



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

FIRST SECTION

CASE OF MOSKALYUK v. RUSSIA

(Application no. 3267/03)

JUDGMENT

STRASBOURG

14 January 2010

FINAL

14/04/2010

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

In the case of Moskalyuk v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 3267/03) 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 Igor Valeryevich Moskalyuk (“the applicant”), on 11 December 2002.

2. The applicant was represented by Ms Zh. Neronskaya, his mother. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he was detained in appalling conditions without adequate medical assistance in contravention of Article 3 of the Convention.

4. On 2 April 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1979 and lives in Moscow.

A. Criminal proceedings against the applicant

7. On 2 July 1999 the applicant was arrested on suspicion of robbery and assault and taken to a police station for questioning. He was released the next day on an undertaking not to leave town. On an unspecified date he retained a lawyer to represent him.

8. According to the applicant, on 5 July 1999 P., one of the victims of the assault, identified the applicant as one of the perpetrators. P. confirmed his allegations during the confrontation with the applicant.

9. On 31 August 1999 the prosecutor authorised the applicant's detention pending investigation and trial. On 17 September 1999 the applicant was taken into custody.

10. The bill of indictment prepared by the police investigator on 22 September 1999 was approved by the prosecutor on 1 October 1999 and subsequently forwarded to the Zyuzinskiy District Court of Moscow.

11. On 12 May 2000 the District Court remitted the matter for additional investigation to the police. The court noted, *inter alia*, that the investigator had failed to communicate to the applicant the materials from the case file, including the forensic expert's reports. Following the completion of the investigation, the case file was resent to the court.

12. On 10 October 2000 the District Court granted the applicant's request to appoint his mother to represent him before the court.

13. On 7 March 2001 the District Court found the applicant guilty as charged and sentenced him to seven years and six months' imprisonment. The Moscow City Court quashed the applicant's conviction and remitted the matter for fresh consideration on 5 June 2001.

14. It appears that during the new trial, the District Court refused to appoint the applicant's mother to represent him. The applicant retained counsel B. as his defender.

15. On 14 September 2001 the applicant asked the court to release him pending trial. He referred to appalling conditions of his detention and his deteriorating health. The court dismissed the applicant's request.

16. On 14 February 2002 the District Court found the applicant guilty as charged and sentenced him to seven years and six months' imprisonment. The court based its findings, *inter alia*, on forensic evidence and the testimonies of the applicant's accomplice and one of the victims of the assault, who testified in court. Their testimonies were corroborated by the

statements made by P., another victim of the assault. The court could not establish P.'s whereabouts and relied on the transcripts of his earlier questioning by the police.

17. The applicant appealed against his conviction. He challenged the lawfulness of the trial court's findings and alleged that the sentence imposed on him had been too severe. In that respect he mentioned that he had by then spent more than three years in appalling conditions awaiting determination of the criminal charges against him.

18. On 26 June 2002 the Moscow City Court upheld the applicant's conviction on appeal, dismissing, *inter alia*, the applicant's argument that the sentence was too severe.

B. Conditions of the applicant's detention and medical treatment received by the applicant

1. The applicant's detention from 17 September 1999 to 30 May 2002

19. According to the Government, from 17 September 1999 to 13 March 2001 the applicant was detained at remand prison no. IZ-48/2 in Moscow. Between 13 March and 5 July 2001 he was placed in remand prison no. IZ-48/3 in Moscow. On 5 July 2001 the applicant was transferred back to remand prison no. 48/2, where he stayed until 30 May 2002. The applicant did not dispute the information submitted by the Government.

20. According to the applicant, at all times the number of inmates detained in each cell exceeded its capacity. The cells were designed to accommodate twenty to thirty persons. Instead, there were eighty to 100 inmates held there. The number of beds was not sufficient and the inmates had to take turns to sleep. As a result of being detained in such congested conditions for an extended period of time, the applicant contracted tuberculosis.

21. The Government did not provide any information concerning the number of inmates detained with the applicant referring to the destruction of the official relevant records due to the expiration of the statutory time-limit for their storage.

22. On 21 May 2002 the applicant underwent an X-ray examination and was diagnosed with pulmonary tuberculosis. According to the excerpt from his medical file, submitted by the Government, he was examined by a phtisiologist who prescribed him the following medication: isoniazid, pyrazinamide, ethambutol, rifampicin, multivitamins and special food rations.

2. Detention in the hospital at remand prison no. IZ-77/1

23. On 30 May 2002 the applicant was transferred to the hospital at remand prison no. IZ-77/1 in Moscow.

24. According to the excerpt from the applicant's medical file, submitted by the Government, he received the following medication: isoniazid, streptomycin, pyrazinamide, rifampicin and vitamin B. On 6 June 2002 the applicant had a blood test for HIV and syphilis with negative results. On 21 June 2002 he had general blood and urine tests, which showed no anomalies.

25. According to the excerpt from the applicant's medical file submitted by the Government, on 11 July 2002 the applicant was examined by a doctor, who found him fit for transfer to the correctional colony and authorised his discharge from the prison hospital. The doctor further recommended that the applicant continue in-patient treatment at the colony and indicated that he should undergo another X-ray examination in August 2002.

26. According to the Government, the applicant received special food rations as per applicable domestic standards. His health condition was satisfactory.

3. Transport from Moscow to medical correctional colony no. LIU-10 in the Omsk Region

27. From 23 July to 21 August 2002 the applicant was transported from Moscow to medical colony no. LIU-10 in the Omsk Region.

28. According to the Government, the conditions of the applicant's transport were satisfactory. On the train he had an individual sleeping berth. The number of detainees on the train did not exceed the applicable standards. The carriage had natural ventilation, toilet facilities and electric light. The applicant received food and drinking water and was allowed to use the toilet facilities when required.

29. According to the applicant, he did not receive any medical treatment during the whole period of the transfer to the colony.

4. Detention at medical correctional colony no. LIU-10 in the Omsk Region

30. On 21 August 2002 the applicant arrived at medical correctional colony no. LIU-10 in Omsk. He was held there until 14 November 2002.

31. According to the excerpt from the medical file, on 28 August 2002 the applicant was examined by a doctor who noted that the applicant's health condition was satisfactory and that he did not develop good tolerance to the prescribed medication. The doctor recommended special food rations and out-patient treatment. He compiled a list of medicines for the applicant

to be given intermittently, notably every other day. It included ethambutol, rifadin and pyrazinamide.

32. On 1 November 2002 the applicant was examined by a phtisiologist, who noted that the applicant's condition was satisfactory, his temperature was 36.6°C, and he was receiving the necessary food rations. The doctor further recommended the same diet and out-patient treatment prescribed earlier.

5. Transport from the Omsk Region to medical correctional colony no. LIU-1 in the Kaluga Region

33. From 14 November 2002 to 4 January 2003 the applicant was being transported from the Omsk Region to medical correctional colony no. LIU-1 in the Kaluga Region. According to the Government, the conditions of the applicant's transport were in compliance with the standards established by Article 3 of the Convention.

34. According to the applicant, he received no medical assistance during the whole period of the transfer.

6. Detention at medical correctional colony no. LIU-1 in the Kaluga Region

35. On 4 January 2003 the applicant arrived at medical correctional colony no. LIU-1 in the Kaluga Region. According to the Government, he underwent further treatment there and was cured of tuberculosis.

36. On 8 January 2003 the applicant was admitted to hospital in accordance with the decision of the medical panel. In-patient treatment was completed on 27 May 2003. The applicant continued to receive out-patient treatment and on 24 July 2003 the medical panel found him completely cured of tuberculosis. The applicant was discharged from the medical colony.

II. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

37. The CPT report on the visit to the Russian Federation carried out from 2 to 17 December 2001 provides as follows:

“102. The CPT is also seriously concerned by the practice of transferring back from SIZO to IVS facilities prisoners diagnosed to have BK+ tuberculosis (and hence highly contagious), as well as by the interruption of TB treatment while at the IVS. An interruption of the treatment also appeared to occur during transfers between penitentiary establishments.

In the interest of combating the spread of tuberculosis within the law-enforcement and penitentiary system and in society in general, **the CPT recommends that immediate measures be taken to put an end to the above-mentioned practice.**

38. The relevant extracts from *Treatment of Tuberculosis: Guidelines for National Programmes*, World Health Organisation, 2003, provide the recommendations as follows:

“4.4 Recommended standardized treatment regimens

New cases

Treatment regimens have an initial (or intensive) phase lasting two months and a continuation phase usually lasting four or six months. During the initial phase, consisting usually of isoniazid, rifampicin, pyrazinamide and ethambutol, the tubercle bacilli are killed rapidly. Infectious patients quickly become non-infectious (within approximately two weeks). Symptoms abate. The vast majority of patients with sputum smear-positive TB become smear-negative within two months. During the continuation phase, fewer drugs are necessary but for a longer time. The sterilizing effect of the drugs eliminates the remaining bacilli and prevents subsequent relapse.”

39. The relevant extracts from the 3rd General Report [CPT/Inf (93) 12] by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) read as follows:

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

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

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

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that he had been detained in appalling conditions from 17 August 1999 to 30 May 2002 in remand prisons nos. IZ-48/2 and 48/3 in Moscow. He further complained that he had not received adequate and proper medical treatment for tuberculosis while in detention in the hospital of remand prison no. IZ-77/1 in Moscow and at medical correctional colony no. LIU-10 in the Omsk Region. He further alleged that during the transfers to and from medical correctional colony no. LIU-10 in the Omsk Region he had not been treated at all. He referred to Article 3 of the Convention, which reads as follows:

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

A. Conditions of detention from 17 September 1999 to 30 May 2002

Admissibility

(a) The parties' submissions

41. The applicant submitted that the cells where he had been detained had been severely overcrowded. He had contracted scabies and various skin diseases. The remand prison had been unable to provide him with necessary treatment and his mother had had to send him medicine. As a result of his lengthy detention in such conditions he had developed tuberculosis. He noted that he had not raised his grievances before competent domestic authorities, knowing that it would have been to no avail. While awaiting trial, he had lodged an application for release, complaining that the conditions of his detention were inhuman. The court had dismissed it, completely ignoring his complaint. The only consequence of his lodging the complaint was retaliatory conduct on the part of the guards in the remand prison.

42. The Government disputed the description provided by the applicant in respect of the conditions of his detention. They further pointed out that the applicant had submitted his complaint more than six months after the end of the period in question. Accordingly, his complaint should be rejected for his failure to comply with the six-month rule set out in Article 35 § 1 of the Convention. The fact that the applicant raised an issue of the conditions of his detention in his points of appeal against his conviction was not relevant. It was not within the appeal court's jurisdiction to deal with the

issue and to afford redress to the applicant in respect of the violation of his rights, if any. Alternatively, the Government reasoned that the applicant's complaint could also be rejected for failure to exhaust domestic remedies. The applicant had failed to complain about the conditions of his detention in the remand prison, either to the prosecutor or the court. In support of their position, they referred to the favourable outcome of four sets of civil proceedings instituted by inmates in Russia seeking either improvement in conditions of detention or damages.

(b) The Court's assessment

43. The Court will first examine the Government's argument that the applicant failed to bring his grievances to the attention of competent domestic authorities.

44. The Court accepts the Government's contention that the fact that the applicant had complained about the conditions of his detention in the statement of appeal against his conviction could not be regarded as an effective remedy in respect of the alleged violation.

45. As regards the opportunity, as suggested by the Government, the applicant had to complain about the conditions of his pre-trial detention and, in particular, about overcrowding of the cells in the remand prison where he awaited determination of the criminal charges against him, to a prosecutor or a court as suggested by the Government, the Court observes that it has previously found on numerous occasions that such a complaint could not be considered an effective remedy (see, among other authorities, *Benediktov v. Russia*, no. 106/02, §§ 27-30, 10 May 2007). Having regard to the materials submitted by the Government, the Court notes that they have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, the Court dismisses the Government's objection and concludes that the applicant was not required to make use of the avenues of exhaustion indicated by the Government in respect of the conditions of his detention. The Court also notes that, according to the applicant, he had been aware of the lack of an effective remedy in respect of his grievances back in 2001.

46. It remains for the Court to ascertain whether the applicant complied with the six-month rule set out in Article 35 § 1 of the Convention.

47. The Court reiterates that according to its well-established case-law, where no domestic remedy is available the six-month period runs from the date of the act complained of (see, among the most recent authorities, *Opuz v. Turkey*, no. 33401/02, § 110 *in fine*, 9 June 2009).

48. Having regard to the principle stated above and the Court's earlier finding that no effective domestic remedy existed in respect of the applicant's complaint, the Court considers that the six-month period in respect of the applicant's complaint about the conditions of his detention from 17 September 1999 to 30 May 2002 started running from the date on

which his detention ended, that is 30 May 2002. Accordingly, the applicant should have introduced his complaint no later than 1 December 2002. However, he lodged it only on 11 December 2002. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Alleged lack of medical assistance in respect of the applicant's detention from 30 May 2002 to 4 January 2003

1. Admissibility

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

2. Merits

(a) The parties' submissions

(i) The Government

50. The Government submitted that the applicant had been detained in satisfactory conditions throughout the period in question and had received proper medical assistance. They relied on excerpts from the applicant's medical file concerning the period in question. They further noted that the applicant had received the special food rations prescribed for inmates suffering from tuberculosis.

51. The Government contended that the applicant had received full and adequate treatment for tuberculosis while in the hospital of remand prison no. IZ-77/1 in Moscow and special medical correctional colony no. LIU-10 in the Omsk Region. The treatment had been in compliance with statutory standards.

52. As regards the applicant's transport, the Government noted that the railway carriage in which the applicant had been detained during the transfers, had not been overcrowded and the conditions of his transport had been adequate. Like other detainees, the applicant received food and drinking water.

(ii) The applicant

53. The applicant conceded that he had undergone a course of chemical treatment in the hospital of remand prison no. IZ-77/1 in Moscow. However, the hospital did not have all the medicine required and his mother had to send him antihistamines and badger and bear fat. Besides, the

chemical treatment had been interrupted due to his transfer to medical correctional colony no. LIU-10 in the Omsk Region. The conditions of his transfer were incompatible with Article 3 of the Convention since he did not receive any medical assistance during the whole time of the transfer.

54. At medical correctional colony no. LIU-10 he did not receive in-patient treatment, as had been earlier prescribed to him. After numerous complaints he had been transferred to medical correctional colony no. LIU-1 in the Kaluga Region, where the situation had changed. However, the transport to LIU-1 had lasted too long and had put an excessive burden on him given his health condition and complete lack of any medical treatment.

(b) The Court's assessment

(i) General principles

55. 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 *Labita v. Italy*, 6 April 2000, § 119, *Reports* 2000-IV).

56. The Court further reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

57. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with the detention (see, *mutatis mutandis*, *Tyrer v. the United Kingdom*, 25 April 1978, § 30, Series A no. 26, and *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161).

58. In most of the cases concerning the detention of people who are ill the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this respect that even if Article 3 does not entitle a detainee to be released "on compassionate grounds", it always requires that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; see also *Hurtado v. Switzerland*, 28 January 1994, § 79, Series A no. 280-A, opinion of the Commission; *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI; and *Khudobin v. Russia*, (no. 59696/00, § 96, ECHR 2006-... (extracts)).

59. The “adequacy” of medical assistance remains the most difficult element to determine. The CPT proclaimed the principle of the equivalence of health care in prison with that in the outside community (see paragraph 39 above). However, the Court does not always adhere to this standard, at least when it comes to medical assistance to convicted prisoners (as opposed to those in pre-trial detention). The Court has previously held that Article 3 of the Convention cannot be interpreted as securing to every detained person medical assistance of the same level as “in the best civilian clinics” (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). In another case the Court went further, holding that it was “prepared to accept that in principle the resources of medical facilities within the penitentiary system are limited compared to those of civil[ian] clinics” (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007).

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

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

61. Turning to the circumstances of the present case, the Court observes that the applicant raised a number of complaints about the way he was treated for tuberculosis, while the Government maintained that he received appropriate medication and was detained in satisfactory conditions.

(α) The applicant’s placement in hospital at remand prison no. IZ-77/1 in Moscow from 30 May to 23 July 2002

62. As regards the applicant’s initial placement in hospital at remand prison no. IZ-77/1 in Moscow, the Court observes that the parties agreed that the applicant was prescribed proper anti-tuberculosis treatment. Nor did the applicant allege that the prescribed chemical treatment was not administered to him. His first grievance in this context concerned, in substance, the fact that some of the supplementary drugs, notably antihistamines, were not available at the pharmacy of the remand prison and his mother had to purchase those for him. The Court notes that the applicant did not contend that these purchases had imposed an excessive financial burden on his family. In these circumstances the Court is prepared to accept that the lack of antihistamines in the prison hospital was not, as such, contrary to Article 3 of the Convention.

63. As for the applicant’s allegation that the course of chemical treatment had not been completed, the Court notes that the applicant’s in-patient treatment at the prison hospital lasted fifty-three days, which was one week shorter than the two-month initial phase of the tuberculosis treatment recommended by WHO (see paragraph 38 above). The Court does

not rule out the possibility that a shorter period of treatment could be sufficient. Accordingly, it will look at the medical evidence submitted by the parties to ascertain whether the doctor's decision to discharge the applicant from hospital was justified in the circumstances of the case.

64. The Court observes that, when deciding on the applicant's discharge, the doctor considered the results of the initial X-ray examination conducted in May 2002 when the tuberculosis was first detected, the blood test for HIV and syphilis, the general blood and urine test results obtained in June 2002 and a visual check-up. There is nothing in the excerpts from the applicant's medical file submitted by the Government to suggest that the applicant underwent any specialised testing, such as a new X-ray examination or a sputum smear test, which would allow objective medical evidence of the positive outcome of the treatment to be obtained and the decision to discharge the applicant from hospital to be justified. In this respect the Court also takes note of the doctor's recommendation that the applicant should continue in-patient treatment once he arrived at the medical correctional colony to serve his sentence. In such circumstances the Court accepts that the applicant's in-patient treatment at remand prison no. IZ-77/1 in Moscow was not properly completed.

(β) The applicant's transport to medical correctional colony no. LIU-10 in the Omsk Region from 23 July to 21 August 2002

65. As regards the applicant's transport from Moscow to the medical correctional colony in the Omsk Region, the Court observes that, upon the applicant's discharge from the hospital at the remand prison in Moscow, the doctor prescribed no medication for the time the applicant was supposed to be in transit. The Court does not lose sight of the fact that the CPT noted in the report on its visit to the Russian Federation in 2001 that it was normal practice for the Russian authorities to interrupt treatment of detainees for tuberculosis for the duration of their transfer between penitentiary establishments (see paragraph 37 above). The Court also notes that the Government did not submit in their observations that this practice had not been followed in the applicant's case and that the applicant had continued to receive treatment for tuberculosis. Accordingly, the Court accepts the applicant's argument that he was deprived of any medical assistance for the twenty-four days he spent being transported from Moscow to medical correctional colony no. LIU-10 in the Omsk Region. Even though, as the Government argued, the conditions of his transport were satisfactory, the fact that the applicant was detained in a railway carriage which was not overcrowded and was provided with food and water is of little significance in such circumstances.

66. Having regard to the above, the Court finds that during the applicant's transfer from Moscow to medical correctional colony no. LIU-10 in the Omsk Region, the Russian authorities failed to comply with their

responsibility to ensure adequate medical assistance to the applicant, who was suffering from tuberculosis and was still in need of medication.

(γ) The applicant's detention at medical correctional colony no. LIU-10 in the Omsk Region from 21 August to 14 November 2002

67. As regards the applicant's allegation that he did not receive proper treatment at medical correctional colony no. LIU-10 in the Omsk Region, the Court observes that the information provided by the Government in respect of the period in question is rather scarce. They asserted that the treatment in question had been in compliance with applicable statutory standards. According to the excerpts from the medical file, it appears that during the three months the applicant spent at the correctional colony he saw the doctor twice. The doctor confined himself to a visual check-up of the applicant and prescribed out-patient treatment for him. The medical records furnish no explanation as to why the earlier recommendations to proceed with in-patient treatment were disregarded. The records also remain silent as to whether the X-ray examination scheduled to be conducted in August 2002 was actually carried out. Nor do the medical records indicate that any tests were administered to follow up on the applicant's condition and effectiveness of the treatment.

68. Accordingly, the Court finds that the applicant did not receive adequate medical assistance at medical correctional colony no. LIU-10 in the Omsk Region.

(δ) The applicant's transport from the Omsk Region to medical correctional colony no. LIU-1 in the Kaluga Region from 14 November 2002 to 4 January 2003

69. Lastly, the Court will examine the conditions of the applicant's transport between medical correctional colonies nos. LIU-10 and LIU-1, which lasted over a month and a half. The Court observes that the Government did not dispute the applicant's allegation that he was not treated for tuberculosis during the period in question. Even though, as the Government pointed out, the conditions of the applicant's transport were satisfactory, in the Court's opinion the lack of medical assistance and supervision for such an extended period of time caused the applicant, who was suffering from tuberculosis, distress and suffering and posed a certain risk to his health. This finding is supported by the fact that the applicant was placed in hospital upon his arrival at LIU-1, out-patient treatment being apparently insufficient.

(ε) Summary of the Court's conclusions

70. Having regard to the above and the responsibility owed by the state authorities to provide the requisite medical care for detained persons, the Court accepts the applicant's argument that the medical treatment he

received for tuberculosis from 23 July 2002 to 4 January 2003 was not adequate. Despite the seriousness of his condition, the hospital at the remand prison and the medical correctional colony did not carry out proper monitoring of the applicant's condition and discontinued his treatment for extended periods of time in the absence of sufficient medical indications to do so.

71. The Court considers that, in the present case, there is no evidence showing that there was a positive intention to humiliate or debase the applicant. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see, for example, *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 120, 29 November 2007). In the Court's opinion, the lack of adequate medical treatment during the period in question must have caused the applicant considerable mental and physical suffering diminishing his human dignity, which amounted to degrading treatment within the meaning of Article 3 of the Convention.

72. Accordingly, the Court finds that there has been a violation of Article 3 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

73. Lastly, the applicant complained under Article 5 of the Convention that his arrest on 2 July 1999 had been unlawful and that the prosecutor had authorised his arrest on 31 August 1999 in his absence. He further complained under Article 6 of the Convention that he had been questioned on 2 July 1999 when he was in an inebriated state and in the absence of a lawyer; that he had belatedly been informed of the investigator's decision to commission a forensic expert report; that the authorities had refused to appoint his mother to represent him in the course of the criminal proceedings against him; and that the trial court had failed to examine witnesses P. and N.

74. However, having regard to all the material in its possession, the Court finds that the events complained of 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 rejected as manifestly ill-founded pursuant to Articles 35 § 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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. Non-pecuniary damage

76. The applicant submitted that he had incurred non-pecuniary damage resulting from the violation of his rights. However, he did not specify the amount claimed, leaving it to the Court’s discretion.

77. The Government considered that the finding of a violation by the Court, if any, would in itself constitute sufficient just satisfaction.

78. The Court considers that the applicant must have suffered distress and frustration resulting from the lack of adequate medical assistance. Making its assessment on an equitable basis, it awards the applicant 20,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

79. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the inadequacy of the medical assistance provided to the applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the inadequacy of the medical assistance provided to the applicant between 23 July 2002 and 8 January 2003;

3. *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 20,000 (twenty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles 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.

Done in English, and notified in writing on 14 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President