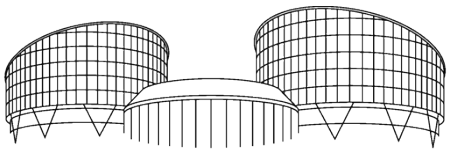

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BUDANOV v. RUSSIA

(Application no. 66583/11)

JUDGMENT

STRASBOURG

9 January 2014

FINAL

02/06/2014

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

In the case of Budanov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Ksenija Turković,
Dmitry Dedov, *judges,*
and 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. 66583/11) 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 Yuriy Vladimirovich Budanov ("the applicant"), on 12 August 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 not received adequate medical assistance in detention.

4. On 28 March 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 1972 and lived until his arrest in the town of Morshansk, Tambov Region.

A. Criminal proceedings against the applicant

6. On 25 October 2004 the applicant was arrested on suspicion of murder committed in a drunken rage. He was placed in temporary detention facility no. IZ-68/2 in Morshansk.

7. On 1 February 2005 the Morshansk District Court found him guilty of murder and sentenced him to ten years' imprisonment. The judgment became final on 10 March 2005 and the applicant was sent to serve his sentence in correctional colony no. 5.

B. The applicant's state of health

8. Medical certificates submitted by the applicant indicate that in 2000 he was admitted to the neurological department of the Morshansk Town hospital for in-patient treatment as he was suffering frequent seizures and loss of consciousness. He was diagnosed with episyndrome with vascular malformation in the right parietal lobe. In 2001 he was again admitted to the hospital with severe headaches and seizures. Doctors confirmed the previous diagnoses of vascular malformation of the brain accompanied by episyndrome, and designated the applicant as category 2 disabled. The applicant was not allowed to perform any physical activity or work other than "light managerial work in a specially designated environment".

9. On admission to detention facility no. IZ-68/2 the applicant complained to a prison doctor of frequent headaches. An examination resulted in his being diagnosed with neurocirculatory dystonia, encephalopathy with complex genesis, and chronic alcoholism. On the following day the applicant was examined by a psychiatrist, who recorded his complaints of regular and lengthy epileptic seizures and prescribed treatment with anticonvulsants. Clinical blood tests and an X-ray examination showed that the applicant was not suffering from any infectious diseases.

10. In December 2004 a prison psychiatrist and medical assistant saw the applicant three times in response to his complaints of insomnia, extreme irritability and disturbed emotional state. Having noted that close supervision was necessary, the doctor amended the applicant's treatment to include another anticonvulsant, a strong neuroleptic and a sedative.

11. A prison paramedic attended the applicant on two occasions in January 2005. The applicant's complaints intensified, to include not only severe headaches but insomnia and frequent and uncontrolled mood swings, with a depressed emotional state being quickly replaced by aggressive behaviour. The paramedic recorded that the applicant was making continual demands for a large number of drugs, in particular strong tranquillisers to fight insomnia, as the headaches only disappeared when the applicant was

asleep. He introduced another anticonvulsant to the applicant's drug regimen and prescribed a strong tranquilliser.

12. In February 2005 the applicant was seen at least every four days, by a psychiatrist or the head of the facility medical unit. The doctors registered extremely negative changes in the applicant's behaviour, numerous complaints, refusal to take medication and subsequent persistent demands for drugs, in particular neuroleptics and tranquillisers. Each time this was done a discussion on the negative consequences of interruption of the treatment followed. The side effects of the treatment with neuroleptics and tranquillisers were also explained to the applicant. Following these "educational" talks, as the psychiatrist called them, the applicant complained of severe headaches and requested an in-depth examination in a specialised prison hospital by medical specialists competent to deal with his medical condition, in particular a neurosurgeon. He also asked for a magnetic resonance imaging (MRI) brain scan. The applicant was notified that the penal institutions in the Tambov region did not employ a neurosurgeon and that MRI scanning was not available free of charge. He continued to insist, however, on a transfer to a hospital and an MRI scan every time he saw a medical specialist. The officials' response was to amend his drug regime, switching him from one neuroleptic to another and replacing one anticonvulsant with another one.

13. On 28 February 2005 the applicant was transferred to detention facility no. 1 in Tambov. Having examined the applicant on his admission to the facility, a prison doctor recommended regular consultations with a psychiatrist and a drug addiction specialist. He also made recommendations in view of the applicant's emotional state, and prescribed injections with a new neuroleptic and a spasmolytic.

14. The applicant was examined by a psychiatrist and a drug addiction specialist during the week following his admission to that detention facility, and the previous drug regime was reinstated. At the same time the drug addiction specialist noted the applicant's dependence on tranquillisers, particularly those which had served as the basis for his chemotherapy regime since his arrest. The drug addiction specialist recommended the applicant be admitted to a correctional colony medical facility for treatment.

15. On 18 March 2005 the applicant was admitted to the Tambov Region prison hospital, where he remained until 6 April 2005. The applicant underwent a number of clinical blood and urine tests, X-ray examinations of the head and chest, an electrocardiogram (ECG) and ultrasound scanning of the abdominal area and kidneys. The tests and examinations did not reveal any pathology. He was also seen by a neurologist and an oculist. He was treated with piracetam, a neurometabolic stimulator, vitamins, analgesics, spasmolytics, sedatives and an antihypertensive drug. The applicant was discharged from the hospital in what the doctors considered a satisfactory condition.

16. Following his treatment in the hospital, the applicant was transferred to correctional colony no. 5 to serve his sentence. His first consultation with a psychiatrist took place two days after his arrival in the colony. Following the applicant's complaints of severe headaches, insomnia, anxiety and irritation, the doctor recommended transfer to a prison medical facility for treatment for his alcoholism. That transfer was effected at the end of April 2005.

17. On 3 May 2005 the applicant was seen by the head of the prison medical facility, to whom he stated that he refused to have treatment for his chronic alcoholism. The applicant insisted on being transferred back to the correctional colony, and asked for a medical expert examination.

18. Ten days later the applicant was examined by a medical panel comprising the head of the prison medical facility, a drug addiction specialist, a psychiatrist and a physician. The panel's conclusion was that the applicant required mandatory treatment for his chronic alcoholism, given that the illness was negatively affecting his behaviour, as well as his psychological state. In particular, the doctors recorded the applicant's continual attempts to obtain additional doses of tranquillisers as a sign of his dependency. The doctors lectured the applicant about the consequences of "simulation and addiction". The applicant's medical record showed that he was seen by a number of specialists and underwent a number of clinical tests. He was released from the in-patient facility with a drug regime comprising tranquillisers, analgesics, neuroleptics and a hepatoprotector. He was discharged on the condition that he would be under close supervision by a psychiatrist and a drug addiction specialist.

19. The applicant continued to receive the psychotherapy, with prison officers and medical staff recording positive effects of the treatment, and noting that the applicant was adjusting rapidly to the conditions of the correctional colony and was complying with the detention regime.

20. In June 2005 a prison psychiatrist reduced the applicant's drug regime to one anticonvulsive drug and multivitamins. While his condition was considered moderately satisfactory, he continued to complain of headaches and occasional loss of consciousness. At the same time the applicant acknowledged that he had had no epileptic fits during the entire period of his treatment in the prison medical facility. In July 2005 the applicant's condition worsened and his complaints intensified, leading to the reintroduction of the drugs that he had been treated with in the prison medical facility. At the same time the colony authorities refused the applicant's requests to be transferred to the regional prison hospital for examinations, in particular an MRI brain scan, and treatment, considering that his condition could be appropriately treated with outpatient treatment in the colony. The only request from the applicant which was granted concerned the reintroduction of a tranquilliser into his drug regimen.

21. In August 2005 the applicant's complaints, which he had been making daily, of a loss of consciousness, loss of appetite and very severe headaches, were heard in a consultation with a prison paramedic, who prescribed pain relief for the headaches, vitamins, an anticonvulsive drug and a herbal sedative. While it was noted that there were injuries on the applicant's face and body which could have supported his account of loss of consciousness and a resultant accidental fall, the paramedic described his behaviour as an attempt to manipulate and attract attention. In response, the rules of behaviour in penal institutions, the internal regulations of the facility he was in, and the aims of the medical treatment were all explained to him. In September 2005 the applicant was prescribed work and psychotherapy in addition to a course of medication.

22. The applicant suffered a relapse of his chronic pancreatitis and was sent to the regional prison hospital on 19 September 2005, where he underwent a series of clinical tests and examinations identical to those he had already had during his previous stay in the hospital. The applicant's diagnosis when he was discharged from the hospital on 6 October 2005 was as follows: encephalopathy with a complex genesis with cephalgia syndrome, chronic pancreatitis, cholecystitis in remission, and alcohol dependency syndrome, aggravated by uncontrolled use of psychotropic drugs.

23. After he was transferred back to the medical correctional facility on his discharge from the hospital the applicant continued to complain of headaches, nausea, loss of consciousness, numbness in the arms and legs, fatigue and insomnia. The following months consisted of new rounds of complaints when the applicant demanded additional doses of tranquillisers, admission to the regional prison hospital and an MRI scan of the head, and the facility authorities treated his requests as coming from a drug addict and a manipulator. The doctors also concluded that he no longer needed treatment for alcohol addiction as he had been cured and had shown a clear intention to continue with a sober life. In the authorities' opinion, that intention should have been strengthened through the prescribed work therapy and psychotherapy.

24. In December 2005 the administration finally acceded to the applicant's request and sent an official letter to the Tambov regional hospital requesting that he be admitted and receive an MRI scan. While waiting for a response, paramedics, on the recommendation of a psychiatrist who had seen the applicant at least once a month, continued to amend his drug treatment, given that he was not responding well to treatment and his condition appeared to be deteriorating.

25. Between March and May 2006 the applicant suffered several epileptic fits, which again led to changes in his drug regimen. On 10 May 2006 he was taken to the regional prison hospital for a complex expert examination. The hospital doctors, who employed identical methods of

clinical examination and consultations with the same specialists as on the two previous occasions, confirmed the diagnosis and recommended treatment with neurometabolic stimulators, piracetam and vitamins.

26. After he was discharged from hospital at the end of May, the applicant was seen at least once a month by a prison medical officer or a psychiatrist; following every consultation there was a change in his treatment, consisting either of the removal of a drug or the introduction of a new drug.

27. At the beginning of August 2006 the applicant's condition deteriorated, and he was prescribed bed rest and increased doses of anticonvulsive drugs, sedatives and analgesics. With no sign that the prescribed treatment was working, he was sent back to the prison regional hospital at the beginning of September 2006. In addition to the usual procedures, treatment and examinations he had received in the hospital on previous occasions, he underwent an MRI brain scan. The MRI scan report was as follows: "the ventricle system of [the applicant's] brain was moderately enlarged; the outline of the sulci in the cerebral hemispheres was drastically sharpened (degeneration); extensive arterial venous malformation in the left side of the parietal lobe with the draining veins in the sagittal sinus; frontal sinusitis on the right side".

28. Between November 2006 and January 2007 the applicant had a recurrence of his chronic pancreatitis, for which he received effective treatment in the correctional colony. He also did not cease to complain of headaches, emotional disturbance, fatigue and insomnia. His readmission to the regional prison hospital was the authorities' response to his increasing complaints about his health. In the hospital the applicant received the usual medical attention and was released in "a satisfactory state" with the recommendation that treatment be continued with piracetam and neurometabolic stimulators. A short stay in the correctional colony was followed by his admission to the Smolensk Inter-Regional Psychiatric prison hospital at the end of March 2007. The applicant did not complete his examinations and treatment in that hospital, as he had broken the rules of the detention regime and had therefore been discharged from the hospital. At this time doctors recommended that the applicant be monitored and treated by a psychiatrist and that he also be treated with neurometabolic stimulators, vascular medication, vitamins, and behaviour modifiers.

29. On the recommendation of a colony psychiatrist who had seen the applicant at least every two weeks since his return from the Smolensk hospital, the applicant was admitted to the prison hospital in correctional colony no. 1, where he remained until the end of June 2007. The applicant was readmitted to the hospital slightly over a month after being discharged. The usual medical procedures and examinations he had had on other occasions were supplemented by rheoencephalography, which showed negative changes in his cerebral blood flow. Four days after the applicant

was discharged from the hospital at the end of September 2007, a colony psychiatrist recorded a deterioration of the applicant's condition. In October 2007 the applicant suffered an epileptic fit during a consultation with a psychiatrist. The latter described the fit in the applicant's medical record as accompanied by a lengthy loss of consciousness, convulsions and foaming at the mouth. The applicant was immediately taken to the medical unit of the correctional colony, where he received increased doses of sedatives, anticonvulsive drugs, hepatoprotectors, vitamins and neuroleptics. The applicant was discharged from in-patient care in the unit in the middle of November 2007. The head of the colony medical unit discussed with the applicant the possibility of his being admitted to the Gaaza prison hospital in St Petersburg for surgery.

30. The following four months featured complaints by the applicant of deteriorating health and inability to stand the severe headaches he was suffering, and attempts by colony staff to give him relief with the range of drugs which had been included in his regimen since his arrest and first complaints of health problems.

31. In April 2008 the applicant's medical record, including the results of the MRI scan in September 2006, was studied by the head of the medical unit of the correctional colony. His findings confirmed the rapid deterioration of the applicant's condition, which could no longer be addressed by medication alone. The head of the unit recommended the applicant be admitted to the regional hospital for an assessment as to whether he would benefit from surgery. A month of treatment in the hospital with the usual chemotherapy regimen led, according to the medical record, to the applicant's condition becoming "satisfactory". A rheoencephalography performed in the hospital showed further progress of the illness, with concomitant serious disturbance of the cerebral blood flow. The applicant was again admitted to the regional hospital, slightly over two months after he was discharged. The hospital doctors changed his treatment, introducing new medication for relief of the headaches and for his emotional disorder and insomnia. When he was discharged from the hospital the applicant's condition was no longer described as "satisfactory" although the only recommendation was to maintain treatment of his symptoms.

32. During the next twelve months the applicant made a very large number of complaints of headaches, stomach pain, nausea, insomnia and extreme emotional disturbance, to which the colony medical staff responded by conducting visual examinations, which were carried out by the head of the colony medical unit, a prison physician or a prison paramedic, and by prescribing drugs to arrest the negative symptoms of the illness. The drugs were alternated so as to switch between one anticonvulsant and another, and new sedatives and neuroleptics were introduced. On certain days the applicant had to take more than ten different drugs at a time. The medical

officers made notes in the applicant's records, detailing, in addition to his complaints, the results of the visual examinations, stating that he was "slow", and that his reactions and responses were "sluggish". On several occasions he was prescribed bed rest.

33. In October 2009 the applicant suffered an epileptic fit and was taken immediately to the colony medical unit, carried there by his cellmates. A prison medical assistant who examined him recommended continuing with the treatment. She also found it necessary for the applicant to be seen by a psychiatrist. Two weeks later the applicant was transferred to the prison hospital in the correctional colony. For the first time the applicant was subjected to an electroencephalogram (EEG). He was treated with the two usual drugs, including an anticonvulsant and a strong neuroleptic, and was prematurely discharged from the hospital. According to the medical record, the discharge was a consequence of the applicant's behaving "incorrectly" towards a hospital official.

34. On 16 October 2009 he lodged a request with the Morshansk District Court for suspension of his sentence in view of the state of his health. The applicant argued that he was suffering from extremely severe headaches and that his seizures were becoming more and more frequent. He also complained that he was unable to receive the medical assistance he needed, including brain surgery, in detention, and asked the court to authorise a forensic medical examination to "determine the nature and severity of the brain damage" in preparation for subsequent surgery, as well as to call a neurosurgeon from a civilian hospital to interpret the MRI scans of his head.

35. On 9 December 2009 the parties were heard in the District Court, which ruled that it was necessary to send the applicant to a prison hospital for a medical examination to determine whether the state of his health warranted his release.

36. On 23 December 2009 the applicant was readmitted to the hospital in correctional colony no. 1, where he was assessed by a medical expert panel to determine whether he was suffering from an illness which was serious enough to warrant his early release. The panel concluded that the applicant could not be released on health grounds as he was not suffering from an illness on the List of Illnesses Precluding the Serving of Custodial Sentences, as adopted by a Government decree in 2004.

37. The District Court received the medical panel's report and on 26 February 2010 dismissed the applicant's request for suspension of the sentence. It held as follows:

> "The opinion of the special medical panel on the medical examination of [the applicant] performed on 28 December 2009 ... establishes the following diagnosis: organic emotionally labile personality disorder connected with mixed illnesses (dyscirculatory vascular malformation, epilepsy with rare seizures, moderate alcohol dependence syndrome in the stage of forced remission). By virtue of paragraph 20 of the List of Illnesses Precluding the Serving of Custodial Sentences ... [the applicant] cannot be relieved from serving the remaining part of his sentence.

> Having considered the opinion of the special medical panel on the medical examination of [the applicant], [and] the nature of his illness, the court finds that treatment of the illness can be ensured in detention. Moreover, taking into account the information provided on [the applicant's] personality, the nature of the criminal offence of which he was convicted and which is considered particularly serious, [and] the references given [on the applicant] at the place of his former residence, the court considers that at the present time the aim of [the applicant's] improvement has not been reached and, if his sentence is to be suspended and he is to be released from detention he would present a danger to society [and] may reoffend."

38. On 23 March 2010 the Tambov Regional Court upheld that decision, finding the District Court's reasoning convincing and well-founded.

39. In the meantime, the applicant was discharged from the hospital and sent back to the correctional colony, only to be returned to the hospital a month later, in February 2010. When the applicant was discharged from the hospital it was with the recommendation that an MRI scan of the head be arranged by his correctional colony. That recommendation was complied with in April 2010. Medical specialists noted negative developments on the scan and stated that the applicant should consult a neurosurgeon.

40. For six months of his stay in correctional colony no. 5 after his return from the hospital the applicant continued to complain of severe headaches, epileptic seizures, nausea and insomnia. Those complaints were heard by a prison paramedic or a prison psychiatrist and amendments were made to his chemotherapy regimen.

41. In June 2010 the applicant sent a letter to the Tambov Regional Health Department asking for medical assistance. He provided the Court with an extract from his medical record issued by the Tambov Regional Clinical Hospital and a letter from the acting director of the Tambov Regional Health Department. The first document showed that the applicant required permanent supervision by a neurologist and regular MRI scans of the head. The letter from the acting director of the Health Department indicated that the applicant was in need of "surgery in a specialised federal centre" and that the medical facilities in Tambov Region were not equipped to perform such an operation. The acting director also noted in the letter that he had informed the Tambov Regional Service for Execution of Sentences (hereinafter "the Service") about the applicant's state of health and that the surgery was required.

42. In response to the applicant's request to be sent to the Gaaza prison hospital in St Petersburg where he could have brain surgery, on 2 July 2010 the director of the Service informed him that there was no medical need for surgery.

43. On 20 September 2010 the director of the Gaaza hospital sent a letter to the head of correctional colony no. 5, the relevant part of which read as follows:

> "In response to your request ... of 12 August 2010 [I] inform you that [the applicant] ... cannot be transferred to [the Gaaza hospital] for in-patient treatment, as the surgery

> in the present case is of a high-tech nature and [the hospital] does not have the necessary equipment to perform it at the present time."

44. The applicant was admitted to the prison hospital in correctional colony no. 1, where he was again seen by an oculist, a neurologist and a psychiatrist, underwent clinical blood and urine tests, ultrasound scanning of the abdominal area, EEG and ECG testing, and received the usual course of drug therapy. The EEG test showed a further negative dynamic in the applicant's condition in comparison to the results of the previous EEG test in 2009. He was discharged from the hospital at the end of October 2010 but was readmitted in January 2011. He was provided during his stay with the same range of medical services as before.

45. In December 2010 a medical panel stripped the applicant of his disability status, considering that his vital functions were not affected by his illness.

46. In 2011 the applicant submitted another request for suspension of the sentence on the grounds of his state of health. He insisted that his health was continuing to deteriorate and that the prison facilities did not have the capability to perform the brain surgery which he needed.

47. Having studied the medical evidence, including the reports by the medical panel and the applicant's medical history, on 14 April 2011 the Morshansk District Court concluded that the applicant's state of health did not warrant his release and that his treatment could be ensured by prison medical staff. The District Court also noted that "an issue pertaining to surgery is at the discussion stage".

48. On 21 July 2011 the Tambov Regional Court confirmed the District Court's conclusions in its decision of 14 April 2011. The Regional Court's reasoning was as follows:

> "The material in [the applicant's] case file indicates that he had the same health problems before he committed the murder, so [the state of his health] did not prevent him from committing a particularly serious criminal offence.
>
> The conclusions of the medical panel indicate that [the applicant's] illness does not preclude him from serving the sentence. He receives the required treatment in detention. As regards the surgery, this question is at the decision stage and, if agreed to, [the applicant's] request [for the suspension of the sentence] will be examined again in compliance with the requirements of the law in force."

49. In 2011 the applicant's treatment consisted of a combination of consultations with colony medical staff and provision of drug treatment for his symptoms, during which time he made a large number of complaints of poor health. Until November 2011 the consultations took place every two months with a prison paramedic. In November 2011 the applicant was seen once by the head of the colony medical unit, once by a psychiatrist, and once by a physician from the prison hospital.

50. In the meantime, in March 2011 the Tambov Regional Health Department sent the applicant's record, including the record of the MRI

brain scan performed in April 2010, to the director of the Burdenko Neurosurgery Scientific Research Institute in Moscow. Specialists from that institute were asked to develop a plan for the applicant's treatment. Having examined the applicant's medical file, a doctor from the Institute concluded that the applicant was in need of supervision by a neurologist and required amendments to the anticonvulsive treatment he was receiving. He also noted that the applicant did not need radiotherapy. The applicant was not seen by a neurologist or neurosurgeon in 2011.

51. In March 2012 a neurologist invited by the applicant's mother visited the applicant. He recorded the applicant's complaints of a severe "burning" pain in the left temporal region of the head and a general continuous pressing ache in the entire head, dizziness, nausea, fatigue, numbness in the legs, occasional loss of consciousness, insomnia, irritation, memory loss, feelings of fear, and panic attacks. Having confirmed the progress of the illness following a visual examination and a number of tests, the neurologist recommended consultations with a neurosurgeon and an angiosurgeon to draw up a schedule for his surgical treatment. He expanded the applicant's drug regimen to include various sedatives, anticonvulsive drugs and neuroleptics, and recommended a number of examinations and tests, including an MRI heart scan and EEG tests.

52. There is no evidence in the applicant's medical record that any of the neurologist's recommendations were complied with. The medical record indicates that colony staff provided the applicant with only some of the drugs prescribed by the neurologist. He continued to be supervised by prison paramedics at the correctional colony.

II. RELEVANT DOMESTIC LAW

53. The relevant provisions of domestic and international law governing the health care of detainees 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained that the authorities had not taken steps to safeguard his health and well-being and had failed to provide him with

adequate medical assistance, in breach 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

55. The Government opened their line of arguments with a description of the state of the applicant's health on 9 June 2012, the date of his most recent examination performed for the purpose of preparing the response to the Court's questions to the parties. Citing the long list of the applicant's illnesses, the Government stressed that the applicant was considered to be in a satisfactory condition. They also reminded the Court that in December 2010 doctors had decided to remove the applicant's disability status, which he had had since 2000, and that special medical expert panels which had assessed his health in 2009 and 2011 had concluded that the applicant's condition was not on the official list of illnesses warranting his early release. In addition, the Government drew the Court's attention to the recommendations made by the Burdenko Institute. According to their findings, the applicant did not need surgical treatment or radiotherapy, merely requiring supervision by a neurologist and correct anticonvulsive medication.

56. The Government insisted that the Russian authorities had taken every necessary step to safeguard the applicant's health. The applicant's condition had not worsened during his detention. He had received and was continuing to receive proper medical assistance. Relying on a typed copy of the applicant's medical record, the Government argued that the applicant was under systematic supervision by a psychiatrist, a neurologist and a physician. He was also consulting an oculist, a dentist, a urologist and a neurosurgeon. He regularly asked correctional colony staff for medical assistance and received outpatient treatment. He was also sent to prison hospitals for in-patient treatment and in-depth examinations, which included MRI scanning and EEG tests. The Government stressed that the applicant could undergo surgery in a civilian hospital. They confirmed their argument with references to the applicant's letters to the Tambov Regional Health Department and the response from the Burdenko Institute. They also stated that a neurologist who had examined the applicant in March 2012 had been invited by the applicant's mother.

57. The Government pointed out that the applicant had not provided any medical opinion which could have supported his argument that the medical services afforded to him in detention were inadequate. The documents submitted by the applicant to the Court, in the Government's opinion, did not show that his health had deteriorated "abnormally" during his detention. In addition, the Government pointed out that the applicant was actively

corresponding with various Russian officials about his state of health which, for them, was a sign that he was not suffering from any condition impairing his vital activities.

58. In their further submissions, in addition to arguing that the applicant's complaint was manifestly ill-founded, the Government stated that he had not lodged a civil action which could have allowed him to obtain an expert opinion on the quality of the medical services. As the applicant had failed to do so, the Government argued, he had failed to exhaust the domestic remedies available to him.

59. The applicant maintained his claims, stating that his health was continuing to deteriorate rapidly and that the authorities had refused to admit him to hospital for neurosurgery.

B. The Court's assessment

1. Admissibility

60. The Government raised an objection of non-exhaustion of domestic remedies by the applicant. The Court has examined a similar objection in several previous cases. Having assessed a number of legal avenues put forward by the Russian Government, as well as remedies employed by applicants, including a civil claim, the Court found that applicants who were detainees did not have effective domestic remedies at their disposal to complain about continuous and ongoing violations of their right to receive adequate medical assistance in detention. That conclusion also led to the Court's finding of a breach by the Russian Government of Article 13 of the Convention (see, for example, *Dirdizov v. Russia*, no. 41461/10, §§ 75-91, 27 November 2012, and *Reshetnyak v. Russia*, no. 56027/10, §§ 62-80, 8 January 2013).

61. While the lack of an independent medical opinion on the state of the applicant's health – which, as the Government argued, could have been obtained in the course of civil proceedings – is regrettable, the Court is still not convinced that a civil claim could offer the applicant a remedy appropriate for his situation (see, for similar reasoning, *Reshetnyak*, cited above, § 72). The Court also bears in mind that the Government did not explain what effect, in addition to an expert assessment of the applicant's health, a civil claim could have had on him. It accordingly sees no reason to depart from the findings made in the cases cited above, and dismisses the Government's objection of non-exhaustion.

62. The Court further 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

63. 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).

64. 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).

65. 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*, cited above, §§ 92-94, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most of the cases concerning the detention of people 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)).

66. 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 treatment 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).

67. 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).

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

68. Turning to the facts of the present case, the Court observes that when the applicant was admitted to a detention facility following his arrest it became known to the Russian authorities that he was suffering from a serious condition affecting his brain. The Government did not dispute, and the medical evidence confirms, that the applicant's condition is characterised by epileptic seizures, severe and frequent headaches, dizziness, fatigue, nausea, occasional loss of consciousness and emotional disturbance. Given the clinical development and progress of the illness, the applicant requires regular medical supervision, in particular by a neurologist, and complex treatment, comprising specific diagnostic procedures and medication. The evidence provided by the parties to the Court confirms that those requirements have not been fulfilled in the conditions of his detention.

69. The Court notes that for years after his arrest the applicant was monitored mostly by a prison paramedic or a psychiatrist. While a consultation with a psychiatrist was an absolute necessity, the Court is not convinced that a prison paramedic had the medical training or skills required to address the applicant's needs in so far as they concerned the neurological aspect of his condition. The inadequacy of the response to the applicant's health-related complaints is demonstrated by the fact that for almost two years after his arrest his drug regimen was amended a great many times, with anticonvulsants or tranquillisers replacing one another, with no comprehensive examination of the applicant's current condition and without the use of modern diagnostic techniques to assess his health problems.

70. The applicant's medical record indicates that he was first seen by a neurologist almost six months after his arrest. Consultations with a neurologist happened only very rarely throughout the applicant's detention, and he had occasionally gone without an examination by that specialist for more than twelve months (see paragraph 50 above) despite the requirement to remain under constant neurological monitoring. A visit to a neurosurgeon was even more exceptional, given that the penal institutions in the Tambov Region did not employ such a specialist (see paragraph 12 above). It appears from the Government's submissions that the sole occasion when such a consultation took place was in 2011, when the Burdenko Institute was asked to study the applicant's medical record (see paragraph 50 above).

71. The Court further notes that the first assessment of the applicant with the use of modern diagnostic techniques, in particular magnetic resonance imaging, was only performed two years after the prison doctors had developed his chemotherapy regimen (see paragraph 27 above). Furthermore, it took the Russian authorities four years to subject him to the most essential test, an electroencephalogram (EEG), which is an important part of the diagnostic process for cases such as the applicant's and which should have guided his treatment through all those years (see paragraph 33 above). Without resorting to those diagnostic procedures and performing a thorough evaluation, the prison medical specialists juggled the applicant's medication in an attempt to respond to his increasing health-related complaints, with no clear understanding of whether a drug was effective and whether it should be discontinued or replaced. The Court observes that the applicant's negative response to several trials of medication for a number of years called for a necessity to consider other means of treatment, including surgery. The Court also bears in mind that while in detention the applicant developed dependency on psychotropic drugs, which required treatment by a drug addiction specialist (see paragraphs 13, 14, 18 and 21-23 above). The Court is not competent to decide whether the frequent decisions to change the applicant's medication without gradual weaning off one drug and by increasing the dose of another drug could have triggered the addiction. It is not, however, prepared disregard this side effect of the applicant's treatment.

72. The Court further observes that the entire period of the applicant's detention was characterised by his frequent transfers from a prison hospital to a correctional colony, only to be sent back to the hospital after a short while. The applicant's medical file showed that he had been admitted to the hospital on at least ten occasions. However, with the exception of a very few stays when the applicant was seen by a neurologist and was subjected to a specific diagnostic procedure, the treatment he received in the hospital did not differ significantly from the medical services he was afforded in the colony. The short-term admissions to the prison hospitals appear to demonstrate attempts by the prison authorities to at least temporarily

prevent the applicant's health from deteriorating further. At the same time, they reveal the absence of a medical plan to manage the applicant's illness. The hospital treatment procedures remained focused on symptoms only, attempting merely to relieve the applicant of certain side effects of his condition without looking into the possibility of, at least, substantially improving his health.

73. In this connection the Court reiterates that as early as April 2008 the head of the medical unit of the applicant's correctional colony admitted the futility of the further medication of the applicant, given his deteriorating health. He considered it necessary to explore the possibility of surgical treatment (see paragraph 31 above). However, it was not until June 2010, following the applicant's letter to the Tambov Regional Health Department, that the option of surgery was discussed for the second time, with the authorities acknowledging that an operation was necessary but that it was not available in the penal institutions of the Tambov Region (see paragraph 41 above). At the same time, it appears that the high-tech surgery which had been discussed was unavailable not only in the Tambov Region, but also in the Gaaza hospital; these were the major prison medical facilities in the Russian Federation (see paragraph 43 above). Another attempt to provide the applicant with surgical treatment was made almost a year later, when the Tambov Regional Health Department sent his medical record to the Burdenko Institute (see paragraph 50 above). The Court does acknowledge the Government's argument that after studying that record a doctor from the Institute concluded that surgery was not needed. It finds it striking that the decision whether surgery, an essential medical procedure, was an option was only taken on the basis of the medical file, and in particular with regard to the outdated results of the diagnostic procedures, a year-old MRI scan (see paragraph 39 above) or a six-month-old EEG record (see paragraph 44 above), even though the progress of the applicant's illness was undeniable. The Court observes that while considering the option of surgery the doctor did not perform a comprehensive pre-surgical examination of the applicant, including a physical and neurological assessment, extended EEG-video monitoring, or other tests. There is no evidence that the decision to refuse permission for surgery was taken following a multidisciplinary assessment with the involvement of several medical specialists, such as an epileptologist, a neurosurgeon, a neuroradiologist or a neuropsychologist. In any case, without disregarding the opinion given by the Burdenko Institute doctor on the surgery option, the Court notes that that opinion remained the only serious attempt by the Russian authorities to understand the etiology and nature of the applicant's brain malfunction and to explore various options for treatment to control or even to improve his condition.

74. The Court is also concerned that the information provided by the Government in respect of the quality of the medical care currently afforded to the applicant does not allow the conclusion that the medical care the

applicant is continuing to receive in detention is such as to be capable of securing his health and well-being and preventing further aggravation of his condition. In particular, the Court notes that neither of the recommendations made by the neurologist in March 2012 was fully complied with by the prison authorities. The applicant remains under the monitoring of prison paramedics in the correctional colony, he does not receive the full drug regimen prescribed by the neurologist, he has not had the diagnostic procedures recommended by that specialist, and he has not been seen by doctors, in particular a neurosurgeon or an angiosurgeon, whose opinions were considered essential to an assessment of the need for surgery (see paragraphs 51 and 52 above).

75. The Court thus finds that the applicant has not received comprehensive, effective and transparent medical treatment for his illness during his detention. It believes that, as a result of this lack of adequate medical treatment, the situation which the applicant has faced for years and which also led to his having developed dependency on psychotropic drugs, he was exposed to prolonged mental and physical suffering diminishing his human dignity. Taking these considerations into account, the Court cannot but conclude that the authorities' failure to provide the applicant with the medical care he needed amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

76. Accordingly, there has been a violation of Article 3 of the Convention on that account.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. 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 those complaints fall within its competence, the Court 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 27,000,000 Russian roubles (RUB) in respect of non-pecuniary damage.

80. The Government submitted that the claim should be rejected as it was excessive, unreasonable and unsubstantiated. They also stated that should the Court find a violation of the Convention, the finding itself would constitute sufficient just satisfaction.

81. 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 adequately address his medical needs 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 15,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

82. 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

83. 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* admissible the complaint concerning the lack of adequate medical assistance in detention and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of adequate medical care of the applicant;

3. *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 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* 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