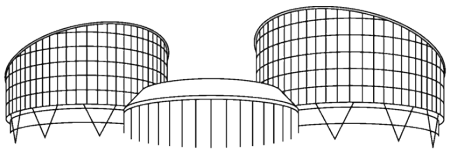

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GORELOV v. RUSSIA

(Application no. 49072/11)

JUDGMENT

STRASBOURG

9 January 2014

FINAL

09/04/2014

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

In the case of Gorelov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 49072/11) 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 Viktor Leonidovich Gorelov ("the applicant"), on 7 June 2011.

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 that he had contracted HIV in custody, that his complaints related to the HIV infection had not been investigated, and that he had not received adequate medical assistance in detention.

4. On 8 October 2012 the application was communicated to the Government. 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 1965 and lived until his arrest in the village of Sushzavod, in the Novosibirsk Region. He is serving a sentence in a correctional colony in the town of Raisino, in the Novosibirsk Region.

6. Arrested in August 2007 on suspicion of aggravated robbery, the applicant was convicted on 28 January 2008 and sentenced to nine years and

three months' imprisonment. On 23 November 2011 the applicant was also convicted of aggravated fraud and sentenced to another three years.

A. The applicant's contraction of HIV

7. On 7 February 2011 a blood test revealed that the applicant had contracted HIV. Tests conducted on previous occasions, in particular in 2009 and 2010 when the applicant was transferred to correctional colony no. 13, medical penal facility no. 10 and a temporary detention facility in the town of Barnaul, were all negative.

8. Believing that he had contracted the virus during medical procedures in detention facilities, the applicant lodged an action with the Berdsk Town Court, seeking compensation from the detention facility authorities for causing him to become HIV-positive.

9. On 16 June 2011 the Novosibirsk Regional Court, acting as a court of final instance, disallowed the action, having found that the applicant had not complied with the procedural requirements for lodging it. He did not name a public official who could have been responsible for his having contracted the virus, he did not indicate his home address, he did not pay a court fee, and so on.

10. The applicant sent a complaint to the Investigations Department of the Novosibirsk Region, asking for criminal proceedings to be instituted against detention facility personnel. He argued that he had become HIV-positive as a result of negligence on the part of the prison medical staff.

11. On 5 July 2011 a deputy head of the Department readdressed the complaint to the Novosibirsk Regional Prosecutor.

12. On 13 July 2011 the first deputy prosecutor of the Novosibirsk Region returned the applicant's complaint to the Investigations Department of the Novosibirsk Region, informing it that there were indications of a possible criminal offence and that a thorough inquiry into the matter should be conducted.

13. Ten days later the Investigations Department redirected the applicant's complaint to the head of the Novosibirsk regional police department, seeking an inquiry into the circumstances causing the applicant to become HIV-positive.

14. In March 2012 the applicant received a letter from a Berdsk deputy prosecutor, informing him that his request for institution of criminal proceedings against detention officers had been examined and refused on 18 June 2011. The applicant lodged a claim with the Berdsk Town Court, complaining that the investigating authorities had failed to look closely into what had caused him to contract the virus. On 2 October 2012 the Town Court discontinued the examination of the complaint, noting that on 2 October 2012 the decision of 18 June 2011 had been overturned by the

investigation authorities as premature and a new inquiry had commenced. The outcome of those proceedings is unknown.

15. In December 2012 specialists from the Hygiene and Epidemics Centre of the Federal Service for Execution of Sentences conducted an inquiry for the purpose of establishing the transmission mode of the applicant's HIV infection. They studied the applicant's medical record and interviewed him. Having observed that the applicant had never travelled abroad, had not been a blood, tissue, organ or sperm donor or recipient, had not used drugs, had not had any sexual contacts in detention, and had not suffered from any sexually transmitted diseases apart from the HIV infection, the specialists stated that it was impossible to establish the exact way in which the applicant had contracted the virus. At the same time, they noted that in February 2009 and in 2010 the applicant had undergone invasive medical procedures in penal facilities. Those procedures were performed in response to the applicant's self-harming. In addition, the large number of tattoos on the applicant's body did not escape the attention of the specialists. They described the tattoos as "home-made", and stated that the most recent one had been done in 2008.

B. Quality of medical assistance

16. The applicant submitted that after he had been diagnosed as HIV-positive his treatment had been extremely erratic and insufficient. His antiretroviral therapy included two drugs, Combivir and Stocrin. When the treatment was amended with another drug the applicant's condition deteriorated; he began to experience loss of consciousness, dizziness and nausea. The applicant submitted that the change in the treatment had been authorised by physicians from colony no. 10. An infectious diseases specialist had not been consulted. When he was transferred to colony no. 13 the applicant asked for his previous chemotherapy regime to be reinstated, given the extremely serious side effects he was experiencing following the change in the treatment regime; CD4 cell counts were showing rapid growth in the viral load.

17. The Government provided the Court with a copy of the applicant's medical record drawn up after his detention at the police station in the town of Cherepanovo on 16 August 2007. On the following day a blood test taken for HIV infection was negative. HIV tests on 24 August and 14 December 2007, 25 September 2008 and 26 February 2009 all produced the same result. Each test was preceded by a consultation with a prison doctor. A report was drawn up as a result. The reports showed that the applicant had denied using drugs, having sexual relations, including homosexual sexual contacts, and had had no blood transfusions.

18. On 24 February 2009 the applicant complained to a prison surgeon of severe stomach pain. He explained that on 28 December 2008 he had

swallowed a long nail. An X-ray examination of the applicant's abdominal area showed two metal nails 11.6 and 8 centimetres long respectively. He was immediately admitted to the surgical department of the prison hospital. Subsequent examinations showed no urgent need for surgery; the applicant also refused surgical treatment. After examination and treatment in the hospital the applicant was released on 18 March 2009 with one nail remaining in his body. He was to stay under supervision in the colony medical unit.

19. The applicant underwent clinical blood tests in October 2009. No HIV test was carried out on that occasion.

20. In January 2010 the applicant broke his arm and was treated in the colony medical unit with the assistance of a surgeon from the Ubinsk hospital.

21. On 16 March 2010 the applicant refused to have an HIV test.

22. In early February 2011 the applicant applied for medical assistance, complaining of coughing blood, stomach pain and dizziness. He explained that he had swallowed a ten-centimetre-long metal wire as a way of protesting against the internal rules of the colony. The applicant received treatment and was seen by a surgeon from the Iskitima town central hospital. An X-ray performed several days later showed that the wire had exited the applicant's body. The applicant nevertheless stayed in the hospital for almost a month. A test performed in the hospital on 7 February 2011 showed that the applicant was HIV-positive. Another test on 18 February 2011 confirmed that result.

23. Following the tests the applicant consulted a psychiatrist, who explained to him the nature of the HIV infection and the methods for treating it, and warned him that knowingly transmitting it was a criminal offence. He was also told about the necessity to adhere to the antiretroviral treatment which he had not yet started receiving, and was informed of the negative consequences of stopping the treatment. The doctor also questioned the applicant about how he might have been infected with the virus. The applicant denied having sexual relations and using drugs. The doctor noted the large number of tattoos on his body. The final diagnosis given to the applicant on his release from the hospital on 15 March 2011 was HIV infection in the third stage and sub-clinical form. The doctor recommended clinical blood and urine tests, biochemical blood analysis, CD4 and CD6 cell counts, consultations with an infectious diseases specialist, and close medical outpatient supervision.

24. On 20 April 2011 the applicant cut his left forearm. A prison nurse treated the wound and made an entry in the applicant's medical record noting her suspicion that the applicant had actually bitten his forearm and had broken the vein with his teeth. The applicant continued receiving treatment in the medical unit until the beginning of May 2011.

25. On 30 June 2011 the applicant was seen by a prison doctor, who repeated the recommendations given on 15 March 2011.

26. On 20 July 2011 another blood test confirmed the HIV infection. The applicant also tested positive for hepatitis C.

27. Between July and December 2011 the applicant was seen six times by a prison doctor following complaints of severe headaches, dizziness and nausea. He was treated for arterial hypertension.

28. In December 2011 the applicant was subjected to a number of immunological tests, including a CD4 cell count which showed slightly over 320 cells/mm3. On 21 December 2011 an infectious diseases specialist examined the applicant. Noting a decrease in the CD4 cell count and rapid growth of the viral load, the doctor recommended commencing antiretroviral therapy with Combivir, a fixed-dose combination of the drugs zidovudin (Retrovir), lamivudine (Epivir), and Stocrin (Ephavirenz). Another round of immunological testing was to be performed in a month. The doctor gave extensive information on the treatment, its schedule and its side effects. The applicant was again reminded about the negative consequences of stopping the treatment. The applicant signed a statement recording the main details of that consultation.

29. On 21 December 2011 the applicant started antiretroviral treatment. An immunological test performed on 12 January 2012 showed an increase in the viral load. The Government provided a record of the daily schedule showing the medicines taken by the applicant under the supervision of the prison nurses.

30. In January and February 2012 the applicant was seen at least once every few days by a prison doctor or nurse. In the months that followed regular medical consultations were continued.

31. Between 5 October and 28 November 2012 the applicant was in the clinical treatment ward of the prison hospital. He was given clinical blood and urine tests, visual examinations, biochemical blood analysis, chest X-rays and an electrocardiogram. He continued his chemotherapy regime, comprising antiretroviral drugs, hepatoprotectors, vitamins and antispasmodics. He was released from the hospital under active supervision by doctors from the colony medical unit. Recommendations also included the addition of two drugs, Kaletara and Fosfogliv, to the antiretroviral treatment, and immunological testing every six months.

32. When he returned to the colony the applicant complained to a prison doctor about the side effects of the new drugs, and requested in writing to be placed back on the previous treatment regime. A certificate issued by the colony director on 19 December 2012 showed that the treatment had been and was continuing to be maintained without any interruptions. The certificate also indicated that the applicant’s health had improved as a result of the antiretroviral treatment.

33. It appears from the applicant's submissions that the most recent CD4 cell count was performed in 2013.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND REPORTS

34. The relevant provisions of the domestic and international law on the health care of detainees, including those suffering from HIV, 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.

35. The Russian Criminal Code establishes criminal responsibility for intentional or negligent infliction of serious health damage, with negligent conduct being punishable by up to three years of limitation on liberty, and intentional actions by up to eight years' imprisonment (Articles 111 and 118). However, the infliction of serious health damage by an official as a result of his or her failure to fulfil professional responsibilities constitutes a separate, aggravated criminal offence attracting an increased penalty, with the possibility of sentencing the defendant to imprisonment coupled with a prohibition on holding an official position or engaging in the practice of certain activities (Article 118 § 2). In addition, Article 122 of the Russian Criminal Code sets out responsibility for transmission of HIV infection, including by intentionally putting someone at the risk of contracting HIV (see § 1 of that provision) or by infecting someone with the virus in the course of performing professional duties (see § 2 of that provision). Such actions are punishable by, *inter alia*, up to three years of imprisonment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONTRACTION OF HIV

36. The applicant complained under Articles 2, 3 and 13 of the Convention that he had been infected with HIV as a consequence of negligent actions by the medical staff of detention facilities, and that the authorities had failed to carry out an effective investigation of the incident. The Court will examine the present complaint under Article 2 of the Convention (see *Shchebetov v. Russia*, no. 21731/02, § 39, 10 April 2012, with further references). Article 2, in so far as relevant, reads as follows:

> "1. Everyone's right to life shall be protected by law ..."

A. The parties' submissions

37. Relying on the report issued by the Centre of Hygiene and Epidemics of the Federal Service for Execution of Sentences (see paragraph 15 above), the Government insisted that the applicant's allegation that he had contracted HIV as a consequence of negligence on the part of prison medical staff could not be proven. In particular, they drew the Court's attention to the satisfactory epidemiological situation in the penal institutions of the Novosibirsk Region, where the applicant had been detained. Having listed the various means by which the virus could be transmitted, the Government noted the large number of prison tattoos on the applicant's body, and also reminded the Court that the applicant had committed acts of self-mutilation on a number of occasions. The Government stressed that both the tattoos and the self-inflicted injuries could have been the cause of the infection with HIV. As regards the procedural aspect of Article 2 of the Convention, the Government observed that the applicant had never made a criminal-law complaint against medical staff of the detention facilities in connection with his infection with HIV. The Government therefore concluded that the applicant's allegations that he had been infected by State officials could not be proven "beyond reasonable doubt" and that the authorities had fully complied with their obligation under Article 2 of the Convention to investigate the cause of the applicant's HIV infection.

38. The applicant insisted that the State should bear responsibility for his infection with HIV, as he had remained HIV-negative for more than three years after his arrest. He had only been diagnosed with HIV after he had been subjected to invasive medical procedures in penal facilities. He insisted that he had not used drugs and cited his medical record in support of that statement. He also denied having sexual relations in custody. Having addressed the Government's argument related to his tattoos, the applicant submitted that the tattoos had all been done between 1980 and 1985. He did not have any recent tattoos. He further stressed that that statement could be easily proven, because detention authorities kept a record of inmates' tattoos. On admission to detention facilities inmates were examined and their tattoos were recorded. It would be easy to compare the tattoos which he had with those which had been recorded on his admission to the correctional colony. Moreover, the applicant pointed out that the ink in the tattoos he had was old and fading and that any expert could establish when the tattoos had been made. He finally stressed that he had never shared sharp objects, such as razors, with other inmates.

39. Relying on copies of letters from investigating and prosecuting authorities, the applicant further stressed that he had made a number of complaints about his infection with HIV. Those complaints had either been

met with silence or the authorities had refused to take any steps to inquire into the cause of his infection.

B. The Court's assessment

1. Admissibility

40. 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. It must therefore be declared admissible.

2. Merits

(a) General principles

41. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The Court reiterates that Article 2 does not solely concern deaths resulting from the use of unjustified force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

42. These principles also apply in the sphere of detention. Persons in custody are in a particularly vulnerable position, and the authorities are under an obligation to account for their treatment. The Convention requires the State to protect the health and physical well-being of persons deprived of their liberty, for example by adopting appropriate measures for the protection of their lives and providing them with the requisite medical assistance (see, *inter alia*, *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; and *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V). The Court also reiterates that where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

43. Finally, the Court observes that the aforementioned positive obligations also require an effective independent judicial system to be set up so that any infringement of the right to life or personal integrity can be identified and those responsible held accountable (see, for instance, *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V, and *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I). The Court further reiterates that even if the Convention does not as such guarantee a right to have criminal proceedings instituted against third parties (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I), the effective judicial system required by Article 2 may, and under certain circumstances must, include recourse to the criminal law. The system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. Accordingly, the competent authorities must act with exemplary diligence and promptness, and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system, and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (see *Kats and Others v. Ukraine*, no. 29971/04, § 116, 18 December 2008).

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

(i) Alleged reckless infection with HIV: establishment of the facts

44. The Court observes that following two tests in February 2011 the applicant was diagnosed with HIV (see paragraph 22 above). Given that four previous HIV blood tests performed after his placement in custody in 2007 were negative, the Court finds, and there was no disagreement between the parties, that the infection was acquired in detention. The parties, however, disputed the exact way in which the virus had been transmitted. The Government indicated two possible routes for the HIV transmission: the applicant giving himself a large number of tattoos in detention, and the applicant committing self-mutilating acts which involved, *inter alia*, swallowing sharp objects and cutting his arm. The applicant insisted that the illness was the result of negligence on the part of prison medical staff during invasive medical procedures performed on him. He argued that infected materials or instruments could have been used in those procedures.

45. It appears to be a common point between the parties that the applicant could not have been infected through sexual intercourse or the use of drugs. Neither the applicant's medical records nor any other documents submitted by the parties contained any reference to a history of intravenous drug use by the applicant. Similarly, there was no evidence of sexual contact between the applicant and other inmates. The Government identified the

applicant's tattoos as "home-made", which, as follows from their submissions, meant that the tattoos could have been done in insanitary conditions with infected instruments; they also indicated that his self-inflicted injuries could have been the primary source of the infection. The Court cannot disregard the Government's argument, given that tattooing and acts of self-mutilation both require the skin to be broken or contact with blood and bodily fluids using objects or instruments which may be multiply-used and unsterilised, which in its turn could carry health risks, not excluding infection with HIV. It also bears in mind the finding by the specialists from the Hygiene and Epidemics Centre that the most recent tattoo was done in 2008 (see paragraph 15 above). While the test performed in February 2009 showed that the applicant was HIV-negative, transmission of the virus by the tattooing in 2008 cannot be completely ruled out. The Court notes that a "window" period during which an infected person would not test positive runs from several days to up to six months, depending on the patient's body and the HIV test used. The Court further observes that the applicant refused to have an HIV test in 2010, which could have narrowed the window of uncertainty as to the possible time of his infection. It also observes that the applicant committed two acts of self-mutilation between February 2009, when he still tested HIV-negative, and February 2011, when tests showed that he was infected. While infection on those occasions in the circumstances described by the parties is unlikely, the Court cannot entirely dismiss the Government's argument.

46. At the same time, the Court does not overlook the applicant's arguments that he had not had any tattoos since 1985, and that no infection could have come from his acts of self-mutilation, as he had not used any objects which had previously been in contact with an HIV-positive inmate. The Court also reiterates the applicant's argument, which is unsupported by any evidence but not entirely lacking validity, that the Government did not produce any proof that any of his tattoos were recent. The Government could apparently have provided the Court with a list of the applicant's tattoos, which would have been drawn up each time he was admitted to a detention facility, and compare it to those he has now. They could also have requested an expert opinion to show when the tattoos had been made, on the basis of the colour of the tattoo ink.

47. In this respect, the Court notes that the parties' submissions created a situation of uncertainty. While the State's compliance with its procedural obligation under Article 2 of the Convention will be examined below, the Court would like to stress at this juncture that its inability to draw any conclusion as to the source of the applicant's infection flows primarily from the absence of any answers at the domestic level. In particular, it notes that the national authorities did not attempt to identify precisely how the applicant's infection had been acquired. The authorities did not produce any findings which could have supported or disproved the parties' versions of

the routes by which the infection could have been transmitted. In these circumstances, the Court entertains doubts as to whether the Government can be said to have provided a satisfactory and convincing explanation of the way in which the applicant was infected with HIV, thus placing his life in danger.

48. While noting the Government's failure to corroborate their allegations with any evidence, the Court is also mindful that the applicant's version of events was unreliable and inconsistent. He could not point out any specific incident or identify the period when the infection could have been contracted by him. His complaints were vague and related to the entire period of his detention, as well as to every medical procedure to which he had been subjected by detention authorities.

49. Accordingly, in a situation where the materials in the case file do not provide a sufficient evidential basis to enable the Court to find "beyond reasonable doubt" that the Russian authorities were responsible for the applicant's contraction of the HIV infection, the Court must conclude that there has been no violation of Article 2 of the Convention on account of the authorities' alleged failure to protect the applicant's right to life.

(ii) Alleged inadequacy of the investigation

50. The Court once again reiterates that where lives have been lost or seriously endangered in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are terminated and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII).

51. Turning to the circumstances of the present case, the Court, in the light of the above principles, finds that a procedural obligation arose under Article 2 of the Convention to investigate the circumstances in which the applicant had contracted the HIV infection. Moreover, such an obligation is imposed by the Russian criminal law (see paragraph 35 above).

52. The Court has held on numerous occasions that an obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the applicant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation must be thorough. This means that the authorities must always make a serious attempt to find out what happened, and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the

incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII, and *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006).

53. The Court notes that despite the Government's arguments to the contrary it is convinced that the prosecuting authorities were made sufficiently aware of the applicant's complaint that he had been infected with HIV in detention. The applicant provided the Court with copies of the authorities' letters and decisions in response to his complaints (see paragraphs 10-14 above). It appears from these documents that the applicant's complaint was either forwarded from one official to another or the response was a promise to conduct an inquiry, given that the complaint contained accusations of a criminal offence. In fact, one complaint did result in the opening of an inquiry into the matter. However, the applicant was not given any information on its fate following the overturning of the initial premature decision not to institute criminal proceedings (see paragraph 14 above). In the absence of any information on the steps taken by the Russian investigating authorities, as well as given the Government's denial that such an inquiry had ever taken place, the Court cannot but conclude that the authorities did not carry out an effective, prompt and diligent investigation of the matter.

54. The Court is mindful of the Government's argument that an inquiry into the applicant's allegations was carried out in December 2012 by the Hygiene and Epidemics Centre. Apart from the fact that that inquiry did not produce any answers either, the Court finds that an examination of the applicant's medical record and his questioning by the specialists of the Centre, which was done almost two years after he had been diagnosed with HIV, could not be a substitute for a full criminal-law inquiry into allegations of transmission of a life-threatening infection, such as HIV, resulting from negligent or willful actions on the part of State agents. A criminal-law inquiry could have allowed the assembling of evidence necessary to corroborate the applicant's allegation of negligence on the part of prison medical staff leading to his contracting the virus. The investigating authorities would have had broad legal powers to visit the detention facility, interview detainees, study documents including medical records, obtain statements from prison officials, collect forensic evidence, commission expert reports, and take all other essential steps for the purpose of ascertaining the veracity of the applicant's account. The investigating authorities' role was critical not only to the pursuit of criminal proceedings against the alleged perpetrators of the offence, but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see

Shchebetov v. Russia, no. 21731/02, § 54, 10 April 2012, and *Ismatullayev v. Russia* (dec.), no. 29687/09, §§ 21-29, 6 March 2012).

55. The Court has already indicated that the authorities' failure to investigate the applicant's complaints made it impossible for the Court to establish the facts of the case and to find "beyond reasonable doubt" whether the State should bear responsibility for the applicant's infection. Given the fundamental nature of the right guaranteed by Article 2 of the Convention and the positive obligations and duties which the Convention imposes on the State, including the duty to take practical preventive measures necessary to protect the life and limb of persons who have been deprived of their liberty and to do everything that could reasonably be expected to prevent the occurrence of a foreseeable definite and immediate risk to a prisoner's life and physical integrity, the Court finds that the Russian authorities' failure to promptly and effectively respond to the applicant's complaints runs contrary to the very purpose of the Article 2 guarantees. This is particularly true in a case stemming from a high-risk environment for the rapid spread of HIV infection, as detention facilities have long been considered to be.

56. The Court concludes that the Russian authorities did not carry out a prompt, expeditious and thorough investigation of the applicant's infection with HIV. It accordingly holds that there has been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

57. The applicant complained under Article 3 of the Convention that the authorities had not taken steps to safeguard his health and well-being, having failed to provide him with adequate medical assistance for his HIV infection. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

58. The Government argued that the authorities fully complied with their obligation to provide the applicant with adequate medical assistance. He was under constant medical supervision, was duly tested, and received antiretroviral treatment, which was amended where necessary.

59. Without providing any specific details, the applicant expressed disappointment with the quality of medical services. He argued that he had had to inflict injuries on himself to attract the authorities' attention to his health problems and to force them to commence his treatment. He argued that his health had deteriorated rapidly, that he had not been placed on an enriched diet, and that he was not receiving vitamins.

B. The Court's assessment

1. General principles

60. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

61. 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 may also fall within the prohibition contained in Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

62. In the context of deprivation of liberty, the Court has consistently stressed that to fall under Article 3 the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention (see, *mutatis mutandis*, *Tyrer v. the United Kingdom*, 25 April 1978, § 30, Series A no. 26, and *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161).

63. 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 where 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)).

64. 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; 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 effectively 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).

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

2. Application of the above principles to the present case

66. Turning to the facts of the present case, the Court reiterates that in February 2011 the applicant was diagnosed as HIV-positive. He was immediately placed under clinical supervision, which also included consultations with a psychiatrist. The Court observes that the applicant did not indicate any specific omissions on the part of the prison medical personnel which had rendered their services ineffective or inadequate. He limited his submissions to the general grievance that an HIV-positive inmate should not be treated in the way he had been treated. However, having assessed the evidence, the Court finds the quality of the medical care provided to the applicant to have been adequate.

67. In particular, the material available to the Court shows that the Russian authorities used available means for the correct diagnosis of the applicant's condition, placed the applicant on an antiretroviral treatment regime to fight the HIV infection, and took the necessary steps to control the course of the illness by, *inter alia*, amending the treatment when necessary and admitting the applicant to medical institutions for in-depth examinations. While the Court is concerned that it took the Russian authorities ten months to perform the first CD4 cell count, which is considered one of the major instruments in identifying the proper time for the commencement of treatment, there is no evidence that the clinical staging and assessment of the applicant by prison medical staff were incorrect, or that they delayed the initiation of the antiretroviral treatment. The medical record produced by the Government does not show that the

applicant's clinical status called for his urgent placement on the chemotherapy regime before December 2011, when he started receiving the treatment. The CD4 count test performed in December 2011, which showed slightly over 320 cells/mm3, served as indirect evidence that no delay in the introduction of the antiretroviral treatment had occurred (see paragraph 28 above). The applicant received regular and systematic clinical assessment and monitoring, which formed part of the comprehensive treatment strategy aimed at preventing the deterioration of the applicant's condition. The Court is unable to find any evidence, and the applicant did not argue otherwise, that the recommendations as to the frequency of testing or the permanent character of the antiretroviral treatment were disregarded by the medical staff of the detention facilities.

68. Furthermore, the Court attributes particular weight to the fact that the detention facility authorities not only ensured that the applicant was attended to by doctors, that his complaints were heard, and that he was prescribed courses of medication, but they also created the necessary conditions for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116). The schedule provided by the Government showed that the applicant received the treatment without any interruptions, with the daily intake of the drugs being carried out under the supervision of prison nurses. The Court is satisfied that the Government introduced psychological and control mechanisms, such as consultations with a psychiatrist and supervision by medical staff, to ensure the applicant's adherence to the treatment and compliance with the prescribed drug regime. The Court notes, in particular, that the applicant was offered psychological support and attention and was provided with clear and complete explanations about medical procedures, the desired outcome of the treatment, and the negative effects of interrupting it.

69. The Court also notes that the authorities efficiently addressed any other health grievances that the applicant had. His treatment was adjusted to take account of his concomitant health problems, such as arterial hypertension and psychological issues, as well as his inability to bear the side effects of certain drugs. The Court is mindful that the applicant did not provide any description of his current condition, merely stating that he believed that his health was deteriorating. While the deterioration of health could, in certain cases, be an indication of ineffective medical treatment, in the present case the Court is unable to interpret it as anything but the unfortunate although natural manifestation of the applicant's condition.

70. To sum up, the Court considers that the domestic authorities afforded the applicant comprehensive, effective and transparent medical assistance in detention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. 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 manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 10,000,000 Russian roubles (RUB, approximately 240,000 euros (EUR)) in compensation for non-pecuniary damage.

74. The Government submitted that the sum was excessive. They stressed that should the Court find a violation of the Convention, that finding would in itself be sufficient just satisfaction.

75. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he has sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It further considers that the applicant's suffering and frustration, caused by the authorities' failure to effectively and diligently perform an investigation of his HIV infection, cannot be compensated for by a mere finding of a violation. However, the actual amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 20,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

76. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

77. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the applicant's infection with HIV in detention and the authorities' failure to effectively investigate the incident admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 2 of the Convention on account of the applicant's contraction of the HIV virus in detention;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out a thorough and expeditious investigation of the applicant's complaint concerning his infection with HIV;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President