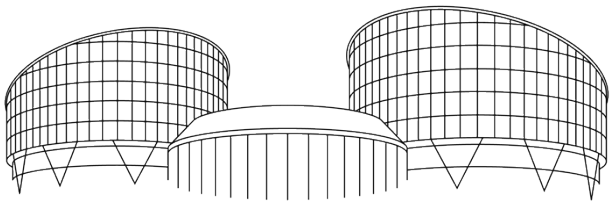

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GURENKO v. RUSSIA

(Application no. 41828/10)

JUDGMENT

STRASBOURG

5 February 2013

FINAL

05/05/2013

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

In the case of Gurenko v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 41828/10) 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 Georgiy Grigoryevich Gurenko ("the applicant") on 4 May 2010.

2. 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 had not benefited from adequate medical care in detention.

4. On 31 May 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Further to the applicant's request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lived in the village of Rassylnaya, Kursk Region. He was serving a sentence in a correctional colony in the Kursk Region until his release in April 2012.

A. The criminal proceedings against the applicant and the conditions of his detention

6. On 29 September 2006 the Kursk Leninskiy District Court found the applicant guilty of having beaten his female partner to death in a drunken rage. The applicant was sentenced to eight years' imprisonment. The judgment became final on 14 December 2006 when the Kursk Regional Court upheld it on appeal.

7. According to the applicant, following his arrest in January 2006 he was detained in inhuman conditions in facility no. IZ-46/1 in Kursk. On 26 December 2006 he was transferred to a correctional colony to serve his sentence.

B. The state of the applicant's health and the quality of medical assistance provided in detention

8. As is stated in the applicant's medical records, on 28 November 2001 he suffered a large transmural myocardial infarction and underwent lengthy treatment in a cardiology clinic. Having been examined in October 2002 by a cardiologist, the applicant was diagnosed with coronary artery disease, postinfarction cardiosclerosis and cardiac aneurysm, a severe form of chronic arterial hypertension and a latent form of urolithiasis. He was classed as permanently (category 2) disabled as a result of his illness.

9. In March 2005 the applicant had another myocardial infarction.

10. On 2 January 2006, the day following his arrest, an ambulance was called for the applicant, who had complained of a severe heartache. Having learned that the applicant suffered from stage 3 arterial hypertension and coronary artery disease, the emergency doctors provided him with urgent assistance and authorised his further detention in facility no. IZ-46/1.

11. Having been admitted to the detention facility, the applicant did not cease to complain about his state of health. He claimed to be experiencing a severe pressing chest pain and shortness of breath. Following an examination by the head of the medical unit of the detention facility ten days after the applicant's admission, his diagnosis of severe essential hypertension (stage 2-3) with a very high risk of development of further cardiovascular complications was confirmed. The applicant was prescribed treatment with four medicines (nitroglycerine, to be taken in case of a sharp chest pain, aspirin, Nitrosorbide (isosorbide dinitrate) and Diroton (lisinopril/hydrochlorothiazide)).

12. On 19 January 2006 the applicant complained to a prison physician on duty that he was experiencing a sharp pain in the left side of his chest reverberating into the left arm and shoulder blade. Having copied the diagnosis and the treatment to be followed from the medical certificate issued by the head of the medical unit on the previous occasion, the

physician sent the applicant back to the cell. Subsequent medical examinations by prison physicians ended with a similar result. The applicant was told to continue with the treatment prescribed by the head of the medical unit.

13. In March 2006 the applicant complained to warders of angina which he could only relieve with nitroglycerine, occasional loss of consciousness, acute elevation of the pulse, reflex pain in the left arm, pain in the eyes, and extremely high blood pressure. On 28 March 2006 he was transferred to the therapy ward of the Kursk Regional prison hospital, where he remained for two months with his state being considered moderately severe. The prison doctors' diagnosis was: "coronary artery disease, recurrent myocardial infarction, extensive transmural scarring of the anterior, lateral and frontal walls of the left ventricle of the heart, postinfarction cardiosclerosis (myocardial infarctions in 2001 and 2005), stable exertional angina, chronic aneurysm of the left ventricle of the heart, stage 3 arterial hypertension, [and] singular premature ventricular complex". During the entire period of his admission to the hospital the applicant had eleven electrocardiogram examinations (hereinafter – "ECG tests"). His blood and urine were also clinically tested on several occasions. However, he was never examined by a cardiologist. The medical team attending on him included general physicians, the head of the therapy ward, a dermatologist, an ophthalmologist and a dentist, depending on which medical specialist was on duty on the day of the applicant's examination. During each examination the applicant continued complaining of angina, fatigue, shortness of breath and that his "heart had stopped working [properly]".

14. On release from the prison hospital on 26 May 2006, the applicant's condition was considered satisfactory with the state of his health having improved during treatment in the hospital, despite his having continued to suffer from fatigue and an aching pain in the chest during physical exercise. The release certificate also indicated that, in addition to the two myocardial infarctions in 2001 and 2005, the applicant had suffered a third one in 2006. He was prescribed symptomatic treatment with a long list of medicines.

15. Following his release from the hospital the applicant continued complaining of angina. He was recommended close supervision by prison medical personnel and was prescribed treatment with four heart medicines. On 3 July 2006 the applicant complained to the attending prison doctor of a severe headache and pain in the chest. He was given a shot of magnesium solution.

16. On 20 July 2006 the applicant suffered a heart attack during a trial hearing. Having heard the applicant's complaints of severe chest pain for the last three days, shortness of breath, sweating, dizziness and elevated heart rate, emergency doctors called to the courthouse suspected that he could have suffered another myocardial infarction. Having provided the applicant with urgent medical assistance they took him to the medical unit

of detention facility no. IZ-46/1. He was to remain under close supervision by the prison medical personnel and urgent admission to a hospital was recommended, should his condition deteriorate.

17. According to the applicant's medical records, the following medical examination took place on 3 August 2006, when a physician from the Kursk Regional prison hospital came to the detention facility to check on the applicant. Having noted that the applicant had already survived three myocardial infarctions, the physician recommended his admission to the hospital when the convoy service could organise his transfer. Four days later the applicant was sent to the Kursk Regional prison hospital, where he remained until 25 August 2006.

18. As is clear from medical record no. 767 drawn up in the hospital and from the Government's submissions, while he underwent a number of clinical blood and urine tests, as well as a chest X-ray exam, the applicant was not subjected to ECG testing in the hospital. Similarly, having been examined by a number of medical specialists, including an ophthalmologist, a neurologist and a dentist, the applicant was not seen by a cardiologist during that stay in the hospital.

19. The Government's submissions do not contain any further records of the applicant's medical examinations or treatment until his transfer to correctional colony no. 2 in the Kursk Region on 26 December 2006. On admission to the colony the applicant was placed on a list of inmates requiring close medical supervision, given the seriousness of his condition. Following a complaint of dizziness and discomfort in the chest, the applicant was taken to the medical unit in the colony and was advised to continue with the treatment with four heart medicines. An examination by a prison physician five days later resulted in an amendment of the treatment with the introduction of an increased dose of medication. During a subsequent examination a week later new drugs were introduced to the applicant's regimen. He was released from the medical unit on 19 January 2007.

20. On 26 February 2007 the applicant was examined by a medical panel comprising a number of specialists, including a physician, a surgeon, an ophthalmologist, an otolaryngologist, a tuberculosis specialist, a physiatrist, a dentist and a drug addiction specialist. The panel confirmed the diagnosis of a severe case of arterial hypertension, a coronary disease and postinfarction cardiosclerosis and declared the applicant permanently disabled. Another examination by a physician took place on 20 March 2007 with the diagnosis and recommendations for treatment remaining without any amendments. A handwritten note enclosed by the Government with their submissions showed that a large number of medicines required for the applicant's treatment had been provided to the detention facility by the applicant's son.

21. In April 2007, following an acute deterioration of his condition, the applicant was again admitted to the colony medical unit for treatment. As is evident from extract no. 315 of his medical records, during a one-month stay in the unit the applicant was not examined by a cardiologist. A record of the applicant's ECG testing could not be interpreted, as the unit did not have the necessary specialist. Ultrasound scanning was also impossible, as the unit did not employ the required specialist either.

22. After his release from the medical unit, the applicant was examined once a month by a colony physician or a drug addition specialist who was acting as an on-duty doctor on the relevant days.

23. On 30 August 2007 the applicant arrived at the colony medical unit complaining of a sharp pain in the heart area which he could not relieve with any heart medicine. He was immediately accepted by the unit for inpatient treatment. Having been examined by a prison physician on the following day, the applicant was released on the basis that the examination had not revealed any negative changes in his condition.

24. In October 2007 the applicant sought assistance from the medical unit once every few days, complaining of high blood pressure, angina and heavy breathing. A prison physician, a medical assistant or a drug addiction specialist measured his blood pressure and slightly amended his drug or food regimens.

25. Following a number of repeated, similar complaints being made by the applicant between January and April 2008 and his subsequent examinations by prison physicians, a medical assistant or tuberculosis specialist, he was sent to the Kursk Regional prison hospital for treatment on 15 April 2008. On admission to the hospital, the examining physician noted that the applicant's hypertension had progressed to stage 3. The applicant was visited by a hospital physician nearly every day and underwent clinical urine and blood testing. He was not seen by a cardiologist but received ECG testing once, on the day following his admission to the hospital. On 13 May 2008 the attending physician performed a visual examination of the applicant and measured his pulse and blood pressure. Having been prescribed treatment with long-term nitrates and admission to the colony medical unit for inpatient treatment, the applicant was released from the hospital on 15 May 2008, despite his complaints of stabbing pain in the heart area, dizziness and blackouts.

26. The applicant's medical records do not show that the recommendation that he be admitted to the medical unit was followed. They list six consultations with a prison physician between the end of May 2008 and March 2009. The entries in the records indicate that the consultations comprised a discussion about the state of the applicant's health and the progress of his condition, and obtaining an authorisation to administer an injection of a painkiller in the event that the applicant experienced particularly strong pain.

27. It appears that the applicant suffered another episode of illness towards the end of March 2009, having complained to the colony staff of severe angina. For three days he was given injections of a painkiller and provided with Diroton to stop the attack. The prison physician relieved the applicant from having to take part in any type of activities related to inmates' everyday life, only authorising him to attend the morning roll call. On 7 April 2009 the applicant was admitted to the Kursk Regional prison hospital where he remained until 21 April 2009, having undergone ECG testing and having received treatment with nitrates.

28. On 14 September 2009 the applicant was admitted to the colony medical unit for inpatient treatment. The medical personnel recorded that his blood pressure was very high and prescribed treatment with nitrates and antihypertensive medicines. Physicians and medical assistants continued recording episodes of hypertension and heart attacks between October 2009 and February 2010, having provided symptomatic treatment. The applicant remained in the unit until 27 January 2010.

29. In April 2010 the applicant was transferred to correctional colony no. 9 in the Kursk Region. A colony tuberculosis specialist who had examined the applicant on his admission confirmed the previous diagnosis, having noted the negative progress of his arterial hypertension and chronic heart disease. In April 2010 the applicant suffered two episodes of hypertensive emergency, having also complained of periodic angina. Towards the end of May 2010 he had another episode of hypertensive emergency and heart attack, having for several consecutive days experienced pain in the chest, headache, dizziness, nausea and angina which could only be relieved with an injection of papaverine. Colony physicians also provided the applicant with aspirin and nitrates and planned to have him transferred to a prison hospital for in-depth examinations and treatment.

30. Between 1 and 25 June 2010 the applicant was admitted to the therapy ward of the Kursk Regional prison hospital, where he received treatment by the hospital's physicians. On admission to the hospital the attending physician noted the critical development of the applicant's arterial hypertension, with a blood pressure reading of 220 over 120, and recommended daily monitoring of the applicant's condition by way of ECG tests and measuring of his blood pressure, an ultrasound scan of his heart accompanied by a Doppler examination, a scan of the major blood vessels of the heart, and examinations by a cardiologist, a neurologist and a cardiac surgeon. There is no indication in the applicant's medical records that the recommendations, save for the performance of two ECG tests, were complied with. On the basis of the two ECG tests performed on 3 and 11 June 2010, an ultrasound examination of the abdominal cavity, and clinical blood and urine exams and visual examinations, the attending physician authorised the applicant's release from the hospital on 24 June 2010. During the last consultation with the physician, the applicant

continued complaining of pressing chest pain, heart pain and a burning sensation behind the ribs which even arose during simple physical exercise, such as a slow walk for ten minutes or using stairs. He also stressed that he was constantly experiencing feelings of fear and panic attacks at night, when he was covered in a cold sweat and shivering.

31. Following his release from the hospital and until February 2011 the applicant sought urgent medical assistance at least once a month, having persistently complained of chest pain, headache, shortness of breath, dizziness and fatigue. Emergency care, including injections with muscular relaxants to arrest acute arterial spasm and provision of nitrates and medicines to lower his blood pressure, was provided each time by a colony tuberculosis specialist or by a psychiatrist. Having received emergency treatment, the applicant was sent back to the colony unit with the recommendation to continue taking his medicines until the next episode of illness requiring the urgent attention of the medical staff. The hypertensive emergencies recurred in May and July 2011, with similar emergency actions being taken by a colony psychiatrist or the head of the medical unit to stop the attacks.

32. The hypertensive emergency in July 2011 was the most recent attack of the illness described by the Government in their submissions to the Court. According to them, the applicant had remained under the supervision of a colony physician, with his condition being considered satisfactory. He had received "necessary" inpatient medical treatment.

33. According to the applicant, his condition had continued deteriorating in view of the fact that the colony and the prison hospital had not been equipped to address his needs, as they had been lacking necessary equipment, specialists, including a cardiologist, and had been unable to provide emergency resuscitation assistance if need be. His complaints to various State authorities, including the Russian Ministry of Health and Social Development, the deputy head of the Kursk Regional Service for the Execution of Sentences, prosecution authorities and the administration of the detention facilities, had either not brought about any response or had been addressed in a very superficial manner. For instance, in January 2009 the applicant had lodged an action with the Kursk Leninskiy District Court, complaining of inadequate medical care in detention and seeking compensation for damage. His complaint had been returned with a letter on 4 February 2009. While the letter of 4 February 2009 was submitted to the Court, a copy of the decision disallowing the complaint was not provided by either party.

34. In response to another complaint by the applicant, on 1 July 2009 the deputy head of the Kursk Regional Service for the Execution of Sentences sent a letter, which read as follows:

> "Your complaint, sent to the head of the medical department of the Kursk Regional Service for the Execution of Sentences, has been examined by staff members of [that] department.
>
> An attending doctor, and not a patient, is competent to prescribe diagnostic examinations. By virtue of paragraph 125 of the Rules of Internal Order in Correctional Facilities ... you may receive additional prophylactic medical treatment (including a consultation with an independent medical specialist – a cardiologist), having paid for it yourself."

35. In his most recent letter to the Court in May 2012, the applicant informed it that upon a request from the administration of the prison hospital he had been released from detention in view of the seriousness of his condition. He attached a copy of a decision issued on 29 March 2012 by the Kursk Leninskiy District Court authorising his release. As is stated in that decision, having heard the representatives of the prison hospital, who had argued that the applicant was suffering from a very serious heart condition which, under domestic laws and regulations, precluded his serving the sentence, the fact that he could not receive the necessary medical assistance in detention and that the prognosis for his condition was unfavourable, the District Court accepted the request for release.

36. Having been released from detention, the applicant was immediately admitted to the cardiology department of a hospital close to his place of residence. It also appears from the medical documents submitted that upon his release prison doctors advised him to consult an oncologist. The applicant stated that he had followed that advice and had been diagnosed with cancer.

II. RELEVANT DOMESTIC LAW

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

37. Russian law gives detailed guidelines for provision of medical assistance to detained individuals. These guidelines, found in the joint Decree of the Ministry of Health and Social Development and the Ministry of Justice no. 640/190 on Organisation of Medical Assistance to Individuals Serving Sentences or Detained ("the Regulation"), enacted on 17 October 2005, are applicable without exception to all detainees. In particular, section III of the Regulation sets out the procedure for initial steps to be taken by medical personnel of a detention facility on admission of a detainee. On arrival at a temporary detention facility all detainees should be subjected to preliminary medical examination before they are placed in cells shared by other inmates. The examination is performed with the aim of identifying 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 should receive an in-depth medical examination, including X-ray. During the in-depth examination a prison doctor should record the detainee's complaints, study his medical and personal history, record injuries if present, 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.

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

39. Section III of the Regulation also sets the procedure for cases of refusals by detainees to undergo a medical examination or treatment. In each case of refusal, a respective entry should be made in the detainees' medical record. A prison doctor should comprehensively explain the detainee consequences of his refusal to undergo the medical procedure.

40. Detainees take prescribed medicines in the presence of a doctor. In a limited number of cases the head of the medical department of the detention facility may authorise his medical personnel to hand over a daily dose of medicines to the detainee for unobserved intake.

41. The Rules of Internal Order in Correctional Facilities, in force since 3 November 2005, lay down regulations determining every aspect of inmates' lives in correctional facilities. In particular, paragraph 125 of the Rules 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 facility where the inmate is being detained.

B. Provisions establishing legal avenues for complaints about the quality of medical assistance

1. Prosecutors Act (Federal Law no. 2202-1 of 17 January 1992)

42. The list of prosecutors' official powers includes the rights to enter premises, to receive and study materials and documents, to summon officials and private individuals for questioning, to examine and review complaints and petitions containing information on alleged violations of

individual rights and freedoms, to explain the avenues of protection for those rights and freedoms, to review compliance with legal norms, to institute administrative proceedings against officials, to issue warnings about the unacceptability of violations and to issue reports pertaining to the remedying of violations uncovered (sections 22 and 27).

43. A prosecutor's report pertaining to the remedying of violations uncovered is served on an official or a body, which has to examine the report without delay. Within a month specific measures aimed at the elimination of the violation(s) should be taken. The prosecutor should be informed of the measures taken (section 24).

44. Chapter 4 governs prosecutors' competence to review compliance with legal norms by the prison authorities. They are competent to verify that prisoners' placement in custody is lawful and that their rights and obligations are respected, as well as to oversee the conditions of their detention (section 32). To that end, prosecutors may visit detention facilities at any time, talk to detainees and study their prison records, require the prison administration to ensure respect for the rights of detainees, obtain statements from officials and institute administrative proceedings (section 33). Decisions and requests by a prosecutor must be unconditionally enforced by the prison authorities (section 34).

2. Code of Civil Procedure: Complaints about unlawful decisions

45. Chapter 25 sets out the procedure for the judicial review of complaints about decisions, acts or omissions of the State and municipal authorities and officials. Pursuant to Ruling no. 2 of 10 February 2009 by the Plenary Supreme Court of the Russian Federation, complaints by suspects, defendants and convicts of inappropriate conditions of detention must be examined in accordance with the provisions of Chapter 25 (point 7).

46. A citizen may lodge a complaint about an act or decision by any State authority which he believes has breached his rights or freedoms, either with a court of general jurisdiction or by sending it to the directly higher official or authority (Article 254). The complaint may concern any decision, act or omission which has violated rights or freedoms, has impeded the exercise of rights or freedoms, or has imposed a duty or liability on the citizen (Article 255).

47. The complaint must be lodged within three months of the date on which the citizen learnt of the breach of his rights. The time period may be extended for valid reasons (Article 256). The complaint must be examined within ten days; if necessary, in the absence of the respondent authority or official (Article 257).

48. The burden of proof as to the lawfulness of the contested decision, act or omission lies with the authority or official concerned. If necessary,

the court may obtain evidence of its own initiative (point 20 of Ruling no. 2).

49. If the court finds the complaint justified, it issues a decision requiring the authority or official to fully remedy the breach of the citizen's rights (Article 258 § 1). The court determines the time-limit for remedying the violation with regard to the nature of the complaint and the efforts that need to be deployed to remedy the violation in full (point 28 of Ruling no. 2).

50. The decision is dispatched to the head of the authority concerned, to the official concerned or to their superiors, within three days of its entry into force. The court and the complainant must be notified of the enforcement of the decision no later than one month after its receipt (Article 258 §§ 2 and 3).

3. Civil Code

51. Damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. The tortfeasor is not liable for damage if he proves that the damage has been caused through no fault of his own (Article 1064 §§ 1, 2).

52. State and municipal bodies and officials shall be liable for damage caused to a citizen by their unlawful actions or omissions (Article 1069). Irrespective of any fault by State officials, the State or regional treasury are liable for damage sustained by a citizen on account of: (i) unlawful criminal conviction or prosecution; (ii) unlawful application of a preventive measure; and (iii) unlawful administrative punishment (Article 1070).

53. Compensation for non-pecuniary damage is effected in accordance with Article 151 of the Civil Code and is unrelated to any award in respect of pecuniary damage (Article 1099). Irrespective of the tortfeasor's fault, non-pecuniary damage shall be compensated if the damage was caused: (i) by a hazardous device; (ii) in the event of unlawful conviction or prosecution or unlawful application of a preventive measure or unlawful administrative punishment: or (iii) through dissemination of information which was damaging to the victim's honour, dignity or reputation (Article 1100).

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")

54. 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")

55. 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 the 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 3 OF THE CONVENTION

56. The applicant complained under Article 3 of the Convention that the authorities had not taken steps to safeguard his health and well-being, having failed to provide him with adequate medical assistance, despite his suffering from a serious heart condition. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

57. The Government put forward two lines of argument, insisting that the applicant had not exhausted domestic remedies available to him and, at the same time, arguing that the treatment provided to the applicant during the entire period of his detention had corresponded to the highest standards. As to the first argument, the Government stressed that the applicant had not complained to a court or any other State body of ineffective medical assistance. The procedure for making claims before a court was established in Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's Ruling no. 2 of 10 February 2009. Having relied on two cases examined by the Russian courts and the Court's findings in the case of *Popov and Vorobyev v. Russia* (no. 1606/02, 23 April 2009), they submitted that it had also been open to the applicant to lodge a tort action claiming compensation for damage caused by allegedly inadequate medical assistance. Relying on Resolution no. CM/ResDH(2010)35 adopted at the 1078th Meeting of the Committee of Ministers of the Council of Europe, the Government further noted that statistics and a number of cases presented to the Committee had demonstrated the developing practice of the Russian courts in awarding compensation for non-pecuniary damage caused by unsatisfactory conditions of detention. In the Government's opinion, the applicant's failure to apply to a Russian court or any "other instance" with a complaint had to be interpreted by the Court as his unwillingness to comply with the admissibility requirements set out by Article 35 §§ 1 and 4 of the Convention.

58. In the alternative, the Government argued that the applicant had been provided with adequate care during the entire period of his detention. The medical personnel had possessed the necessary training and skills to treat the applicant. The facilities had been equipped with medicines and medical equipment according to established norms. The Government pointed out

that the applicant had been subjected to a number of medical examinations, tests and procedures. His condition had been satisfactory. He had had consultations with a prison doctor once a month and, if his condition deteriorated, daily. On a number of occasions the applicant had undergone in-depth assessment in the prison hospital, where he had been given necessary medical assistance which had led to positive changes in his condition.

59. The applicant argued that the medical care afforded to him had been ineffective, as he had never been examined by a cardiologist, the only specialist who could have properly assessed his condition and prescribed adequate treatment. With his condition continuing to deteriorate, the prison medical personnel had only been able to afford him symptomatic treatment to stop the acute episodes of illness. The applicant further pointed out that his release from detention in view of the seriousness of his condition and given the prison authorities' acknowledgement that they had been unable to deal with it was the strongest evidence in support of his submissions.

B. The Court's assessment

1. Admissibility

(a) Exhaustion of domestic remedies

60. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

61. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, amongst others, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston*

and Others v. Ireland, 18 December 1986, § 22, Series A no. 112). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

62. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports* 1996-IV).

63. Where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 of the Convention. Indeed, the special importance attached by the Convention to that provision requires, in the Court's view, that the States Parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any such treatment rapidly. Had it been otherwise, the prospect of future compensation would have legitimised particularly severe suffering in breach of this core provision of the Convention (see *Vladimir Romanov v. Russia*, no. 41461/02, § 78, 24 July 2008).

64. The Court observes that the Government listed a complaint under Chapter 25 of the Code of Civil Procedure, a tort action or a complaint to "any other State body" as the remedial avenues which the applicant had allegedly failed to use. They did not specify a reasonably comprehensive

and consolidated body of applicable rules, recommended practices and guidelines for the Court to clearly understand to which State authorities, apart from a court, the applicant should have resorted. However, given the Government's reliance on the Court's findings in the case of *Popov and Vorobyev v. Russia* (cited above, § 67, where it, having declared the applicants' complaint of inadequate medical assistance inadmissible, noted that they had not raised that issue before any domestic authority, including the administration of the detention centre, the prosecutor's office or the courts), the Court is ready to consider that, in addition to a complaint to a court and a civil tort action, two other avenues are open to Russian inmates to complain about the quality of medical care in detention: a complaint to the administration of a detention facility or a complaint to a prosecutor. It will now examine whether any of the remedies suggested by the Russian Government were effective, as required by Article 35 of the Convention.

i. Complaint to prison authorities

65. As to a complaint to the administration of a detention facility, the Court notes that the primary responsibility of the prison officials in charge of a detention facility is that of ensuring appropriate conditions of detention, including the adequate health care of prisoners. It follows that a complaint of negligent actions by prison medical personnel would necessarily call into question the way in which the prison management had discharged its duties and complied with domestic legal requirements. Accordingly, the Court does not consider that the prison authorities would have a sufficiently independent standpoint to satisfy the requirements of Article 35 of the Convention (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61): in deciding on a complaint concerning an inmate's medical care for which they were responsible, they would in reality be judges in their own cause (see *Goginashvili v. Georgia*, no. 47729/08, § 55, 4 October 2011, and, more recently, *Ismatullayev v. Russia* (dec.), § 26, 6 March 2012).

ii. Complaint to a prosecutor

66. The Court will now consider whether a complaint to a prosecutor could have provided the applicant with redress for the alleged violation of his rights. The Court reiterates that the decisive question in assessing the effectiveness of raising a complaint of inhuman and degrading treatment before a prosecutor is whether the applicant could have done so in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. Even though the prosecutors' review undeniably plays an important part in securing appropriate conditions of detention, including the proper standard of medical care for detainees, a complaint to the supervising prosecutor falls short of the requirements of an effective remedy because of the procedural

shortcomings that have been previously identified in the Court's case-law (see, for instance, *Pavlenko v. Russia*, no. 42371/02, §§ 88-89, 1 April 2010, and *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 85-86, 12 March 2009, with further references). In particular, the Court has never been convinced that a report or order by a prosecutor, which both have a primarily declaratory character, could have offered the preventive or compensatory redress or both for allegations of treatment contrary to Article 3 of the Convention (see *Aleksandr Makarov*, §§ 85-86, cited above).

67. The Court further reiterates the Convention institutions' settled case-law, according to which a hierarchical complaint which does not give the person making it a personal right to the exercise by the State of its supervisory powers cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII, and *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, pp. 76 and 82). The Court accepts the assertion that detainees may send their complaints to a prosecutor. However, there is no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings, which would entirely be a matter between the supervising prosecutor and the supervised body. The complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint. The Court reiterates that, in the absence of a specific procedure, the ability to appeal to various authorities cannot be regarded as an effective remedy because such appeals aim to urge the authorities to utilise their discretion and do not give the complainant a personal right to compel the State to exercise its supervisory powers (see *Dimitrov v. Bulgaria*, no. 47829/99, § 80, 23 September 2004). Moreover, the Court has already seen cases in which an applicant complained to a prosecutor but his complaint did not elicit any response (see *Antropov v. Russia*, no. 22107/03, § 55, 29 January 2009). Since the complaint to a prosecutor about the quality of medical assistance in detention does not give the person using it a personal right to the exercise by the State of its supervisory powers, it cannot be regarded as an effective remedy.

iii. Tort action

68. The Court will further examine whether the tort provisions of the Civil Code constituted an effective domestic remedy capable of providing an aggrieved detainee redress for absent or inadequate medical assistance. The Court has already examined this remedy in several recent cases, in the context of both Article 35 § 1 and Article 13 of the Convention, and was not satisfied that it was an effective one. The Court found that, while the possibility of obtaining compensation was not ruled out, the remedy did not offer reasonable prospects of success, in particular because the award was

conditional on the establishment of fault on the part of the authorities (see, for instance, *Roman Karasev v. Russia*, no. 30251/03, §§ 81-85, 25 November 2010; *Shilbergs v. Russia*, no. 20075/03, §§ 71-79, 17 December 2009; *Kokoshkina v. Russia*, no. 2052/08, § 52, 28 May 2009; *Aleksandr Makarov*, cited above , §§ 77 and 87-89; *Benediktov v. Russia*, no. 106/02, §§ 29 and 30, 10 May 2007; *Burdov v. Russia (no. 2)*, no. 3509/04, §§ 109-116, ECHR 2009; and, most recently, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-118, 10 January 2012).

69. The provisions of the Civil Code on tort liability impose special rules governing compensation for damage caused by State authorities and officials. Articles 1070 and 1100 contain an exhaustive list of instances of strict liability in which the treasury is liable for the damage, irrespective of the State officials' fault. Inadequate medical care does not appear in this list. Only the unlawful institution or conduct of criminal or administrative proceedings gives rise to strict liability; in all other cases, the general provision in Article 1069 applies, requiring the claimant to show that the damage was caused through an unlawful action or omission on the part of a State authority or official.

70. The Court has already had occasion to criticise as unduly formalistic the approach of the Russian courts based on the requirement of formal unlawfulness of the authorities' actions. However, in its assessment of the effectiveness of tort proceedings for cases of inadequate medical care of detainees, the Court considers the following considerations to be more important. To prove the existence of the selection and successful use of mechanisms of redress, the Government cited two cases in which claimants, former inmates, had been granted compensation for damage to health resulting from inadequate medical care in detention. Without embarking on an analysis of the relevance of the cases to the case at hand and deciding whether the two cases sufficiently demonstrate the existence of a developed, consistent and coherent practice of remedies being available for victims of Article 3 violations resulting from a lack of medical assistance or its poor quality, the Court reiterates that to be adequate, remedies for the implementation of accountability of a State should correspond to the kind and nature of the complaints addressed to it. Given the continuous nature of the violation alleged by the applicant, in particular his complaint of suffering from an extremely serious medical condition with a continuous deterioration of his health in the absence of appropriate medical treatment, the Court considers that an adequate remedy in such a situation should imply a properly functioning mechanism of monitoring the conduct of national authorities with a view to putting an end to the alleged violation of the applicant's rights and preventing the recurrence of such a violation in the future. Therefore, a purely compensatory remedial avenue would not suffice to satisfy the requirements of effectiveness and adequacy in a case of

an alleged serious continuous violation of a Conventional right and should be replaced by another judicial mechanism performing both the preventive and compensatory functions.

71. The Court observes that the Government have not argued that a tort action could have offered the applicant any other redress than a purely compensatory award. Being convinced that a preventive remedial measure would have had an evidently pivotal role in a case such as the applicant's, with his pleas of ongoing deterioration of his health in view of a lack of proper medical care, the Court finds that a tort claim was not able to provide the applicant with relief appropriate for his situation. The purely monetary compensation afforded by a tort action could not extinguish the consequences created by the alleged continuous situation of inadequate or insufficient medical services. A tort claim would not have entailed the ending or modification of the situation or conditions in which the applicant found himself. It would not have brought about an order to put an end to the alleged violation and to compel the detention authorities to offer the applicant the requisite level of medical care and it would not have provided for any sanction for failure to comply, thus depriving a court examining the tort claim of the opportunity to take practical steps to eliminate the applicant's further suffering or to deter wrongful behaviour on the part of the authorities. This logic has been applied in a large number of cases raising an arguable claim under Article 3, with the Court insisting that if the authorities could confine their reaction in such cases to the mere payment of compensation, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice. The State cannot escape its responsibility by purporting to erase a wrong by a mere grant of compensation in such cases (see, among many other authorities, mutatis mutandis, *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004; *Yaşa v. Turkey*, 2 September 1998, § 74, Reports 1998-VI; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV; *Velikova v. Bulgaria*, no. 41488/98, § 89, ECHR 2000-VI; *Salman v. Turkey* [GC], no. 21986/93, § 83, ECHR 2000-VII; *Gül v. Turkey*, no. 22676/93, § 57, 14 December 2000; *Kelly and Others v. the United Kingdom*, no. 30054/96, § 105, 4 May 2001; and *Avşar v. Turkey* [GC], no. 25657/94, § 377, ECHR 2001-VII).

72. In the light of the above considerations, the Court also finds that in the present case, concerning a continuous situation of absent or inadequate medical care in detention, a civil claim for damages did not satisfy the criteria of an effective remedy.

iv. Judicial complaints of infringements of rights and freedoms

73. The Court's final task is to assess the effectiveness of a complaint under Chapter 25 of the Code of Civil Procedure. By virtue of the provisions of Chapter 25, Russian courts are endowed with a supervisory jurisdiction over any decision, action or inaction on the part of State officials and authorities that has violated individual rights and freedoms or prevented or excessively burdened the exercise thereof. Such claims must be submitted within three months of the alleged violation and adjudicated in a speedy fashion within ten days of the submission. In those proceedings, the complainant must demonstrate the existence of an interference with his or her rights or freedoms, whereas the respondent authority or official must prove that the impugned action or decision was lawful. The proceedings are to be conducted in accordance with the general rules of civil procedure (see paragraphs 45-50 above).

74. If the complaint is found to be justified, the court will require the authority or official concerned to make good the violation of the complainant's right(s) and set a time-limit for doing so. The time-limit will be determined with regard to the nature of the violation and the efforts that need to be deployed to ensure its elimination. A report on the enforcement of the decision should reach the court and the complainant within one month of its service on the authority or official.

75. The Court notes that judicial proceedings instituted in accordance with Chapter 25 of the Code of Civil Procedure provide a forum that guarantees due process of law and effective participation for the aggrieved individual. In such proceedings, courts can take cognisance of the merits of the complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation. The proceedings are conducted diligently and at no cost for the complainant. The ensuing judicial decision will be binding on the defaulting authority and enforceable against it. The Court is therefore satisfied that the existing legal framework renders this remedy prima facie accessible and capable, at least in theory, of affording appropriate redress.

76. Nevertheless, in order to be "effective", a remedy must be available not only in theory but also in practice. This means that the Government should normally be able to illustrate the practical effectiveness of the remedy with examples from the case-law of the domestic courts. The Russian Government, however, did not submit any judicial decision showing that a complainant had been able to vindicate his or her rights by having recourse to this remedy. The Court, for its part, has not noted any examples of the successful use of this remedy in any of the conditions-of-detention or medical-assistance cases that have previously come before it. The absence of established judicial practice in this regard appears all the more clear in the light of the fact that the Code of Civil Procedure, including its Chapter 25, has been in force since 1 February 2003 and that Chapter 25

merely consolidated and reproduced the provisions concerning a substantially similar procedure that had been available under Law no. 4866-1 of 27 April 1993 on Judicial Complaints against Actions and Decisions which have Impaired Citizens' Rights and Freedoms. The remedy, which has not produced a substantial body of case-law or a plethora of successful claims in more than eighteen years of existence, leaves genuine doubts as to its practical effectiveness. Admittedly, the ruling of the Plenary Supreme Court, which explicitly mentioned the right of detainees to complain under Chapter 25 about their conditions of detention, was only adopted in February 2009, but it did not alter the existing procedure in any significant way and its effectiveness in practice still remains to be demonstrated (see, for similar reasoning, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 107-110, 10 January 2012). The Government also did not explain how, in the light of the ruling of the Plenary Supreme Court which concerned complaints of conditions of detention, the Chapter 25 procedure would work in respect of complaints of ineffective medical care for detainees, given the specificity of those complaints.

77. The Court therefore finds that, although Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's ruling of 10 February 2009, provides a solid theoretical legal framework for adjudicating detainees' complaints of inadequate conditions of detention, and possibly their complaints of ineffective medical care, it has not yet been convincingly demonstrated that that avenue satisfies the requirements of effectiveness.

(b) Conclusion

78. In the light of the above considerations, the Court concludes that none of the remedial avenues put forward by the Government in support of their argument of the applicant's failure to exhaust domestic remedies constituted in the present case an effective remedy. Accordingly, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies.

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

2. Merits

(a) General principles

80. 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).

81. 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).

82. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most of the cases concerning the detention of 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 part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

83. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik,* cited above, §§ 104-106; *Yevgeniy Alekseyenko*, cited above, § 100; *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, 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov*, cited above, § 211).

84. 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

85. Turning to the facts of the present case, the Court observes that when the applicant was admitted to a detention facility following his arrest it became known to the Russian authorities that he was suffering from a number of very serious cardiovascular conditions. Prior to his arrest the applicant had already survived two myocardial infarctions. In fact, on the day following his arrest he had a severe heart attack calling for the involvement of a medical emergency team. Throughout the years of his detention, the applicant's condition, not disputed by the Government, was characterised by severe and sharp pain in the chest, extreme headaches, occasional loss of consciousness, pain in the eyes, shortness of breath, fatigue, dizziness, excessive sweating and anxiety. A further deterioration of the applicant's health occurred in detention, when he suffered his third infarction (see paragraphs 13 and 14 above). Given the significant clinical manifestations and progress of his condition, with a high risk of development of further cardiovascular complications, the applicant required regular medical supervision by specialists, in particular a cardiologist, and complex treatment, comprising clinical tests and medication. The evidence provided to the Court by the parties confirms that neither of those requirements was fulfilled during the applicant's detention. The evidence shows that from the beginning of his detention in 2006 until his release in April 2012 the applicant was not provided with a consultation with a cardiologist.

86. In this respect, the Court observes that it does not exclude the possibility for an inmate to receive medical assistance for his specific health problems from a medical professional who does not have credentials or diploma in the relevant field of medicine. However, the Court is not convinced that the Russian authorities resorted to all reasonably possible medical measures in the present case to ameliorate the applicant's health or to at least decrease the number of serious negative effects that he had to endure in his everyday life due to his heart condition.

87. The Court notes that for more than six years during the applicant's detention and in every facility, including the prison hospital, his treatment was carried out by medical specialists who had medical training or skills other than those required to address his individual needs. It is not convinced

that the general physicians, tuberculosis specialist, drug addiction specialist, dermatologist, dentist and ophthalmologist who examined the applicant on various occasions and addressed his complaints related to his cardiovascular conditions could have developed and ensured a comprehensive evaluation and the medical management of the applicant's serious health problems (see paragraphs 12, 19, 20 and 22 above). The inadequacy of their response to the applicant's health complaints is demonstrated by the fact that they either maintained the drug therapy which had been developed by a previous specialist, disregarding the complaints from the applicant and the clinical signs of a further deterioration of his condition, or merely increased the dose of the prescribed drugs or introduced another painkiller without carrying out a comprehensive examination of the applicant's then-current condition. At this juncture the Court would stress that while the Russian authorities undoubtedly took charge of the applicant's therapeutic care, it is not convinced that they did not render him the individual medical assessment necessary to properly evaluate his specific needs and to adjust his treatment to them, in contrast to what the Court has on many occasions declared as one of the cornerstones of adequate medical care for detainees (see, *mutatis mutandis*, *L.B. v. Belgium*, no. 22831/08, § 97, 2 October 2012).

88. The applicant's admission to the prison hospital brought about no change to his treatment strategy: he was not seen by a cardiologist and when the hospital personnel put forward a more or less long-term strategy for the evaluation and management of the applicant's health problems, their recommendations were not followed through (see paragraph 30 above). The Court also notes that, having opted to treat the applicant in the medical unit of the correctional colony following further acute episodes of illness, the colony administration chose to treat him there in the knowledge that the colony did not employ a cardiologist or a resuscitation specialist and also did not employ a specialist who could understand the results of the applicant's ECG testing (see paragraph 21 above). Having provided rather symptomatic treatment for his condition to arrest the most acute temporary problems, such as pain or elevated blood pressure, they failed to send the applicant to a cardiologist for an assessment and medical management of his serious condition.

89. The Court also does not lose sight of the fact that the applicant's relatives played a considerable part in ensuring that the applicant received medicines purchased by them. In this respect, the Court would also draw attention to the fact that more than three years after the applicant was first taken into custody, the deputy head of the Kursk Regional Service for the Execution of Sentences in his letter of 1 July 2009 informed the applicant about the possibility existing under Russian law for applicant to pay himself for a consultation with a cardiologist (see paragraph 34 above). Without going into the details of the applicant's financial situation, the Court notes that the Government did not argue that a consultation with a cardiologist

was not available free of charge to the general population, that the State was unable to bear the costs of such consultations by an inmate in a situation like the applicant's, or that it was impossible to organise a cardiologic consultation of the applicant in a civilian hospital, if not on a regular basis, at least on those occasions when his treatment regimen needed to be adjusted.

90. In the light of the considerations mentioned above, the Court is of the view that the Russian authorities failed to effectively manage the applicant's health. This conclusion becomes even more salient in view of the decision issued by the Kursk Leninsky District Court on 29 March 2012. Having examined the authorities' petition for the applicant's release, the District Court concluded that his condition was particularly serious and that he was not able to receive in detention the medical care he needed (see paragraph 35 above). This supports the Court's conclusion that the Russian authorities did not comply with their responsibility to ensure the provision of adequate medical treatment to the applicant for more than six years of his detention prior to his release in April 2012.

91. The Court thus finds that the applicant did not receive the required medical treatment for his conditions while in detention. It believes that, as a result of this lack of adequate medical treatment, the applicant has been exposed to prolonged mental and physical suffering diminishing his human dignity. The authorities' failure to provide the applicant with the medical care he needed thus amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

95. The applicant claimed 1,750 euros (EUR) in respect of pecuniary damage and EUR 186,000 in respect of non-pecuniary damage.

96. The Government submitted that the claims for pecuniary damage were unsupported by evidence and the claims for non-pecuniary damage were excessive.

97. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it observes that it has found a violation of Article 3 in the present case,. In these circumstances, it considers that the applicant's suffering and frustration 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.

B. Costs and expenses

98. The applicant did not seek reimbursement of costs and expenses, and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

99. 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

1. *Declares* unanimously the complaint concerning the lack of adequate medical care admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been a violation of Article 3 of the Convention on account of the lack of provision of effective medical assistance to the applicant during his detention;

3. *Holds* by six votes to one
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President