

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

FIRST SECTION

CASE OF AMIROV v. RUSSIA

(Application no. 51857/13)

JUDGMENT

STRASBOURG

27 November 2014

FINAL

20/04/2015

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



In the case of Amirov 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 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 51857/13) 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 Said Dzhaparovich Amirov ("the applicant"), on 12 August 2013.

2. The applicant was represented by Mr D. Khoroshilov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he was not receiving adequate medical assistance while in detention and that he had been remanded in custody without valid reasons.

4. On 16 August 2013 the President of the First Section, acting upon the applicant's request of 13 August 2013, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should be immediately examined by medical experts independent from the prison system with a view to determining (1) whether the treatment he was receiving in the temporary detention facility was adequate for his condition; (2) whether his state of health was compatible with the conditions of his detention; and (3) whether the applicant's condition required his placement in a hospital.

5. On 29 August 2013, having received the Government's reply to the Court's letter of 16 August 2013, the President of the First Section reminded the Government of the interim measure applied under Rule 39 of the Rules of Court. The Government's attention was also drawn to the fact that the

failure of a Contracting State to comply with a measure indicated under Rule 39 could entail a breach of Article 34 of the Convention.

6. On 21 October 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1954 and prior to his arrest lived in the town of Makhachkala, Dagestan Republic. He is currently being detained in a temporary detention facility in Rostov-on-Don.

A. Background. The applicant's detention

8. In 1993 the applicant, at the material time the deputy Prime Minister of the Dagestan Republic, survived an assassination attempt. However, his spine was badly wounded and he became paralysed. He cannot walk and is confined to a wheelchair. He also lost his ability to urinate or defecate without special medical procedures, such as catheters and enemas.

9. Since 1998 the applicant has been mayor of Makhachkala, the Dagestan Republic.

10. Criminal proceedings were instituted against the applicant on suspicion of organised aggravated murder and attempted murder of State officials, including several prosecutors, investigators, a member of the town council and the head of the investigative committee in the Dagestan Republic. The investigation was assigned to a group of senior investigators and criminologists from the investigative committees of various regions of the Russian Federation and led by the deputy head of the Russian Federal Investigative Committee, a major-general. The applicant was arrested on 1 June 2013.

11. On the following day the Basmanniy District Court of Moscow ordered the applicant's detention pending trial, citing the gravity of the charges against him and the risk that he might abscond, interfere with the investigation, in particular influence witnesses, and reoffend. The District Court's decision was based on the applicant's official powers and his significant contacts with various persons involved in the investigation, as well as his consequent ability to influence the investigation. The court referred to the case-file materials, according to which a number of defendants arrested on suspicion of participating in the murders were also public officials and law-enforcement agents, investigators or police officers. They had identified the applicant as the "master-mind" of the murders, had

provided details of the murders and had argued that certain victims had been murdered in retaliation for their failure to obey the applicant's orders.

12. At the same time, the District Court dismissed the applicant's arguments pertaining to his poor state of health, his stable family situation, his age and his standing in the community, having considered that they did not outweigh the reasons warranting his detention. The District Court was also not convinced by the description given by the head of the Makhachkala police department portraying the applicant as "an example of compliance with the law and public order".

13. The decision of 2 June 2013 was upheld on appeal on 3 July 2013 when the Moscow City Court found the District Court's finding reasonable and convincing. The City Court also noted that no alternative measure, such as house arrest or a written undertaking, could ensure the proper course of the criminal proceedings.

14. On 26 July 2013 the Basmannyy District Court extended the applicant's detention until 11 November 2013, having again linked the gravity and nature of the charges against him, as well as his standing in society, to the likelihood that he would obstruct the course of justice, reoffend or abscond. The District Court once again relied on the applicant's connections to support the conclusion that if released he would tamper with the evidence. At the same time, the District Court took into account a medical opinion issued on 17 July 2013 (cited in detail below), according to which the applicant's state of health did not preclude his detention in the conditions of an ordinary detention facility. It also noted that there was no evidence that the authorities had delayed the pre-trial investigation. The District Court concluded by stressing that the case was particularly complex, involved a large number of defendants and required a series of investigative steps to be taken.

15. On 20 September 2013 new charges were brought against the applicant. He was charged with firearms trafficking and attempting to organise a terrorist attack on a public official, his political rival. According to the investigation, the applicant and his accomplices had intended to shoot down, with a portable anti-aircraft rocket launcher, a civilian aircraft in which the public official was to travel from Makhachkala to Moscow with other passengers.

16. On 7 November 2013 the Basmannyy District Court accepted the investigators' request to extend the applicant's detention again until 28 February 2014. The District Court noted the gravity of the charges, including the new ones, and the fact that the applicant was facing a sentence of up to life imprisonment. It once again cited the risks of the applicant absconding, reoffending and obstructing the course of justice, and expressed concern for the safety of the witnesses and victims. The District Court noted that the investigation of certain criminal offences with which the applicant was charged was at an active stage and that the risk of his interfering with

the investigation, if he were released, was well-founded. More than eleven defendants had been arrested and certain suspects were yet to be apprehended. The District Court placed particular weight on the complexity of the case and the progress that the investigators were making with it.

17. The District Court also examined in detail the arguments put forward by the defence in favour of the applicant's release and the application of a more lenient measure of restraint. It concluded that neither his family ties nor his state of health outweighed the reasons for his continued detention. In particular, the District Court relied on the medical opinions of 17 July and 7 August 2013, which had found that the applicant's illness was not among those listed in Governmental Decree no. 3 of 14 January 2011 preventing the detention of a suspect. It further stressed that on a daily basis at least three medical specialists from municipal and State medical facilities ("generalists, surgeons, neurologists, urologists, endocrinologists, proctologists, an infectious diseases specialist, and a rehabilitation specialist") had examined the applicant and that he had received the prescribed drug treatment in full. Moreover, he had undergone all the necessary laboratory testing and clinical examinations in certified civilian laboratories in Moscow and on 5 November 2013 he was to undergo yet another expert examination to determine whether he was suffering from any illness warranting his release. Having cited a long list of the applicant's illnesses, the District Court noted that there was no evidence that his condition had deteriorated or that he required treatment in a specialised medical facility. The District Court dismissed as unreliable various expert opinions and medical records prepared by specialists, including foreign ones, in various related fields of medicine and produced by the defence in support of their argument that the applicant's life was being put at risk by his prolonged detention in the conditions of an ordinary detention facility and in the absence of adequate medical assistance.

18. On 25 February 2014 the Basmannyy District Court extended the applicant's detention until 1 June 2014. Having again assessed the materials presented to it by the investigation and the defence, the District Court concluded that the risks of the applicant influencing witnesses, reoffending, obstructing the investigation by other means and absconding were still present. In particular, the criminal proceedings against the applicant were at a crucial stage of collecting evidence and there was a risk that, using his connections in the criminal underworld, the applicant might try to influence witnesses and victims who feared him. The District Court also cited the medical reports of 17 July, 7 August and 8 November 2013, which supported its conclusion that the applicant's state of health did not preclude his further detention.

19. It appears that the applicant's detention was further extended. However, neither party provided the Court with an update.

20. On 9 July 2014 the North-Caucasian Military Court found the applicant guilty of conspiring to organise a terrorist attack and sentenced him to ten years' imprisonment. The applicant was stripped of all State awards and commendations. It appears that the criminal proceedings on the remaining charges against the applicant are still pending.

B. The applicant's medical condition

21. Numerous medical certificates and expert opinions submitted by the parties show that the applicant is suffering from a spinal cord injury, paraplegia, chronic urinary tract infection, chronic pyelonephritis (kidney infection), chronic urinary retention, rectal prolapse (a condition in which the rectum protrudes out of the anus), paraproctitis (an inflammation of the cellular tissues surrounding the rectum), ischemic heart disease, chronic heart failure, hypertension, a thyroid gland disease, hepatitis C and non-insulin-dependent diabetes.

22. At the request of the applicant's representatives a panel comprising experts in neurology, urology and general medicine examined the applicant's medical records dating from the period between 2001 and 2008. Their report dated 2 July 2013 found that, due to his inability to satisfy his most basic needs (such as moving, urinating or defecating) without help and to his very serious diseases, the applicant required constant medical supervision, treatment and assistance and that he should therefore be placed in a specialised medical facility. His detention in a temporary detention facility could aggravate his condition and, in the absence of a swift reaction to such an aggravation, could result in his death. The report also found that the applicant was suffering from diseases which, according to Governmental Decree no. 3 of 14 January 2011, were incompatible with detention.

23. On 17 July 2013 a panel of three doctors from State hospital no. 20 in Moscow examined the applicant at the investigator's request. Having studied the applicant's medical history, the results of his recent clinical blood and urine analyses, as well as the results of his ultrasound scan and MRT examinations, the doctors confirmed the diagnoses and found that the applicant "was not suffering from any of the serious diseases included in the list of serious illnesses precluding detention of a suspect or an accused". The report did not indicate the field of medicine in which the doctors specialised.

24. In response to a request by the investigator, on 25 July 2013 the director of the medical unit of temporary detention facility (SIZO-2) in Moscow, where the applicant was detained, prepared a certificate describing the applicant's state of health. Citing extracts from the medical records, the director reported that the applicant was examined by him almost every day and also by various specialist doctors, including a urologist, a neurologist, a surgeon, a cardiologist and an endocrinologist. Blood and urine tests were

regularly performed. He was prescribed and administered various medications. The applicant used disposable catheters to urinate. He performed that procedure himself, as he had done before his arrest, up to ten times a day without the facility administration having the possibility of ensuring the requisite level of asepsis. An enema was carried out by a doctor two or three times a week to make the applicant defecate. The applicant's condition was stable and no deterioration in his health had been noted, although he had continued to raise various health complaints.

25. At the same time, the director of the medical unit also noted that, because the applicant was confined to a wheelchair, he could not be transported to the medical unit of the detention facility. He was therefore held in an ordinary cell where he was visited by the doctors and where all the necessary medical procedures were performed. In particular, the neighbouring cell which was used to perform the enemas was not suitable for that medical procedure as it was difficult to ensure the requisite sterility. The director stressed that lack of sterility could result in a serious complication.

26. The applicant's lawyers submitted the medical report of 17 July 2013 for assessment by two medical specialists: a deputy president of the Russian Scientific Society of Medical Experts, academician and honorary doctor of the Russian Federation, Mr K.; and a member of the Russian and International Neurosurgeons' Association, academician and highly respected professor-neurosurgeon, Mr S. On 25 July 2013 the two experts issued their review of the report. Having noticed the lack of information on the medical qualifications and specialisation of the three doctors who had issued the report, the two experts considered that the report contained a number of "significant and important contradictions". In particular:

- a urologist had not examined the applicant or participated in the preparation of the report of 17 July 2013, even though the applicant was suffering from a serious urological disorder;

- although the three doctors had been provided with a complete set of medical records comprising the applicant's medical history, including those related to his injuries and complications, the report was only based on "fragments of that information"; major complications arising from the applicant's condition, such as chronic cystitis and pyelonephritis, remained unassessed;

- Governmental Decree no. 3 of 14 January 2011 listed, among the serious illnesses precluding the detention of a suspect, "serious progressive forms of atrophic and degenerative illnesses of the nervous system accompanied by a stable disorder of the motor, sensory and vegeto-trophic functions", which fully corresponded to the applicant's diagnosis. However, that medical condition had not been taken into account by the three doctors who had prepared the report of 17 July 2013;

- the applicant was also suffering from a life-threatening post-traumatic pathology of the kidneys and urinary tracts. However, despite the fact that a similar condition was also listed by the Governmental decree among the illnesses precluding detention, the three doctors had paid no attention to it.

27. The two experts concluded that the report of 17 July 2013 was incomplete and was not objective, as it did not fully reflect the "true picture of [the applicant's] pathology, which undoubtedly fell within the serious illnesses precluding detention pending trial, as determined by Governmental Decree no. 3 of 14 January 2011".

28. On 7 August 2013 the three doctors from hospital no. 20 issued another report confirming the findings in their previous report of 17 July 2013. The doctors again concluded that the applicant's condition did not warrant his release as he was not suffering from any illness listed in Governmental Decree no. 3. The findings of the two reports were similar, the only difference being that part of the second report was based on more recent clinical tests and examinations of the applicant.

C. Rule 39 request

29. On 13 August 2013 the applicant asked the Court to apply Rule 39 of the Rules of Court and to authorise his transfer to a specialised medical facility as an interim measure.

30. The applicant claimed that the medical assistance he was receiving in the temporary detention facility was insufficient in view of his very serious diseases, which required constant medical supervision by specialised medical staff. The facility's medical staff were not competent to deal with such serious conditions. The treatment he was receiving there did not correspond to the treatment he had received before his arrest. Moreover, he was unable to satisfy his most basic needs without help. In particular, when he wanted to defecate, he had to wait, suffering, until an external specialist was called, as the facility staff were not qualified to carry out an enema. According to the applicant, such inadequate medical assistance could result in a brutal aggravation of his condition and ultimate death.

31. On 16 August 2013 the Court decided to indicate to the Russian Government, under Rule 39 of the Rules of Court, that it was desirable in the interests of the proper conduct of the proceedings that the applicant be immediately examined by medical experts independent from the prison system with a view to determining: (1) whether the treatment he was receiving in the detention facility was adequate for his condition; (2) whether his current state of health was compatible with detention in the conditions of a detention facility; and (3) whether his current condition required his placement in a hospital.

32. On 26 August 2013 the Government responded to the Court's letter of 16 August 2013, having submitted a handwritten copy of the report

prepared when the applicant was examined on admission to the detention facility SIZO-2 in Moscow; documents showing that the detention facility was licensed to provide medical services to inmates; certificates issued jointly by the head of the detention facility and the director of its medical unit describing the state of the applicant's health and listing the medical procedures to which he had been subjected; extracts from the applicant's medical history dating back to 2007; a certificate issued by the same two officials informing the Court that there was no risk to the applicant's life and limb and that his condition was considered stable; a handwritten copy of the applicant's medical record drawn up in the detention facility in which the most recent entry had been made on 21 August 2013 by a prison doctor; a record drawn up during the applicant's stay in hospital no. 20 in Moscow from 11 to 17 July 2013, noting the applicant's diagnosis and assessing his condition as moderately serious; a medical record from a psychiatric prison hospital where he had stayed from 12 to 17 June 2013 and where he had been treated for an "adaptation disorder affecting emotions and behaviour"; copies of the two medical reports issued on 17 July and 7 August 2013, respectively, by a medical commission of three doctors from hospital no. 20 who, having cited the applicant's medical history and the results of his examinations by various specialists and clinical tests performed in the hospital in July 2013 and the beginning of August 2013, concluded that the applicant was "not suffering from an illness included in the list of serious illnesses precluding detention of suspected or accused persons".

33. The Government also answered the three questions which, in its letter of 16 August 2013, the Court had asked them to address to independent medical experts. In particular, having provided an answer to the first question related to the adequacy of the applicant's treatment, the Government stressed that the applicant had been placed under dynamic medical supervision by the medical personnel of the detention facility in relation to illnesses of the musculoskeletal, endocrine, hepatobiliary and urinary systems. They acknowledged that the applicant, as a wheelchair-bound inmate, required systematic care and permanent medical attention, which were being provided to him in a special cell. He was performing the remaining hygiene procedures himself. The Government submitted that the applicant received the necessary medical attention and that no additional medical procedures were required.

34. In their response to the second question about the compatibility of the applicant's state of health with the conditions of the detention facility, the Government stressed that the applicant was under the medical supervision of the personnel of the detention facility and was also being seen by various civilian medical specialists. The prison doctors were fully complying with the treatment plan developed by the civilian specialists.

35. In replying to the third question as to whether the applicant needed to be transferred to a hospital, the Government relied on the two reports

issued by the three doctors from hospital no. 20 on 17 July and 7 August 2013, according to which the applicant was not suffering from any condition included in the list of serious illnesses precluding the detention of suspected and accused persons in detention facilities, as provided for by in Decree no. 3 of the Government of the Russian Federation of 14 January 2011.

36. On 29 August 2013 the Court reminded the Russian Government that on 16 August 2013 an interim measure had been imposed under Rule 39 of the Rules of Court, in accordance with which independent medical experts were to examine the applicant and provide their expert opinion on the three questions, assessing the quality of the applicant's treatment, the compatibility of his state of health with the conditions of the detention facility and the need to transfer him to a hospital. The Government's attention was also drawn to the fact that the failure of a Contracting State to comply with a measure indicated under Rule 39 may entail a breach of Article 34 of the Convention.

37. On 13 September 2013 the Government submitted an English translation of their submissions of 26 August 2013.

D. Developments following the application of Rule 39 and communication of the case to the Government

38. The applicant submitted a large number of medical reports and opinions issued by various Russian and foreign experts. In particular, he provided the Court with a copy of an opinion issued by Dr P. of the Nurnberg Centre of Gastroenterology in Germany, where he had undergone treatment on a number of occasions since 2004. The doctor who had attended to the applicant on those occasions stressed that he was in need of permanent medical supervision by qualified specialists. The lack of such assistance, in the doctor's opinion, was life-threatening. He also noted that the conditions of a detention facility were not suitable for a person in the applicant's state of health.

39. The applicant also provided the Court with an assessment report issued on 15 August 2013 by a deputy president of the Russian Scientific Society of Medical Experts, academician and honorary doctor of the Russian Federation, Dr K., in response to the medical opinion prepared on 7 August 2013 by the three doctors from hospital no. 20. Dr K. again criticised the opinion for the same defects as those identified in the previous report of 17 July 2013.

40. According to another report prepared on 2 August 2013 by Professor B., a surgeon from the Caspari Clinic in Munich, Germany, the applicant required complex daily medical examinations and procedures to control his diabetes, hepatitis C and urological problems. The doctor, who had treated

the applicant in December 2012 and January 2013, insisted that the lack of such care would be critically dangerous for the applicant's life.

41. Another medical expert from Germany, a urologist from a hospital in Dillenburg, in his opinion of 5 August 2013, described the complexity of the applicant's health condition and listed the treatment which he should receive on a daily basis. He concluded that the applicant's detention in the absence of such treatment posed a threat to his life.

42. Two more specialist reports were issued in November 2013: the first, by a professor of urology/andrology from Salzburg, Dr J.; and the second by a professor of surgery and intensive surgical medicine from the Paracelsus Private Medical University of Salzburg, Dr W. The reports were based on the applicant's medical record and answers to their questions prepared by the applicant's defence team. Having noted the poor sanitary conditions in which the applicant had to undergo necessary procedures and his "reduced immune system", their prognosis for him was "very bad", with the likelihood that "over time he would suffer from antibiotic-resistant urinary tract infection that [could] cause urosepsis with a very high risk of [death]". Dr J. concluded that from the medical evidence before him, the applicant already had a permanent urinary tract infection which would probably soon develop into urosepsis. There was a 60% to 90% chance of developing septic shock and death in such a case, even in optimal clinical conditions. That chance became far more probable in a prison environment. The risk was even higher than for otherwise healthy paraplegic men given that the applicant was suffering from diabetes. Having listed various medical procedures and recommendations for treatment, Dr J. concluded that the applicant's life "was in acute danger" and that "high-quality medical management of [the applicant's] problems [was] mandatory".

Dr W. concluded his analysis of the applicant's health and the treatment to which he was being subjected with the following assessment:

> "In my 40 years of professional experience as a surgeon, I have never encountered such inhuman, demoralizing and humiliating treatment of [a disabled person] bound to a wheelchair. A paraplegic patient has the same life expectancy as a [non-disabled] person, provided the measures described above are followed. Based on the documents presented to me, I have no reason to assume that this is the case.
>
> Given the circumstances described here, one may expect the patient to experience severe and agonizing pain. Due to the non-existent medical care, one may anticipate severe complications or his demise."

43. On 17 December 2013 Dr W. amended his expert opinion. Having again listed all the illnesses with which the applicant had been diagnosed by the Russian prison authorities, Dr W. stated as follows:

> "From the medical view it is absolutely insignificant if one or more of those diseases are not in the list of serious diseases preventing the holding in custody of suspects or accused of the commission of crimes.

> On the other hand, it is proved in international medical literature that the combination of all these serious diseases causes an enormous life threatening situation for [the applicant]. The patient is really very critically ill.".

44. In the meantime, relying on the Court's letter of 16 August 2013, on 27 September 2013 the applicant's lawyers asked the investigators in the case to provide the applicant with an opportunity to be examined in person by a number of medical experts from various civilian hospitals, including those who had prepared the reports assessing the doctors' opinions of 17 July and 7 August 2013. The lawyers insisted that the named specialists had agreed to provide their expert opinion in response to the three questions put by the Court before the Russian Government under Rule 39 of the Rules of Court.

45. On 3 October 2013 the lawyers received a letter from the senior investigator "fully refusing" their request. Having pointed out that the applicant had already been examined twice by doctors from hospital no. 20, a civilian hospital, and that the doctors had concluded that the applicant was not suffering from an illness included in the list of serious illnesses precluding detention pending trial, the senior investigator dismissed the request.

46. The lawyers sent a similar request to the director of the applicant's detention facility. The director responded that he did not "in principle" object to such an examination by medical experts, but that the decision authorising the examination could only be taken by the investigator.

47. The applicant was again sent for an examination to hospital no. 20, where the three doctors confirmed their previous findings of 17 July and 7 August 2013. The new report issued on 5 November 2013 was very similar.

48. The lawyers also submitted to the Court a large number of certificates issued by the administration of the detention facility showing that the applicant's daily needs in terms of medicines and medical materials, including catheters, were covered by his relatives. The director of the detention facility also confirmed that fact in his letter of 23 October 2013.

49. On 1 April 2014 the applicant was transferred to temporary detention facility no. 4 in Rostov-on-Don. A prison doctor attending on the applicant in that facility issued a record listing a number of visits to the applicant by various medical specialists and registering the applicant's mounting complaints. In the same record she stated that while the applicant remained under permanent medical supervision and was subjected to regular clinical examinations, with his condition, due to those procedures, being satisfactory, any of his illnesses at any time could lead to a significant deterioration in his health and become acute or chronic, with an unpredictable prognosis for his life expectancy.

II. RELEVANT DOMESTIC LAW

A. Provisions governing the quality of medical care afforded to detainees

50. Russian law gives detailed guidelines for the provision of medical assistance to detained individuals. These guidelines, found in joint Decree no. 640/190 of the Ministry of Health and Social Development and the Ministry of Justice on the Organisation of Medical Assistance to Individuals Serving Sentences or Remanded in Custody ("the Regulation"), enacted on 17 October 2005, are applicable without exception to all detainees. In particular, section III of the Regulation sets out the initial steps to be taken by medical personnel of a detention facility on the admission of a detainee. On arrival at a temporary detention facility, all detainees should be subjected to a preliminary medical examination before they are placed in a cell shared by other inmates. The aim of the examination is to identify individuals suffering from contagious diseases and those in need of urgent medical assistance. Particular attention should be paid to individuals suffering from contagious conditions. No later than three days after the detainee's arrival at the detention facility he or she should receive an in-depth medical examination, including an X-ray. During the in-depth examination a prison doctor should register the detainee's complaints, study his medical and personal history, record any injuries and recent tattoos, and schedule additional medical procedures, if necessary. A prison doctor should also authorise laboratory analyses to identify sexually transmitted diseases, HIV, tuberculosis and other illnesses.

51. Subsequent medical examinations of detainees are performed at least twice a year or following a detainee's complaints. If a detainee's state of health has deteriorated, medical examinations and assistance should be provided by the detention facility medical staff. In such cases a medical examination should include a general check-up and additional tests, if necessary, with the participation of the relevant specialists. The results of the examinations should be recorded in the detainee's medical file. The detainee should be comprehensively informed about the results of the medical examinations.

52. Section III of the Regulation also sets out the procedure to follow in the event that the detainee refuses to undergo a medical examination or treatment. For each refusal, an entry should be made in the detainee's medical record. A prison doctor should comprehensively explain to the detainee the consequences of his refusal to undergo the medical procedure.

53. Any medicines prescribed to the detainee must be taken in the presence of a doctor. In a limited number of circumstances, the head of the detention facility medical department may authorise his medical personnel

to hand over a daily dose of medicines to the detainee to be taken unobserved.

54. The Internal Regulations of Correctional Institutions, in force since 3 November 2005, deal with every aspect of inmates' lives in correctional institutions. In particular, paragraph 125 of the Regulations provides that inmates who are willing and able to pay for it may receive additional medical assistance. In such a situation, medical specialists from a State or municipal civilian hospital are to be called to the medical unit of the correctional institution where the inmate is being detained.

55. Governmental Decree no. 3 of 14 January 2011 concerning the medical examination of individuals suspected or accused of criminal offences regulates the procedure for authorising and performing a medical examination of a detainee to determine whether he or she is suffering from a serious illness preventing his or her detention. It also contains a list of such serious illnesses. A decision on the medical examination of a detainee is taken by the director of the detention facility following a written request from a detainee or his or her legal representative or a request by the head of the medical unit of that detention facility. The examination is performed by a medical commission of a facility appointed by the health service executive body of the respective region of the Russian Federation. The activities of the medical commission are determined by the Ministry of Health and Social Development of the Russian Federation.

56. The examination is performed within five days of the medical facility receiving the relevant order. Following the examination, the medical commission issues a report stating whether the detainee is suffering from a serious illness listed in the Decree. If a detainee who was previously examined by the medical commission experiences deterioration in his or her health, a new medical examination can be authorised.

57. The list of serious illnesses preventing the detention of suspected or accused persons comprises diseases affecting various systems of the human body. The sections devoted to illnesses affecting the endocrinal, nervous and urogenital systems read as follows:

"Illnesses affecting the endocrinal system, eating disorders and metabolic disorders

Serious forms of insular diabetes accompanied by complications or stable health impairment leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.

Serious disorders of the thyroid gland (if their surgical correction is impossible) and of other endocrine glands accompanied by complications or stable health impairment leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.

Diseases of the nervous system

Inflammatory diseases of the central nervous system of a progressive nature accompanied by an apparent phenomenon of focal brain damage with stable

impairment affecting motor, sensory and vegeto-trophic functions, leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.

Serious forms of atrophic and degenerative diseases of the nervous system of a progressive nature with stable impairment affecting motor, sensory and vegeto-trophic functions, leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.

Progressive neuromuscular synapsis and muscular diseases with stable impairment affecting motor functions, leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.

...

Urogenital system disorders

Kidney and urinary tract disorders and complications following other illnesses requiring regular extracorporal detoxification.

Kidney and urinary tract disorders accompanied by complications or stable health impairment leading to a significant reduction in vitality and requiring lengthy treatment in a specialised medical facility.

Injuries, poisoning and other consequences of external factors

Anatomic defects (amputations) arising after an illness, or injuries leading to a significant reduction in vitality [and] requiring permanent medical supervision."

B. Provisions governing detention

58. The relevant provisions governing detention are described in the judgment of *Pyatkov v. Russia* (no. 61767/08, §§ 48-66, 13 November 2012).

III. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

A. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies ("the European Prison Rules")

59. The European Prison Rules provide a framework of guiding principles for health services. The relevant extracts from the Rules read as follows:

"*Health care*

39. Prison authorities shall safeguard the health of all prisoners in their care.

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

...

41.4 Every prison shall have personnel suitably trained in health care.

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

...

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

..;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

...

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

...

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment."

B. 3rd General Report of the European Committee for the Prevention of Torture ("the CPT Report")

60. The complexity and importance of health-care services in detention facilities was discussed by the European Committee for the Prevention of Torture in its *3rd General Report* (CPT/Inf (93) 12 - Publication Date: 4 June 1993). The following are extracts from the Report:

> "33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.
>
> It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.
>
> 34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime ... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay ...
>
> 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.
>
> As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.
>
> 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 ...
>
> 38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.
>
> There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.). ...
>
> 39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.
>
> Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that

they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

61. The applicant complained that the Government’s failure to have his medical examination performed with a view to answering the three questions asked by the Court had been in breach of the interim measure indicated by the Court under Rule 39 and had thus violated his right to individual application. He relied on Article 34 of the Convention, which reads as follows:

> “The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

Rule 39 of the Rules of Court provides:

> “1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.”

A. Submissions by the parties

62. The Government opened their line of argument with the assertion that the legally binding force of the interim measure issued under Rule 39 of the Rules of Court may not be drawn from Article 34 of the Convention or “from any other source”. They further stressed that the Rules of Court and accordingly the interim measure applied did not have a binding force on the State Party and that, accordingly, their failure to submit answers to the questions raised by the Court in its letter of 16 August 2013 did not entail a violation of Article 34 or any other provision of the Convention.

63. The Government continued by arguing that the applicant's right to communicate with the Court had in no way been interfered with. The applicant had retained counsel, who had submitted his application to the Court. The applicant and his counsel had continued to communicate freely with the Court and still did so. Lastly, the Government submitted that in response to the questions in the letter of 16 August 2013 they had provided the Court with medical reports prepared by specialists from two civilian hospitals merely days before receiving the Court's letter indicating an interim measure. The Government considered that therefore there was no need to perform another medical examination of the applicant. They also stressed that in their response of 26 August 2013 they had already answered the three questions put forward.

64. The applicant argued that the evidence submitted by him and by the Government on the state of his health drew two different pictures. While the reports prepared by the respected and highly-qualified medical specialists appointed by him consistently described his condition as life-threatening and unsuitable for detention in an ordinary detention facility, the medical reports commissioned by the investigating authorities and submitted to the Court by the Government refused time after time to admit that the applicant was unfit for continuous detention. In those circumstances, the Court had asked the Government to subject the applicant to an independent medical examination and raised three questions which medical experts had to answer. The Government, however, had refused to organise such an examination. Moreover, the applicant's efforts to organise such an examination by independent specialists in the detention facility had also been unsuccessful. The applicant insisted that by failing to organise such an examination, the Government had stripped him of an opportunity to effectively argue his case before the Court, particularly so given the diverse nature of the evidence presented to the Court by the parties.

B. The Court's assessment

1. General principles

65. The Court reiterates that, pursuant to Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, and this has been consistently reaffirmed as a cornerstone of the Convention system (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005‑I). Although the object of Article 34 is essentially that of protecting an individual against any arbitrary interference by the authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there are positive obligations inherent in Article 34 requiring the authorities to

furnish all necessary facilities to make possible the proper and effective examination of applications. Such an obligation will arise in situations where applicants are particularly vulnerable (see *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010; *Savitskyy v. Ukraine*, no. 38773/05, § 156, 26 July 2012; and *Iulian Popescu v. Romania*, no. 24999/04, § 33, 4 June 2013).

66. According to the Court's established case-law, a respondent State's failure to comply with an interim measure entails a violation of the right of individual application (see *Mamatkulov and Askarov*, cited above, § 125, and *Abdulkhakov*, cited above, § 222). The Court cannot emphasise enough the special importance attached to interim measures in the Convention system. Their purpose is not only to enable an effective examination of the application to be carried out but also to ensure that the protection afforded to the applicant by the Convention is effective; such measures subsequently allow the Committee of Ministers to supervise the execution of the final judgment. Interim measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention (see *Mamatkulov and Askarov*, cited above, § 125; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 473, ECHR 2005‑III; *Aoulmi v. France*, no. 50278/99, § 108, ECHR 2006‑I; and *Ben Khemais v. Italy*, no. 246/07, § 82, 24 February 2009).

67. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, only in truly exceptional cases and on the basis of a rigorous examination of all the relevant circumstances. In most of these cases, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. The vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands that the utmost importance be attached to the question of the States Parties' compliance with the Court's indications in that regard (see, *inter alia*, the firm position on that point expressed by the States Parties in the Izmir Declaration and by the Committee of Ministers in Interim Resolution CM/ResDH(2010)83 in the above-mentioned case of *Ben Khemais*). Any laxity on this question would unacceptably weaken the protection of the core rights in the Convention and would not be compatible with its values and spirit (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161); it would also be inconsistent with the fundamental importance of the right to individual petition and, more generally, undermine the authority and effectiveness of the Convention as a constitutional instrument of European public order (see *Mamatkulov and Askarov*, cited above, §§ 100 and 125, and, *mutatis mutandis*, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 75, Series A no. 310).

68. Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably be taken in order to comply with the interim measure indicated by the Court (see *Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009). It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see *Paladi*, cited above, §§ 92-106; and *Aleksanyan v Russia*, no. 46468/06, §§ 228-232, 22 December 2008, in which the Court concluded that the Russian Government had failed to honour their commitments under Article 34 of the Convention as a result of their failure to promptly transfer a seriously ill applicant to a specialised hospital and to subject him to an examination by a mixed medical commission including doctors of his choice, in disregard of an interim measure imposed by the Court under Rule 39 of the Rules of Court).

2. Application to the present case

69. Turning to the circumstances of the present case, the Court notes that on 16 August 2013 it indicated to the Russian Government, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, that the applicant should be immediately examined by medical experts independent from the penal system with a view to determining three issues: (1) whether the treatment he was receiving in the temporary detention facility was adequate for his condition; (2) whether his state of health was compatible with the conditions of his detention; and (3) whether the applicant's condition required his placement in a hospital. The Government responded by submitting the two medical reports of 17 July and 7 August 2013, each prepared by three doctors from Moscow hospital no. 20. The Government themselves also answered the three questions put forward by the Court (see paragraph 32-35 above). On 29 August 2013 the Court reminded the Government of the interim measure applied under Rule 39 of the Rules of Court, in accordance with which independent medical experts were to examine the applicant and to answer the three questions.

70. Following the communication of the case, the Government insisted that they had entirely complied with the interim measure by submitting the two expert reports drawn up by civilian doctors and by providing detailed answers to the Court's questions in their letter of 26 August 2013. The Court is not convinced by the Government's argument. It reiterates that the aim of the interim measure in the present case, as formulated in the Court's decision of 16 August 2013, was to obtain an independent medical expert assessment of the state of the applicant's health, the quality of the treatment he was receiving and the adequacy of the conditions of his detention for his

medical needs. That expert evidence was necessary to decide whether, as the applicant argued, his life and limb were at real risk as a result of the conditions of his detention, including the alleged lack of requisite medical care. In addition, the Court was concerned with the contradictory nature of the medical reports prepared by the applicant's experts and those commissioned by the investigators, which the applicant submitted with his application and his request for an interim measure. The interim measure in the present case was therefore also meant to ensure that the applicant could effectively pursue his case before the Court (see, *mutatis mutandis*, *Shtukaturov v. Russia*, no. 44009/05, § 141, ECHR 2008).

71. Whilst the formulation of an interim measure is one of the elements to be taken into account in the Court's analysis of whether a State has complied with its obligations under Article 34, the Court must have regard not only to the letter but also to the spirit of the interim measure indicated (see *Paladi*, cited above, § 91) and, indeed, to its very purpose. The main purpose of the interim measure, as indicated by the Court in the present case – and the Government did not pretend to be unaware of it – was to prevent the applicant's exposure to inhuman and degrading suffering in view of his poor health and his remaining in the conditions of an ordinary detention facility that was unable to ensure that he received, as he argued, adequate medical assistance. There could have remained no doubt about either the purpose or the rationale of that interim measure after the Court, having received the Government's response to its decision of 16 August 2013, reminded them of the interim measure.

72. While not doubting the professional expertise and qualifications of the doctors who prepared the medical reports of 17 July and 7 August 2013, as well as their independence from the penal system, their opinion reflected in the two reports did not provide any answers to the three questions put forward by the Court. Although the Court is mindful of the particularly harsh criticism to which the two reports were subjected by the experts appointed by the applicant, to the point of being described as incomplete, subjective and failing to reflect the "true picture of [the applicant's] pathology" (see paragraphs 26 and 39 above), it finds it more important that the aim of the two medical examinations, the results of which were set out in the reports submitted by the Government, was to compare the applicant's medical condition with the exhaustive list of illnesses provided for by the Governmental Decree, which could have warranted his release (see paragraphs 23 and 28 above). At no point during the examinations did the doctors from hospital no. 20 assess the applicant's state of health independently from that list or evaluate whether his illnesses, separately or in combination, given their current manifestation, nature and duration, required his transfer to a hospital. Nor did they pay any attention to the quality of the medical care he had been receiving while in detention, or the conditions in which he was being detained. The reports therefore have little

relevance to the implementation of the interim measure indicated by the Court to the Russian Government in the present case.

73. The Government further argued that they themselves had responded to the three questions put forward by the Court in its decision of 16 August 2013. The Court notes in this respect that in view of the vital role played by interim measures in the Convention system, they must be strictly complied with by the State concerned. The Court cannot conceive, therefore, of allowing the authorities to circumvent an interim measure such as the one indicated in the present case by replacing the medical expert opinion with their own assessment of the applicant's situation. Yet, that is exactly what the Government have done in the present case (see paragraphs 32-35 above). In so doing, the State has frustrated the purpose of the interim measure, which sought to enable the Court, on the basis of a relevant independent medical opinion, to effectively respond to and, if need be, prevent the possible continuous exposure of the applicant to physical and mental suffering in violation of the guarantees of Article 3 of the Convention (see *Salakhov and Islyamova v. Ukraine,* no. 28005/08, § 222, 14 March 2013.

74. The Government did not demonstrate any objective impediment preventing compliance with the interim measure (see *Paladi*, cited above, § 92). Nor did they explain the authorities' refusal to allow a medical expert examination of the applicant organised by his defence team with a view to providing answers to the Court's three questions (see paragraphs 44-47. above). The Court finds the authorities' denial of access to the applicant by those experts striking, particularly given that the issue at hand – the health of an inmate – was of such urgency and importance.

75. Consequently, the Court concludes that the State has failed to comply with the interim measure indicated by it in the present case under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. The applicant complained that he was unable to obtain effective medical care while in detention, which had led to a serious deterioration in his condition, put him in a life-threatening situation and subjected him to severe physical and mental suffering, in violation of the guarantees 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."

A. Submissions by the parties

77. Having referred to the general principles laid down by the Court in a number of judgments concerning the standards of medical care of detainees (*Aleksanyan v. Russia*, no. 46468/06, 22 December 2008; *Mirilashvili v. Russia*, no. 6293/04, 11 December 2008; *Gelfmann v. France*, no. 25875/03, 14 December 2004; *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI, and *Mouisel v. France*, no. 67263/01, ECHR 2002-IX), the Government stressed that the applicant had received and was continuing to receive comprehensive medical care in detention. They relied on evidence enclosed with their reply of 26 August 2013. The Government further challenged the reliability of the medical reports commissioned by the applicant from Russian and foreign doctors. In particular, they argued that the biggest flaw of those examinations, in comparison with those provided to the Court by the Government, was that neither of the applicant's experts had examined him in person. They also stressed that although the applicant had provided the experts with various medical documents describing his health, those documents were not "official" records "reflecting the essence of the medical treatment provided to [him]". The Government therefore proposed that the Court dismiss the expert reports as inadmissible and declare the applicant's complaint as manifestly ill-founded.

78. The applicant argued that following his arrest the medical care he had received in detention had been extremely scarce and ineffective and had led to a steady deterioration in his health. The applicant stressed that he was seriously ill and unable to care for himself. He required permanent assistance even with his most basic needs. The medical specialists who had treated him prior to his arrest had always acknowledged the necessity of various medical procedures, including simple ones such as physiotherapy, as he was unable to move on his own. The administration of the detention facility was unable to provide that level of care. They merely continued to register the increasing number of the applicant's complaints, including those of serious pain in the back, atrophy of the limbs, headaches, pain in the legs, dizziness, insomnia, spasms, and so on. He was unable to urinate and defecate and had to undergo medical procedures to relieve himself, which he had to do in extremely degrading and unsanitary conditions that posed a constant risk to his life. While the authorities, in their replies to the applicant's complaints, had acknowledged that the conditions in the detention facility did not satisfy the simple requirements of hygiene and sterility, they had taken no steps to change that situation. The medical recommendations issued by specialists prior to his arrest were costly and complex, as could be seen from various medical reports submitted by him to the Court, and could not be complied with by the untrained and poorly qualified medical personnel of the detention facility. The applicant insisted that the Russian authorities had violated his rights guaranteed by Article 3

of the Convention as they were unable to provide him with the requisite level of medical services and were subjecting him to severe suffering and a significant risk of a fatal outcome.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the Court's evaluation of the facts and burden of proof

80. In cases in which there are conflicting accounts of events, the Court is inevitably confronted, when establishing the facts, with the same difficulties as those faced by any first-instance court. It reiterates that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is to rule not on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention - conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. In accordance with its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012, and the cases cited therein).

81. Furthermore, it should be pointed out that Convention proceedings do not in all cases lend themselves to a strict application of the principle

affirmanti incumbit probatio. The Court reiterates its case-law under Articles 2 and 3 of the Convention to the effect that where the events at issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries, damage and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; and *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008). In the absence of such an explanation the Court can draw inferences which may be unfavourable for the respondent Government (see, for instance, *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002, and *Buntov v. Russia*, no. 27026/10, § 161, 5 June 2012).

(ii) As to the application of Article 3 and standards of medical care for detainees

82. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Verbinţ v. Romania*, no. 7842/04, § 63, 3 April 2012, with further references).

83. 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).

84. 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 cases concerning the detention of persons 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 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)).

85. 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; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 100, 27 January 2011; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; and, *mutatis mutandis*, *Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at 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).

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

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

87. Turning to the circumstances of the present case, the Court observes that the applicant is a paraplegic wheelchair-bound inmate suffering from a long list of illnesses, affecting his nervous, urinary, muscular and endocrine systems (see paragraph 21 above). Relying on a large number of expert opinions issued by Russian and foreign medical specialists, the applicant argued that his condition was extremely serious, or even life-threatening, particularly given that he had not received adequate medical care in detention (see paragraphs 22, 26, 38-43 above). He submitted that neither the quality nor the quantity of the medical services he was being provided with corresponded to his needs. In addition, he was being left in unsanitary conditions in which any medical procedure administered to him on a daily basis could be fatal.

88. The Government disagreed. They drew the Court's attention to the reports prepared by doctors from hospital no. 20, as well as the medical certificates issued by the Russian prison authorities. They insisted that the applicant was not suffering from a serious illness listed in the Governmental decree, that his condition did not therefore call for his release and that the quality of the medical services afforded to him was beyond reproach (see paragraphs 23, 28, and 32-35 above).

89. The Court has already stressed its difficult task of evaluating the contradictory and even mutually exclusive evidence submitted by the parties in the present case (see paragraph 70 above). Its task has been further complicated by the need to assess evidence calling for expert knowledge in various medical fields. In this connection it emphasises that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a "particularly thorough scrutiny" (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010).

90. The Court has examined a large number of cases against Russia raising complaints of inadequate medical services afforded to inmates (see, among the most recent ones, *Koryak v. Russia*, no. 24677/10, 13 November 2012; *Dirdizov v. Russia*, no. 41461/10, 27 November 2012; *Reshetnyak v. Russia*, no. 56027/10, 8 January 2013; *Mkhitaryan v. Russia*, no. 46108/11, 5 February 2013; *Gurenko v. Russia*, no. 41828/10, 5 February 2013; *Bubnov v. Russia*, no. 76317/11, 5 February 2013; *Budanov v. Russia*, no. 66583/11, 9 January 2014, and *Gorelov v. Russia*, no. 49072/11, 9 January 2014). In the absence of an effective remedy in Russia to air those complaints, the Court has been obliged to perform the first-hand evaluation of evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention had been respected. In that role, paying particular attention to the vulnerability of applicants in view of their detention, the Court has called on the Government to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention.

91. Coming back to the medical reports and opinions submitted by the applicant in the present case, the Court is satisfied that there is *prima facie* evidence in favour of his submissions and that the burden of proof should shift to the respondent Government. The Court finds some merit in the Government's argument that the expert evidence produced by the applicant has the major defect of having been drawn up without the experts having examined the applicant in person. However, in the particular circumstances of the present case, it does not consider that argument valid given that the

Government failed to organise a medical expert examination of the applicant in disregard of the interim measure indicated by the Court (see paragraph 75 above) and given that the Russian authorities denied the applicant access to medical experts of his choice (see paragraph 74 above).

92. Having regard to its findings under Article 34 of the Convention, the Court considers that it can draw inferences from the Government's conduct and is ready to apply a particularly thorough scrutiny to the evidence submitted by them in support of their position. It therefore finds that the Government have failed to demonstrate conclusively that the applicant was receiving effective medical treatment for his illnesses while in detention. The evidence submitted by the Government is unconvincing and insufficient to rebut the applicant's account of the treatment to which he was being subjected in detention.

93. The Court thus finds that the applicant was being left without the medical assistance vital for his illnesses. The treatment he was receiving was incomplete and the medical supervision afforded to him was insufficient to maintain his health. There had been no thorough evaluation of his condition or adequate diagnosis in response to the increasing number of his health-related complaints. The medical personnel of the detention facilities were taking no steps to address his concerns or to apply the recommendation of the experts commissioned by the applicant. The poor quality of the medical services was accentuated by the fact that the applicant was being kept in unsterile and unsanitary detention conditions posing a serious danger to him, given that his immune system was already compromised. The Court is also concerned that the information provided by the prison doctor from the detention facility in Rostov-on-Don in respect of the quality of the medical care currently afforded to the applicant does not lead it to conclude that the medical care he is continuing to receive in detention is such as to be capable of securing his health and well-being and preventing further aggravation of his condition (see paragraph 49 above). The Court believes that, as a result of the lack of comprehensive and adequate medical treatment, the applicant is being exposed to prolonged mental and physical suffering that is diminishing his human dignity. The authorities' failure to provide the applicant with the medical care he needs amounts to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

95. The applicant complained of a violation of his right to trial within a reasonable time and alleged that the orders for his detention had not been

based on sufficient reasons. He relied on Article 5 § 3 of the Convention, which provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Submissions by the parties

96. The Government argued that the Russian courts had authorised the applicant's arrest because they had sufficient reasons to believe that he had organised a number of very serious criminal offences. When authorising or extending the applicant's detention, the Russian courts had taken into account the gravity of the charges, the nature of the criminal offences in question, and the applicant's social and political standing, which provided him with significant possibilities to influence witnesses, threaten victims, obstruct the investigation by other means, as well as abscond or reoffend. The courts had examined the possibility of applying other, less strict measures of restraint, such as bail or house arrest, but had found them insufficient to counter-balance the above-mentioned risks. Similarly, the courts had paid attention to the defence's arguments concerning the state of the applicant's health, but given the medical evidence before them, had considered that his condition did not preclude his detention pending trial.

97. The applicant argued that the authorities had known of his serious illness, and that his state of health had warranted his release. His diagnosis had diminished the risk of his absconding or reoffending. However, the courts had continued to extend his detention on obviously far-fetched grounds. The investigator's assumptions that he was liable to abscond or obstruct the course of justice had not been supported by any evidence. The detention orders had been issued as a mere formality.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

99. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the

lawfulness of his or her continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are found to have been "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV and *Suslov v. Russia*, no. 2366/07, §§ 93-97, 29 May 2012).

100. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons justifying his or her continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; McKay v. the United Kingdom [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

101. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine public interest requirement justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities which ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the established facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the

Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

102. The applicant was arrested on 1 June 2013 and was convicted on 9 July 2014 of conspiring to organise a terrorist attack. The period to be taken into consideration has therefore lasted for slightly more than a year. The fact that criminal proceedings against the applicant on other charges are currently pending does not alter this conclusion.

103. Turning to the circumstances of the present case and assessing the grounds for the applicant's detention, the Court notes that the competent judicial authorities advanced three principal reasons for not granting the applicant's release, namely that there remained a strong suspicion that he had committed the crimes of which he was accused; the serious nature of the offences in question; and the fact that if released, he was likely to abscond and pervert the course of justice, given the sentence he faced if found guilty as charged, his personality, his connections and powers stemming from his position as mayor of Makhachkala and his political and social stance, and the likelihood that he would influence witnesses.

104. The Court accepts the existence of the reasonable suspicion, based on cogent evidence, that the applicant committed the offences with which he was charged. It also acknowledges the particularly serious nature of the alleged offences.

105. As regards the danger of the applicant's absconding, the Court notes that the judicial authorities relied on the likelihood that a severe sentence would be imposed on the applicant, given the serious nature of the offences at issue. In this connection, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. It acknowledges that in view of the seriousness of the accusations against the applicant, the authorities could justifiably have considered that such an initial risk was established (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). However, the Court reiterates that the possibility of a severe sentence alone is not sufficient, after a certain lapse of time, to justify continued detention based on the danger of flight (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7, and *B. v. Austria*, 28 March 1990, § 44, Series A no. 175).

106. In this context the Court observes that the danger of absconding must be assessed with reference to a number of other relevant factors. In particular, regard must be had to the character of the person involved, his morals and his assets (see *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254 A). Having said that, the Court would emphasise that there is a general rule that the domestic courts, in particular the trial court, are better placed to examine all the circumstances of the case and take all the necessary decisions, including those in respect of pre-trial detention. The

Court may intervene only in situations where the rights and liberties guaranteed under the Convention have been infringed (see *Bąk v. Poland*, no. 7870/04, § 59, ECHR 2007 II (extracts)). The applicant in the present case is undoubtedly a person with significant financial resources and powerful connections, including in political and law-enforcement circles. The medical evidence that he presented to the national courts showed that he had frequently travelled abroad to consult foreign medical specialists and to undergo treatment. There was no evidence in the file that he had surrendered his passport. While the Court doubts whether those circumstances, taken on their own, could have justified the domestic courts' finding that it was necessary to continue the applicant's detention, it is satisfied that the totality of those factors combined with other relevant grounds could have provided the domestic courts with an understanding of the pattern of the applicant's behaviour and the persistence of a risk of his absconding (see, for similar reasoning, *Sopin v. Russia*, no. 57319/10, § 42, 18 December 2012, and *Mkhitaryan v. Russia*, no. 46108/11, § 93, 5 February 2013).

107. The Court further observes that one of the main grounds relied on by the domestic courts in their justification for the applicant's detention was the likelihood of his tampering with evidence and influencing witnesses. The Court reiterates that, as regards the risk of pressure being brought to bear on witnesses, the judicial authorities considered that the applicant's substantial influence, including through his holding office in Makhachkala and his links with the law-enforcement bodies, as well as with the criminal underworld, could give him an opportunity to influence witnesses and to destroy evidence if released. In these circumstances the Court is prepared to accept that the courts could have validly presumed that a risk existed that, if released, the applicant might abscond, reoffend or interfere with the proceedings, given the nature of his alleged criminal activities (see, for similar reasoning, *Bąk v. Poland*, cited above, § 62).

108. It remains to be ascertained whether the risks of the applicant absconding or perverting the course of justice persisted throughout the entire period of his detention. The Court reiterates the applicant's arguments that the fact that he is seriously ill and confined to a wheelchair, with his state of health continuously deteriorating and the need to remain under constant medical supervision, considerably reduces the risk of his absconding. While not being convinced that the applicant's medical condition entirely mitigated the risk of his absconding so that it was no longer sufficient to outweigh his right to a trial within a reasonable time or release pending trial, the Court is of the opinion that the risk of collusion is such that it cannot be negated by the changes in the applicant's state of health to the extent that his detention is no longer warranted.

109. In the decisions extending the detention it was emphasised that the fears of collusion were founded on the specific, fear-spreading and order-

challenging nature of the crimes and the circumstances surrounding the criminal offences with which the applicant was charged. Those included the organisation of a terrorist attack on a civilian aircraft and the commissioning of murders of various public officials, including representatives of the law-enforcement bodies who had investigated criminal activities in Makhachkala. The national courts stressed the organised nature of the crimes, involving eleven apprehended defendants and a number of suspects still on the run. Moreover, they could not disregard the fact that the criminal group itself was comprised of public officials and law-enforcement officers. The authorities considered the risk of pressure being brought to bear on the parties to the proceedings to be real, and in such circumstances insisted on the necessity to keep the applicant detained in order to prevent him from disrupting the criminal proceedings. The Court reiterates that the fear of reprisal, justifiable in the present case, can often be enough for intimidated witnesses to withdraw from the criminal justice process altogether. The Court observes that the domestic courts carefully balanced the safety of the witnesses and victims who had already given statements against the applicant, together with the prospect of other witnesses' willingness to testify, against the applicant's right to liberty (see *Sopin,* cited above, § 44).

110. Having regard to the above, the Court considers that the present case is different from many previous Russian cases where a violation of Article 5 § 3 was found because the domestic courts in those cases had extended the applicant's detention by relying essentially on the gravity of the charges, without addressing specific facts or considering alternative preventive measures (see, among many others, *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); and *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006). In the present case, the domestic courts cited specific facts in support of their conclusion that the applicant might interfere with the proceedings, having assessed the evolving circumstances and the changes that affected the applicant's situation in the course of his detention. They also considered the possibility of applying alternative measures, but found them to be inadequate (see, for similar reasoning, *Buldashev v. Russia*, no. 46793/06, § 99, 18 October 2011 and *Bordikov v. Russia*, no. 921/03, § 92, 8 October 2009.

111. The Court believes that the authorities were faced with the difficult task of determining the facts and the degree of responsibility of each of the defendants who had been charged with taking part in the organised criminal acts. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the existence of a general risk flowing from the organised nature of the applicant's alleged criminal activities, constituted relevant and sufficient grounds for extending the applicant's detention for the time necessary to complete the investigation, draw up a bill of indictment and hear evidence from the

accused and witnesses in court. The Court does not underestimate the need for the domestic authorities to take statements from witnesses in a manner that excludes any doubt as to their veracity. The Court thus concludes that, in the circumstances of this case, the risk of the applicant interfering with the course of justice actually did exist, and it justified holding him in custody (see, for similar reasoning, *Celejewski v. Poland*, no. 17584/04, 4 May 2006, and *Łaszkiewicz v. Poland*, no. 28481/03, §§ 59-60, 15 January 2008). The Court concludes that the circumstances of the case as described in the decisions of the domestic courts, including the applicant's personality and the nature of the crimes with which he was charged, reveal that his detention was based on "relevant" and "sufficient" grounds.

112. The Court lastly observes that the proceedings were of considerable complexity, given the extensive evidentiary proceedings and the implementation of the special measures required in cases concerning organised crime. The time that elapsed between the commission of the crimes and the institution of the criminal proceedings was another factor that complicated the investigators' task. The Court is mindful of the fact that the authorities needed to balance the necessity to proceed with the investigation against an obligation to ensure that the applicant was fully fit to take part in it. The national authorities displayed diligence in the conduct of the proceedings. They completed the investigation, held the trial hearings and issued the judgment against the applicant within thirteen months. The applicant did not argue that the authorities had, in any way, delayed that procedural action. In these circumstances, the Court reiterates that while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the authorities' efforts to clarify fully the facts at issue, to provide the defence with all the necessary facilities for putting forward their evidence and stating their case, and to give judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed (see, for similar reasoning, *Bąk*, cited above, § 64).

113. To sum up, having established that the authorities put forward relevant and sufficient reasons to justify the applicant's detention and that they did not display a lack of special diligence in handling the applicant's case, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

114. The relevant parts of Article 46 of the Convention read as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

115. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Menteş and Others v. Turkey* (Article 50), 24 July 1998, § 24, Reports 1998-IV; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I). It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (see *Scozzari and Giunta*, cited above; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

116. However, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V, and *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 148, 17 September 2009).

117. In the instant case the Court considers that it is necessary, in view of its finding of a violation of Article 3 of the Convention, to indicate individual measures for the execution of this judgment. It has found a violation of that Article on account of the failure of the Russian authorities to provide the applicant, a seriously ill-person whose life is at risk, with the requisite level of medical care.

118. The Court considers that in order to redress the effects of the breach of the applicant's rights, the authorities should admit him to a specialised medical facility where he would remain under constant medical supervision and would be provided with adequate medical services corresponding to his needs. Nothing in this judgment should be seen as an obstacle to his placement in a specialised prison medical facility if it is established that the facility can guarantee the requisite level of medical supervision and care.

The authorities should regularly re-examine the applicant's situation, including with the involvement of independent medical experts.

B. Article 41 of the Convention

119. 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."

1. Damage

120. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

121. The Government submitted that the sum claimed was excessive.

122. The Court observes that it has found violations of Articles 3 and 34 of the Convention in the present case. It considers that the applicant must have endured suffering as a result of his inability to receive comprehensive medical services in detention. His suffering cannot be compensated for by a mere finding of a violation. Having regard to all the above factors, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

2. Costs and expenses

123. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court. He asked that the sum be paid into his lawyer's bank account.

124. The Government stressed that the applicant had not provided the Court with a contract or any documents supporting his claim for the reimbursement of costs and expenses, or, in fact, showing that those expenses had been incurred at all.

125. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court observes that the applicant did not submit any documents to confirm the legal fees paid to his representative in the proceedings before the Court. However, it cannot overlook the number of submissions made by the applicant's lawyer to the Court. In the absence of any documents showing the actual sums incurred by the applicant for his representation before the Court, it therefore considers it reasonable to award under this head the usual amount of legal aid granted to applicants in the proceedings, that is, the sum of EUR 850, plus any tax that may be

chargeable to the applicant. The sum is to be paid into the bank account of the applicant's representative.

3. Default interest

126. 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 application admissible;

2. *Holds* that the respondent State has failed to comply with the interim measure indicated by the Court under Rule 39 of the Rules of Court, in violation of its obligation under Article 34 of the Convention;

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

4. *Holds* that there has been no violation of Article 5 § 3 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 850 (eight hundred and fifty euros), in respect of costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant, to be paid to the bank account of the applicant's representative;
   (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;

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

Done in English, and notified in writing on 27 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President