Neither the applicant's counsel, nor his guardian lodged an appeal against the judgment of 3 May 2006. It became final on 13 May 2006.

31. On 15 May 2006 the court dismissed the applicant's application for access to the trial records as such a request could only be lodged by his defence counsel or legal guardian. Two days later the Oktyabrskiy District Court returned the applicant's appeal against the judgment of 3 May 2006, informing him that his lawyer or legal guardian were the only ones with the authority to appeal. A similar response arrived from the prosecutor's office on 26 May 2006.

32. On 11 June 2006 the judgment of 3 May 2006 was enforced and the applicant was admitted to Oryol Psychiatric Hospital.

4. Supervisory review

33. In 2012 the Belgorod regional prosecutor's office applied to the Presidium of the Belgorod Regional Court for supervisory review of the case referring to the breach of the applicant's right to defence.

34. On 27 September 2012 the request was granted. Invoking Article 6 § 3 (c) of the Convention, the court held that the trial court's decision to hold the hearings in the applicant's absence had been unjustified.

35. On 11 October 2012 the Presidium of the Belgorod Regional Court acknowledged a violation of the applicant's right to defence, quashed the judgment of 3 May 2006 and remitted the case to the Oktyabrskiy Regional Court for a fresh examination on the merits.

5. Fresh examination

36. The first hearing in the case was to be held on 19 November 2012, but the court was unable to summon the applicant. The summons was returned with a note that the applicant could not be found at the indicated address. On 26 November and 6 December 2012 the District Court repeatedly attempted to inform the applicant of the hearing by registered post and telegram. The summons was not served on the applicant as he had left the place of his residence.

37. On 6 December 2012 the District Court held that it could not proceed with the examination of the criminal case in view of the lack of any knowledge of his whereabouts. It returned the case to the investigating authorities with an order to find the applicant.

38. The parties did not inform the Court of the outcome of the proceedings.

C. Complaints of police ill-treatment in 2005

39. On 10 December 2005 the applicant complained to the Belgorod town prosecutor's office about his arrest and subsequent ill-treatment. The complaint contained no references to bodily injuries or possible witnesses to the beatings. It was not supported by any other evidence.

40. Having questioned the alleged perpetrators, who denied any instance of ill-treatment, the prosecutor's office refused to open a criminal case on 20 January 2006.

41. On 27 February 2006 a higher-ranking prosecutor overturned the decision of 20 January 2006 with an order to verify whether the applicant had had any injuries on his admission to the detention facility.

42. On 10 March 2006 the prosecutor's office again refused to open a criminal case, mainly referring to the applicant's mental disorder. On 14 April 2006 the Oktyabrskiy District Court upheld the refusal.

D. Medical treatment between December 2005 and September 2009

43. The applicant was detained in the following institutions: from 2 December 2005 to 11 June 2006 in the temporary detention facility; from 11 June 2006 to 4 December 2007 in Oryol Psychiatric Hospital; from 4 December 2007 to 24 February 2009 in St Petersburg High-Security Psychiatric Hospital; and from 24 February to 31 August 2009 in Kashchenko Psychiatric Hospital in St Petersburg. The applicant was then discharged for outpatient treatment.

1. Mental condition

44. Shortly after his admission to the temporary detention facility the applicant was seen by a resident doctor, whom he informed that he had been suffering from schizophrenia since 2001.

45. In the end of December 2005 he was examined by a psychiatrist. According to the doctor's report of 21 December 2005, the applicant had manic schizophrenia. Having noted that his condition did not call for any drug regimen, the doctor recommended his further examination and treatment in a mental institution.

46. A report prepared by the detention authorities for the applicant's examination by a psychiatric commission indicated that there were no peculiarities in his general behaviour. He had good relations with inmates and was respectful of the authorities. He never violated prison regulations.

47. On 15 February 2006 the applicant was examined by a commission of doctors from Belgorod Regional Clinical Psychoneurological Hospital. The experts confirmed that the applicant suffered from paranoid continuous progressive schizophrenia and paraphrenia in the initial stage. They recommended treatment in a high-security medical institution with intensive supervision, given the danger the applicant posed to those around him.

48. During his stay in the temporary detention facility he received no antipsychotic drugs. No aggressive outbursts or other incidents were recorded.

49. On admission to Oryol Psychiatric Hospital in June 2006 the applicant behaved aggressively. He was given antipsychotic medication. In the beginning of February 2007 his mental condition improved. By the end of 2007 his behaviour was satisfactory.

50. During his stay in St Petersburg High-Security Psychiatric Hospital and in Kashchenko Psychiatric Hospital, St Petersburg the applicant received standard psychiatric treatment with antipsychotic medication. His mental condition significantly ameliorated, he was no longer in need of inpatient treatment and he was therefore released.

2. *Tuberculosis*

51. A chest X-ray examination performed several days after his admission to the temporary detention facility disclosed that the applicant had been infected with focal tuberculosis at the infiltration stage. The applicant was seen by a doctor. A standard treatment regimen with first-line antibacterial drugs was ordered.

52. Daily entries in his medical records show that between 13 January and 20 April 2006 the applicant received the prescribed anti-tuberculosis drug regimen. A scheduled break in his treatment followed.

53. In Oryol Psychiatric Hospital his treatment continued. A chest X-ray in February 2007 showed that the tuberculosis had been “clinically cured”, with only insignificant traces of the disease remaining in the left lung. On 10 November 2008 doctors confirmed his complete recovery.

54. The submitted documents indicate that during his treatment the applicant was subjected to regular X-ray examinations, and blood and sputum tests.

3. *Hepatitis*

55. A blood test carried out by Oryol Psychiatric Hospital on 16 June 2006 showed that the applicant had hepatitis C. On 29 June 2006 he was seen by an infectious diseases specialist. Treatment with a regimen of drugs was prescribed. It resulted in the remission of the hepatitis in June 2007. In December 2007 the doctor confirmed the full remission. When asked by the doctor about the possible causes of the infection, the applicant stated that he had shared his safety razor with inmates in the temporary detention facility.

56. Subsequent medical tests and check-ups did not show any deterioration in the applicant’s health. It appears from the submitted documents that the illness has remained dormant ever since.

E. Further events

57. On 11 June 2012 the applicant was arrested in Ivanovo for drug trafficking. The Leninskiy District Court of Ivanovo authorised his detention. He was placed in a temporary detention facility. In 2013 he was transferred to a psychiatric hospital in Kostroma Region.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Medical care afforded to detainees

58. The relevant provisions of domestic and international law governing the health care of detainees are set out in the cases of *Ivko v. Russia*, (no. 30575/08, §§ 55-63, 15 December 2015), *Amirov v. Russia*,

(no. 51857/13, §§ 50-57, 27 November 2014), *Pakhomov v. Russia* (no. 44917/08, §§ 33-39 and 42-48, 30 September 2011) and *Yevgeniy Alekseyenko v. Russia* (no. 41833/04, §§ 60-66 and 73-80, 27 January 2011).

B. Detention on remand and compulsory measures of medical nature

59. The relevant provisions of domestic law governing detention on remand and application of compulsory measures of a medical nature are summarised in the case of *Proshkin v. Russia* (no. 28869/03, §§ 37-45, 7 February 2012).

60. Under Article 308 of the Russian Code of Criminal Procedure (“the CCrP”), a sentence must contain a ruling on the preventive measure applied until the sentence becomes final.

61. Under Article 443 § 3 of the CCrP, proceedings for the application of compulsory measures of a medical nature are governed by the general rules laid down by that same Code (including Article 308 of the CCrP) and special provisions provided for by Chapter 51 of the CCrP, “Proceedings on the application of compulsory measures of a medical nature”.

C. Judicial proceedings on the application of compulsory measures of a medical nature

62. The regulation of the judicial proceedings on the application of compulsory measures of a medical nature and issues related to the personal presence of mentally ill persons are described in the case of *Valeriy Lopata v. Russia* (no. 19936/04, §§ 79- 81, 30 October 2012).

63. The Code of Criminal Procedure of Russia (“the CCrP”), as in force at the material time, did not list persons of unsound mind among those who had a right to study the case file, participate in court hearings, or appeal against court decisions. According to Articles 402, 437-39, and 444 of the CCrP, only a legal guardian or counsel could exercise the aforementioned rights.

64. On 20 November 2007 the Russian Constitutional Court delivered decision no. 13-II, having examined the compliance with the norms of the CCrP regulating judicial proceedings related to the application of compulsory measures of a medical nature with the Constitution of Russia. It found that the CCrP did not provide persons of unsound mind with access to the case file, with the right to participate in court hearings, or to appeal against court decisions.

65. The Constitutional Court reiterated that in accordance with Article 6 § 3 (c) of the Convention everyone charged with a criminal offence had a right to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she did not have sufficient

means to pay for legal assistance, to be given it free when the interests of justice so require. It further held that the proceedings on the application of compulsory measures of a medical nature were governed by the general provisions of the Code of Criminal Procedure of Russia and special rules set out in the relevant chapter.

66. Having relied on its previous decision delivered in 2000, the Constitutional Court noted that while guaranteeing procedural rights to those persons whose rights and interests were affected by the criminal proceedings, its decision should not only be based on the formal procedural status of a person in those proceedings; it should also enquire into the major features of the factual position of such a person in the proceedings. Relying on a number of the provisions of the Russian Criminal Code, the Constitutional Court noted that a person to whom compulsory measures of the medical nature might be applied, in the same way as an accused or defendant in a criminal case, is, in fact, being accused of having committed an offence which is proscribed by the criminal law. The Constitutional Court also noted that that person, until his or her psychiatric examination results are known, had the status and procedural rights of “an ordinary” accused or suspect provided for by the Russian Code of Criminal Procedure and concluded that he or she should therefore continue to be treated equally to other persons against whom criminal proceedings are pending.

67. Referring to the case of *Romanov v. Russia* (no. 63993/00, 20 October 2005), it concluded that a person in respect of whom a court may decide to apply compulsory measures of a medical nature should be afforded the same procedural rights and guarantees as those afforded to a suspect or an accused in an ordinary criminal case. The fact that a person of unsound mind was not mentioned in Articles 402, 439 §§ 3 and 6, 444 and 445 § 1 of the CCrP per se could not be interpreted as depriving him or her of those procedural rights. The Constitutional Court condemned the courts’ approach of automatically, as a rule, considering a mentally ill person to be unable or incapable of exercising his or her procedural rights in person. It declared incompatible with the provisions of the Constitution of Russia any norm of the CCrP, including Articles 402, 439 §§ 3 and 6, 444 and 445 § 1, in so far as they were interpreted as to strip persons of unsound mind of procedural rights, including the right to study the case file, to participate in court hearings or to challenge court decisions.

68. On 7 April 2011 the Supreme Court of Russia delivered Ruling no. 6 “On the application of compulsory measures of a medical nature by the courts”. At the outset the Supreme Court stressed that the national courts when deciding on the applicability of compulsory measures of a medical nature should strictly follow the rules of the Russian Constitution, Criminal law, Criminal Procedure, and the Law on the Execution of Sentences, as well as the case-law of the European Court of Human Rights. It further drew the attention of the national courts to the fact that compulsory measures of a

medical nature were criminal in character. The Supreme Court also held that a psychiatric expert examination should be ordered in every criminal case, if a doubt had arisen regarding the suspect's or accused's sanity or ability to protect his or her rights and interests in the proceedings on their own. A person subjected to the proceedings on the application of compulsory measures of a medical nature should be entitled to exercise all of the rights vested in a suspect or accused in an ordinary criminal case.

69. On 29 November 2010 Federal Law no. 323-FZ introduced amendments to the CCrP entitling persons of unsound mind to exercise their procedural rights directly, in person, if their mental condition allowed them to do so.

D. Legal representation

70. The relevant provisions of domestic law governing legal representation are set out in the case of *Volkov and Adamskiy v. Russia* (nos. 7614/09 and 30863/10, §§ 21-25, 26 March 2015).

71. Pursuant to Article 7 § 1 of the Advocates Act of 31 May 2002, defence counsel must protect the rights and interests of his or her client honestly, reasonably and in good faith by all means not prohibited by Russian law. He or she also must follow rules of bar ethics (*адвокатская этика*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

72. The applicant complained under Article 3 that he had been infected with tuberculosis and hepatitis in detention and that the detention authorities had failed to take steps to safeguard his health and well-being, having failed to provide him with adequate medical assistance in respect of his mental and somatic conditions. Article 3 of the Convention reads as follows:

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

A. Submissions by the parties

1. The Government

73. The Government put forward two lines of argument regarding the applicant's infection with tuberculosis and hepatitis.

74. Firstly, they argued that the applicant's claim should be rejected owing to non-exhaustion of domestic remedies. They stated that the applicant should have brought his grievances before the domestic authorities prior to lodging his application with the Court.

75. Secondly, they argued that there was no evidence suggesting that the applicant had contracted the diseases in detention.

76. As regards the quality of medical assistance received in detention, the Governments' arguments were also twofold.

77. Firstly, they claimed that the applicant had failed to exhaust domestic remedies by omitting to lodge a claim for damages with a court.

78. In the alternative they argued that the applicant had received adequate medical treatment leading to his complete recovery from tuberculosis. His hepatitis was brought under control and it did not exacerbate after 2007. As regards his mental problems, the applicant had failed to submit an expert opinion demonstrating that the care afforded to him in this respect had been inadequate.

2. The applicant

79. The applicant maintained his complaints. He argued that he had contracted tuberculosis and hepatitis in detention through the negligent actions of the medical staff of the temporary detention facility. Accordingly, the authorities should be held liable for that.

80. He also stated that he had had no access to medical assistance in the temporary detention facility, neither in respect of his tuberculosis, nor in respect of his mental condition.

B. The Court's assessment

1. Admissibility

(a) Infection with tuberculosis

81. The Court observes that the applicant was diagnosed with focal tuberculosis at the infiltration stage within several days of his admission to the temporary detention facility (see paragraph 51 above). Although it seems unlikely that in a mere few days the disease progressed through the incubation period to the advanced stage, the Court will not speculate as to whether this was possible. Instead it reiterates its constant approach that even if an applicant contracted tuberculosis while in detention, this in itself would not imply a violation of Article 3, provided that he or she received treatment for it (see *Yevgeniy Bogdanov v. Russia*, no. 22405/04, § 90, 26 February 2015; *Gorbulya v. Russia*, no. 31535/09, § 84, 6 March 2014; *Pitalev v. Russia*, no. 34393/03, § 53, 30 July 2009; and *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005).

82. Turning to the quality of the medical care provided to the applicant in respect of his tuberculosis, the Court notes that the only major flaw invoked by the applicant was the lack of anti-tuberculosis therapy during his detention in the temporary detention facility.

83. However, the applicant's allegation in this respect is refuted by the medical records covering the period from 13 January to 20 April 2006. According to them, the applicant received anti-tuberculosis drug therapy in full compliance with the doctor's prescription (see paragraph 52 above). The Court has no grounds to cast any doubt on the veracity of the aforementioned documents.

84. In view of the above considerations the Court finds that the applicant's complaint concerning his infection with tuberculosis in detention must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention. The complaint about the quality of the tuberculosis treatment will be examined below.

(b) Infection with hepatitis

85. The Court notes the Government's objection as to the non-exhaustion of domestic remedies by the applicant.

86. The Court has previously held that a criminal-law complaint was an adequate remedy within the meaning of Article 35 § 1 of the Convention for an applicant to complain of his or her infection with transmittable diseases in detention. Thus in the case of *Ismatullayev* (see *Ismatullayev v. Russia* (dec.), no. 29687/09, 6 March 2012, §§ 28 and 29) the Court has held that the applicant should have provided the State with an opportunity to investigate the case and answer his grievances. The criminal law inquiry could have allowed assembling evidence necessary to corroborate the applicant's allegation of negligent actions by the prison medical personnel leading to his contracting the virus. The investigating authorities would have had broad legal powers to visit the detention facility, interview detainees, study documents including medical records, obtain statements from the prison officials, collect forensic evidence, commission expert reports and take all other crucial steps for the purpose of establishing the veracity of the applicant's account. The investigating authorities' role was critical not only to the pursuit of criminal proceedings against the alleged perpetrators of the offence but also to the pursuit by the applicant of other remedies to redress the harm he had suffered. The Court has concluded in the cited case that that by failing to submit a criminal law complaint to the investigating authorities the applicant stripped the State of the opportunity to remedy the alleged violation of his rights guaranteed by Article 3 of the Convention.

87. The circumstances of the present case are similar and they do not disclose the existence of any special circumstances which might have absolved the applicant from exhausting that domestic remedy which was

available to him. Accordingly, the Court finds no reasons to reach a different conclusion in this case. This part of the application must be dismissed under Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies.

(c) Adequacy of the medical treatment

88. While assessing the Government's argument that the applicant failed to exhaust the available avenues of domestic protection regarding the allegedly inadequate medical treatment, the Court reiterates that it has consistently held that a civil claim for damages, as proposed by the Government as "an effective remedy", did not satisfy the relevant criteria (see *Koryak v. Russia*, no. 24677/10, §§ 82-86, 13 November 2012, and *Reshetnyak v. Russia*, no. 56027/10, §§ 65-73, 8 January 2013). Therefore the Court rejects this argument.

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

2. Merits

(a) General principles

90. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

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

92. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method

of the execution of the measure of deprivation of liberty do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most cases concerning the detention of sick people, the Court has examined whether or not the applicant received adequate medical care in prison. The Court reiterates in this regard that even though Article 3 does not entitle a detainee to be released “on compassionate grounds”, it has always interpreted the requirement to assure the health and well-being of detainees as an obligation on the part of the State to provide them with the requisite medical assistance (see *Kudła*, cited above, § 94; *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts); and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

93. The “adequacy” of medical assistance remains the most difficult element to determine. The Court insists, in particular, that authorities must ensure that diagnosis and care are prompt and accurate (see *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; *Yevgeniy Alekseyenko*, cited above, § 100; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006; and, *mutatis mutandis*, *Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006) and that – where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee’s health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114, and *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005). The Court reiterates that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same level of medical treatment that is available in the best health-care establishments outside prison facilities (see *Blokhin v. Russia* [GC], no. 47152/06, § 137, 23 March 2016 and *Cara-Damiani v. Italy*, no. 2447/05, § 66, 7 February 2012).

94. Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the

unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see, *Kudła*, cited above, § 94, and *Mouisel*, cited above, § 40).

95. The Court has held on many occasions that the detention of a person who is ill may raise issues under Article 3 of the Convention (*ibid.*, § 37) and that the lack of appropriate medical care may amount to treatment contrary to that provision (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII; *Farbtuhs v. Latvia*, no. 4672/02, § 51, 2 December 2004; and *Naumenko v. Ukraine*, no. 42023/98, § 112, 10 February 2004).

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

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

97. Turning to the circumstances of the present case, the Court will first assess the adequacy of the authorities’ response to the applicant’s mental problems, and in particular the compatibility of his pre-trial detention in a regular detention facility with the requirements of the Convention.

98. While maintaining the detention measure is not, in itself, incompatible with the applicant’s state of health, detaining him in establishments not suitable for the detention of the mentally-ill, in the absence of daily supervision of his condition, raises an issue under the Convention.

99. The Court has already examined several cases concerning the detention of mentally-ill persons in regular detention facilities. It has found a violation of Article 3 of the Convention in circumstances where the applicants, suffering from serious mental disorders, had spent years in unfit conditions, sometimes inadequate even for healthy inmates (see *Kudła*, cited above; *Claes v. Belgium*, no. 43418/09, 10 January 2013; *G. v. France*, no. 27244/09, 23 February 2012, Series A no. 325-B; *Sławomir Musiał v. Poland*, no. 28300/06, 20 January 2009; and *Rivière v. France*, no. 33834/03, 11 July 2006).

100. However, the present case is different from the cases cited above in two respects: the seriousness of the applicant’s mental condition and the length of his stay in an ordinary penal institution.

101. In particular, according to the medical report of 21 December 2005, although the applicant suffered from a serious mental disorder - schizophrenia - there was no need for urgent treatment with medication (see paragraph 45 above). The applicant did not exhibit any symptoms

which would have prompted the psychiatric assistance. There was no indication that the illness was affecting his behaviour. He did not have any conflicts with inmates or the administration, and he did not demonstrate suicidal tendencies (see paragraph 46 above) (see, by contrast, *Kudła*, cited above, § 83 and *G. v. France*, cited above, § 17). In the absence of any medical opinion to the contrary the Court is unable to conclude that during the period under consideration the applicant required treatment for his mental condition or that in the absence of such treatment his mental health significantly deteriorated. What is also important is that the applicant's stay in the temporary detention facility was not particularly lengthy (see, by contrast, *Kudła*, cited above, § 84, *Claes*, cited above § 90; *G. v. France*, cited above, § 47; *Śławomir Musiał*, cited above, § 90; and *Rivière*, cited above, § 67) and that no adverse effect on the applicant's mental health was established (see, by contrast, *Claes*, cited above § 97). In these circumstances, having regard to the fact that he did not invoke any physical or mental suffering or additional aggravating factors related to the material conditions of his detention, the Court cannot find that the applicant's pre-trial detention in a regular detention facility reached the minimum level of severity provided for by Article 3 of the Convention. The Court notes that his subsequent detention and treatment in a psychiatric institution did not appear to be flawed. It was successful and resulted in his discharge from the hospital (see paragraph 43 above).

102. Having regard to the applicant's complete medical history and the positive outcome of the disease management, specifically the fact that the applicant's tuberculosis was expeditiously and effectively treated and his hepatitis was brought under control and that the applicant has not relapsed since, the Court finds that the authorities took all the necessary steps to safeguard his physical well-being.

103. Accordingly, the Court concludes that there has been no violation of Article 3 of the Convention on account of the quality of the applicant's medical treatment.

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

104. The applicant complained that his detention from 3 May to 11 June 2006 was incompatible with the requirements of Article 5 § 1 of the Convention. Article 5, in so far as relevant, reads as follows:

“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: ...

(a) the lawful detention of a person after conviction by a competent court;

...

(e) the lawful detention ... of persons of unsound mind ...”

A. Submissions by the parties

105. The Government submitted that the applicant's detention in the period between 3 May and 11 June 2006 fell within Article 5 § 1 (c) of the Convention as it had been effected for the purpose of preventing his absconding. In the alternative the Government argued that his detention fell within Article 5 § 1 (e) of the Convention and satisfied the requirements of that provision as the detention had been lawful and necessary in view of the applicant's mental state.

106. The applicant submitted that his detention had been unlawful as the court had had no power to order for him to be held for the period until the judgment in his case had become final. He further submitted that in any event it had been arbitrary as the temporary detention facility which had accommodated him during that period had been unsuitable for the detention of persons of unsound mind.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

108. In order to comply with Article 5 § 1 of the Convention, the detention at issue must take place "in accordance with a procedure prescribed by law" and be "lawful". The Convention here refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that body of law, but it requires in addition that any deprivation of liberty should be in keeping with the aim of Article 5, namely to protect the individual from arbitrariness (see, amongst many authorities, *Aerts v. Belgium*, 30 July 1998, § 46, Reports of Judgments and Decisions 1998-V; *Bizzotto v. Greece*, 15 November 1996, § 31, Reports 1996-V; and *Winterwerp v. the Netherlands*, 24 October 1979, §§ 39 and 45, Series A no. 33).

109. The Court reiterates that subparagraphs (a) to (f) of Article 5 § 1 of the Convention contain an exhaustive list of permissible grounds for deprivation of liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds (see, *inter alia*, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008; *Witold Litwa v. Poland*, no. 26629/95, § 49, ECHR 2000-III; and *Guzzardi v. Italy*, 6 November

1980, § 96, Series A no. 39). However, the applicability of one of these grounds does not necessarily preclude that of another: detention may, depending on the circumstances, be justified under more than one subparagraph (see *Eriksen v. Norway*, 27 May 1997, § 76, Reports 1997-III, and *Erkalo v. the Netherlands*, 2 September 1998, § 50, Reports 1998-VI).

110. However, the lawfulness of the applicant's detention under domestic law is not in itself decisive. It must also be established that his or her detention during the relevant period was in conformity with the purpose of Article 5 § 1 of the Convention and that it was devoid of arbitrariness (see *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000-III).

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

111. Turning to the circumstances of the present case, the Court observes that on 3 May 2006, after having established that the applicant had committed a criminal offence, the Oktyabrskiy District Court ordered his detention in a psychiatric hospital for compulsory treatment of his mental disorder. At the same time the court held that the applicant should remain detained until his admission to a psychiatric hospital. The judgment entered into legal force on 13 May 2006 and was enforced twenty-nine days later, on 11 June 2006 (see paragraphs 27, 30 and 32 above).

112. The applicant's detention from 3 May to 11 June 2006 falls within subparagraph (a) of Article 5 § 1 of the Convention as it resulted from a "conviction" by a "competent court". Furthermore, as evidenced by the District Court's judgment of 3 May 2006, since the applicant – who was suffering from a mental disorder – was to be detained in a psychiatric institution, his detention starting from that date also falls within the ambit of Article 5 § 1 (e) of the Convention (see *Proshkin*, cited above, § 67; *Erkalo*, cited above, § 51; and *Morsink v. the Netherlands*, no. 48865/99, § 62, 11 May 2004).

113. The Court will first examine whether the applicant's detention was lawful. The expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 state the obligation to conform to the substantive and procedural rules of national law (see *Proshkin*, cited above, § 73).

114. Having regard to the text of Articles 308 and 443 § 3 of the CCRP (see paragraphs 59-61 above), the Court rejects the applicant's argument that the Oktyabrskiy District Court acted *ultra vires* in authorising his detention in the judgment of 3 May 2006, including for the period pending appeal. It considers that the District Court had the power to require the applicant's deprivation of liberty given its findings that he had committed the criminal offences he was charged with and, despite being unable to bear criminal responsibility due to his mental disorder, the fact that he presented a danger to himself and others around him, and thus had to be placed in a mental institution. The Court accepts the Government's argument that the

applicant's detention after 3 May 2006 was ordered in conformity with the substantive and procedural rules of national law.

115. However, the Court has now to examine whether the applicant's detention from 3 May to 11 June 2006 was devoid of arbitrariness.

116. In this connection, the Court observes that there must be some relationship between the grounds of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the "detention" of a person as a mental health patient will only be "lawful" for the purposes of subparagraph (e) of paragraph 1 if effected in a hospital, clinic or other appropriate institution (see *Proshkin*, cited above, § 78, with further references).

117. Taking into account that the applicant was detained in a regular shared cell and was not receiving any treatment to improve or at least to maintain his mental condition, the Court finds that his cell could not be regarded as "an institution appropriate for the detention of persons of unsound mind" (see *Proshkin*, cited above, § 78, and *Aerts v. Belgium*, 30 July 1998, § 49, Reports 1998-V).

118. The Court has already held that domestic authorities may need a certain amount of time to select the most appropriate custodial clinic for a convicted applicant suffering from a mental disorder and that a certain disparity between available and required capacity in custodial clinics is inevitable (see, for example, *Proshkin*, cited above, §§ 76-82; *Mocarska v. Poland*, no. 26917/05, §§ 41-49, 6 November 2007; *Morsink*, cited above, §§ 66-68; and *Brand v. the Netherlands*, no. 49902/99, §§ 60-66, 11 May 2004). At the same time, the Court has stressed that a reasonable balance must be struck between the competing interests involved. On this point, reiterating the importance of Article 5 in the Convention system, the Court has been of the opinion that in striking this balance particular weight should be given to the applicant's right to liberty, taking into account that a significant delay in admission to a custodial clinic and thus the start of the treatment of the person concerned could adversely affect the course of treatment and, in some cases, prospects of the treatment's success.

119. In the present case the Government have signally failed to provide any explanation for the applicant's delayed admission to a mental institution. In the absence of such an explanation, even if the duration of the applicant's detention in itself was not particularly lengthy, the Court cannot find that a reasonable balance between the competing interests was struck and that the applicant's detention lacked arbitrariness. There has, accordingly, been a violation of Article 5 § 1 of the Convention on account of his detention from 3 May to 11 June 2006.

III. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

120. The applicant further complained that his trial had been unfair and that the defence had been in a disadvantageous position vis-à-vis the prosecution. He claimed that he had been unable to defend himself in person, that he had had no access to the case file and that the legal assistance provided to him by the State had been manifestly ineffective. Lastly, he claimed that his access to appeal had been blocked. The applicant relied on Article 6 §§ 1 and 3 (c) of the Convention, which reads as follows:

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

...

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 ...”

A. The parties’ submissions

121. Firstly, the Government argued that the proceedings in question had not been “criminal proceedings” within the meaning of the Convention, because the prosecution had sought the applicant’s placement in a psychiatric institution, rather than his punishment under the Russian Criminal Code. Accordingly, Article 6 of the Convention was inapplicable. In this connection, they referred to the cases of *Antoine v. the United Kingdom* ((dec.), no. 62960/00, ECHR 2003) and *Kerr v. the United Kingdom* ((dec.), no. 63356/00, 23 September 2003).

122. Secondly, the Government submitted that the applicable domestic legal provisions did not prescribe an obligation to ensure the attendance at court hearings of a mentally-ill defendant. At the same time, they guaranteed the protection of the interests of a mentally-ill defendant through legal aid and representation by a legal guardian. The applicant had had no objections to his representation by State-appointed counsel and a legal guardian who had ensured effective legal protection of the applicant’s rights throughout the proceedings.

123. The Government also argued that the applicant had not exhausted domestic remedies as he had failed to challenge the judgment of 3 May 2006 by way of a supervisory review. In addition, they pointed out that the applicant could no longer claim to be a victim in respect of any procedural defects which had occurred during the trial as the judgment of 3 May 2006 had been quashed by way of a supervisory review.

124. The Government also argued that the applicant had not asked the domestic courts to dismiss his counsel from the proceedings and to appoint a new lawyer.

125. They lastly argued that the provisions of the CCrP preventing the applicant from participating in the proceedings and lodging an appeal against the court judgment had been declared unconstitutional in 2007 and had been amended by the legislator in 2010 (see paragraphs 69 above).

126. The applicant argued that he should have had an opportunity to attend the trial, study the case file and challenge the judgment of 3 May 2006 on appeal. He noted that his two legal representatives had been manifestly passive. His counsel had supported the position of the prosecution, rather than that of the applicant. Moreover, his representatives had not appealed against the judgment of 3 May 2006, although such a complaint had been the only possibility for him to challenge that judgment.

B. The Court's assessment

1. Admissibility

127. The Court will first consider whether the quashing of the judgment of 3 May 2006 and the reopening of the case deprived the applicant of victim status, as suggested by the Government.

128. In the case of *Sakhnovskiy v. Russia* ([GC], no. 21272/03, § 83, 2 November 2010) the Court held that the reopening of proceedings by itself may not automatically be regarded as sufficient redress capable of depriving the applicant of his victim status.

129. The Court sees no reason to depart from that approach. It considers that the mere reopening of the proceedings by way of supervisory review failed to provide appropriate and sufficient redress to the applicant. It is particularly so given that that, in the event, it appears that no new trial was held. The Court notes in this connection that as at the relevant time the applicant was in custody (see paragraph 57 above), nothing was preventing the authorities from ensuring his presence at hearings.

130. The Court further notes that the Government's argument pertaining to the applicability of Article 6 of the Convention to the proceedings concerning the application of compulsory measures of a medical nature has already been addressed in the case of *Valeriy Lopata* (cited above, § 120). The Court has held that the proceedings in question were "criminal" within the meaning of Article 6 § 1 of the Convention. The Court sees no reason to reach a different conclusion in the present case, since the task of the Russian courts in the applicant's case was, in substance, to establish whether he had committed a criminal offence for which he should be held criminally liable. It was not until the very last moment, when it was established that the applicant was a mentally ill person who could not, in view of his state of mind, bear criminal responsibility for the acts committed by him that the court decided to relieve him of a custodial sentence and to apply compulsory measures of a medical nature instead. The Court notes that

throughout the criminal proceedings the applicant remained in custody as an accused in the criminal case and he awaited the conclusion of the proceedings against him as any other defendant in an ordinary criminal case. The Court is particularly mindful of the approach adopted by the Russian Constitutional Court, which has held that the procedural situation of a person to whom compulsory measures of a medical nature were to be applied was essentially similar to a suspect or accused in a criminal case, and he or she should thus benefit fully from the guarantees afforded to an accused or defendant by the Russian Code of Criminal Procedure (see paragraph 64 above).

131. The Court further rejects the Government's non-exhaustion plea as, in accordance with the Court's consistent approach, supervisory review in the criminal cases could not be regarded as "an effective remedy" and, accordingly, the applicant could not be required to resort to it (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II).

132. The Court therefore rejects all the Government's objections as to the admissibility of the applicant's complaints under Article 6 §§ 1 and 3 (c) of the Convention. Given 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 Court must thus declare it admissible.

2. Merits

(a) General principles

133. The Court notes at the outset that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, and therefore the applicant's complaints under Article 6 §§ 1 and 3 should be examined together (see *Vacher v. France*, 17 December 1996, § 22, Reports 1996-VI).

134. The Court further reiterates that although this is not expressly mentioned in Article 6 § 1, the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, subparagraphs (c), (d) and (e) of Article 6 § 3 guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court"; it is difficult to see how an accused person could exercise these rights without being present (see *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89).

135. It also reiterates that the object and purpose of Article 6 §§ 1 and 3 (c) presuppose the accused's presence. The trial court may exceptionally continue hearings where the accused is absent on account of illness, provided that his or her interests are sufficiently protected (see *Ninn-Hansen*

v. Denmark (dec.), no. 28972/95, p. 351, ECHR 1999-V). However, where proceedings involve an assessment of the personality and character of the accused and his or her state of mind at the time of the offence and where their outcome could be of major detriment to him or her, it is essential to the fairness of the proceedings that he or she be present at the hearing and afforded the opportunity to participate in it together with his or her counsel (see *Pobornikoff v. Austria*, no. 28501/95, § 31, 3 October 2000; *Zana v. Turkey*, 25 November 1997, §§ 71-73, Reports 1997-VII; and *Kremzow v. Austria*, 21 September 1993, § 67, Series A no. 268-B).

136. The proceedings as a whole could be said to have been fair if the defendant was allowed to appeal against the conviction in absentia and entitled to attend the hearing in the court of appeal entailing the possibility of a fresh factual and legal determination of the criminal charge (see *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

137. The Court lastly reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Poitrimol v. France*, 23 November 1993, § 34, Series A no. 277-A). It is of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal (see *Lala v. the Netherlands*, 22 September 1994, § 33, Series A no. 297-A, and *Pelladoah v. the Netherlands*, 22 September 1994, § 40, Series A no. 297-B). Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes or chosen by the accused. It is a natural corollary that if the legal profession is independent from the State, the conduct of the defence is essentially a matter between the defendant and his or her counsel, whether counsel be appointed under a legal-aid scheme or be privately financed (see *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002). The competent national authorities are required under Article 6 § 3 (c) of the Convention to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168, and *Daud v. Portugal*, 21 April 1998, § 38, Reports 1998-II).

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

i. Personal attendance

138. Turning to the present case, the Court notes that, although the applicant was present at the preliminary court hearing (see paragraph 22 above), the trial was held in his absence (see paragraph 26 above). The authorities did not ensure his appearance before the trial, alleging that Russian law did not call for his presence in view of his mental condition.

The applicant was thus not given an opportunity to participate in the proceedings against him and to argue his case in person. He was also deprived of other procedural rights, including the right to study the case file.

139. The Court has found that, although not having an absolute character, the right of being heard in court enjoys such a prominent place in a democratic society and has such a fundamental value for the protection of an individual against arbitrariness on the part of public authorities, that the mere fact that an individual suffers from a mental illness or has been declared legally incapacitated cannot automatically lead to the exclusion of the exercise of that right altogether. It is the very weakness of a mentally ill defendant which should enhance the need for supporting his or her rights. In this context, the authorities must show requisite diligence in ensuring the accused's right to be present in an effective manner and must act particularly carefully when infringing upon that right, so as not to place the mentally ill at a disadvantage when compared with other defendants who do enjoy such a right (see, *Valeriy Lopata*, cited above, § 125). However, in the present case there is no indication that the trial or appeal courts which examined the case in 2006 made a proper assessment of the applicant's ability to participate usefully in the criminal proceedings against him. The Court does not see any evidence convincingly demonstrating that the applicant's behaviour or his mental condition precluded his stating his case in open court. On the contrary, his submissions were reasonable and clear. The applicant's inability to participate in the proceedings in person seemed to have resulted not from the seriousness of his mental condition, but rather from the lack of a legal provision in domestic law which recognised his right to attend the court hearings even in a limited number of situations.

140. In view of what was at stake for the applicant the courts could not, if the criminal proceedings were to be fair, have decided on his case without observing the applicant's demeanour and directly assessing the evidence submitted by him. Without looking at this juncture at the quality of the applicant's legal representation, the Court finds that the presence of defence counsel and the applicant's legal guardian could not compensate for the applicant's inability to state his own case by appearing before the court (see *Valeriy Lopata*, cited above § 128; see also, *mutatis mutandis*, *Mamedova v. Russia*, no. 7064/05, 1 June 2006, and *Duda v. Poland*, no. 67016/01, 19 December 2006). This conclusion corresponds to the findings of the Presidium of the Belgorod Regional Court which in 2012 for similar reasons acknowledged the violation of the applicant's right to defence (see paragraph 34 above).

141. Accordingly, the Court considers that the trial held in the applicant's absence did not satisfy the requirements of the fairness enshrined by Article 6 § 1 of the Convention.

ii. Effective legal assistance

142. Turning to the quality of the legal representation afforded to the applicant in the present case, the Court notes that while the effectiveness of the legal assistance does not necessarily call for a proactive approach on behalf of a lawyer and the quality of legal services cannot be measured by the number of applications or objections lodged by counsel with a court, manifestly passive conduct might at least give rise to serious doubts about the efficacy of the defence. It is particularly so, if the accused strongly disputes the accusation and challenges evidence or is unable to attend the trial and ensure his or her defence in person.

143. In this connection the Court observes that during the trial the defence was essentially passive. Neither counsel, nor the appointed legal guardian, asked the trial court to verify the applicant's argument that he had been in detention in Ukraine at the time of one of the offences, although this argument was mentioned by the applicant in his submissions (see paragraph 21 above). Another failing is that they did not challenge the admissibility of evidence, including the self-incriminating statements made by the applicant after the arrest, despite the fact that the applicant himself had fiercely disputed the accusation, insisting that he had an alibi and arguing that he had incriminated himself as a result of police brutality.

144. The Court concludes that the legal assistance provided to the applicant at the trial was seriously deficient. Both the applicant's lawyer and his legal guardian did not appear to act in the applicant's interest. Far from protecting the applicant's rights and interests they appear to have mirrored the position of the prosecution, both as regards material issues such as the applicant's involvement in the crimes, as well as various important procedural matters such as the applicant's presence at the trial. Their actions thus undermined the applicant's own line of defence. The Court has already found that the applicant was unfairly deprived of an opportunity to attend the trial and to present his own version of events (see paragraphs 140 and 141. above). It thus considers that the defects in the legal service that the applicant received became particularly salient and damaging given the impossibility for him to correct or decrease in any respect the negative impact that the legal aid afforded to him had on his chances of being found innocent.

145. The Court is also mindful of the applicant's argument that he was not able to appeal given his lawyer's and legal guardian's failure to lodge an appeal. It notes that in many cases such a failure on a lawyer's behalf led to the finding of a violation of Article 6 § 3 (c) of the Convention, taken in conjunction with Article 6 § 1 (see, for example, *Syrak v. Russia*, no. 38094/05, §§ 30-33, 19 December 2013; *Orlov v. Russia*, no. 29652/04, §§ 109 and 117, 21 June 2011; and *Ananyev v. Russia*, no. 20292/04, §§ 55-56, 30 July 2009). There is no reason for a different conclusion in the present case.

146. The Court lastly refers to the Government's argument that the applicant should have notified the trial court of the poor quality of legal representation he was receiving and that by failing to do so he did not give it an opportunity to correct the defects complained of. However, the Court does not need to establish whether the applicant made such requests because the applicant's conduct could not of itself relieve the authorities of their obligation to provide him with an effective defence (see *Volkov and Adamskiy v. Russia*, nos. 7614/09 and 30863/10, § 58, 26 March 2015, and *Shekhov v. Russia*, no. 12440/04, § 42, 19 June 2014). Thus, in such circumstances it was up to the Russian courts to intervene and to appoint new legal-aid counsel or to adjourn the hearing until such time as the applicant could be adequately represented (see *Eduard Rozhkov v. Russia*, no. 11469/05, §§ 25, 31 October 2013).

147. In the light of the above, the Court finds that the quality of the legal assistance provided to the applicant in the present case fell short of the requirements of Article 6 §§ 1 and 3 (c) of the Convention.

iii. Access to appeal

148. The Court considers that there might be an issue concerning the applicant's access to appeal. However, having regard to the findings relating to Article 6 of the Convention above, and the fact that the domestic regulation as in force at the material time has been amended (see paragraph 69 above), the Court concludes that it is not necessary to examine whether the restriction on the applicant's access to appeal was compatible with the requirements of Article 6 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

149. The applicant complained under Article 3 of the Convention of his alleged ill-treatment in the police station and the authorities' failure to carry out an effective investigation into these events.

150. The Government submitted that his complaint of ill-treatment was unsubstantiated and therefore was not "arguable".

151. The Court observes that the applicant's complaint of ill-treatment was not supported by any evidence, such as a medical certificate or witness statement. The prison registers contained no record of his complaints of alleged ill-treatment or of any request for medical assistance or examination. In these circumstances, the Court cannot but conclude that the applicant's claim did not amount to "an arguable claim" of ill-treatment. Accordingly, it was not sufficient to trigger the domestic authorities' obligation to investigate the alleged incident. It follows that this part of the complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see *Gusev v. Russia* (dec.), no. 67542/01, 9 November 2006).

152. The Court has also examined other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as those complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be also rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. 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

154. The applicant claimed 900,000 euros (EUR) in respect for non-pecuniary damage.

155. The Government argued that the finding of a violation would constitute sufficient just satisfaction.

156. The Court, making its assessment on an equitable basis, considers it reasonable to award EUR 9,700 in respect of compensation for non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

157. The applicant claimed EUR 5,400 in respect of legal costs incurred before the Court to be paid directly to the bank accounts of one of his representatives, Ms V. Bokareva.

158. The Government argued that the claim was excessive.

159. 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, the volume of the submissions by the applicant's representatives, the stage of the proceedings at which they joined them, and the above criteria, and bearing in mind that the applicant was granted EUR 850 in legal aid for his representation, the Court considers it reasonable to award EUR 3,000, plus any tax that may be chargeable to the applicant on that amount. The award is to be paid to the bank account of Ms V. Bokareva.

C. Default interest

160. The Court considers it appropriate that the default interest rate 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 complaints pertaining to the quality of the medical treatment in detention, the lawfulness of the applicant's detention between 3 May and 11 June 2006 and the fairness of the criminal proceedings in view of his absence from the trial hearings, the poor quality of legal assistance and the lack of access to appeal admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention concerning the applicant's access to appeal;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 9,700 (nine thousand seven hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable thereon, to be paid to the applicant;
 - (ii) EUR 3,000 (three thousand euros), in respect of costs and expenses incurred before the Court to be paid to the bank account of Ms V. Bokareva, plus any tax that may be chargeable thereon;
 - (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 21 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President