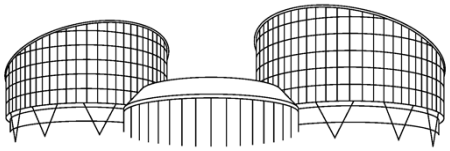

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NOGIN v. RUSSIA

(Application no. 58530/08)

JUDGMENT

STRASBOURG

15 January 2015

FINAL

01/06/2015

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

In the case of Nogin v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 16 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 58530/08) 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 Vladimir Rufimovich Nogin ("the applicant"), on 20 November 2008.

2. The applicant was represented by Mr E.A. Mezak, a lawyer practising in Syktyvkar. 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 while in prison he had not been provided with adequate medical treatment.

4. On 1 February 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Syktyvkar.

A. Criminal proceedings against the applicant

6. On an unspecified date criminal proceedings were instituted against the applicant on suspicion of aggravated rape.

7. Between 8 August and 9 November 2006 the applicant was held in pre-trial detention in remand prison SIZO no. 1 of Syktyvkar (*СИЗО № 1 г. Сыктывкара*).

8. On 9 November 2006 the applicant was released subject to an undertaking not to leave a specified place.

9. On 8 December 2006 the Syktyvkar Town Court convicted the applicant as charged and sentenced him to two years and six months' imprisonment.

10. On the same date the applicant was detained in SIZO no. 1 of Syktyvkar.

11. On 11 April 2007 the applicant was transferred to prison IK-31 in Mikun.

12. On 6 March 2009 the applicant's prison sentence expired and he was released from the correctional facility.

B. The applicant's medical condition

13. The applicant has been suffering from an insulin-dependent form of diabetes since the age of four. The disease has entailed various complications, including diabetic angioretinopathy and complicated diabetic cataracts.

14. On 24 April 2006 the applicant underwent a medical examination in connection with his eyesight problems at a municipal clinic at his place of residence. The examination confirmed that the visual acuity of the applicant's right eye was 0.02, which corresponded to his ability to count the fingers on a hand from a distance of one metre, and that the visual acuity of his left eye corresponded to his ability to see hand movements near his face. According to the applicant, at that time he was able to orientate himself within familiar spaces, such as his flat, medical institutions and streets in the town.

15. On 20 November 2006, following his release from pre-trial detention, the applicant underwent another medical examination at the same municipal clinic, which established that he could count the fingers on a hand from a distance of 0.5 metres, that is that his visual acuity was 0.01, and that he could see hand movement near his face with his left eye. A cataract operation was recommended.

16. In December 2006, shortly after the applicant had been detained following his conviction by the Syktyvkar Town Court, he was admitted to prison hospital B-18 and diagnosed with a serious form of insulin-dependent Type 1 diabetes, subcompensation, diabetic polyneuropathy, diabetic nephropathy, symptomatic arterial hypertension, chronic renal insufficiency, an immature diabetic cataract in the left eye and an almost mature diabetic cataract in the right eye. The visual acuity of the applicant's right eye was 0.02 and of his left eye was 0.004.

17. In late December 2008, in connection with his request for release on parole (see paragraphs 60-62 below), the applicant was examined by a special medical commission of the correctional facility where he was being detained at that time. The commission confirmed that the applicant had a serious form of insulin-dependent diabetes and all the accompanying diseases which had been established before. As regards the applicant's eyesight, it was stated that he could detect hand movement near his face with his right eye but that he was blind in his left eye. The applicant was diagnosed with complicated diabetic cataracts in both eyes, and specifically with an almost mature cataract in the right eye and a mature cataract in the left eye.

18. On 14 March 2009, after the applicant had been released, he was examined by an ophthalmologist at the municipal clinic at his place of residence. It was established that he could detect hand movement near his face with his right eye and that he was blind in his left eye. The ophthalmologist recommended that he undergo urgent surgery for his cataracts.

19. On 12 May 2009 the applicant was admitted to the ophthalmology department of a public hospital for cataract surgery. According to the applicant, the doctors confirmed that his visual acuity corresponded to that established on 14 March 2009 and refused to carry out any surgery on the grounds that they were not sufficiently experienced to operate on cataracts at such an advanced stage. They recommended that the applicant be operated on in a specialised research institution. The applicant was discharged from the hospital the following day.

20. On 10 July 2009 a research clinic for eye problems in Moscow diagnosed the applicant as having a complicated immature cataract, proliferative diabetic retinopathy and retinal detachment in respect of his right eye, and neo-vascular terminal glaucoma and advanced retinal detachment in respect of his left eye. The visual acuity of the right eye was "light perception with correct light projection" and he was blind in the left eye.

21. On 14 July 2009 the applicant underwent surgery on the cataract in his right eye. The surgery was successful and when he was discharged from the clinic on 20 July 2009, he could detect hand movement near his face with his right eye.

22. On 29 September 2009 the applicant underwent another medical examination at the same clinic in Moscow with a view to establishing whether any further surgery on his right eye could be effective. It was established that he had a complete retinal detachment in his right eye caused by diabetes and that he was unable to see any distinct object with that eye, which meant that further surgery would be devoid of any prospect of success.

C. Medical care during the applicant's imprisonment

1. Admissions to prison hospitals and other treatment

23. Following his conviction, the applicant was admitted a number of times to prison hospitals for examination and treatment. The admissions were as follows:

- between 8 and 24 December 2006 to the hospital of SIZO no. 1 of Syktyvkar;
- between 24 December 2006 and 20 March 2007, 20 and 25 April 2007, 1 and 24 September 2007 and between 2 and 23 October 2008 to prison hospital B-18;
- between 11 and 20 April 2007; 25 April and 1 September 2007, 31 July and 2 October 2008 and between 23 October and 6 March 2009 to the hospital of prison IK-31 in Mikun.

24. The Government provided the Court with copies of licenses issued to the prison hospitals to practise medical activity.

25. The applicant was regularly examined by a doctor, an endocrinologist and an ophthalmologist. Blood and urine tests were regularly carried out. A number of other tests, such as ultrasound of the abdominal cavity, electrocardiogram, fluorography and rheography of the legs and feet were also performed. The applicant was provided with symptomatic treatment, which, apart from insulin, included hypotensive therapy, medicines to improve microcirculation, vitamins and nootropics.

2. Special diet and availability of insulin

26. In autumn 2006, while the applicant was being held in pre-trial detention in SIZO no. 1 of Syktyvkar, the remand prison doctor prescribed him special diet no. 7b, in which sugar was replaced with milk. In January 2007, while he was in prison hospital B-18, the applicant was prescribed special diet no. 7a, in which sugar was replaced with milk.

27. According to the applicant, between April and July 2007, and then from early 2008 onwards, including on the date on which he lodged his application with the Court, he did not receive a special diabetic diet in the correctional facility.

28. According to a certificate of 28 March 2012 issued by prison hospital B-18, during his hospitalisation sugar was replaced with milk in the applicant's diet.

29. In an epicrisis of April 2007 it was stated that at the time, prison IK-31 did not have a sufficient supply of Humalog and Lantus and, therefore the applicant's admission to the prison hospital had been recommended in order to find an alternative treatment.

30. According to the applicant, in July 2008 the prison authorities provided him with insulin with an expiry date of March 2008. He was

allegedly informed of this by another prisoner, V., and enclosed the latter's statement to that effect.

31. According to a certificate issued by prison IK-31 on 29 March 2012, during his detention in the prison the applicant was provided with the required insulin treatment. On several occasions when the forms of insulin specifically prescribed for the applicant by the endocrinologist were temporarily unavailable, he was provided with other forms of insulin. However, insulin that was past its expiry date was never used by the medical unit of prison IK-31.

32. According to an extract from the register of insulin supply of prison IK-31 for the period from 21 May 2007 to 8 May 2008, the forms of insulin prescribed to the applicant had the following expiry dates: May 2008, August 2008, June 2009 and August 2009.

3. Treatment of diabetic cataracts

33. According to the applicant, throughout his detention his eyesight steadily deteriorated because he was denied the necessary surgical intervention.

34. On 12 September 2006, while the applicant was being held in pre-trial detention in SIZO no. 1 of Syktyvkar, he was examined by an ophthalmologist who stated that in the facilities under the authority of the Ministry of Health it would be possible to remove the cataract from his left eye and implant an intraocular lens.

35. In reply to a request of a Syktyvkar Town Court judge asking whether diabetic cataracts in both eyes were irreversible, an ophthalmologist stated on 7 December 2006 that patients suffering from cataracts, including diabetic cataracts, were recommended surgery to improve their eyesight. Accordingly, bad eyesight caused by cataracts could not be considered irreversible.

36. On 26 December 2006 the applicant was examined by an ophthalmologist, who stated in his report that the applicant had had bad eyesight for approximately five to seven years, and had been unable to see anything with his left eye for approximately two years. On an unspecified earlier date surgery had been proposed to him in Syktyvkar, but he had refrained from undergoing it. However, the applicant now wished to undergo the surgery. The ophthalmologist stated that in the facilities under the authority of the Ministry of Health it would be possible to undergo elective surgery to remove the cataract from the applicant's left eye and implant an intraocular lens.

37. On 13 April 2007 the applicant was examined by an ophthalmologist, who took note of his wish to undergo surgery on the cataracts.

38. On 3 May 2007 the applicant was again examined by an ophthalmologist, who recommended cataract surgery.

39. In a letter of 28 June 2007 the Federal Service for the Execution of Sentences in the Republic of Komi ("the FSIN") informed the applicant's mother that the applicant was being provided with the necessary medical assistance in connection with his disease. The letter also stated that surgery in respect of his eye diseases was necessary.

40. On 3 August 2007, in reply to a request from the hospital of prison IK-31, the Central Clinic of Syktyvkar informed the prison hospital that the applicant had been under the medical supervision of an endocrinologist, an ophthalmologist and a neuro-pathologist since 1997 on account of insulin-dependent diabetes, diabetic cataracts, diabetic retinopathy and encephalopathy of mixed genesis.

41. On 4 September 2007 the applicant was examined by an ophthalmologist again. The latter reiterated that the applicant could undergo elective surgery to remove the cataract from his left eye and to implant an intraocular lens in facilities under the authority of the Ministry of Health.

42. On 11 June 2008 the applicant was again examined by an ophthalmologist, who prescribed therapeutic treatment and scheduled the next examination three months later.

43. On 15 July 2008 prison IK-31 sent a request to the Gaaza prison hospital in St Petersburg to admit the applicant for further examination in order to decide whether cataract surgery was possible and, in the event of a negative answer, to provide recommendations as to his treatment or release on parole.

44. On 20 August 2008 the Gaaza prison hospital in St Petersburg replied that it could not grant the request as it did not comply with the applicable regulations. In particular, important information concerning the applicant's condition and his consent to the treatment was missing.

45. On 29 September 2008 prison IK-31 sent the same request to the Gaaza prison hospital in St Petersburg.

46. In a letter of 6 October 2008 the same authority replied to a letter from the applicant's mother complaining of the applicant's poor medical treatment. The reply stated, in particular, that in connection with the deterioration of the applicant's eyesight, the prison authorities had sought his admission to the Gaaza prison hospital in St Petersburg but that their request had been refused. It went on to say that on 2 October 2008 the applicant had been sent to another prison medical institution for examination, and that thereafter another request would be sent to the Gaaza prison hospital in St Petersburg for his admission there.

47. Also on 6 October 2008 the applicant was examined by an endocrinologist, who stated that he needed cataract surgery.

48. According to the applicant, by autumn 2008 his eyesight had deteriorated to the extent that it was recommended that he use a walking stick when moving about the prison facility, even though that was usually prohibited to convicted persons under the relevant regulations.

49. On 5 November 2008 prison IK-31 sent another request to the Gaaza prison hospital in St Petersburg to admit the applicant for further examination in order to decide whether cataract surgery was possible.

50. On 18 December 2008 the Gaaza prison hospital in St Petersburg informed prison IK-31 that it could admit the applicant for examination and treatment. It stated that, given the term of the applicant's imprisonment and the time required to travel from the place of his detention or residence to the hospital, he should arrive at the hospital no later than 15 January 2009.

51. On 30 December 2008 the applicant refused in writing to be transferred to the Gaaza prison hospital in St Petersburg for surgery on the following grounds: (i) he had not been offered medical assistance during his transfer and was afraid to go on his own as he could not see; and (ii) only sixty-nine days remained until the expiry of his sentence.

52. On the same date the prison authorities acknowledged in writing receipt of the applicant's refusal. They also stated that the applicant's state of health allowed him to be transferred to St Petersburg, that he could take care of himself, and that his refusal was groundless.

53. On 16 January 2009 the FSIN informed the applicant that arrangements for transferring him to the Gaaza prison hospital had been suspended owing to his refusal.

54. However, in February 2009 the applicant's mother asked the prison authorities to place the applicant in the Gaaza prison hospital in St Petersburg. In connection with her request, three prison doctors talked to the applicant on 4 and 5 February 2009 and tried to persuade him to give his consent to be transferred to St Petersburg. The applicant said that he would consider it and withheld his consent for the time being. A decision in that respect was therefore postponed.

55. Nevertheless, on 6 February 2009 prison IK-31 sent another request to the Gaaza prison hospital to admit the applicant for cataract surgery. The applicant eventually refused to be transferred to St Petersburg.

D. The applicant's requests for release on parole

56. Between 8 December 2006 and 6 March 2009 the applicant remained in prison pursuant to a court judgment of 8 December 2006. On several occasions during that period he sought release on parole on medical grounds.

57. On 5 February 2008 the applicant lodged a request for release on parole, referring, *inter alia*, to his poor health and the need for medical treatment, in particular, surgery in respect of his eye diseases.

58. In a decision of 4 April 2008 the Ust-Vymskiy District Court of the Republic of Komi ("the District Court") rejected the applicant's request. It referred to his negative characteristics as cited by the prison authorities and

stated that his diseases did not constitute grounds for his release on parole, as they did not prevent him from serving his sentence.

59. On 30 May 2008 the Supreme Court of the Republic of Komi upheld the first-instance decision following an appeal by the applicant.

60. On 18 November 2008 the applicant lodged another request for release on parole. He pointed out, in particular, that he had diabetes and complicated diabetic cataracts in both his eyes, and that surgery in the latter respect had been recommended to him in 2006. The applicant also stated that his eyesight had significantly deteriorated during the period of his imprisonment.

61. On 23 January 2009 the District Court rejected the applicant's request, stating that his diseases were not on the list of diseases approved by a relevant governmental decree, which precluded the serving of a sentence in the form of imprisonment.

62. On 20 March 2009 the Supreme Court of the Republic of Komi upheld that decision following an appeal by the applicant.

II. RELEVANT DOMESTIC LAW

A. Algorithms for Specialised Medical Assistance to Patients Suffering from Diabetes, adopted by the Ministry of Health and the Russian Academy of Medical Sciences in 2006

63. The Algorithms for Specialised Medical Assistance to Patients Suffering from Diabetes ("the Diabetes Algorithms") constitute an updated version of the National Standards for Treatment of Patients Suffering from Diabetes adopted in 2002. They contain detailed information and recommendations on diagnostics, prophylactics and treatment of diabetes and its complications.

64. The Diabetes Algorithms provide, in particular, that patients suffering from diabetic retinopathy must be examined by an ophthalmologist from two to four times per year, depending on the stage of the disease. They also provide for four possible methods of treatment of diabetic retinopathy: carbohydrate metabolism compensation; laser photocoagulation; laser and cryocoagulation; and vitrectomy with laser endocoagulation. Laser photocoagulation cannot be performed, *inter alia*, if the patient suffers from cataracts (paragraph 10.1).

B. Order no. 640/190 of the Ministry of Health and Social Development and the Ministry of Justice of 17 October 2005 on the Organisation of Provision of Medical Assistance to Detained Persons and Persons Serving Custodial Sentences

65. The order regulates the functioning of medical units of remand prisons and prisons as well as of prison hospitals. It defines, *inter alia*, the scope of medical assistance available in medical units and circumstances in which a detainee must be admitted to a prison hospital. In particular, a detainee suffering from diabetes should be urgently admitted to hospital if his treatment needs to be revised (paragraph 94). Hospitalisation must be planned if, *inter alia*, a detainee's treatment requires specialised equipment or methods (paragraph 115). Catering for patients in prison hospitals must conform to the applicable regulations and dietary requirements (paragraph 121).

C. Order no. 125 of the Ministry of Justice of 2 August 2005

66. The order provides detailed instructions for catering for detainees, and includes specific provisions for detainees in prison hospitals.

III. RELEVANT INTERNATIONAL MATERIALS

A. Diabetes Mellitus, Report of the World Health Organisation's Study Group, 1985

67. In the report the Study Group of the World Health Organisation (WHO) stated, in particular, that some form of advice on dietary adjustment was needed by all types of diabetic, though it differed for the two main types: non-insulin-dependent and insulin-dependent patients. Dietary information and advice must be simple, clear and realistic and was best given by a person trained in dietetics (paragraph 7.2). Once a commitment to insulin therapy had been made, continued supplies of the correct types of insulin should be ensured (paragraph 7.3.4).

B. Prevention of Blindness from Diabetes Mellitus, Report of a World Health Organisation consultation in Geneva, Switzerland, 9-11 November 2005

68. In the report WHO made a number of recommendations concerning medical assistance to patients suffering from diabetes mellitus, focussing on the prevention of loss of eyesight. It recommended, in particular, that patients undergo a regular eye evaluation for the presence of diabetes,

preferably on an annual basis (paragraph 4.3). If retinopathy was detected, the society concerned must deliver the necessary level of eye care (paragraph 4.4).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INADEQUATE MEDICAL ASSISTANCE IN SIZO No. 1 OF SYKTYVKAR

69. The applicant complained that he had not been provided with adequate medical treatment during his detention in SIZO no. 1 of Syktyvkar, in violation of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

70. The Government argued that the applicant had failed to exhaust available domestic remedies in respect of his complaint.

71. The Court observes that the applicant was first placed in SIZO no. 1 of Syktyvkar on 8 August 2006, having been arrested on suspicion of having committed a criminal offence. On 9 November 2006 he was released subject to an undertaking not to leave a specified place. On 8 December 2006, when the applicant was convicted of the criminal offence and sentenced to a term of imprisonment, he was detained in the same remand prison. However, on 11 April 2007 he was transferred to prison IK-31, where he served the remainder of his sentence. The present complaint was brought before the Court after the applicant had been transferred from SIZO no. 1 of Syktyvkar.

72. In *Buzychkin v. Russia* (no. 68337/01, §§ 74 and 82-85, 14 October 2008) the Court found that, since the applicant was no longer being held in the detention facility where allegedly adequate medical assistance had not been made available to him, a civil claim for damages was capable of providing redress in respect of his complaint and offered reasonable prospects of success. As the applicant in the present case did not institute proceedings seeking compensation for damage caused by the allegedly insufficient medical assistance in SIZO no. 1 of Syktyvkar, the Court concludes that he failed to exhaust available domestic remedies with regard to this complaint.

73. It follows that this part of the application should be rejected, pursuant to Article 35 § 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INADEQUATE MEDICAL ASSISTANCE IN PRISON IK-31 IN MIKUN

74. The applicant complained that he had not been provided with adequate medical treatment in prison IK-31, in breach of Article 3 of the Convention.

75. The Government first argued that the applicant had failed to exhaust available domestic remedies in respect of his complaint, as he had neither lodged a civil claim for compensation for damage caused by the allegedly inadequate medical assistance, nor brought a complaint under Chapter 25 of the Code of Civil Procedure, which, as clarified by the Plenary Supreme Court in 2009, enables the courts to deal with health-related issues.

76. The Government further submitted that during his imprisonment the applicant had been provided with adequate medical assistance. In particular, he was regularly examined by medical specialists and on numerous occasions admitted to the prison hospital. Relevant examinations were regularly carried out and he was provided with the requisite treatment. The prison establishments were provided with the medicines required for the applicant's treatment. Medicines were never used after their expiry dates, and on rare occasions when Lantus and Humalog were temporarily unavailable, the applicant received insulin in the form of Actrapid and Protaphane. The Government provided a copy of the applicant's medical file to corroborate their submissions. They stated that the applicant had been provided with food in accordance with Ministry of Justice Order no. 125 of 2 August 2005 and, following the doctor's instructions, sugar in his diet had been replaced with milk. The Government pointed out that cataract surgery had been recommended to the applicant in 2001, that is, several years before his imprisonment. However, he had chosen not to undergo it for unspecified reasons. His condition, a diabetes complication in the form of cataracts, continued to deteriorate irrespective of the adequate treatment that he received in the prison facilities. The authorities of prison IK-31 several times requested the applicant's admission to the Gaaza prison hospital in St Petersburg for surgery, but he refused to be transferred there. In the Government's view, it was the applicant's fault that he had not undergone surgery in due time, which led to serious complications of his condition.

77. The applicant argued firstly that no effective domestic remedies had been available to him. He pointed out that, on a general level, the prison regulations did not reflect in any way the specific needs of prisoners suffering from diabetes. The applicant further submitted that (i) while in detention he had not been provided with a specific diet recommended for those suffering from diabetes; (ii) he had not been provided with an opportunity to exercise, physical exercise being an important element in the treatment of diabetes; (iii) whereas he was allergic to any form of insulin

other than Lantus and Humalog, on a number of occasions they had been unavailable, and he had had to take other forms of insulin instead; (iv) in July 2008 he had been given insulin that was past its expiry date; (v) a blood test for glycated haemoglobin had been performed only once, in March 2007, whereas according to the general medical regulations it should have been done every three to four months; (vi) he had not been examined by an ophthalmologist on account of his diabetic retinopathy as often as he should have been, and he had received no treatment corresponding to the Diabetes Algorithms (see paragraph 64 above); and (vii) the authorities had taken measures to provide him with cataract surgery with undue delay; the first request to the Gaaza prison hospital in St Petersburg had not been examined until August 2008 and had been declined because it did not comply with the applicable regulations. The failure to carry out the surgery earlier had considerably complicated the treatment of retinopathy and led to his blindness. The applicant emphasised that he had refused to be transferred to St Petersburg for surgery in December 2008 because, being virtually blind, he had been afraid to make a long journey by train without an accompanying person. However, no special arrangements for his transfer in view of his condition had been proposed by the authorities. Overall, the applicant maintained that during his imprisonment he had not been provided with adequate medical assistance.

A. Admissibility

78. Having regard to the Government's plea of non-exhaustion, the Court observes that the present complaint is different from the one examined in paragraphs 69-73 above, as it was brought while the applicant was still being held in the detention facility where the requisite medical assistance was allegedly unavailable to him. The complaint thus concerns a continuous situation of allegedly inadequate medical care in custody.

79. The Court reiterates that it has previously examined and dismissed similar arguments on the part of the Government in relation to a continuous situation of absent or inadequate medical care in detention (see *Koryak v. Russia*, no. 24677/10, §§ 74-95, 13 November 2012; *Dirdizov v. Russia*, no. 41461/10, §§ 75-91, 27 November 2012; and *E.A. v. Russia*, no. 44187/04, § 40, 23 May 2013). Nothing in the Government's submissions enables the Court to reach a different conclusion in the present case.

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

B. Merits

1. General principles

81. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a 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).

82. 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).

83. 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 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 of the cases concerning the detention of people who were ill, the Court has examined whether or not the applicant received adequate medical assistance 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 secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

84. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007;

Melnik v. Ukraine, no. 72286/01, §§ 104-06, 28 March 2006; *Yevgeniy Alekseyenko*, cited above, § 100; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; and *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011) and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive treatment strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov*, cited above, § 211).

85. 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).

2. Application of the above principles to the present case

86. Turning to the facts of the present case, the Court observes that from the documents provided to it by the parties it appears that insulin treatment was available to the applicant throughout the entire term of his detention in prison IK-31 between 11 April 2007 and 6 March 2009. On several occasions when the forms of insulin specifically prescribed to the applicant were temporarily unavailable, other forms of insulin were provided to him (see paragraph 31 above). The applicant's allegations that he was allergic to other forms of insulin are not corroborated by his medical file. Furthermore, the detailed register of the insulin available to the applicant in prison IK-31 (see paragraph 32 above) gives no indication that insulin with an expiry date of March 2008 was ever administered to the applicant. The Court, therefore, dismisses the applicant's allegation that he was provided with insulin after its expiry date.

87. The Court further notes that during the applicant's detention in prison IK-31 he was regularly examined by doctors, underwent the required medical tests and was provided with symptomatic treatment (see paragraph 25 above).

88. As for the applicant's diet, the Court observes that it was prescribed by prison doctors taking into account his state of health and the various diabetes complications he was suffering from. As those doctors examined and tested the applicant in person on many occasions, the Court sees no reason to doubt the accuracy of their conclusions (see *Lebedev v. Russia* (dec.), no. 4493/04, 18 May 2006).

89. As regards the applicant's allegations that cataract surgery was made available to him with undue delay, the Court observes that when the applicant was admitted to prison IK-31 on 11 April 2007, the Russian authorities were aware that he was suffering from a serious form of

insulin-dependent diabetes with numerous complications, including diabetic cataracts in both eyes. Furthermore, during the applicant's detention in SIZO no. 1 of Syktyvkar prior to his transfer to prison IK-31, the ophthalmologists who examined him noted the possibility of cataract surgery (paragraphs 34 and 36 above) as well as his wish to undergo it (paragraph 36 above). The corresponding entries were made in the applicant's medical file, which was subsequently transferred to prison IK-31.

90. The Court notes that on 13 April 2007, after the applicant's transfer to prison IK-31, an ophthalmologist noted his wish to undergo the surgery (paragraph 37 above). Following the applicant's examination on 3 May 2007 an ophthalmologist expressly recommended cataract surgery (paragraph 38 above). In a letter of 28 June 2007 the FSIN informed the applicant's mother that cataract surgery was necessary (paragraph 39 above).

91. The Court further notes that it was not until 15 July 2008 that prison IK-31 contacted the Gaaza prison hospital in St Petersburg for the first time requesting the applicant's admission for examination and, depending on the results, possible surgery (paragraph 43 above). However, the request was rejected by the Gaaza prison hospital as it did not conform to the applicable regulations. Prison IK-31 thus had to resubmit the request on 29 September and 5 November 2008 (see paragraphs 45 and 49 above), which further delayed the progress of arrangements for possible surgery. The Gaaza prison hospital granted the request on 18 December 2008 on condition that the applicant arrived at the hospital not later than 15 January 2009 (paragraph 50 above). However, the applicant refused to be transferred, arguing that, being virtually blind, he was afraid to make a long journey by train without an accompanying person, and pointing out that he was due to be released in slightly over two months (paragraph 51 above).

92. Therefore, despite the fact that the possibility of surgery had been discussed during the applicant's detention in SIZO no. 1 of Syktyvkar, of which the medical staff of prison IK-31 was aware, and despite the fact that cataract surgery had been expressly recommended by an ophthalmologist on 3 May 2007, it took the prison authorities more than a year to contact the Gaaza prison hospital in St Petersburg to arrange it. Furthermore, that request did not comply with the relevant regulations and had to be rectified and resubmitted, which led to a further delay of several months. It thus took the prison authorities a year and seven months to arrange for the surgery to be performed. No explanation has been provided to the Court for such a delay.

93. The Court takes note of the Government's argument that the delay in the operation was the applicant's own fault, as cataract surgery had been recommended to him as early as 2001, but he had not undergone it before having been detained. Firstly, no evidence has been submitted to the Court

to show that the applicant had been recommended surgery in 2001, although it does appear that he was recommended surgery before having been placed in custody (see paragraph 36 above). Secondly, in no way does that dispense the prison authorities from providing the applicant with surgery in good time while in detention. On the contrary, it should have prompted them to act with even greater expediency to ensure that, given the applicant's deteriorating eyesight, the surgery did not become overdue and consequently futile.

94. The Court takes note of the Government's argument that the applicant had himself refused the surgery. It also notes that the prison authorities found the applicant's refusal groundless (see paragraph 52 above). In the Court's view, the applicant, whose eyesight at that time was limited to an ability to detect hand movement near his face with his right eye and who was completely blind in his left eye (see paragraph 17 above), had reasons to be wary of undertaking a long train journey on his own, without an accompanying person provided by the authorities. His refusal makes more sense given that the surgery was eventually proposed to him when only slightly over two months remained until his release. In such circumstances a surgery near his place of residence without the stress of long-distance transportation could have been a possibility. Most importantly, however, the applicant's eventual refusal did not in any way mitigate the fact that the authorities had handled arrangements for his surgery with undue delay, despite the consequences for his health.

95. The Court observes that the applicant's eyesight steadily deteriorated during his detention. Thus, in November-December 2006 the visual acuity of the applicant's right eye was 0.02, and he could count the fingers on a hand from a distance of half a metre, while the visual acuity of his left eye was 0.004, and he could see with it hand movement near his face. However, in December 2008 he could only detect hand movement near his face with his right eye and he was blind in his left eye (see paragraphs 15-17 above). In so far as it may be argued that the deterioration in the applicant's eyesight constituted a natural process due to the progression of the cataracts caused by his main illness, that is diabetes, the Court notes that an ophthalmologist specifically stated that bad eyesight caused by cataracts could not be considered irreversible as such patients could benefit from surgical treatment to improve their eyesight (see paragraph 35 above).

96. Furthermore, apart from the diabetic cataracts, the other diabetic complications the applicant suffered from included diabetic retinopathy (see paragraph 40 above). The Diabetes Algorithms indicate that diabetic cataracts prevent certain types of treatment of diabetic retinopathy (see paragraph 64 above). Accordingly, the failure to operate on the cataracts might have affected the possibilities of treatment of diabetic retinopathy as well. Although the applicant eventually underwent the surgery after his release, it was performed after an initial refusal on the part of the local

hospital to operate on his cataracts at such an advanced stage (see paragraph 19 above), and within several months he was diagnosed with a complete retinal detachment in his right eye, which made further surgery devoid of any prospect of success (see paragraph 22 above). The applicant thus completely lost his eyesight.

97. In view of the foregoing, the Court finds that the delay in providing the applicant with diabetic cataract surgery constituted a failure to provide him with adequate treatment for his illness during his detention. In the Court's view, it cannot be excluded that this failure largely contributed to the applicant's eventual complete loss of eyesight, and thus led to physical and mental suffering diminishing his human dignity. Taking these considerations into account, the Court cannot but conclude that the authorities' failure to provide the applicant with the timely medical care he needed amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

98. There has, accordingly, been a violation of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government found the amount claimed to be excessive.

102. The Court considers that the applicant's suffering and frustration caused by the authorities' failure to effectively and adequately address his medical needs cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount.

B. Costs and expenses

103. The applicant also claimed EUR 2,600 for the costs and expenses incurred before the Court, which includes remuneration for his representative in the amount of EUR 2,500 and postal expenses in the

amount of EUR 100. The applicant provided a copy of a legal assistance agreement of 25 March 2009 and postal invoices.

104. The Government argued that it did not appear from the agreement of 25 March 2009 that the applicant had actually paid the amount claimed to his representative.

105. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,600 for the proceedings before the Court.

C. Default interest

106. 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 complaint concerning the inadequate medical assistance in prison IK-31 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President