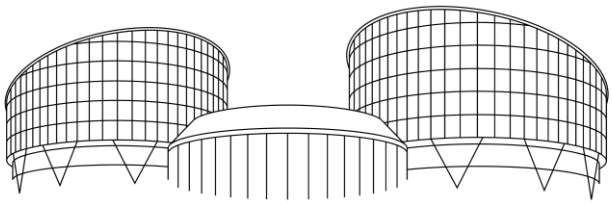

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BUBNOV v. RUSSIA

(Application no. 76317/11)

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 Bubnov v. Russia,

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

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

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 76317/11) 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 Vasiliy Viktorovich Bubnov ("the applicant"), on 17 November 2011.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg. 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 effective medical care in detention and that the authorities' refusal to release him from detention, despite his very poor health, had subjected him to extreme physical and mental suffering.

4. On 28 March 2012 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 1982 and lived in Kaliningrad until his arrest.

A. Criminal proceedings against the applicant

6. On 18 May 2006 the applicant was arrested on suspicion of murder. On 28 November 2006 the Kaliningrad Leningradskiy District Court found him guilty of murder and attempted murder and sentenced him to thirteen years' imprisonment, to be served in a correctional facility operating under a strict regime. With the judgment becoming final, the applicant was sent to a correctional colony in the Kaliningrad Region.

B. The applicant's state of health

7. The parties provided the Court with handwritten and typed versions of the applicant's medical records, showing the history of the diagnosis and development of the applicant's HIV and hepatitis infections, as well as a number of reports assessing the current state of his health. In particular, as is noted in a medical certificate from the Kaliningrad Regional Infectious Diseases Hospital, in December 2005 the applicant underwent testing in a drug clinic, where, in view of his being a drug addict, his blood was taken for testing for hepatitis C and HIV infection. The applicant tested positive for the presence of both viruses. The final diagnosis made on 23 March 2006 in the AIDS Centre where the applicant had sought assistance following the testing was: clinical stage 3 HIV infection, chronic viral hepatitis C with minimal activity, opiate drug addiction. The applicant continued being monitored by the medical staff of the AIDS Centre, with the most recent consultation taking place on 17 April 2006 when the applicant sought the assistance of a psychiatrist. He also gave a blood sample, which was tested for hepatitis B.

8. Following the applicant's admission to detention facility no. 1 on 20 May 2006, a sample of the applicant's blood was taken for testing to establish the presence of any blood-borne infections. The results of the tests confirmed the diagnosis established by the AIDS Centre. On 14 December 2006 the applicant was transferred to detention facility no. 4, which copied the results of the previous testing into the applicant's medical records. Tests performed in January 2007 showed the slight progress of the HIV infection. As is evident from the applicant's medical records, in April 2007 he was

advised to consider the possibility of antiretroviral therapy. The applicant asked to postpone the issue until he had met with his mother. Several days later the head of the medical unit authorised the applicant's transfer to a correctional colony, having considered him fit for the transfer.

9. On arrival at correctional colony no. 13, the applicant immediately expressed his willingness to commence HIV treatment. That request was recorded in his medical records, but the treatment was not initiated. Tests performed in July and August 2007 confirmed the further progress of the HIV infection and elevated liver enzymes. In particular, the tests showed a drop in the CD4 cell count below 498 cells/mm3. It was recommended that the tests be repeated in three months.

10. In the beginning of October 2007 the applicant started complaining of a severe pain in the throat, coughing, dizziness, fatigue and fever. Having been diagnosed with an acute respiratory disease, prison doctors prescribed a number of medicines and bed rest. In the following weeks the applicant's complaints intensified. While the typed version of the applicant's medical records states that he was subjected to another CD4 cell count test on 25 November 2007, the Court was unable to find records of that test in the handwritten version. From the material available to the Court, it appears that the results of the testing appeared in the typed version by mistake, as they duplicated the results of the CD4 test performed exactly a year later, on 25 November 2008 (see below).

11. The applicant continued complaining of a deterioration of his health, having been diagnosed with "localised lymphadenopathy [in the inguinal area] against a background of HIV infection". No treatment was required. The applicant's subsequent complaints, related to an acute respiratory infection and dermatological problems, were promptly and effectively addressed by the medical personnel.

12. Subsequent immunological testing in March 2008 revealed a serious decrease in the CD4 cell count to approximately 290 cells/mm3. The attending physician recommended the commencement of antiretroviral therapy. On 18 April 2008 the applicant commenced the therapy, comprising two medicines: Combivir, a fixed dose combination of the drugs lamivudine (Epivir) and zidovudine (Retrovir), and Stocrin. The drugs were to be taken daily in accordance with a strict schedule to avoid drug resistance. The requirement of strict adherence to the chemotherapy regimen was recorded in the medical report. The applicant was also assigned bed rest.

13. Having continued suffering from dermatological problems and inflammation of an inguinal gland, the applicant received treatment. The recommendation of bed rest was extended until the middle of June 2008.

14. Although the medical records show that the applicant continued receiving the antiretroviral therapy without any interruptions, another immunological test in July 2008 revealed a drop in his CD4 cell count to

below 240 cells/mm3. The antiretroviral therapy continued without any amendments being made.

15. On 25 November 2008 the applicant complained of a loss of appetite, dizziness, and nausea. He was diagnosed with biliary dyskinesia and admitted to the colony medical unit for inpatient treatment. His blood was also taken, with the tests showing a very serious decrease in CD4 cell count. The diagnosis indicated in the medical records was as follows: biliary dyskinesia, clinical stage 4 HIV infection (B2), progressing chronic hepatitis. The applicant was recommended to continue with the same regimen of antiretroviral therapy.

16. Further tests, including a CD4 cell count and plasma viral load, were performed towards the end of February 2009, and showed a slight improvement in the applicant's condition.

17. The applicant continued receiving the same antiretroviral therapy comprised of two drugs. However, in May 2009 the colony medical staff asked for the applicant's assessment in the AIDS Centre, with a view to changing his chemotherapy regimen. The new recommendations received from the AIDS Centre towards the end of August 2009 provided for a new regimen to be followed comprising Epivir, Zerit and Kaletra. With another round of immunological testing showing a slight deterioration of his condition, the applicant immediately started receiving the newly composed therapy.

18. No negative changes were identified in the applicant's immunological status between September 2009 and February 2010. The concomitant health problems pertaining to the applicant's condition were promptly flagged and duly addressed.

19. On 10 March 2010 the applicant was transferred to correctional colony no. 9. Upon his arrival there, a colony doctor issued the following diagnosis: progressing HIV infection in the progressing stage, chronic hepatitis with minimum activity, heroin drug addiction, [possible] polyarthritis. The doctor confirmed that the applicant continued to receive the antiretroviral therapy comprising three drugs and prescribed another medicine. The applicant was assigned bed rest and was checked on by colony doctors several times a week. Immunological and clinical tests performed in April 2010 did not show any negative changes in the applicant's condition. The colony medical staff continued addressing his multiple complaints, including those which related to his psychological state. They promptly responded to any complaints which related to the side-effects of the antiretroviral therapy, subjected the applicant to additional testing, called an infectious diseases specialist to attend on him and adjusted his drug therapy.

20. On 15 April 2010 a medical expert panel declared that the applicant was category 3 disabled.

21. In June 2010 the applicant was sent to the regional prison hospital for an in-depth examination and a possible correction of the therapy regimen. The applicant's diagnosis on admission to the hospital was: HIV infection, progressing against a background of antiretroviral therapy, the presence of secondary illnesses, chronic hepatitis with acute episodes, chronic bronchitis with acute episodes, polyneuropathy with generalised pain in the wrist and ankle joints, and heroin addiction. Having stayed in the hospital for more than a month, the applicant was released in a satisfactory condition for active supervision by the colony medical personnel. The recommendation to continue with the antiretroviral therapy and hepatoprotectors was maintained.

22. Tests performed in August 2010 showed a significant rise in the applicant's CD4 cell count to above 342 cell/mm3. At the same time, the tests revealed a very high viral load.

23. Between August and October 2010 the colony personnel afforded the applicant the usual level of medical attention, responding to his health complaints pertaining to secondary illnesses, authorising additional clinical tests and continuing to maintain the antiretroviral therapy throughout.

24. On 14 October 2010 the applicant was transferred to a prison hospital in colony no. 8. His diagnosis on admission recorded the further progress of the HIV infection to clinical stage 4. Hospital doctors noted that the first task on the agenda was the correction of the applicant's antiretroviral therapy, given the progress of the infection. A large number of tests were carried out in the hospital, including those which aimed at treating the applicant's secondary illnesses. His chemotherapy regimen was expanded to include additional antiviral medicines, hepatoprotectors, vitamins, muscle relaxants, and so on. Having considered that the applicant's condition had stabilised, he was sent back to the correctional colony on 25 November 2010. The records state that he was provided with the necessary amount of antiretroviral drugs to cover the period of his transfer back to the colony.

25. Another set of immunological testing in January 2011 revealed a slight drop in the applicant's CD4 cell count but a significant decrease of the viral load at the same time.

26. Between January and April 2011 the applicant was regularly examined by a number of doctors, including an infectious diseases specialist, a surgeon, a dermatologist, a neurologist, a psychiatrist, and a general physician. The recommendations of those specialists were closely followed through. Clinical and immunological assessments were performed at regular intervals. Given the results of the medical examinations and immunological monitoring, the applicant's condition was considered stable. The doctors also noted that the applicant had a good body mass index score.

27. In April 2011 the applicant was transferred to the prison hospital in correctional colony no. 8, where he has remained ever since. The medical

records provided by the Government indicate that the applicant has been receiving antiretroviral therapy. His drug regimen has been adjusted to take account of his health complaints and the results of regular and extensive clinical, radiological and immunological monitoring. The hospital personnel examine the applicant at least once every three days. Specialists from the AIDS Centre have been invited to assess the applicant in order to determine possible amendments to the antiretroviral therapy. The recommendations of those specialists have been complied with. On 28 March 2012 a forensic medical panel determined that the applicant was category 2 disabled. As is clear from the most recent records dating from April 2012, while certain negative changes in the applicant's condition have been registered on a number of occasions during his stay in the hospital, they were dealt with and have been overcome. The applicant's condition is stable.

C. Proceedings for release on health grounds

28. On 24 June 2011 a medical panel of the prison hospital issued report no. 39-11, recommending the applicant's release on health grounds in line with paragraph 39 of the List of Illnesses Warranting Relief from a Sentence, adopted by a decree of the Government of the Russian Federation on 6 February 2004 (hereinafter – "the List"). The medical panel stressed that the applicant's diagnosis of "progressing HIV infection at clinical stage 4, despite antiretroviral therapy [being] administered; the presence of secondary illnesses which are mainly affecting the central nervous system in the form of encephalopathy and polyneuropathy; chronic hepatitis C and B with acute episodes; accompanying illnesses: chronic bronchitis, bacterial dermatitis on the face, and fungal lesions on the feet" warranted his release.

29. Acting in line with the recommendations of the medical panel, the correctional colony's governor filed an application with the Kaliningrad Tsentralniy District Court seeking the applicant's release. The applicant supported the application, having also argued that he had not been receiving the necessary medical attention in detention, including for his HIV infection.

30. On 8 August 2011 the District Court held a hearing, during which the applicant's attending doctor stated that the hospital was capable of providing the necessary medical assistance, as it had the necessary resources and specialists. However, the doctor was concerned that there was no legal basis for permanently keeping the applicant in the hospital, although he was in need of complex medical care. The doctor also confirmed that the applicant was aggressive, that his behaviour was poorly controlled and that he frequently acted irrationally, with the result that he had been placed under ongoing psychiatric and neurologic assessment.

31. On the same date the District Court dismissed the application for release, having found as follows:

"By virtue of Article 81 § 2 of the Russian Criminal Code a person who, after having committed a crime, contracts a serious illness which precludes his serving a sentence may be released by a court from further punishment.

As noted in report no. 39-11 of the special medical panel of [the prison hospital in correctional colony no. 8] in the Kaliningrad Region, following an examination on 24 June 2011 [the applicant] was diagnosed with progressing HIV infection at clinical stage 4, despite antiretroviral therapy [being] administered; the presence of secondary illnesses which are mainly affecting the central nervous system in the form of encephalopathy and polyneuropathy; chronic hepatitis C and B with acute episodes; accompanying illnesses: chronic bronchitis, bacterial dermatitis on the face, fungal lesions on the feet. According to the same report by the medical panel ... [the applicant] should be granted relief from the sentence in line with paragraph 39 of the List.

At the same time, [while] relief from a sentence in view of an illness is a right [... it is] not [one which gives rise to] an obligation on a court dealing with that issue; the court takes into account not only the presence of the illness included on [the List], but also the manner in which the illness precludes the detainee from serving a sentence, the nature and degree of social dangerousness of the crime, the detainee's ability to improve, his behaviour while serving his sentence, his having a permanent place of residence, close relatives who may wish to take care of the detainee, the term of imprisonment which has already been served and the personal characteristics of the detainee.

In the course of the court proceedings it was established that [the applicant] had committed a particularly serious criminal offence and that he had served less than half of the term of his sentence. [The applicant] has been negatively characterised [by officials] during ... his detention; he has violated the prison rules on a number of occasions, having received thirty-four penalties which have not yet expired. On 15 July 2009 he was declared a "persistent offender" of the established prison rules and was registered as a person prone to provocative behaviour. Having studied those violations, the court considers that they have a persistent character.

According to explanations by doctor K., [the applicant] behaves inadequately and aggressively towards those around him; he does not control his behaviour.

Those circumstances make it impossible for the court to conclude that the applicant has [taken the first] step on the path of improvement; the particular features of his behaviour at the present time do not exclude the possibility of his committing other criminal offences, if he were to be released in view of his illness, thus presenting a danger to others.

The court also takes into account that there are special medical facilities within the prison system; those facilities can accommodate sick persons, including those who present an extreme danger to society when there are grounds to believe that the person, if released, may commit another crime.

As was established, [the applicant] is undergoing inpatient treatment in [the prison hospital in correctional colony no. 8]... where he is receiving the necessary treatment free of charge. That hospital employs an infectious diseases specialist and a neurologist.

> [The applicant's mother] also explained that she intends to help her son to pay for medicines when he requires inpatient treatment.
>
> The court finds that if released [the applicant] will not be able to receive the necessary assistance. Moreover, the opportunity to be admitted to an infectious diseases hospital depends on the availability of places; [in the prison hospital] [the applicant] can receive treatment similar to that which he could receive in an infectious diseases hospital."

32. On 4 October 2011 the Kaliningrad Regional Court upheld the decision of 8 August 2011, giving full support to the District Court's findings.

D. Proceedings concerning the conditions of the applicant's detention

33. In 2011 the applicant lodged an action with the Kaliningrad Tsentralniy District Court, seeking compensation for damage caused by the poor conditions of his detention for seven days in 2002.

34. On 25 March 2011 the District Court partly accepted the claim, awarding the applicant 2,000 Russian roubles (RUB) in compensation. The judgment became final on 20 July 2011, when the Kaliningrad Regional Court upheld it on appeal.

35. In another set of proceedings, the District Court accepted another claim from the applicant regarding his detention for three days in a punishment cell in a temporary detention facility in 2007 and awarded him RUB 3,000. That judgment was also upheld on appeal.

II. RELEVANT DOMESTIC LAW

A. Provisions governing the quality of medical care in detention

36. The relevant provisions of domestic and international law governing the health care of detainees, including those suffering from HIV and viral hepatitis, are set out in the following judgments: *A.B. v. Russia*, no. 1439/06, §§ 77-84, 14 October 2010; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, §§ 60-66 and 73-80, 27 January 2011; and *Pakhomov v. Russia*, no. 44917/08, §§ 33-39 and 42-48, 30 September 2011.

B. Early release on health grounds

37. On 6 February 2004 the Government of the Russian Federation adopted Decree no. 54, establishing the List of Illnesses Warranting Relief

from a Sentence. The list includes secondary diseases or generalised infection caused by the HIV infection.

III. RELEVANT INTERNATIONAL INSTRUMENTS

38. The Recommendations within the HIV/AIDS programme guidelines for Antiretroviral therapy for HIV infection in adults and adolescents issued by the World Health Organization (WHO), following revision in 2006, read, in so far as relevant, as follows:

> "In resource-limited settings the decision to initiate ART [antiretroviral therapy] in adults and adolescents relies on clinical and immunological assessment. In order to facilitate the rapid scale-up of ART programmes with a view to achieving universal access to this therapy, WHO emphasizes the importance of using clinical parameters in deciding when to initiate it. However, it is recognized that the value of clinical staging in deciding when to initiate and monitor ART is improved by additional information on baseline and subsequent (longitudinal) CD4 cell counts.
>
> The process of initiating ART involves assessing patient readiness to commence therapy and an understanding of its implications (lifelong therapy, adherence, toxicities). Access to nutritional and psychosocial support and to family and peer support groups is important when decisions are being made about the initiation of ART...
>
> **4. When to start antiretroviral therapy in adults and adolescents**
>
> The optimum time to commence ART is before patients become unwell or present with their first opportunistic infection. Immunological monitoring (CD4 testing) is the ideal way to approach this situation. A baseline CD4 cell count not only guides the decision on when to initiate ART but is also essential if CD4 counts are to be used to monitor ART. Table 3 summarizes the immunological criteria for the initiation of ART.
>
> **Table 3. CD4 criteria for the initiation of ART in adults and adolescents**

CD4 (cells/mm3)	Treatment recommendation
<200	Treat irrespective of clinical stage [A-III]
200−350	Consider treatment and initiate before CD4 count drops below 200 cells/mm3 [A-III]
>350	Do not initiate treatment [A-III]

> The benchmark threshold marking a substantially increased risk of clinical disease progression is a CD4 cell count of 200 cells/mm. Although it is never too late to initiate ART, patients should preferably begin the therapy before the CD4 cell count drops to or below 200 cells/mm3 [A-III].

> The optimum time to initiate ART with a CD4 cell count of 200−350 cells/mm^3 is unknown.
>
> Patients with CD4 cell counts in this range require regular clinical and immunological evaluation.
>
> The treatment of patients with WHO clinical stage 4 disease should not depend on a CD4 cell count determination: all such patients should initiate ART [A-III]. For WHO clinical stage 3 conditions, a threshold of 350 cells/mm^3 has been identified as a level below which functional immune deficiency is present and ART should be considered."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE QUALITY OF MEDICAL ASSISTANCE

39. The applicant complained that he was unable to receive effective medical care in detention for the very serious infections he was suffering from, 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

40. The Government submitted that the applicant, a person with a long history of injection drug use and suffering from life-threatening infections which had been discovered before his being taken into custody, had benefited from and continued to receive skilled medical care in detention. For years the applicant had received antiretroviral therapy, which had been prescribed as soon as the immunological assessment of his state had called for its introduction. His regimen had also included pathogenetic therapy and symptomatic treatment of secondary illnesses. Despite the treatment he had received, the infection had been progressing. At the same time, the prison medical personnel had taken every possible measure to maintain the applicant's health. At the present time, his condition is stable and he is in drug-induced remission. A complex schedule of medical procedures, tests and examinations had been developed by the hospital personnel to contain the development of the HIV infection and determine a treatment strategy for the viral hepatitis.

41. The applicant maintained his complaints, arguing that he was now suffering an advanced stage of HIV infection – clinical stage 4. He submitted that even adequate medical treatment, including antiretroviral therapy, would offer no prospects of success at that stage and could only therefore be deemed *per se* ineffective. The applicant submitted that he had received no treatment from the date of his arrest until April 2008 and that after the antiretroviral therapy had finally been introduced, treatment had been occasional in nature. He only considered effective the medical services which he had received during his stays in the prison hospital. During the remaining periods, the assistance had been inadequate, as his condition had continued to deteriorate. Relying on the statements made by his attending doctor at the hearing on 8 August 2011, the applicant insisted that he could not receive adequate assistance in detention.

B. The Court's assessment

1. Admissibility

42. 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

43. 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).

44. 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).

45. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most of the cases concerning the detention of persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

46. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006; *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).

47. 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

48. Turning to the facts of the present case, the Court observes that following the testing performed upon the applicant's admission to the temporary detention facility in May 2006, the authorities became aware that

he was suffering from HIV and viral hepatitis. The applicant indicated two specific omissions on the part of the prison medical personnel which had rendered, in his view, their services ineffective and inadequate. In particular, he argued that the authorities had delayed the initiation of antiretroviral therapy and had kept him in ordinary detention facilities instead of a hospital. However, having assessed the evidence, the Court is not convinced that the quality of the medical care provided to the applicant has been inadequate.

49. In particular, the Court considers that the Russian authorities took a timeous decision to initiate antiretroviral therapy for the applicant. It reiterates that a clinical and immunological assessment preceded the commencement of the therapy. The authorities used clinical parameters, and in particular the CD4 cell count results, in deciding when to initiate the treatment. The Court does not agree with the applicant that the decision was belated. It does not escape the Court's attention that the authorities had invited the applicant to consider the possibility of therapy in April 2007 (see paragraph 8 above) but only initiated the ART a year later (see paragraph 12 above). However, the Court interprets the steps taken by the Russian authorities in April 2007 not as a formal decision to start therapy but rather as a measure aimed at assessing the applicant's readiness to commence such therapy and psychologically preparing him for the inevitable necessity to commit to a lifelong highly aggressive and toxic regimen. The Court once again stresses that the Russian authorities commenced the antiretroviral therapy in compliance with the guidelines of the World Health Organization in force at the relevant time and with domestic legal requirements. As soon as the immunological results showed a drop of the CD4 cell count below 290 cells/mm3 in March 2008, the applicant began receiving treatment (see paragraph 12 above).

50. The Court has also been unable to find any serious flaws in the medical care afforded to the applicant after the initiation of the ART. His medical assessment conducted in the detention facilities appears to have fully complied with international standards for HIV treatment in adults. In particular, the Court notes that the applicant was seen without delay by an attending prison doctor, who studied his medical history, recorded complaints, organised meetings with infectious disease specialists and solicited opinions from civilian doctors, in particular, from those at the AIDS Centre. The recommendations of those specialists amending the drug regimen were promptly put into practice. The doctors also examined the feasibility of the concurrent treatment of both the HIV and hepatitis infections, but, having studied the pill burden, drug toxicities and interactions, decided to delay the hepatitis virus therapy. That decision, prompted by the necessity of waiting until after the applicant's immune recovery in order to obtain a better therapy response, cannot be considered unreasonable.

51. The Court further observes that the applicant's being subjected to regular and systematic clinical assessment and monitoring formed part of a comprehensive therapeutic strategy aimed at assessing the efficacy of the antiretroviral therapy, managing or eliminating its side-effects and promptly identifying any treatment failure. It also does not escape the Court's attention that by introducing regular clinical and laboratory testing and putting in place control mechanisms the Russian authorities were able to reinforce the applicant's adherence to the therapy regimen, thus ensuring the fulfilment of one of the most essential parameters in the effectiveness of the treatment. The Court is particularly mindful of the complex task faced by the Russian authorities given the applicant's history of drug addiction.

52. The Court also notes the authorities' efficient response to any other health complaints that the applicant had. His drug therapy was adjusted to take account of his concomitant health problems and psychological issues and to accommodate his personal preferences in terms of medical procedures to be followed and medicines to be taken. The authorities also provided him with adequate counselling and advice. The applicant's secondary illnesses were subsequently assessed and managed as clinically appropriate.

53. Finally, the Court will evaluate the applicant's argument that any medical services were *per se* ineffective, given that he had received them in an ordinary detention facility and had only occasionally been transferred to the prison hospital. In this respect, the Court notes that the applicant was admitted to the prison hospital on a number of occasions, where he underwent in-depth examinations affecting the content of his therapy. Each time the applicant was released from the hospital under the clinical supervision of the medical personnel of the correctional colony, who fully complied with the recommendations of the hospital doctors. In view of its findings concerning the general quality of the medical care afforded to the applicant in detention, the Court does not see any reasons to doubt the decision to release him from the hospital for outpatient treatment. It is also relevant that as soon as his condition called for readmission to the hospital in April 2011, the detention authorities immediately effected his transfer (see paragraph 27 above). The applicant has remained in the hospital ever since.

54. To sum up, the Court considers that the domestic authorities afforded the applicant comprehensive, effective and transparent medical assistance throughout the period of his detention. There has accordingly been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE REFUSAL TO RELEASE THE APPLICANT

55. The applicant further complained of a violation of Article 3 of the Convention in view of the authorities' refusal to release him from detention despite his very poor health. Article 3 was cited above.

A. Submissions by the parties

56. The Government submitted that by virtue of Russian law, an inmate suffering from a very serious illness which precludes his serving a sentence of imprisonment has the right to seek his release from detention. The decision concerning such an application lies with the courts, which have to assess a number of factors while determining the inmate's eligibility for release. In the applicant's case, the courts had taken into account the gravity of the crime of which he had been found guilty, the length of his term of imprisonment and the period which had already been served by the applicant, his behaviour during his serving the sentence, the severity of his illnesses, the conditions of his detention and whether or not the applicant had received proper medical attention. Having considered that the applicant's condition was stable, that he had received adequate medical care in detention, including the fact that the applicant would most probably not benefit from that level of medical care and would not adhere to the antiretroviral therapy if released, the Russian courts had rightfully refused to release him.

57. The applicant argued that the courts' decision dismissing his application for release, supported by the colony administration and the hospital personnel, had been unlawful and unreasonable. Given that he had not received effective medical care, that his condition was life-threatening and that his mother and an NGO had provided assurances that they would assist him in getting treatment after release, the courts had not had any grounds to keep him in detention any longer.

B. The Court's assessment

Admissibility

58. The Court reiterates its settled approach that Article 3 does not entitle a detainee to be released "on compassionate grounds", particularly so when authorities take adequate measures to secure, including by provision of the requisite medical care, his health and well-being (see *Aleksanyan v. Russia*, cited above, § 138, with further references). Taking into account its findings pertaining to the quality of the medial assistance afforded to the

applicant in detention (see paragraph 54 above) and keeping in mind that the applicant's condition has been considered stable, with the Russian authorities effectively addressing any negative changes (see paragraph 27 above), the Court does not see any reasons to depart from that principle.

59. It observes that the Russian courts, which are generally better placed to assess the evidence before them, gave due consideration and weighed various factors affecting the applicant's right to early release, such as the nature of the offence, time served, genuine remorse, his behaviour while serving the sentence and whether continued detention was necessary for retribution and deterrence. They also assessed the state of the applicant's health, the quality of medical services he was receiving in detention and the prospect of his receiving the necessary medical care if released. Having balanced all those considerations of progress, rehabilitation, remorse, and so on, the Russian courts concluded that the applicant's release was unwarranted (see paragraph 31 above). The Court sees no reason to conclude otherwise.

60. In conclusion, the Court accepts that the applicant's medical condition might have made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear. However, on the basis of the evidence before it and assessing the relevant facts as a whole, the Court does not find it established that the applicant was subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3 of the Convention (see, for similar reasoning, *Stoyan Mitev v. Bulgaria*, no. 60922/00, § 73, 7 January 2010). It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the quality of medical care in detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention on account of the quality of medical services afforded to the applicant in detention;

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

Andre Wampach	Isabelle Berro-Lefèvre
Deputy Registrar	President