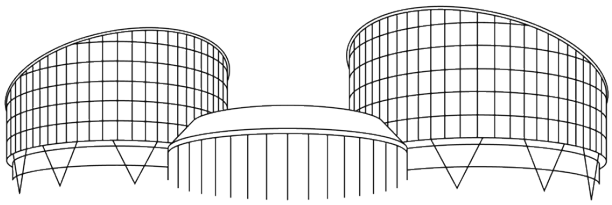

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MKHITARYAN v. RUSSIA

(Application no. 46108/11)

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 Mkhitaryan v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
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. 46108/11) 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 Telman Akopovich Mkhitaryan ("the applicant"), on 25 May 2011. The applicant was represented before the Court by Mr A. Leontyev and Mr V. Cherkasov, lawyers practising in St. Petersburg.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not benefited from adequate medical care in detention, that his pre-trial detention was not warranted and that the authorities had failed to examine speedily his requests for release.

4. On 14 December 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 1947 and lived until his arrest in the city of Velikiy Novgorod, Novgorod Region.

A. Criminal proceedings against the applicant. His arrest and detention

6. On 30 October 2008 criminal proceedings were instituted against the applicant. The prosecution authorities suspected that, having organised a criminal group and made threats of violence, the applicant had committed two counts of aggravated extortion.

7. In July 2009 an investigator issued a bill of indictment and a warrant for the applicant's arrest. The applicant was placed on an international list of wanted persons because the authorities believed that he had left Russia. That assumption was based on the impossibility, on a number of occasions, to summon the applicant to a prosecutor's office. He could not be found at the place of his permanent registration or any other known place of residence.

8. On 4 August 2009 the Novgorod Town Court, in his absence, authorised the applicant's placement in custody on the grounds that the charges against him were very serious and that there was strong reason to believe that he had left his place of residence and fled Russia in 2007 in an attempt to abscond from the investigation and trial. There was evidence that the applicant intended to remain on the run and carefully hid any information which could disclose his whereabouts. The court also noted that several victims and witnesses had complained to the investigating authorities that acquaintances of the applicant had tried to convince them, either by threats or incentives, to make statements in his favour. The applicant's lawyer objected to the decision, arguing that the applicant was undergoing in-patient treatment in Armenia and was not fit to travel to Russia. The decision was upheld on appeal by the Novgorod Regional Court, which found the Town Court's reasoning well-founded.

9. On 27 August 2010, having learnt that the applicant was in Armenia, the deputy Prosecutor General of the Russian Federation dealing with the case sent a letter to the relevant deputy Prosecutor General of Armenia, seeking the applicant's arrest and extradition. Two weeks later, the Armenian authorities granted that request and on 24 September 2010 the applicant was apprehended and placed in the Nubarashen detention facility, where he remained until his extradition to Russia on 22 October 2010.

10. On 30 October 2010, as the applicant was suffering from a serious heart disease and there had been a deterioration in his state of health, he was admitted to the Gaaza Federal prison hospital in the Leningrad Region. Having suffered a stroke in the night of 24 November 2010, the applicant was transferred to the resuscitation unit of the hospital. On the following day, after release from the resuscitation unit, he was served with the bill of indictment in the presence of one of his lawyers.

11. The applicant's lawyers lodged a complaint with the St. Petersburg Oktyabrskiy District Court about the investigator's decision to serve the applicant with the bill of indictment in a hospital in disregard of his poor state of health and his being under the influence of strong sedatives.

12. On 10 December 2010 the District Court dismissed the complaint, finding no evidence that the applicant's defence rights had been violated. The court noted that the applicant's attending doctor had consented to the service of the bill of indictment, considering the applicant's health to be satisfactory, and that a lawyer had been present to assist the applicant when it was served. The decision was upheld on appeal by the St. Petersburg City Court on 14 March 2011.

13. According to the applicant, on 14 December 2010 the Erebuni and Nubarashen District Court in the Republic of Armenia declared his detention in Armenia unlawful as it had been authorised by an official who did not have the power to do so.

14. On 17 December 2010 the Novgorod Town Court granted the investigator's request for the extension of the applicant's detention until 22 February 2011. The District Court's reasoning was as follows:

> "The court accepts the investigator's arguments that the investigation in the present case is particularly complicated. Two particularly serious crimes were committed in 1998 and 2004. The law-enforcement authorities only learned about them in 2008. Two persons are charged with criminal offences within this criminal case. The case file has 40 volumes.
>
> [The applicant] is charged with two intentional particularly serious criminal offences which were directed against property [and] committed by a group of persons in concert; it is clear that the criminal offences present a serious danger to society. The Criminal Code of the Russian Federation lays down a maximum penalty of fifteen years' imprisonment for each of the crimes.
>
> [The applicant] has not been convicted before and is not charged with an administrative offence. He is not registered as a psychiatric patient or a drug addict.
>
> The following grounds were taken into account when detention was chosen as a preventive measure for [the applicant]: sufficient information to enable a conclusion that [the applicant] is liable to abscond from the investigation and trial and to interfere with the proceedings by tampering with witnesses [and] victims.
>
> Those circumstances, as listed in Article 97 of the Russian Code of Criminal Procedure, have not changed.

The case-file materials contain information indicating that [the applicant] was placed on a wanted persons' list in the course of the pre-trial investigation – first, the federal warrant for his arrest [was issued], and then an international warrant [followed]; [he] did not respond to the investigator's summonses to take part in investigative actions; for a long period of time [he] did not live at the place of his registration; he has a travel passport and also has immovable property in foreign countries; on a number of occasions between 2007 and 2009 he crossed the border out of the Russian Federation. The court therefore has sufficient evidence to conclude that, if released, [the applicant] may leave the territory of the Russian Federation, including by going to countries with which Russia has no visa policy. In these circumstances, a more lenient preventive measure cannot ensure [the applicant's] participation in the criminal proceedings, also taking into account the gravity of the charges and the amount of damage caused by the crimes. The above-mentioned circumstances are confirmed by copies of the warrant for [the applicant's] arrest, copies of the investigator's summonses and records, copies of responses from the migration service and the airline companies 'Armavia' and 'Aeroflot', and also by certificates in reply to orders of the investigator.

Moreover, the case-file materials contain sufficient evidence showing that if [the applicant's] preventive measure is revoked or changed to a more lenient one, he will be able to interfere with the proceedings in the case by tampering with witnesses and victims either through his own actions or with the help of intermediaries. This conclusion is confirmed by the interview records [of two victims and two witnesses]; during [their questioning] the above-mentioned persons stated that [the applicant] had exerted pressure on them or that there was a possibility that such pressure would be applied by [the applicant] or individuals from his close circle.

[The applicant] suffers from a number of illnesses; [this fact] is confirmed by medical documents. At the same time, the court has established that the applicant received and continues receiving the necessary medical and consultative assistance in detention.

The defence did not present any evidence showing that [the applicant's] state of health precludes his detention. It follows that the fact that [the applicant] suffers from a number of illnesses cannot be taken as an absolute ground calling for a change of the preventive measure to a more lenient one. The court does not take into account the information on [the applicant's] state of health contained in the response by the cardiologist Mr B. from the State Mechnikov Medical Academy in St. Petersburg to a lawyer's letter of 7 December 2010 because this medical specialist is not [the applicant's] attending doctor, he does not [examine] the applicant on a daily basis but only provides consultative services. Moreover, [the applicant's] attending doctor, when questioned by the investigators, did not indicate that there was a risk to [the applicant's] life; to the contrary, he explained that [the applicant] was being provided with the necessary medical assistance and his numerous complaints about the state of his health were connected to his psychological and emotional condition.

The court does not see any grounds to change the preventive measure [applied to the applicant] ... to a more lenient one, including bail, because such a lenient measure cannot comply with the purposes of the criminal proceedings in the present case, in particular it will not prevent the possibility of witness tampering, which [the applicant] is liable to do if released, and will not preclude his absconding.

> The measure chosen for [the applicant] corresponds to the gravity of the charges, his personality, his behaviour before and during the criminal proceedings, and the seriousness of the penalty which [he may face]."

15. The applicant's lawyers appealed, arguing, among other things, that the applicant was seriously ill and his health was rapidly deteriorating in the conditions of the detention facility and in the absence of adequate medical care.

16. On 11 January 2011 the Novgorod Regional Court upheld the decision of 17 December 2010, endorsing the Town Court's reasoning.

17. On 18 February 2011 the Novgorod Town Court again extended the applicant's detention, until 24 April 2011. The Town Court's reasoning was similar to that given in its previous detention order of 17 December 2010. The new extension decision, however, was based on additional evidence which, in the Town Court's opinion, confirmed the reasonable suspicion that the applicant was liable to abscond. In particular, the Town Court noted that the case-file materials showed that the applicant, acting through intermediaries, had taken steps to transfer title to his property to other people. The Town Court also dismissed the lawyers' arguments pertaining to the state of the applicant's health, finding no evidence in support of the allegation that his life and health were at imminent risk in view of his continued detention in an ordinary detention facility or prison hospital. The applicant was absent from the hearing because a medical commission comprising three doctors from the Gaaza prison hospital had found him unfit to participate.

18. That detention order was upheld on appeal by the Novgorod Regional Court on 3 March 2011. The Regional Court also supported the Town Court's conclusion that the applicant's state of health was not such as to interfere with his further detention.

19. On 22 April 2011 another extension order was issued by the Novgorod Town Court. The reasoning was identical to that given in the previous detention decisions. The detention was extended until 24 July 2011.

20. The Novgorod Regional Court authorised further extensions of the applicant's detention on 22 July and 22 August 2011. Each time it relied on the gravity of the charges against the applicant and his liability to abscond and obstruct justice. The Town Court interpreted the fact that the applicant had obtained a new travel passport as an indication of his intention to abscond if released. The lawyers' arguments pertaining to the deterioration of the applicant's health were again dismissed as unfounded.

21. The detention order of 22 August 2011 was appealed against by the applicant's lawyers three days later. According to the Government, having received the lawyers' appeal on 25 August 2011 and the prosecutor's comments on 8 September 2011, the Regional Court fixed a hearing for

28 September 2011. That hearing was postponed for two days because the applicant needed time to consult his defence team. On 30 September 2011 the appellate division of the Novgorod Regional Court upheld the detention order.

22. In the meantime, on 19 September 2011 the applicant was served with an amended version of the bill of indictment. On 3 November 2011 the investigation was completed and the applicant was committed to stand trial before the Novgorod Regional Court.

23. Another extension order followed, on 21 November 2011, with the Novgorod Regional Court concluding that the risk of the applicant absconding and interfering with the course of justice was still present and could not be mitigated by the applicant's poor health. The Regional Court interpreted the receipt of a new travel passport by the applicant through a secret arrangement in St. Petersburg and not at the place of his registration in Novgorod, together with his selling or giving away property in Russia, as clear signs of his intention to flee the country if released. Finally, the Regional Court noted that there was no medical evidence that the applicant was not fit to continue being detained.

24. Having received the applicant's lawyers' appeal statement on 29 November 2011 and the prosecutor's submissions in response on 12 December 2012, the appellate division of the Regional Court returned the case file to the lower court, stating that the matter was not ready for consideration. After the case file was returned on 22 December 2011, the appellate division scheduled the hearing for 11 January 2012, when it upheld the detention order of 21 November 2011.

25. A similar conclusion – that no preventive measure other than remand would ensure the applicant's participation in the trial and prevent him from fleeing the country or tampering with witnesses – was reached by the Novgorod Regional Court on 21 February 2012. The applicant's detention was extended until 24 May 2012. The court noted that the authorities had taken promptly all necessary steps to complete the investigation. There were no delays in the proceedings which could be attributed to them. The major stays in the proceedings had occurred in view of the necessity to respect the applicant's right to health and his need to undergo various medical procedures. The applicant and his lawyers had been studying the case file since the end of November 2011 and had read through twenty-five out of its forty volumes. The Regional Court also took into account information received from police security officials pertaining to threats which had been made against investigators and the prosecutor in the applicant's case. An inquiry was opened into the matter.

26. On 16 April 2012, in a lengthy and detailed decision, the appellate division of the Regional Court upheld the detention order of 21 February 2012.

27. The most recent detention order submitted to the Court by the parties was issued on 3 May 2012 by the Novgorod Regional Court. The applicant's detention was extended until 24 August 2012. One of the reasons on which the court based its decision to authorise a further extension was the seriousness of the risk of collusion. In particular, the Regional Court took into consideration that security measures had been taken in respect of the prosecutor in the applicant's case following threats which had been mounted against her by persons who could have been acting in the applicant's interest. The court attributed particular weight to the applicant's previous attempts to influence witnesses and victims and noted that the fact that the applicant had studied their pre-trial statements at the material time could make the witnesses and victims particularly vulnerable to further intimidation or tampering. The Regional Court did not establish any circumstances which could warrant the applicant's release.

28. On 20 June 2012 the appellate division of the Regional Court heard the prosecution and the applicant's lawyers. It rejected the lawyers' argument that the investigating authorities were not efficient, that they had not taken any steps to expedite the proceedings, having deliberately extended the applicant's detention for over two years, and that they had long collected every possible item of evidence, thus excluding any threat of collusion. However, the appellate bench was convinced by the prosecutor's pleadings. In particular, as can be seen from the record of the appeal hearing, the prosecutor informed the court that one of the victims had left the country, fearing for her life and for the safety of her family members. She reminded the court that the victim had testified that the applicant had threatened her and the family member with violence, either personally or through intermediaries. Two other witnesses had testified that they had been approached by four armed men, who had threatened them and urged them to testify in favour of the applicant. One prosecutor involved in the case was under security surveillance following threats against her. According to the prosecutor, the applicant was doing everything possible to delay the trial, having been promised by his lawyers a judgment of the European Court by July 2012. He, a Russian national who had spent the major part of his life in Russia, had summoned an Armenian interpreter and forced the investigator to read him documents from the case-file while the interpreter gave a simultaneous translation. The applicant had refused to sign a form confirming that he had completed his study of the case-file and his preparation for the trial. The prosecutor concluded by citing medical records which showed that during the entire period of the applicant's detention following his receiving second-degree disability status, his condition had not deteriorated.

29. Despite the applicant's lawyers disputing every argument raised by the prosecutor, as well as the reasoning of the detention order, the appellate division upheld the order, being entirely convinced by its reasoning. As

follows from materials available to the Court, the applicant is still detained on remand and the criminal case against him is still pending before the trial court.

B. Quality of medical care afforded to the applicant

30. Both parties provided the Court with an extensive medical file, put together after his arrest and including expert reports, opinions by various medical specialists and medical certificates. The file shows that the applicant suffers from coronary disease accompanied by severe stenocardia, arterial hypertension, blood circulation deficiency, disturbance of the blood supply to the brain, chronic encephalopathy, and post-ischemic stroke symptoms.

31. Following the applicant's extradition from Armenia, on 30 October 2010 he was admitted to the Gaaza prison hospital on account of his acute heart condition. He was examined by the prison physician on duty, who recorded a further deterioration in his condition. The applicant signed a consent form stating that he had been informed of the state of his health, his illness, his diagnosis, the treatment methods and the risks he faced with the chosen type of treatment. He consented to any type of medical procedure made necessary by his condition. On a number of further occasions he confirmed, in writing, his consent to any medical procedure doctors considered necessary for his condition. The applicant was provided with urgent assistance. He remained in the hospital for intensive cardiovascular treatment, and also underwent a large number of tests, including frequent clinical blood testing, ultrasound examinations and electrocardiogram testing (ECG testing).

32. After the applicant suffered a stroke, he applied to the head of the Gaaza hospital asking to undergo a complex medical examination to determine the degree of his disability. That request was granted, as well as his request for an examination by a cardiologist, Mr B., from the State Mechnikov Medical Academy. The examination was performed on 18 November 2010.

33. The records drawn up at that time showed a long list of medicines which had been administered to the applicant. The hospital also allowed medicines which had been brought for the applicant by his relatives. The records meticulously recorded the schedule and dose for every medicine taken by the applicant. They also showed that he was attended on by prison doctors daily, frequently several times per day, and was seen by various medical specialists, including a cardiologist, a neurologist and resuscitation specialist; his blood pressure and temperature were measured every morning and evening. His complaints, including those which related to the refusal to take certain medicines, were listened to, recorded and addressed. The applicant was also systematically subjected to ECG testing, the results of

which did not show any negative dynamics. The medical specialists who had regularly examined the applicant noted that his condition was "relatively satisfactory" and that he did not need any therapy in addition to that which he was already receiving.

34. On 30 November 2010 cardiologist B. from the State Mechnikov Medical Academy issued his report following an examination of the applicant. He confirmed the applicant's diagnosis, noting that, given the risk of further cardiovascular complications, the applicant's condition "absolutely called for another diagnostic coronary angiography followed by a consultation with a cardiologist and a heart surgeon to develop a further treatment plan and to choose a method of myocardial revascularisation". Doctor B. also stated that the applicant required permanent active supervision by a cardiologist and another consultation with a neurologist to adjust the therapy and to determine whether it was necessary to perform a magnetic resonance tomography (MRT) of the brain and a duplex scan of the brachial arteries. Doctor B. compiled a list of medicines which were to be included in the applicant's therapy. According to the same report, the applicant received all of them.

35. Another examination of the applicant by cardiologist B. took place on 3 December 2010. The doctor's only recommendation was to continue regular medical supervision and to limit stressful situations which could affect the applicant's emotional state.

36. In addition to being monitored by prison medical personnel, the applicant continued being regularly seen by cardiologist B. In December 2010 examinations took place at least once every three or four days. Recommendations by cardiologist B. concerning the drug therapy, various medical tests and supervision by other medical specialists, including a neurologist and a psychiatrist, were closely followed, the one exception being the recommendation of an MRT scan. Following a joint examination of the applicant on 24 December 2010, the head of the medical department of the prison hospital and cardiologist B. noted in the applicant's medical record that his state of health precluded his participation in investigative actions. A medical commission comprising a number of prison doctors issued a report on 28 December 2010 confirming that the applicant's condition remained relatively stable and did not exhibit any positive changes despite the treatment he had received in the hospital. The commission recommended continuing with the intensive therapy. Two days later cardiologist B. performed another examination of the applicant. Although noting no positive dynamic in his condition, he nevertheless stressed that consultations with the head of the Therapeutic Department of the State Mechnikov Medical Academy had confirmed the appropriateness of the therapy chosen for and administered to the applicant.

37. Cardiologist B. continued seeing the applicant regularly in January 2011, each time noting that the patient had received the prescribed therapy

in full. He addressed the applicant's complaints by amending the chemotherapy regimen or recommending consultations by other medical specialists. The applicant was examined by a surgeon and neurologist upon the recommendation of cardiologist B. The only recommendation which was not immediately complied with was that of a diagnostic coronary angiography to determine whether there was any possibility that the applicant's coronary disease could be treated by surgery. That recommendation was subsequently repeated by the head of the medical department of the prison hospital.

38. On 1 February 2011 doctor B., having studied the results of the coronary angiography, which, as appears from the parties' submissions, was performed in January 2011, and noting a deterioration in the applicant's state of health, made the following entry in his medical record:

> "... at the material time there is a very high risk of myocardial infarction and a negative outcome to the course of the illness. [The applicant] needs in-patient treatment in a specialised cardiac hospital".

Having prescribed a long list of medicines for the applicant, doctor B. also noted that his participation in investigative actions was "undesirable".

39. Three days later, the director of the Gaaza prison hospital dismissed a request by the applicant's lawyers for a medical examination of the applicant to identify whether his health was compatible with the conditions of the detention facility. The director's report, in so far as relevant, reads as follows:

> "[The applicant] has been diagnosed with:
>
> coronary disease; atherosclerosis of the coronary and cerebral arteries; atherosclerotic cardiosclerosis; stenocardia ...; third-degree essential hypertension; third-degree arterial hypertension ... a condition resulting from the placement of a stent in the circumflex branch of the left coronary artery in 2010; cerebrovascular disease; the consequences of an acute disturbance of the blood supply to the brain in 2009 in the form of left-sided hemiparesis; second or third-degree encephalopathy.
>
> It follows that the [applicant's] diagnosis does not fall into the category of severe illnesses which prevent the detention of suspects or accused persons established by Government Decree no. 3 of 14 January 2011 'On Medical Examinations of Suspects and Persons Accused of Criminal offences'."

40. In February 2011 the applicant continued to be attended on by cardiologist B. Examinations took place at least once every four days. The results of these consultations were similar. Doctor B. noted a negative dynamic in the applicant's condition, informed the prison authorities of a possible negative outcome of the situation, including the applicant's death, and recommended his transfer to a specialised cardiac hospital for high-tech medical assistance. While the applicant's transfer to a cardiac clinic was not carried out, the remaining recommendations by the attending cardiologist were followed through.

41. On 15 February 2011 a forensic medical commission determined that the applicant was suffering from a second-degree disability. On the following day, on the order of the head of the Service of Execution of Sentences of the St. Petersburg and Leningrad Region ("the Execution Service"), the applicant was subjected to a medical examination in the presence of a member of the St. Petersburg Public Review Board in the Sphere of Human Rights Protection, an assistant to the head of the Execution Service supervising human rights matters in detention facilities, the head of detention facility no. 5, doctors from the prison hospital, doctor B., and the applicant's lawyers.

The relevant part of the expert report issued upon the medical examination of the applicant on 16 February 2011 reads as follows:

> "Following the medical examination the medical commission established that [the applicant] suffers from a chronic heart illness with blood circulatory deficiency, complications and permanent impairment of bodily functions leading to substantial limits on vital functions and requiring lengthy treatment in the setting of a specialised cardiac medical facility. This type of illness is included in the list of severe illnesses which prevent the detention of suspects or persons accused of criminal offences".

42. In March 2011 the applicant continued to be under close medical supervision by the prison personnel, with a regular schedule of examinations by cardiologist B. being maintained. An examination by a neurologist on 18 March 2011 led to a recommendation to call a council of neurosurgeons to determine whether it was necessary to perform surgery given the failure of conservative therapy. The applicant continued to complain of severe chest pain and headache, particularly after participating in investigative actions. Doctors also recorded high blood pressure, dizziness and shortness of breath after physical exercise. On 30 March 2011, after another spate of complaints by the applicant, cardiologist B. again recommended a diagnostic coronary angiography to determine whether it was necessary for the applicant to undergo surgery, and concluded that the applicant's participation in investigative actions was "extremely undesirable". A neurosurgeon who saw the applicant on the following day recommended an MRT scan to finally settle the issue of surgery.

43. After regularly observing the applicant in April and May 2011, the cardiologist and neurologist repeated their recommendations for an urgent coronary angiography and an MRT scan of the lumbosacral spine to decide whether the applicant's condition required immediate surgery. The doctors also forbade his participation in investigative actions, on account of the extremely high risk of the development of complications in his coronary disease. The prison hospital doctors issued a report noting that despite the treatment the applicant had received, he continued to suffer from serious angina pectoris attacks even while resting, as well as during minor physical exercise. The applicant continued to complain about heart pains and

headache, dizziness and fatigue. These complaints, however, led to no or very slight amendments in the applicant's chemotherapy regimen.

44. On 20 May 2011 professor M., a doctor of medicine, examined the applicant and noted his complaints of constant severe chest and heart pain. Although noting that the applicant's condition was relatively stable, professor M. agreed that his health was continuing to deteriorate and the illness to progress. He refused to assess the quality of the therapy administered to the applicant without seeing the results of a coronary angiography, and recommended that the test be performed as soon as possible. At the end of May 2011, cardiologist B. scheduled a long list of procedures for the monitoring of the applicant's health. Every procedure on the list was performed without delay, save for one. Despite the cardiologist's recommendation, repeated in the reports following every examination of the applicant, a coronary angiography had still not yet been performed.

45. Examinations of the applicant by the cardiologist and neurologist in June 2011 led to similar recommendations that a coronary angiography and MRT scan needed to be done. The specialists also continued insisting on the applicant's transfer to a cardiac hospital for specialised treatment. The progress of the applicant's coronary disease did not go without notice by the prison hospital personnel, who recorded and addressed his daily complaints. On a number of occasions the doctors also precluded the applicant from taking part in investigative actions, given the risk to his health flowing from any emotional pressure.

46. On 27 June 2011 the applicant suffered a heart attack and was immediately transferred to the resuscitation unit of the prison hospital, where he was placed on a drip to begin receiving intensive symptomatic therapy. His condition was described as moderately severe. In the evening of the same day a resuscitation specialist noted in the record that the therapy had had a positive effect on the applicant's condition. In the morning of 28 June 2011 he was taken back to the therapeutic department of the hospital, where he was seen by cardiologist B. The doctor compiled a long list of medicines which were to be included in the applicant's regimen, scheduled regular ECG tests and blood pressure monitoring, and forbade any investigative actions involving the applicant's participation.

47. The applicant's daily examinations by prison personnel or cardiologist B. did not reveal any positive changes in his condition. He continued complaining of chest pain, dizziness and headache. Doctors recorded high blood pressure and unstable stenocardia. The daily ECG tests showed that the applicant's health was continuing to deteriorate. The applicant was prescribed bed rest and relieved of any obligation to take part in the investigative actions. On 4 July 2011 cardiologist B., the head of the therapeutic department of the prison hospital, Ms C., and the applicant's attending physician, Ms S., issued a report on the basis of the daily

monitoring and specific tests employed for the assessment of the applicant's condition. The relevant part of the report reads as follows:

> "Taking into account the results of the instrumental examinations; the presence of episodes of stable depression of segment ST during the repeated ECG tests, together with the expressed negative dynamic in February 2011, which remains unchanged according to the daily monitoring in June 2011; the nature of the coronary lesion shown by the results of the coronary angiography; the picture of exertional angina progressing to the fourth functional group and the clinical picture of angina when at rest; and the progress of the chronic heart failure against a background of maximum cardiovascular therapy, the reserves of conservative therapy have been exhausted for the present time.
>
> The patient now faces a very high risk of the development of acute cardiac infarction and a high risk of an unfavourable outcome to his illness, including death. According to the recommendations of the neurologist and neurosurgeon, the patient also needs an MRT scan of his lumbosacral spine to confirm the diagnosis of the formation of a hernia in the lumbosacral spine, in order to develop a further plan of treatment ...
>
> At present the patient has progressive impairment of his bodily functions, leading to significant limitations on his vital activities; [he] needs lengthy in-patient treatment in the setting of a specialised cardiac hospital where he can receive specialised high-tech medical assistance, including coronary angiography and cardiac surgical treatment in the shortest possible period of time".

48. The same routine of daily medical check-ups in response to the applicant's complaints and the negative manifestations of his condition, including extreme instances of hypertension, unstable heart rate, and poor ECG test results, continued throughout July and August 2011. The doctors also introduced tranquilisers into the applicant's regimen as his emotional state was raising serious concerns. While the applicant was provided with every medicine prescribed to him, the doctors, on a number of occasions, reaffirmed the necessity to perform a coronary angiography to determine the proper course of treatment. With the applicant being confined to his bed for the major part of the day, the ban on his participation in the pre-trial investigation was maintained throughout July 2011. A single attempt to lift the ban by authorising a meeting with the investigators in the hospital led to the applicant suffering another hypertension attack. On a number of occasions the attending doctors also described the applicant's condition as severe. In August 2011 investigators invited the applicant to take part in interviews and other investigative actions. Each encounter with the investigators led to the applicant suffering another hypertension attack and tachycardia, which, in their turn, resulted in a doctor's decision to limit such encounters.

49. On 25 August 2011 the applicant was sent to the Mariinskiy hospital in St. Petersburg for an in-depth examination, including a coronary angiography. At the hospital the applicant was examined by a heart surgeon and a radiologist, who gave their recommendations concerning the

chemotherapy regimen and also strongly recommended surgical treatment of the coronary disease, namely, revascularisation of the coronary arteries (coronary artery grafting). Following the applicant's return to the prison hospital, the head of the therapeutic department of the hospital issued a certificate confirming the necessity to urgently transfer the applicant to a specialised clinic for lengthy cardiac and neurological surgical treatment by high-tech methods. She also recommended adjourning any procedural actions involving the applicant's participation, citing a high risk of the development of further cardiac complications.

50. On 6 September 2011 the applicant was examined by a medical commission comprising the vice-chancellor of the St. Petersburg Medical Academy, the director of the clinics attached to the Academy, a deputy head of the therapeutic department of the Academy, a leading cardiologist at the Academy, the head of the second cardiology department of the Academy, the head of the X-ray department, the head of the neurology department, and the applicant's attending doctor. The commission concluded that the applicant's illness did not fall into the category of severe illnesses precluding detention, and it recommended surgery in the form of myocardial revascularisation, and a heavy drug regimen. On 13 September 2011 the applicant was examined by a surgeon, a resuscitation specialist and a physician in response to his complaints of serious heart pain. Noting that the applicant suffered from hypertension, they gave him an injection to lower his blood pressure and noted that he could only be transported in the presence of a cardio-resuscitation unit. On the same day the acting head of the prison hospital, supported by the head of the therapeutic department and the applicant's attending doctor, again cited the necessity to perform urgent cardiac surgery to prevent the development of further complications, including the applicant's death. At the same time, the prison doctors authorised his release from the hospital to detention facility no. 5, where he was to continue with in-patient treatment.

51. In the late evening of 14 September 2011 an ambulance was called to the applicant, who had already been transferred to detention facility no. 5. Emergency doctors diagnosed him with coronary disease, aterosclerotic cardiosclerosis, third-degree essential hypertension and second-degree cerebral claudication. Having provided the applicant with urgent medical assistance, the emergency doctors left the detention facility with assurances that the applicant would remain in the medical unit of the detention facility.

52. In the morning of 20 September 2011 an investigator summoned the applicant for an interview. The applicant did not feel well, complained of severe pain, fatigue, high tension, dizziness and temporary loss of consciousness, and asked for a doctor to be called. After an hour the doctor had still not appeared, so the applicant's lawyers wrote a note to the head of the detention facility seeking the provision of urgent medical services to the applicant.

53. On the basis of various medical reports issued at the beginning of September 2011, and citing the urgent necessity to perform surgery to prevent the risk to the applicant's life and limb, the applicant's lawyers sent a complaint to the head of the Federal Service for the Execution of Sentences, seeking the applicant's transfer to the prison hospital. They argued that detention facility no. 5 was not equipped to provide the applicant with the requisite medical care, that the prison doctors did not have adequate qualifications, that emergency doctors had not been called to the facility, and that the applicant had been forced to participate in investigative actions despite his extremely poor health. Similar complaints were sent to various prosecution officials. The lawyers attached copies of records and certificates issued by various doctors from civilian hospital recommending staying the applicant's participation in the criminal proceedings in view of his extremely fragile health and the fact that he was being administered sedative medicines influencing his physical and mental condition. Citing the medical opinions, the lawyers insisted that the applicant's condition was likely to deteriorate under stress, including by possibly leading to the applicant's death.

54. On 23 November 2011 the applicant was again transferred to the Gaaza prison hospital, where he remained until 16 December 2011. Having taken note of the applicant's complaints of headache, dizziness, a pressing chest pain, shortness of breath, and unstable heart rate, the prison physicians concluded that his condition was relatively satisfactory. However, after comparing the results of the ECG testing in September 2011 and a test performed in November 2011, the cardiologist noted a negative dynamic in the applicant's condition and stressed that an urgent examination by a neurologist and a surgeon was absolutely necessary. He also drew up a long list of medicines to be taken by the applicant. The applicant's condition was assessed as moderately severe and the doctors scheduled various tests, including an MRT scan of the brain and the lumbosacral spine, ECG tests, and an ultrasound scan of the heart, to determine the proper course of therapy. After the recommendation for the tests and procedures had been fully complied with, the head of the therapeutic department of the hospital authorised the applicant's release from the hospital for in-patient treatment in the setting of an ordinary detention facility.

55. Twelve days later the applicant was sent back to the Gaaza prison hospital. On admission to the hospital the applicant signed a memo indicating his commitment to undergo any medical procedure that the doctors considered necessary to maintain his health. According to the medical record drawn up on the basis of the new round of tests performed on the applicant in the hospital, his condition had not changed. He received similar drug therapy and remained under daily medical monitoring, including ECG testing. Doctors continued recording the applicant's complaints and noted the failure of the chemotherapy in respect of his

extreme case of hypertension and stenocardia. In January 2012 the cardiologist recorded a negative dynamic in the applicant's state of health on the basis of the ECG tests results. He also noted a significant increase in ischemic episodes, as well as an increase in their length. Convinced that the applicant's heart disease was progressing, the cardiologist persistently cited the urgent necessity to perform a revascularisation of the coronary arteries. He also indicated that the applicant's drug regimen was pushed to its maximum capacity, with the drugs being prescribed at maximum doses of tolerance. On 16 February 2012 a forensic medical commission confirmed that applicant should be classed as category 2 disabled. On the same day the applicant was sent back to detention facility no. 5, where he was to receive in-patient treatment and remain under close supervision by the personnel of the medical unit.

56. According to a letter of the head of the medical unit sent to the applicant's lawyers at the end of April 2012, the applicant's condition was considered to be "close to satisfactory, stable", and he was receiving treatment. However, the head of the unit refused to authorise the applicant's examination by a cardiologist, stating that it was for the investigators to determine the matter. In response to the lawyers' complaints about inadequate medical assistance in detention, including the investigators' refusals to authorise the applicant's examination by a cardiologist, the head of the North-Western Department of the Prosecutor General's office sent a letter stating that an investigator was not competent to deal with any matters pertaining to the medical assistance of a detainee.

57. The applicant provided the Court with a written opinion by cardiologist B., who was his attending doctor from October 2010 until March 2012, when he was no longer allowed access to the applicant in detention facility no. 5. Basing his conclusions on the results of the applicant's daily check-ups and the various medical tests and procedures to which he had been subjected since his arrest, cardiologist B. stated as follows:

> "... I consider myself competent to issue the following opinion about the patient. The patient [the applicant] has a multifocal coronary lesion and an extremely high coronary risk, taking into account the stress echocardiography testing presented to me. The patient has absolute indicators calling for a surgical revascularisation of the coronary arteries - coronary artery grafting. As a cardiologist who has been seeing the patient since October 2010, who has assessed the clinical picture and the results of clinical laboratory and instrumental tests in their dynamics (repeated daily monitoring of ECG tests, the coronary angiography of 25 August 2011, echocardiography, [and] stress echocardiography), I can state unequivocally that the diagnosis presented has been fully confirmed. According to national and European recommendations, the lesion affecting more than 50% of the trunk of the left coronary artery, combined with the three arterial coronary atherosclerotic lesions, serve as the indication for urgent cardiac surgery – coronary artery grafting. It is also necessary to stress that the question of cardiac surgery, given the seriousness of the coronary lesions, should have been determined as soon as the results of the diagnostic coronary angiography were

received and the consultation with the heart surgeon had taken place in August 2011! In addition, given the results of the cardiac angiography, it may be stated that further conservative treatment of [the applicant] will not be effective, will certainly lead to the patient becoming fully disabled, and to the development of an acute cardiac infarction and complications in the course of the heart ischemic disease, including sudden coronary death. Cardiac surgery will unequivocally lead to the improvement of the patient's condition, the improvement of his life expectancy [and] will sufficiently decrease his need for drug therapy".

II. RELEVANT DOMESTIC LAW

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

58. 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.

59. 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.

60. 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.

61. 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.

62. 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 governing detention

63. The Russian legal regulations for 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")

64. 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")

65. 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

66. The applicant complained that was unable to obtain effective medical care in detention, which led to a serious deterioration in his condition and 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

67. Having provided a detailed account of the medical services afforded to the applicant in detention, the Government argued that the assistance was timeous and effective, and fully covered the applicant's health needs. The facilities where the applicant had been or continued to be detained had the necessary staff and resources, including medicines and medical equipment, to provide the most effective medical care. In particular, the Government stressed that the applicant had been given every medicine prescribed for him. However, they acknowledged that in August 2011 the medical specialists from civil hospitals had already recommended surgery in the form of coronary artery grafting. The Government also confirmed that since declaring the applicant disabled in February 2011, on further occasions the medical commissions had not noted any change in his state which would

have allowed the lifting of that diagnosis. The Government, nevertheless, concluded that the applicant's illnesses were chronic and age-related and, therefore, incurable. However, the doctors had been able to obtain the stable remission of the applicant's pathology and his health had become relatively satisfactory.

68. While acknowledging that until March 2012 he had been under the active supervision of a number of medical specialists, including from civil clinics, the applicant nevertheless insisted that the detention authorities had been unable to provide the systematic and regular treatment necessitated by the seriousness of his condition. He cited opinions by various medical experts, including his attending cardiologist, according to which the conservative drug therapy he was being given had long exceeded its capacity and no longer worked, and that he required urgent surgery. The authorities had long disregarded the doctors' warnings that his life was in danger should they fail to comply with the recommendation for surgical treatment. They had not taken any steps to organise surgery and had even cut his contact with the cardiologist, thus limiting his life expectancy even further. He also stressed that his detention in the ordinary detention facility, where his cardiologist was denied the opportunity to examine him, was the most evident example of the ineffectiveness of the assistance, or rather its absence.

B. The Court's assessment

1. Admissibility

69. 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

70. 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).

71. 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).

72. 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)).

73. 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).

74. 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

75. Turning to the circumstances of the present case, the Court observes that less than ten days after his extradition from Armenia, the applicant was transferred to the Gaaza prison hospital in St. Petersburg in view of his serious heart condition and an acute deterioration in his health. Less than two months after his admission to the prison hospital the applicant suffered a stroke and was taken to the resuscitation unit of the hospital (see paragraph 10 above). Having examined the voluminous medical records presented by the parties, the Court takes note of the Russian authorities' efforts to maintain the applicant's health in the first few months of his stay in the prison hospital. Having promptly put forward complex and stable drug therapy as the cornerstone of the long-term management of the applicant's case, the authorities ensured his full compliance with the medication regimen and provided comprehensive evaluation and follow-up. The Court does not lose sight of the number of tests and procedures the applicant was subjected to, or of the fact that an independent medical specialist, a cardiologist from a respected Russian medical facility, was called to assist the prison medical personnel in monitoring the applicant's case. The Court also notes the open and supportive communication between the civilian medical specialists and the administration of the prison hospital during this time, with the former having unlimited access to the patient and the latter complying with the recommendations issued by the civilian doctors. While the applicant's condition did not improve in those months, the suitability of the treatment strategy chosen for the applicant, including the drug regimen, was confirmed by the head of the Therapeutic Department of the State Mechnikov Medical Academy (see paragraph 36 above).

76. The situation, however, started changing for the worse when recommendations to perform complex diagnostic procedures, as well as to transfer the applicant to a specialised cardiac facility, were made by the attending cardiologist. For unknown reasons the prison authorities either disregarded the recommendations (see paragraph 38 above) or substantially delayed their implementation (see paragraphs 42 and 43 above). The Court finds this change in the authorities' approach to be a cause for concern, particularly in that the applicant's health continued to deteriorate and the medical specialists were no longer able to assess the appropriateness of the existing drug therapy for his condition in view of the fact that the prison authorities had failed to comply with the doctors' recommendation to perform a coronary angiography (see paragraphs 44-47 above). The Court is mindful that a further serious deterioration in the applicant's health, which resulted in him being admitted to the resuscitation unit of the hospital, led to

the prison medical staff joining the civilian cardiologist in his fears for the applicant's life (see paragraph 47 above). However, the resulting decision had no more than a declaratory character, having no effect on the quality of the medical care the applicant was afforded, despite the fact that the prison medical authorities acknowledged that the drug therapy was no longer working. From July 2011 the decision calling for surgery was steadily maintained both by the attending civilian cardiologist and the prison hospital doctors (see paragraph 47 above). The urgency of the coronary artery grafting for the applicant was raised on a number of occasions by the head of the therapeutic department of the prison hospital, following the recommendations of the leading medical specialists in the fields of the cardiology and neurology (see paragraphs 49 and 50 above). The necessity for surgical treatment became even more apparent when the doctors imposed a lengthy ban on the applicant's participation in the investigative actions on the ground that even minor emotional disturbance resulted in a further deterioration in his condition. The Court also notes that the applicant signed a number of forms consenting to any form of medical treatment, including surgery, the earliest written consent having been given after his arrest and the most recent in 2012 (see paragraphs 31 and 55 above).

77. Furthermore, despite the medical consensus that the applicant's condition was grave to the point that he could only be transported if accompanied by a cardio-resuscitation unit, in September 2011 he was discharged from the hospital and sent to an ordinary detention facility where he remained for slightly over two months (see paragraphs 50 and 54 above). The Court is not convinced, and the Government did not argue otherwise, that the personnel of the detention facility were equipped to deal with a serious heart patient. The following events – the applicant suffering another heart attack on 14 September 2011 and his readmission to the prison hospital – strengthen the Court in this belief. The subsequent behaviour of the authorities when sending the applicant to the detention facility after a short-term assessment in the prison hospital only to return him to the hospital less than two weeks later is another example of the inadequate management of the applicant's health (see paragraphs 54 and 55 above).

78. The Court is, however, particularly concerned about the applicant's most recent return to the detention facility, despite the doctors' repeated recommendations of urgent surgery in view of the drug regimen having reached its limits in terms of capacity and tolerance. The decision to transfer the applicant was also accompanied by the decision to cut his contact with the cardiologist. The Court has therefore every reason to conclude that the applicant was left without the medical assistance which was vital for his illness (see paragraph 57 above). This fact alone is sufficient for a finding that the authorities have been unable to comply with their responsibility to ensure the provision of adequate medical treatment to the applicant.

79. The Court thus finds that due to the lack, on the authorities' part, of a proper response to the repeated recommendations of an urgent surgery, the applicant does not receive effective medical treatment for his illness while in detention. It believes that, as a result of this lack of adequate medical treatment, the applicant is exposed to prolonged mental and physical suffering 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.

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

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

81. 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 founded 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

82. The Government argued that the Russian courts had authorised the applicant's arrest because they had sufficient reason to believe that he had organised a criminal group with whose assistance he had committed large-scale extortion. The fact that the applicant had fled the country had served as an additional ground warranting the conclusion that he was liable to abscond. The Government further submitted that the applicant's continued detention was the result of the courts' assessment that he was likely to abscond and obstruct justice, given the gravity of the charges against him and his attempts to tamper with witnesses. There was evidence of threats mounted against the victims and witnesses, who were afraid for their lives and the lives of their family members. The applicant had substantial financial resources, including in other countries, and had even obtained a new travel passport in the course of the investigation, by illegal means.

83. The Government further stressed that the length of the pre-trial investigation had been due to the complexity of the case, the necessity to take a large number of investigative steps, and the need to ensure the parties had an opportunity to study the case file. The resistance to the investigation from the applicant's close circle, as well as the remoteness in time of certain criminal acts which the investigators had to look into, undoubtedly complicated their task. Another condition which contributed to the length of

the proceedings was the applicant's state of health. While, in the Government's view, his health did not preclude his detention, the investigators had to take into account the applicant's inability, on health grounds, to participate in the investigation. A large number of procedural actions requiring the applicant's presence had to be adjourned owing to his being unfit to take part in them. According to the Government, the investigators could have already completed the investigation if it had not been for the applicant's absence. At least, they had already performed every action which did not call for his presence. The Government concluded by noting that the authorities had taken effective action in dealing with the case, that there had not been any delays for which they could be held liable, and that the applicant's detention had been based on relevant and sufficient grounds.

84. 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 justice had not been supported by any evidence. The detention orders had been issued as a mere formality and had been identical in wording.

B. The Court's assessment

1. Admissibility

85. 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

86. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *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).

87. 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).

88. 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 requirement of public interest 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

89. Following the applicant's arrest in Armenia on an international search warrant, he was extradited to Russia on 22 October 2010. He has

remained in detention ever since. The period to be taken into consideration has therefore lasted for slightly more than two years.

90. Turning to the circumstances of the present case and assessing the grounds for the applicant's continued 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 the applicant had committed the crimes of which he was accused; the serious nature of the offences in question; and the fact that the applicant would be likely to abscond and pervert the course of justice if released, given the sentence which he faced if found guilty as charged, his personality, his behaviour in the aftermath of the crime and his liability to tamper with witnesses.

91. The Court accepts that the reasonable suspicion that the applicant has committed the offences with which he is charged, being based on cogent evidence, persists. It also agrees that the alleged offences are of a serious nature.

92. As regards the danger of the applicant's absconding, the Court notes that the judicial authorities relied on the likelihood that a severe sentence might be imposed on the applicant, given the serious nature of the offences in 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).

93. 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)). In the present case the national courts also relied on other circumstances, including the fact that the applicant had fled the country in 2007, had taken steps to conceal his trips to Russia, had substantial financial resources, had sold or given away property in the Russian Federation, and had secretly, and in violation of the

established procedure, renewed his travel passport. The Court is satisfied that the totality of those factors, combined with other relevant grounds, provided the domestic courts with an understanding of the pattern of the applicant's behaviour such as to lead to the belief that the risk of his absconding persisted.

94. 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 witnesses. The Court reiterates that, as regards the risk of pressure being brought to bear on witnesses, at the initial stages of the proceedings the judicial authorities cited statements by victims and witnesses who had complained to the investigating authorities about threats mounted against them or incentives offered to them by the applicant's close circle. The authorities also considered that the applicant's substantial financial resources and his ties to the criminal environment would give him an opportunity to influence witnesses and to destroy evidence if released. In these circumstances the Court is prepared to accept that at the initial stage of the proceedings the courts could have validly presumed the existence of a risk 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).

95. It remains to be ascertained whether the risks of the applicant's absconding or his colluding against justice persists throughout the entire period of detention. The Court reiterates the applicant's arguments that the fact that he suffers from a serious heart condition, with his state continuously deteriorating and the necessity for him to remain under constant medical supervision, considerably reduces the risk of his absconding (see the Court's findings in paragraphs 75-80 above). 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.

96. In the decisions extending the detention it was underlined that the fears of collusion were founded on specific instances of threats being made against the victims and witnesses, as well as against the prosecutor in the case. The authorities considered the risk of pressure being brought to bear on the parties to the proceedings to be so real that they placed the prosecutor under security surveillance. The Court is also mindful of the fact that certain witnesses preferred to leave the country, fearing for their life and the lives of their family members. It understands that in such circumstances the authorities considered it necessary to keep the applicant detained in order to prevent him from disrupting the criminal proceedings. It 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 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.

97. 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 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 instance, paragraph 14 above) (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.

98. 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 the 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 which will exclude 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 is charged, reveal that his detention is based on "relevant" and "sufficient" grounds.

99. The Court lastly observes that the proceedings are of considerable complexity, regard being had to the extensive evidentiary proceedings and

the implementation of the special measures required in cases concerning organised crime. The remoteness of the criminal acts in time from the institution of the criminal proceedings was another factor in complicating the investigators' task. Nor does the Court lose sight of the fact that the authorities need 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. In November 2011 the investigation was completed and the applicant's lawyers started studying the case file. It does not escape the Court's attention that that task had not yet been concluded in June 2012. 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 efforts of the authorities to clarify fully the facts in 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). At the same time, keeping in mind that the trial proceedings in the applicant's case are still pending and taking note of his remaining in detention since October 2010, the Court would like to remind the Russian authorities of their responsibility to display particular diligence while continuing dealing with the case.

100. To sum up, having established that the authorities put forward relevant and sufficient reasons to justify the applicant's detention and that they have not yet displayed 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.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

101. The applicant further complained that the appeal court had failed to speedily examine his complaint against the detention orders of 22 August and 21 November 2011. He relied on Article 5 § 4 of the Convention which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

102. The Government argued that the domestic courts had fully complied with their responsibility to speedily examine the applicant's complaints against the detention orders, including those issued on 22 August and 21 November 2011. While acknowledging that it had usually taken the appeal court between eleven and twenty-four days to examine the detention complaints in the applicant's case, the Government stressed that the slightly longer length of the proceedings on the two above-mentioned occasions had been warranted by the complexity of the case, the necessity to obtain the parties' detailed observations on the matter, and the need to take into account the applicant's fragile state.

103. The applicant argued that the appellate court had failed to comply with the "speediness" requirement laid down in Article 5 § 4 of the Convention. In particular, he stressed that while the defence team had prepared and lodged their complaints within the shortest possible time-limit, the courts had unwarrantedly provided the prosecution with an extensive period in which to prepare their response, thus delaying the proceedings by two weeks each time. It had also taken an inexplicably long time to transfer the case file from the lower court to the appellate court, and to schedule the appeal hearing. The applicant insisted that the reasons cited by the Government could not be taken as a ground relieving the authorities of their obligation to speedily decide on the lawfulness of his detention.

B. The Court's assessment

1. Admissibility

104. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds and that they must therefore be declared admissible.

2. Merits

(a) General principles

105. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State

which institutes such a system must in principle accord to detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given "speedily" is undeniably one such guarantee and Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In this context, the Court also observes that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

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

106. The Court notes that it took the appeal court approximately thirty-six and forty-two days, respectively, to examine the applicant's appeals against the detention orders of 22 August and 21 November 2011 (see paragraphs 21, with the appeal having been lodged on 25 August 2011 and the proceedings terminated on 30 September 2011, and 23-24 above, with the appeal statement having been lodged on 29 November 2011 and the proceedings having come to an end on 11 January 2012). There is nothing to suggest that the applicant caused delays in the examination of his appeals against the detention orders. The fact that the appeal court stayed the proceedings for two days to allow the applicant to consult his defence team does not alter this conclusion, given the total length of the appeal proceedings. The Court does not find any reasonable explanation for the court's decisions to grant up to two weeks to the prosecution to prepare responses to the applicant's appeal statements. Nor does it consider that in such an urgent matter as one concerning the right to liberty, the domestic courts acted diligently in taking up to twenty days to schedule the hearing. The Court thus finds that the two periods in question cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially taking into account that their entire duration was attributable to the authorities (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Khudoyorov*, cited above, §§ 198 and 203; and *Rehbock v. Slovenia,* no. 29462/95, §§ 85-86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were not "speedy").

107. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

108. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

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

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

112. The Court observes that it has found violations of Articles 3 and 5 § 4 of the Convention in the present case. In these circumstances, it considers that the applicant's 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.

B. Costs and expenses

113. The applicant also claimed 315,840 Russian roubles (RUB) (approximately 7,900 euros) for the costs and expenses incurred before the Court, of which RUB 300,000 for legal services and RUB 15,840 for postal expenses.

114. The Government submitted that only the claims supported by proper evidence should be accepted.

115. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,000 in respect of all costs and expenses, together with any tax that may be chargeable to the applicant.

C. Default interest

116. 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 absence of effective medical care in detention, the length of the applicant's detention pending trial and the failure of the domestic authorities to decide "speedily" on the lawfulness of his detention admissible and the remainder of the application inadmissible;

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

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

4. *Holds* by six votes to one that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* unanimously
   (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;
      (ii) EUR 7,000 (seven thousand euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable to the applicant on the above amounts;
   (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* 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	Isabelle Berro-Lefèvre
Deputy Registrar	President