



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

FIRST SECTION

CASE OF AKHMETOV v. RUSSIA

(Application no. 37463/04)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

04/10/2010

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

In the case of Akhmetov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 37463/04) 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 Rafik Khamidullovich Akhmetov (“the applicant”), on 12 July 2004.

2. The applicant was represented by Mr R. Khashimov, a lawyer practising in Chelyabinsk. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation before the European Court of Human Rights.

3. The applicant alleged, in particular, that he did not receive adequate medical treatment in detention.

4. On 12 February 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

5. On 26 March 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).

6. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1967 and lives in Chelyabinsk.

A. The applicant's sentence and detention

8. In 1996 the applicant was detained in connection with criminal proceedings instituted against him and placed in remand prison IZ-70/3 in the Chelyabinsk Region.

9. On 30 December 1998 the Chelyabinsk Regional Court found the applicant, who had previous convictions, guilty of a number of criminal offences, including banditry, kidnapping and unlawful use of weapons. He was sentenced to the death penalty and to confiscation of property.

10. Between 14 December 1999 and 26 April 2000 the applicant was held in remand prison IZ-77/2 in Moscow pending the examination of his appeal.

11. On 28 February 2000 the Supreme Court of the Russian Federation altered the sentence, commuting the death penalty to fifteen years' imprisonment, ten years of which to be served in a prison and five years in a correctional facility.

12. From 10 May 2000 until an unspecified date in 2006 the applicant was held in prison YaV-48/T-1, Chelyabinsk Region (*учреждение ЯВ-48/Т-1 по Челябинской области*).

13. On an unspecified date in 2006 the applicant was transferred to prison no. T-2 in the Vladimir Region.

14. On 29 February 2007 the Metallurgicheskiy District Court of Chelyabinsk reviewed the sentence. Under the revised sentence, the applicant was to serve the entire term of his imprisonment in a correctional facility.

B. The applicant's illness and the medical treatment provided

15. Since 1993 the applicant has suffered from a cavernous haemangioma of the right parietotemporal area.

16. In 1995 the applicant underwent examination and carotid ligation in the Microvascular Surgery Centre at Chelyabinsk Regional Hospital no. 1.

17. Following the applicant's placement in remand prison IZ-70/3 in 1996, he was examined by the prison doctors in connection with his complaints concerning the growth of the tumour and occasional

haemorrhages of the tumour and the right auricle. The doctors subsequently applied antiseptic dressings and haemostatic medicines.

18. During the applicant's detention in remand prison IZ-77/2, Moscow, from 14 December 1999 to 26 April 2000 he was regularly examined by the prison doctors.

19. On 10 May 2000, following the applicant's transfer to prison YaV-48/T-1, he was examined by the deputy head of the prison medical unit. He was diagnosed with cavernous haemangioma of the head and right auricle and aseptic dressings were applied regularly.

20. On 24 May and 20 August 2000 the applicant was placed in the surgical department of penitentiary hospital IK-3. There he was examined by a neurosurgeon and oncologist and diagnosed with a cavernous haemangioma of the right temporal and parotid area involving the right auricle.

21. On 19 November 2000 the applicant was placed in penitentiary hospital IK-3 for surgery. On 14 December 2000 he underwent ligation of the occipital artery and of branches of the carotid artery with a view to reducing the blood supply to the tumour. A short-term improvement was observed after the surgery: the tumour decreased in size and the sores epithelised. The applicant was discharged from hospital on 15 January 2001 in a satisfactory state.

22. On 11 June 2001 the applicant was again placed in the surgical department of penitentiary hospital IK-3 on account of a growth in the tumour. There he was examined by M., microsurgeon of the Microvascular Surgery Centre at Chelyabinsk Regional Hospital no. 1, who had operated on the applicant in 1995 and 2000, with a view to determining the prospects for radical surgery. M. stated that, taking into account the previous surgeries, excision of the haemangioma, ligation of the nutrient stem and subsequent plastic surgery for the injury to the skull was recommended. Angiography and magnetic resonance tomography were also recommended.

23. On 8 October 2001 the applicant underwent tomography in Chelyabinsk Regional Hospital no. 1, since it was not possible to carry this out in penitentiary hospital IK-3. According to the angiosurgeon, the results of the tomography were not conclusive and angiography with intracranial vascular opacification was required.

24. On 25 October 2001 prison YaV-48/T-1 requested the Ministry of Justice to grant permission for the applicant's transfer with a view to providing him with the medical aid required.

25. On 19 February 2002 the Ministry of Justice granted permission to transfer the applicant to detention facility US-20/12 in St Petersburg. On 21 February 2002 the relevant instruction was sent to prison YaV-48/T-1.

26. From 15 April to 8 May 2002 the applicant was placed in facility US-20/12 in St Petersburg, where he was examined by E., an otolaryngologist-oncologist. The applicant was diagnosed with

haemangioma of the right temporal and parietal areas and recurrent arrosive haemorrhages from the right auricle, which were life-threatening. It was recommended that he undergo radical removal of the tumour, with simultaneous plastic surgery of the injury and embolization of the vessels, in an oncological centre specialising in head and neck tumours.

27. According to the doctors of facility US-20/12, such treatment was not possible within the penitentiary system. They stated that an examination should be carried out by the Special Medical Commission (SMK) with a view to deciding on the applicant's possible release in connection with his state of health.

28. Between 30 July and 10 October 2002 the applicant was placed in the surgical department of penitentiary hospital IK-3 in Chelyabinsk, where he underwent medical examinations prior to the meeting of the SMK. The relevant medical record, no. 2388/618, stated as follows:

“Diagnosis established by the referring medical institution: cirroid haemangioma of the right parietotemporal area... 31 July 2002...”

Diagnosis upon discharge [from the hospital]: cavernous haemangioma affecting the right parietotemporal area and the right auricle. 16 September 2002...”

29. On 22 August 2002 the applicant was examined by surgeon K., Doctor of Medicine, Head of the Centre for Plastic and Aesthetic Surgery *Plastes*. After examining the applicant, she stated as follows:

“Complaints concerning a tumour in the right parietotemporal area and the right auricle. According to the patient, the tumour appeared in 1993 and has been growing slowly. In 1995 he underwent surgery in the microsurgery department of Chelyabinsk Regional Clinical Hospital no. 1 (*ЧОКБ №1*); the external carotid artery was ligated on the right side. In 1996, after trauma to the soft tissues of the head, he noted continued growth of the tumour. [The patient] was examined in 2001. He underwent computer tomography of the brain...”

Conclusion: the patient has vascular malformation of the soft tissue of the right parietotemporal and parotid areas involving the right auricle (cavernous haemangioma). The illness does not fall within the category of cancerous tumours and is not of immediate danger to the patient's life. The non-abundant haemorrhages stop without assistance. [Surgery] is not possible in the surgery department of YaV-48/3 [hospital]. Radical ablation of the growth, with simultaneous plastic surgery to the soft tissues injury using an advanced flap, is possible only in specialised departments.”

30. On 20 September 2002 the applicant was examined by the SMK, which concluded that, having regard to the list of illnesses that could serve as a basis for early release from serving one's sentence, the applicant was not entitled to such release. The report of the examination stated:

“Complaints: a tumour in the right temporal and parietal areas spreading to the right auricle.

Anamnesis: ...The patient notes ... that the haemangioma on the right side appeared in 1993. In 1995 [he] underwent surgery in OKB no. 1 [hospital] [*ОКБ № 1*], and the

external carotid artery was ligated on the right side. After surgery the tumour diminished somewhat. Rapid growth of the tumour, ulceration of the upper segment of the auricle and frequent haemorrhages from that area in 1996. On 19 November 2000 [he was] placed in the surgery department of the YaV-48/3 hospital. Ligation of the cervical branch of the temporal artery on 14 December 2000 – insignificant effect... In agreement with the medical unit of [the penitentiary service] he was placed in institution US-20/12 (*Vc 20/12*) between 15 April and 8 May 2002 with the diagnosis: cavernous haemangioma of the right parietotemporal area, recurrent arrosive haemorrhages from the right auricle affected by the tumour, threatening the patient's life. Recommended: ablation of the tumour with simultaneous plastic surgery in an oncocentre by oncologist [E.]. Such treatment is not feasible in the penitentiary system's facilities.. ...

Examination by Z., the senior external surgeon of the medical unit [of the Chelyabinsk Region penitentiary service]: taking into account the anamnesis, the tumour has been growing slowly over the past seven years. No changes in bone tissue, no possibility of taking material for histological study on account of the risk of haemorrhage and impossibility of stopping it in the given circumstances, no changes in lungs, brain; the tumour is benign. Diagnosis: vascular malformation of soft tissues of the right parietotemporal and parotid areas involving the right auricle. No threat to life...

Final diagnosis: vascular malformation of soft tissue of the right parietotemporal and parotid areas involving the right auricle.”

31. On 21 October 2002, after the applicant's return to prison YaV-48/T-1, he was examined by a regional medical-social commission. The commission decided not to grant him the status of a disabled person.

32. It appears that between 2 and 28 January 2003 the applicant was again placed in a penitentiary hospital. Medical record no. 372/76 stated:

“...28 January 2003. Diagnosis upon discharge [from the hospital]: ...vascular malformation of the parietal and temporal areas, of the right auricle.”

33. On 2 February 2003 the applicant was examined by K, Head of the Department of Maxillofacial Surgery of Chelyabinsk Town Clinical Hospital no. 3. The report of the examination stated:

“Complaints about a tumour in the right temporal, parotid and cervical [areas] and the auricle. There is progressive tumour growth: the tumour currently measures 15x14 centimetres, protrudes from the surface of the skin and pierces it with a vascular figure. Auscultation creates noise in the parotid and temporal [areas]... In the auricle area there are zones of necrosis...

Diagnosis: vast haemangioma... of the right temporal, parotid and parietal areas and the auricle.

Surgery is not recommended because of the high risk to life. Sclerotherapy (SHF, X-ray therapy) is recommended...”

34. On 14 March 2003 the administration of prison YaV-48/T-1 requested the Ministry of Justice to assist with the applicant's treatment, since there were no facilities for X-ray therapy in the prison.

35. On 29 April 2003 the Ministry of Justice replied that the administration of prison YaV-48/T-1 should apply with a request for the applicant's transfer to penitentiary hospital OZh-118/5 in Voronezh. The prison authorities applied for such a transfer.

36. On 25 August 2003 hospital OZh-118/5 in Voronezh refused the request on the ground that it had no specialists qualified for the treatment of the applicant's condition. On the same date the prison authorities again requested the Ministry of Justice to assist with the applicant's treatment by SHF and X-ray therapy.

37. On 18 September 2003 the administration of prison YaV-48/T-1 received an order on the applicant's transfer to facility US-20/12 in St Petersburg. On 19 October 2003 the applicant left for the facility.

38. The applicant was placed in inter-regional penitentiary hospital IK-12 (MOB) from 24 November 2003 to 7 January 2004. He underwent a biopsy and was examined by a panel consisting of the head of the hospital, the deputy head of the medical department, the deputy head of the surgical department and the head of the otolaryngological department. The applicant was also examined by Sh., the head of the neurological department of Town Hospital no. 2, and E, an oncologist. According to the panel's report, treatment of the applicant's condition was not possible in hospital IK-12 (MOB). The applicant was discharged in a satisfactory state and supervision by a maxillofacial surgeon was recommended.

39. Following the applicant's return to prison YaV-48/T-1 on 26 February 2004 he complained about occasional haemorrhages and pains. He received treatment consisting of dressings with haemostatic sponges and analgesics.

40. On 27 March 2004 the applicant was examined by plastic surgeon M. and stomatologist F. They reached the following conclusions:

“The patient has vascular malformation of the soft tissue of the right temporal and parietal areas and the ear with ulceration. There is a risk of profuse bleeding. Angiography is necessary. It will be possible to decide whether surgical treatment is possible only after the angiography.”

41. From 8 April to 2 June 2004 the applicant was placed for examination in penitentiary hospital YaV-48/3. He was discharged in a satisfactory state.

42. After the applicant's return to prison YaV-48/T-1 on 8 June 2004 he was examined by the prison doctor every day.

43. According to the Government, on 18 June 2004 the applicant, who was trying to avoid placement in a disciplinary cell, caused himself injuries in the area of the tumour; this resulted in profuse bleeding. He was urgently placed in a surgical department of the Verkhneursalsk Central District Hospital. There he underwent haemostatic therapy and on 21 June 2004 he was discharged in a satisfactory condition. During the subsequent period of

his detention in prison YaV-48/T-1 minor haemorrhages occurred; these were stopped by dressings.

44. On 13 July 2004 the applicant was again placed in the surgical department of penitentiary hospital IK-3 for examination with a view to determining subsequent treatment.

45. On 5 August 2004 the applicant underwent angioarteriography of the vessels of the head.

46. On 11 August 2004 the applicant was examined by M., a plastic surgeon, and O., the head of the vessel surgery department of Chelyabinsk Regional Hospital no. 1. They stated, in particular:

“The patient has evident pathology of intracranial sections of the right and left vertebral arteries feeding the pathological centre (malformation). Ligation of the vertebral arteries is impossible because of the high risk of truncal stroke. Excision of the vascular tumour and plastic surgery is impossible because of its very big size and feeding by intracranial sections. Palliative therapy is recommended.”

47. On 18 August 2004 the applicant was examined by radiologist K., who stated:

“The patient has vast cavernous haemangioma of the right parietotemporal area spreading to the auricle and neck. There is vast ulceration with decomposition. Branches of the external carotid artery were previously ligated. Taking into account the amplitude of the lesion and decomposition effects, radiotherapy for sclerosing is not recommended.”

48. On 24 August 2004 the applicant was discharged from the hospital in a satisfactory state. Palliative treatment was recommended (antiseptic dressings, haemostimulating therapy and, in the event of haemorrhages, haemostatic therapy). He was also referred for examination by the medical-social commission. The medical unit of prison YaV-48/T-1 complied with the recommendations. The applicant was regularly examined by the unit doctors and received dressings.

49. On 20 October 2005 the applicant was placed in Regional Somatic Hospital no. IK-3 for haemostatic therapy and examination by the medical-social commission. He was granted category-3 disability status.

50. On 24 October 2005 the applicant was discharged from the hospital in a satisfactory state. In prison YaV-48/T-1 he continued to receive symptomatic therapy and antiseptic dressings.

51. On 25 November 2004 professor D., Department of Vascular Surgery of the Vishnevsky Institute of Surgery, issued a medical opinion on the basis of the results of the angiography:

“From the results of the angiography it follows that the main source of blood supply for the [affected] zone is the basin of the vertebral artery through intracranial vessels. Therefore, any interference ... is connected with an extremely high risk of neurological complications (haemorrhagic or ischemic stroke) and can be performed only in highly specialised neurosurgical institutions. Radical surgical treatment with ablation of all the affected areas is impossible because of the amplitude of the lesion.

It is recommended that the patient be supervised by a surgeon and, in case of haemorrhage, stitching of angiomatous tissues.”

52. On 30 January 2006, upon studying the applicant's medical file, the Moscow State Medical-Stomatological University refused to accept him for treatment.

53. On 15 February 2006 the Ministry of Justice informed the administration of prison YaV-48/T-1 that the applicant could be placed for treatment in the Krasnoyarsk Regional Hospital. The prison administration requested an order for his transfer.

54. On 20 May 2006 the Ministry of Justice replied that the order could be granted only upon confirmation from the Krasnoyarsk Regional Hospital that it would accept the applicant for treatment.

55. On 14 July 2006 the Krasnoyarsk Regional Hospital replied that it could not accept the applicant since it did not have the technical facilities for the treatment required.

56. From 26 October 2006 to 20 March 2007 the applicant underwent treatment for tuberculosis in penitentiary hospital IK-3.

57. On 27 February 2007 the Tyumen Regional Hospital informed the penitentiary authorities, in reply to their request, that it could not provide treatment to the applicant given the absence of the necessary technical facilities.

58. Following the applicant's transfer to prison no. T-2 in the Vladimir Region, he was placed in the surgical department of the penitentiary hospital. On 1 February 2008 he was examined by an oncologist, who diagnosed him with a giant cavernous haemangioma of the head and stated that surgical treatment was not recommended because of the extent of the propagation of the tumour. He recommended symptomatic treatment only.

59. On 13 March 2008 the applicant was again examined by the medical-social commission, which granted him category-2 disability status.

C. Complaints and applications for medical treatment lodged by the applicant and his wife on his behalf

60. In 2003 the applicant applied to a court seeking to have the failure to provide him with adequate medical aid in prison declared unlawful. He also asked the court to order his placement in the Chelyabinsk Oncological Centre for treatment.

61. On 16 September 2003 the Tsentralniy District Court of Chelyabinsk dismissed the claim. The court found that the following medical aid was provided to the applicant during his imprisonment: between 28 February and 10 May 2000 – examination by doctors and conservative treatment; between 24 May and 20 August 2000 – placement in the surgery department of YaV-48/3 (*ЯВ 48/3*) hospital for convicts, Chelyabinsk, consultations with a neurosurgeon and oncologist; 19 November 2000 – placement in the

YaV-48/3 hospital for another elective operation conducted on 14 December 2000; between 11 June and 4 December 2001 – placement in YaV-48/3 hospital, computer tomography conducted on 8 October 2001; between 15 April and 8 May 2002 - treatment and consultations by doctors in institution US-20/12, St Petersburg (*учреждение УС-20/12 ГУИИ по Ст.-Петербургу и Ленинградской области*); between 30 July and 10 October 2002 – placement in the surgery department of YaV-48/3 hospital; 22 August 2002 – consultation by the Department Head of the *Plastes (Пластэс)* centre; 20 September 2002 – an examination by a special medical commission (*СМК*); 1 October 2002 – a medico-social examination (*МСЭ*) in Magnitogorsk; 26 January 2003 – placement in the YaV-48/3 hospital; 3 February 2003 – consultation by the head of Chelyabinsk hospital no. 3 (*ЧЛХО МУ 3 «ГКБ № 3 г. Челябинска*). The court held that the medical aid provided had been sufficient. The applicant appealed.

62. On 20 November 2003 the Chelyabinsk Regional Court upheld the judgment on appeal.

63. On 3 March 2004 the Deputy Head of Hospital IK-12 (*ИК-12*) of the Main Department for the Execution of Sentences replied to a query by the applicant's wife:

“In reply to your request... I inform you that [the applicant] was placed in [IK-12 hospital] between 24 November 2003 and 19 January 2004 with the diagnosis: racemose haemangioma of the right parietal area, the right auricle and the right half of the neck. Recurrent arrosive haemorrhages threaten the patient's life.

Surgical treatment is not feasible in [the penitentiary system's] facilities. Progressive growth of the tumour is possible in the absence of treatment. Out-patient supervision has been recommended... The possibility of a fatal outcome in the event of trauma to [the area of the haemangioma] is very high. It is possible to stop haemorrhage only in specialised surgical in-patient facilities. Branches of the external carotid artery are involved in the tumour.”

64. On 14 November 2005 the Deputy Head of the Medical Department of the Federal Service for the Execution of Sentences replied to the applicant's wife:

“...Surgical treatment of [the applicant] in Moscow institutions is not possible. The decision with regard to surgical treatment of [the applicant] can be taken after he has been examined in the place where he is serving his sentence.”

65. On 15 February 2006 the First Deputy Head of the Medical Department of the Federal Service for the Execution of Sentences replied to the applicant's wife:

“The Federal Service for the Execution of Sentences examined your request concerning the transfer of your husband ... who is serving his sentence in ... the Chelyabinsk Region to Moscow for specialised medical treatment.

[Your husband's] illness is subject to elective operative treatment and requires high-technology (expensive) medical aid. The procedure for providing such aid to patients

held in institutions of the Federal Service for the Execution of Sentences is not established by the federal executive authority responsible for the legal regulation of health protection and social development.

Since the legislation requires [the patient's] voluntary informed consent to medical interference, it follows that only your husband ... may apply for such treatment. If he gives his written consent for the transfer and medical intervention, he can be transferred to the regional hospital for convicts ... of the Krasnoyarsk Region, where there are technical facilities for the provision of the required additional medical aid (endovascular surgical intervention and plastic surgery, provided participation of external specialists from other medical institutions). The procedure for providing additional medical aid to convicts is governed by the internal regulations of correctional facilities.

The possibility of such treatment in the Burdenko Institute of Neurosurgery or in the Hospital of Surgical Stomatology and Maxillofacial Surgery ... is not provided by [relevant regulations].”

66. On 22 May 2006 the Chief Medical Officer of the Krasnoyarsk Regional Hospital pertaining to the Federal Service for the Execution of Sentences (*ФГЛПУ КТБ-1 ГУФСИН России по Красноярскому краю*) replied to the request of the applicant's wife::

“In reply to your request concerning hospitalisation of [the applicant] for in-patient treatment in [the Krasnoyarsk Regional Hospital for convicts] and after having studied the medical documents provided, we have to inform you that the treatment, including surgical intervention, is not feasible in the facilities of [the Krasnoyarsk Regional Hospital for convicts] even with the assistance of external specialists from other medical institutions, because of an absence of technical facilities for the operation, diagnostics, control and treatment ... [and] of possible post-operative complications which would be life-threatening for the patient.”

67. On 28 March 2008 the head of prison no. T-2 of the Vladimir Region informed the applicant's wife of the applicant's placement in the penitentiary hospital and the examination by an oncologist on 1 February 2008. The letter also stated that the haemangioma only posed a threat to the applicant's life in the event of haemorrhages from its vessels. However, during the period under supervision there had been no such haemorrhages. At the same time the haemangioma increased by 1-1.5 centimetres.

II. RELEVANT COUNCIL OF EUROPE DOCUMENTS

68. The relevant extracts from the General Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) read as follows:

Extracts from the 3rd General Report [CPT/Inf (93) 12]**“a. Access to a doctor**

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

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

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

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

69. The applicant complained under Article 3 of the Convention about the alleged lack of adequate medical treatment in prison YaV-48/T-1. Article 3 of the Convention provides:

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

70. The Government contested that argument. They submitted that during his detention the applicant had regularly undergone examinations and treatment in penitentiary and civilian medical institutions. In particular, he had undergone tomography and angiography in civilian hospitals. He had been examined by the medical-social commission and the SMK with a view to deciding on his early release on the basis of his state of health. Furthermore, he had been examined by a number of civilian doctors, including surgeons, oncologists, stomatologists and a radiologist. Furthermore, the penitentiary authorities had taken steps to arrange surgical treatment of the applicant's condition. However, none of the medical institutions to which the authorities had applied had agreed to perform the surgery, due to its complexity and the risk to the applicant's life. The doctors who had examined the applicant had not been prepared to conduct the surgery, nor had they advised where such surgery could be performed. The doctors' and hospitals' refusals to conduct the surgery was based on the anatomic-physiological particularities of the blood supply to the vascular tumour which had formed at the time of the tumour onset. Given these particularities, radical treatment would be extremely dangerous for the

applicant's life. Accordingly, the authorities had taken every measure to ensure adequate medical assistance for the applicant; however, radical treatment had appeared impossible for medical reasons.

71. The applicant disagreed with the Government's arguments. He stated that it had been acknowledged on numerous occasions by the penitentiary medical authorities themselves that adequate treatment of his condition was impossible within the penitentiary system. In the applicant's view, because of the authorities' failure to take prompt measures to arrange radical treatment in a civilian hospital, although he and his wife had repeatedly asked for his placement in a civilian hospital at their own expense, his illness had become irreversible and the surgery was no longer possible.

A. Admissibility

72. The Court notes that the application 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.

B. Merits

1. General principles

73. 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, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity 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 *Valašinas v. Lithuania*, no. 44558/98, §§ 100–101, ECHR 2001-VIII).

74. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, as a recent authority, *Labzov v. Russia*, no. 62208/00, § 42, 16 June 2005). Measures depriving a person of his liberty may often involve such an element. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure do not subject him to distress or hardship of an intensity

exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

2. Application in the present case

75. The Court observes that since 1993 the applicant has been suffering from cavernous haemangioma of the head and the right auricle, a vascular tumour which is a relatively rare medical condition. It requires constant supervision and specialised medical treatment. In 1995 the applicant underwent examination of the tumour and carotid ligation. He was placed in detention in 1996, three years after having developed the condition.

76. The Court notes that it is not alleged by the applicant that the conservative treatment available to him in detention was insufficient. It observes that while in custody he regularly not only underwent examinations and treatment in penitentiary medical facilities, but was also examined by a number of civilian doctors. This included examination by surgeons, oncologists, a microsurgeon, an angiosurgeon, an otolaryngologist, an otolaryngologist-oncologist, a maxillofacial surgeon, a plastic surgeon, a vascular surgeon, a stomatologist, a neuropathologist and a radiologist. Furthermore, he was also placed in civilian hospitals for such specialised tests as tomography and angiography. The subsequent treatment, which included haemostatic therapy and antiseptic dressings, was provided in accordance with the results of the tests and the doctors' recommendations. The Court is therefore satisfied that adequate conservative treatment was made available to the applicant in custody.

77. The Court further observes that the main allegations raised by the applicant concern the fact that in detention he was not provided with radical treatment for the tumour. He argued, in particular, that although it had been acknowledged on numerous occasions and by various authorities that radical treatment was not feasible within the penitentiary system, the prison authorities took no steps to arrange such treatment in a civilian hospital, even at the applicant's expense, which led to his condition becoming irreversible. The Court thus has to establish whether the penitentiary authorities took all necessary measures to ensure the required treatment.

78. The Court notes that on 11 June 2001 microsurgeon M. recommended excision of the haemangioma with prior tomography and angiography. Likewise, during the applicant's placement in the facility US-20/12 in St Petersburg between 15 April and 8 May 2002, radical removal of the tumour was recommended. Following the first recommendation the applicant underwent tomography on 8 October 2001 and, after his placement in the facility US-20/12, a panel of the penitentiary doctors found that the radical treatment was not possible within the penitentiary system. In

view of this conclusion the authorities began to examine the possibility of the applicant being operated in a civilian hospital. They first referred the applicant to the SMK for a decision on early release on the basis of his state of health, which would facilitate his surgery outside the penitentiary system. However, on 20 September 2002 the SMK found that the applicant's illness was not life-threatening and did not fall under the list of illnesses that could serve as a basis for early release from serving one's sentence.

79. Subsequently maxillofacial surgeon K., who examined the applicant on 2 February 2003, stated that surgery was not recommended because it would threaten the applicant's life. Later plastic surgeon M., who examined the applicant on 11 August 2004, and professor D., who in November 2004 studied the results of the angiography conducted on 5 August 2004, both stated that the radical treatment was impossible because of the size of the tumour and its structure. At the same time the penitentiary authorities continued investigating the possibility of the radical removal of the tumour having contacted several civilian hospitals, including medical institutions in Voronezh, Moscow and Tyumen, between 2004 and 2007. However, all of them refused to accept the applicant for treatment on the ground of lack of adequate technical facilities and qualified personnel.

80. The Court reiterates that the CPT in its 3rd General Report (see paragraph 68 above) stated that a prison's health care service should be able to provide regular out-patient consultations and emergency treatment. At the same time, prison doctors should be able to call upon the services of specialists and the direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital.

81. The Court observes that it is not in dispute by the parties that radical treatment of the applicant's tumour was not possible within the penitentiary system. However, having regard to the 3rd General Report of the CPT cited in the preceding paragraph and the highly complex nature of the applicant's condition, the Court does not consider that this fact alone gives rise to issues under Article 3 of the Convention. In the circumstances of the present case the question is rather whether the authorities took sufficient steps to ensure adequate treatment for the applicant, having recourse to facilities outside the penitentiary system.

82. The Court notes that, having received the recommendations to conduct radical treatment and having established that it was not possible within the penitentiary system, the authorities referred the applicant to the SMK seeking his early release due to his state of health. It was only after the SMK's refusal that the authorities started contacting civilian hospitals so as to investigate the possibility of the radical treatment outside the penitentiary system. All the hospitals they contacted refused to accept the applicant on account of their being ill-equipped to conduct the required kind of surgery.

83. The Court thus accepts that the authorities took steps aimed at providing the applicant with radical treatment outside the penitentiary

system. However, in view of the particular circumstances of the present case, it finds that those measures were not carried out with sufficient expedition. Taking into account the particularly grave and complex nature of the applicant's condition, the authorities should have been mindful of the danger of it becoming irreversible due to the delay in radical treatment. Therefore, they ought to have started to investigate the possibility of treatment in a civilian hospital shortly after having received the recommendation for such treatment rather than awaiting for more than a year the outcome of the examination by the SMK.

84. The Court thus finds that, in the special circumstances of the present case, the authorities did not take sufficient measures to provide the applicant with adequate medical assistance.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 75,000 euros (EUR) as compensation for the cost of his future medical treatment as well as compensation for non-pecuniary damage. He submitted neither calculations nor documents in support of his claim for compensation of pecuniary damage. He did not specify the amounts claimed in respect of each type of damages either.

88. The Government argued that the claim for compensation of pecuniary damage was unsubstantiated and that the amount claimed for compensation of non-pecuniary damage was not specified.

89. As to the pecuniary damage allegedly caused, the Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see *Barberà, Messegue and Jabardo v. Spain*, judgment of 13 June 1994 (*former Article 50*), Series A no. 285-C, §§ 16-20; see also *Berktaş v. Turkey*, no. 22493/93, § 215, 1 March 2001). Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The Court notes that the applicant

submitted no calculations, let alone documents, to support his claim for pecuniary damage. Accordingly, the Court dismisses the claim in this part.

90. As regards non-pecuniary damage, the Court recalls that it found that the applicant's rights guaranteed by Article 3 of the Convention had been violated on account of the failure to provide him with adequate medical treatment. That fact indisputably caused him physical and mental suffering. The Court thus accepts that he has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Ruling on an equitable basis, the Court awards the applicant EUR 18,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

91. The applicant has made no claim for the compensation of costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

92. 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

1. *Declares* the application admissible unanimously;
2. *Holds* by five votes to two that there has been a violation of Article 3 of the Convention;
3. *Holds* by five votes to two
 - (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
 - (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;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, a dissenting opinion of Judge Jebens, joined by judge Kovler, is annexed to this judgment.

C.L.R.
A.M.W.

DISSENTING OPINION OF JUDGE JEBENS, JOINED BY JUDGE KOVLER

I respectfully disagree with the majority that there has been a violation of Article 3 in this case, due to lack of adequate medical assistance to the applicant. In my view, the authorities took all steps that can be reasonably expected by them, in order to provide the applicant with medical treatment.

1. The applicant alleges that radical treatment of his tumour became impossible due to the authorities' failure to conduct such treatment in good time. This is, in my opinion not supported by the facts of the case. Though radical treatment was recommended in 2001 and 2002, but was ruled out by the doctors in 2003 and 2004, it appears that the different answers to this complex question were caused by conflicting opinions by the doctors, not by the fact that too much time had passed. I would like to note in this respect, firstly, that a relatively short period of time elapsed between the last report recommending surgery, issued in May 2002, and the first report not recommending it, issued in February 2003. Though it is not inconceivable that this period could have been critical for the development of the applicant's condition, there are no medical reports to support that argument. Secondly, the first report of 2001 only recommended radical treatment subject to the tomography and angiography reports. The opinion of 27 March 2004 also stated that a decision on the possibility of surgical treatment of the tumour could only be made after angiography had been performed. The reports of August and November 2004, which ruled out radical treatment, were therefore based on more complete and accurate information concerning the applicant's condition.

2. Given the complex and rare nature of the applicant's condition, it is understandable that the methods for its treatment could be subject to different medical opinions, especially in view of the results of medical tests which were not available to the doctors who had recommended radical treatment. Thus, the domestic authorities were confronted with conflicting medical opinions as to the applicant's treatment, of which the most recent one ruled out radical surgery. The question to be discussed is whether the authorities took all necessary steps in order to ensure that the applicant received adequate treatment.

3. Having obtained medical opinions recommending surgery, the authorities went on to arrange the tests prescribed by the doctors. Furthermore, they convened a special medical council, the SMK, to decide on the applicant's early release. The SMK found, however, that the applicant's condition did not fall into the category of illnesses that constituted grounds for such release. I have no reason to contest this

finding. Subsequently the authorities were presented with medical opinions that stated that surgical treatment was not recommended, because it posed a threat to the applicant's life. However, even after these opinions were issued, the authorities continued to take measures to investigate the feasibility of radical treatment. They contacted several civilian medical institutions in this regard, but all of them refused to accept the applicant for treatment, due to lack of adequate technical facilities and qualified staff.

4. Although the applicant argued that the authorities had refused to place him in a civilian hospital for surgery, he did not present documents containing the consent of a particular medical institution to conduct such medical intervention. Furthermore, none of the doctors who examined the applicant, including those who recommended the radical treatment, provided any recommendations as to where it could be conducted.

5. Concluding, I note firstly that the authorities provided the applicant with numerous medical examinations and conducted conservative treatment of his disease. Secondly, they took all necessary steps which could realistically be expected, in order to clarify whether the applicant could be given radical treatment, and to facilitate it practically. The authorities acted adequately and with reasonable speediness. I therefore find it untenable to conclude that there has been a violation of Article 3.