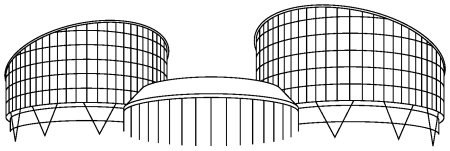

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GORBULYA v. RUSSIA

(Application no. 31535/09)

JUDGMENT

STRASBOURG

6 March 2014

FINAL

06/06/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Gorbulya v. Russia,

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

Elisabeth Steiner, *President,*
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 31535/09) 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 Vadim Vladislavovich Gorbulya ("the applicant"), on 4 May 2009.

2. The applicant was represented by Ms O. Stasyuk, a lawyer practising in St. Petersburg. 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 that he had not benefited from adequate medical care while in detention, that the conditions of his detention in a temporary detention facility, including in solitary confinement, and in a correctional facility had been inhuman, and that there had not been effective remedies available to him enabling him to complain of a violation of his right to proper medical services and adequate conditions of detention.

4. On 17 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 1973 and lived until his arrest in St. Petersburg. He is serving a sentence of life imprisonment.

A. Criminal proceedings against the applicant

6. On 18 May 2006 the Kalininskiy District Court of St. Petersburg found the applicant guilty of unintentional manslaughter and sentenced him to ten years' imprisonment.

7. On 10 December 2008 the St. Petersburg City Court, by a jury verdict, found the applicant guilty of several counts of aggravated robbery and murder and sentenced him to life imprisonment. The applicant was represented by Ms D. as counsel. On 5 March 2009 the judgment was upheld on appeal and became final.

B. Conditions of detention

1. Detention in facility IZ-47/1 in St. Petersburg

(a) The applicant's version of events

8. From 23 December 2002 to 8 October 2010 the applicant was detained in temporary detention facility IZ-47/1 in St. Petersburg, known as "Kresty". He stated that the cells had been extremely overcrowded, with cells nos. 899, 907, 90, 74, 184 and 411, where he had been detained between 2002 and 2004, housing from seven to nine inmates and the cells where he was detained between 2004 and December 2008 accommodating between five and eight inmates. According to the applicant, each cell measured 8 square metres. Daily searches were performed in the cells, during which warders deliberately destroyed inmates' personal belongings.

9. On 10 December 2008 the applicant was transferred to wing 2/1 of the facility and was placed in cell no. 128, which also measured 8 square metres and where he was detained alone. Wing 2/1 was allegedly designed for the detention of inmates sentenced to life imprisonment. Up to 8 October 2010 he was held in a number of similar cells, where he was always kept alone. The cells did not have a table or chair. A concrete platform served as a bed. The cells were not equipped with an artificial ventilation system. They had a small window which had three rows of metal bars and was covered by a metal mesh which separated the window from the rest of the cell. It did not allow access to fresh air. As a result the cells were extremely stuffy. A video camera was installed in the corner "to spy on inmates" and as a result the

applicant did not have privacy even when using the toilet. It was extremely cold in winter. A lavatory pan and a sink were installed side by side in the corner of the cell, not separated from the living area by a door or partition. The applicant could only have a shower once a week for fifteen minutes. A small 60-watt lamp was installed above the cell door. It produced very little light, making it impossible to read or write in the cell. The applicant was allowed a daily hour-long walk in a recreation yard. On court hearing days that walk was cancelled.

10. In response to numerous complaints by the applicant pertaining to the conditions of his detention and the quality of the medical care, various prosecution authorities informed him that the conditions were satisfactory save for minor irregularities pertaining to the absence of a bench in the cell, for instance, and that the applicant had received adequate medical assistance whenever he had asked for it. The applicant provided the Court with copies of the prosecutors' letters.

(b) The Government's version of events

11. Relying on certificates issued by the director of facility IZ-47/1 in 2012, the Government noted that the applicant had been detained in that facility from 23 December 2002 until 8 October 2010, save for the period between 14 August and 23 October 2003 when he had been transferred to facility IZ-47/6 in the Leningrad Region.

12. The Government further submitted that until 10 December 2008 the applicant had usually been detained in cells measuring 8 square metres and equipped with four sleeping places. The cells housed four inmates. The Government could not provide the Court with copies of inmate population logs to support their submissions concerning the number of detainees as the logs had been destroyed following the expiry of the statutory storage period. The cells had been equipped with a properly functional artificial ventilation system. The light in the cells was both natural and artificial: daylight entered through a 1.1-square-metre window covered with four horizontal and seven vertical metal bars. A 60-watt electric bulb and an emergency 40-watt bulb also provided light in the cells. There was a lavatory pan in the corner of each cell, separated from the living area by a 1.5-metre wooden partition. The applicant could take an hour-long daily walk in one of the seventy-three recreation yards of the facility. The Government accepted that from 23 December 2002 to 10 December 2008 the applicant's conditions of detention had been incompatible with the requirements of Article 3 of the Convention on account of overcrowding and the resulting lack of personal space.

13. From 10 December 2008 until 8 October 2010 the applicant had been kept in solitary confinement, alone in 8-square-metre cells equipped with two sleeping places. The solitary confinement had been a consequence of the applicant's sentencing to life imprisonment on 10 December 2008.

The other conditions of the applicant's detention during that time had been similar to those in which he had been detained together with other inmates.

2. Detention in the correctional facility

(a) The applicant's version of events

14. On 8 October 2010 the applicant was sent to correctional facility IK- 56 in the Sverdlovsk Region (commonly known as "the Black Golden Eagle") where he arrived on 4 November 2010 and has remained ever since, save for short visits to prison hospitals (see below for details).

15. In compliance with the requirements of Russian law, the applicant, having been sentenced to life imprisonment, had to be detained in a cell and not in a dormitory. He submitted that he had already occupied a number of cells where the conditions of detention had been identical. Relying on handwritten statements by inmates from facility IK-56, he provided the following description of the conditions of his detention.

The cell measured approximately 18 square metres and housed one other inmate. He could not leave the cell without authorisation and was not allowed to move freely around the premises of the facility. The cell was not equipped with a lavatory pan or running water as the facility did not have a centralised water-supply or sewage systems. Inmates were provided with a bucket of water for their daily needs: for drinking, washing themselves and cleaning the bucket which they used as a lavatory. The water was obtained from the local river and was not clean. In the morning the bucket was emptied into a cesspool outside the building, behind the walls of the recreation yards. The bucket serving as a lavatory was not separated from the rest of the cell, thus offering no privacy. An unpleasant odour lingered in the cell. The heating system did not function properly. It was thus extremely cold in winter, when the temperature outside dropped below minus 30 or 40 degrees Celsius. The cell was not equipped with a ventilation shaft, thus it was stuffy and damp. Dim light penetrated into the cell through a small window covered with several rows of metal bars. The window was separated from the rest of the cell by a metal mesh which had small casings measuring five by five centimetres. The food provided in the facility was of poor quality. In 2011 the applicant was repeatedly given fish containing worms. He attached these worms to his complaints to the prosecutor's office.

16. The applicant also submitted that he was allowed a daily walk of no more than two hours in one of the five recreation yards which measured 6-9 square metres. He and his cellmate could bathe for fifteen minutes once a week in a room of no more than nine square metres where they used a small basin to pour water.

(b) The Government's version of events

17. The Government produced certificates from the facility director and gave the following description of the conditions of the applicant's detention in facility IK-56.

After his arrival at the facility and until 28 June 2012 the applicant was detained in cells which measured 18 square metres. He shared a cell with another inmate. After 28 June 2012 the applicant occupied alone cells which measured 4 or 18 square metres. The cells had ventilation shafts. Each cell had a window measuring between 0.3 square metres and 0.6 square metres with a small casing which could be opened for fresh air. There were metal bars on the window but these did not block access to fresh air. There was a grille formed by vertical and horizontal bars on the windows which was 100 millimetres in width and 170 millimetres in length. One or two 100-watt bulbs lit the cells during the day. At night a 40-watt bulb was kept on. Facility IK-56, built in 1982, was not equipped with centralised water-supply or sewage systems. A bucket was kept in each cell to be used as a lavatory. It was separated by a metre-high wooden partition from the living area. The distance between the lavatory bucket and the dinner table was no less than one metre, and the distance between the bucket and the closest bunk slightly less than three metres. Inmates were also given 30-litre cans of drinking water. The water was obtained from an electric water-pumping station in a nearby village. The applicant was allowed to take daily one-and-a-half-hour outdoor walks in the recreations yards. The yards were covered by wire netting attached to the concrete walls surrounding the yards, which served as a roof. The sanitary conditions were satisfactory. The food was obtained by the head of the canteen from a storage facility. The quality of the food was checked on a daily basis by a duty officer and a prison doctor. The food was stored in the facility in conditions which protected it from theft or infection. The preparation of the food was carried out in the presence of a medical assistant and the duty officer. The applicant could take a shower once a week in a bathing facility in which cold and hot water were provided by an autonomous boiler.

18. The Government supported their submissions by attaching plans of every cell in which the applicant had been detained and of the recreation yards in the correctional facility. The plans were hand-drawn. It appears from the materials presented that the facility had eight recreation yards, the smallest one measuring 7 square metres and the biggest measuring 18 square metres. Each yard was equipped with a bench and had a small cover to protect it from rain.

C. Medical assistance

1. The applicant's submissions

19. According to the applicant's submissions, in 2009 he was diagnosed with a gastric ulcer, hemorrhoids and fragile joints. He insisted that these illnesses were the direct result of his having been detained in appalling conditions for so many years. He applied for medical assistance. A prison nurse dismissed the request, noting that the applicant's case did not require medical care. On further occasions when the applicant sought medical care, prison doctors refused to treat him, citing a lack of funds and medicine. The applicant complained to a prosecutor's office on 21 April 2009 but received no response. In June 2009 he hurt his leg while descending from a bunk. He lodged a large number of complaints with the head of the detention facility, seeking medical assistance and, in particular, an X-ray examination of his leg. Following a complaint to a prosecutor's office the applicant was examined by a prison surgeon who then threatened the applicant with violence and forbade him to ever complain again.

20. In June 2011 the applicant was sent outside to empty lavatory buckets into the cesspool. He slipped and fell, injuring his knee joint. The applicant complained that prison doctors merely provided him with painkillers in response to his claims for medical assistance. As a result he could not use his knee joint fully and his movement was restricted.

21. In June 2011 the applicant was detained in a cell immediately after it had been occupied by inmates suffering from an open form of tuberculosis. The cell was not disinfected before the applicant was placed in it. On 24 April 2012 the applicant was diagnosed with infiltrative tuberculosis of the right lung in the disintegration phase. His requests for treatment were not responded to or were dismissed, despite the fact that his illness had progressed. Furthermore, in February 2012 it was recommended that he have surgery to remove an inguinal (groin) hernia. The correctional facility officials took no steps to arrange the surgery.

22. The applicant provided the Court with copies of the authorities' – including prosecutors' – responses to his complaints about the conditions of detention in the correctional facility and lack of medical assistance during his detention, and stated that all his attempts to draw attention to his problems had been to no avail.

2. The Government's submissions

23. Relying on a handwritten copy of the applicant's medical record and a typed version of the same, the Government argued that upon the applicant's admission to facility IZ-47/1 he had been examined by prison doctors. Further examinations had been carried out on the applicant's transfer to the correctional facility and after his arrival at that facility. Each

time the applicant had been found to be in satisfactory health. The applicant had undergone annual medical check-ups. He had received treatment for a gastric ulcer and a soft tissue bruise on his leg.

24. According to the applicant's medical record, during his detention in facility IZ-47/1 he was attended to by prison doctors and a psychiatrist. He also underwent a number of chest X-ray examinations which did not reveal any indication of tuberculosis. The first X-ray examination was performed in November 2003. After being diagnosed with a gastric ulcer in 2006, the applicant was treated and the illness went into remission. He was subsequently examined by a prison doctor on a regular basis. In March 2009, after the applicant complained of stomach pain, he was diagnosed with a relapse of gastric ulcer and was prescribed treatment. A two-month drug regimen led to a substantial improvement in the applicant's condition. His satisfactory condition was confirmed by an in-depth medical examination and tests, including a gastroscopy.

25. On three occasions in the second half of 2009 the applicant complained about a leg injury. On each occasion he was examined by a surgeon and was sent back to the detention facility in good health. The surgeon did not find any signs of a serious injury; a small bruise on the left leg had been noted on the first examination in June 2009 but it was no longer visible on his subsequent visits to the doctor.

26. In 2010 the prison medical personnel, including a physician and a surgeon, continued to closely supervise the applicant in respect of his ulcer and hemorrhoids. If a relapse was suspected, the applicant was provided with treatment and was assigned a special diet. He was also subjected to gastroscopy testing and the doctors' recommendations were adjusted to take account of the results.

27. On the applicant's arrival at the correctional facility on 4 November 2010 a doctor examined him. The doctor noted the history of the applicant's gastric problem and also recorded the results of the most recent chest fluorography examination, which had not revealed any pathology.

28. A week after his arrival at the colony, the applicant complained of stomach pains and heartburn. He was placed on an emergency drug regimen and sent for specific tests. He was found to be suffering from a moderately acute gastric ulcer and he started receiving extensive drug treatment and was placed on special diet. The acute condition was entirely relieved by the beginning of 2011. He remained under the medical supervision of the prison doctors, who recorded his condition as improving. He also underwent regular gastroscopy testing and continued with the treatment and diet.

29. In June 2011, after complaining about a pain in the right knee joint and explaining that he had had a serious knee injury more than ten years before, the applicant was examined by a surgeon, underwent an X-ray examination of the knee joint and was diagnosed with post-traumatic arthritis of the right knee joint. He started receiving treatment with anti-

inflammatory drugs and pain relievers. As the treatment did not produce any positive improvement, a surgeon performed a knee joint puncture, put the applicant's right leg in plaster and prescribed bed rest. The applicant's drug regimen was amended. At the end of July 2011 the plaster was removed and the applicant's leg was bandaged. Regular visits from a surgeon led to slight changes to the drug regimen. In October 2011 the applicant completed his treatment, which was considered a success. At the same time, he also underwent a gastroscopy and a chest X-ray. Both tests showed the applicant to be in good health.

30. The prison personnel continued to address the applicant's complaints whenever he had any. He was treated by a dentist and was consulted by and received treatment from a surgeon in respect of a groin hernia. He was sent to the surgical department of the prison hospital for it to be determined whether he needed surgery for the hernia and knee joint problems. As these operations were not considered urgent, the applicant continued with his treatment in the correctional facility.

31. On 2 May 2012 a tuberculosis specialist diagnosed the applicant with infiltrative tuberculosis of the upper lobe of the right lung in the dissolution phase. The diagnosis was based on the results of an X-ray examination in April 2012 which had revealed shadows of infiltration with dissolution caverns in the applicant's lung. The applicant underwent clinical blood analysis and sputum smear testing and started receiving treatment with isoniazid, rifampicin, ethambutol, pyrazinamide and streptomycin. He was prescribed an enriched food regimen and transferred to the tuberculosis unit of the correctional facility. Two weeks later the applicant complained of severe stomach pain which the doctors connected to a relapse of the gastric ulcer against the background of the heavy antibacterial drug regimen. The applicant's treatment was changed in view of these added health issues. When the relapse of the ulcer had been resolved, the applicant continued with primary antibacterial treatment. He was also regularly tested in order for any improvements or deterioration in the illness to be recorded. In November 2012 the applicant was sent to a tuberculosis hospital in the town of Ivdel, as the prison tuberculosis specialist considered that he needed a more in-depth analysis in a specialised medical facility. On the applicant's transfer to the tuberculosis hospital sputum smear tests no longer showed traces of active tuberculosis bacteria.

32. It can be seen from a certificate sent by the Ivdel Town prosecutor to the director of correctional facility IK-56 that several rounds of tests performed in the tuberculosis hospital demonstrated that the applicant was sputum smear-negative. The applicant's condition was considered satisfactory. A medical panel which performed an expert assessment of the applicant at his request found that he could not be classed as disabled. The hospital doctors recommended a slight amendment to the applicant's drug

regimen and he was sent back to correctional facility IK-56 for in-patient treatment.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. General conditions of detention in temporary and correctional facilities, provision of medical care and the existence of effective remedies

33. The relevant provisions of domestic and international law on the health care of detainees, including those suffering from tuberculosis, and on conditions of detention are set out in the following judgments: *Isayev v. Russia*, no. 20756/04, § 62, 22 October 2009; *A.B. v. Russia*, no. 1439/06, §§ 77-84, 14 October 2010; *Gladkiy v. Russia*, no. 3242/03, §§ 29-50, 21 December 2010; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, §§ 60-66 and 73-80, 27 January 2011; *Pakhomov v. Russia*, no. 44917/08, §§ 33-39 and 42-48, 30 September 2011; and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 25-48, 10 January 2012.

34. The provisions of domestic law establishing legal avenues for complaints about conditions of detention and quality of medical services are cited in the following judgments: *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 25-48, 10 January 2012; *Dirdizov v. Russia*, no. 41461/10, §§ 47-61, 27 November 2012; and *Reshetnyak v Russia*, no. 56027/10, §§ 35-46, 8 January 2013.

35. For the relevant provisions of domestic and international law on solitary confinement, see the following judgments: *Razvyazkin v. Russia*, no. 13579/09, §§ 70-89, 3 July 2012, and *Borodin v. Russia*, no. 41867/04, § 69, 6 November 2012.

B. Detention of inmates sentenced to life imprisonment

36. Article 80 § 1 of the Russian Code on the Execution of Criminal Sentences requires inmates sentenced to life imprisonment to be detained separately from other categories of detainees. Life prisoners are to be detained in "special regime" correctional facilities (Article 126 of the Code).

37. Life prisoners are to be kept in a cell housing no more than two inmates. They may request to be detained alone or may be placed in solitary confinement by the facility director for safety reasons. Inmates sentenced to life imprisonment have a right to a daily walk of an hour and a half, which is to be extended to two hours in case of good behaviour. The remaining rules and regulations governing such aspects of prison life as family visits, phone calls, postal services, and so on, are similar to those which are

applied in colonies "of particular regime" (Articles 125 and 127 of the Code).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

38. The applicant complained that the conditions of his detention in temporary detention facility IZ-47/1 from 23 December 2002 until 8 October 2010, including his detention in solitary confinement from 10 December 2008 to 8 October 2010, as well as the conditions of his detention in correctional facility IK-56 from 4 November 2010 onwards had amounted to a breach of Article 3 of the Convention. He also complained under the same Convention provision that the Russian authorities had placed him in solitary confinement and thus in social isolation, and that they had taken no steps to safeguard his health and well-being, failing to provide him with adequate medical care. Article 3 of the Convention reads as follows:

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

The applicant lastly claimed that he had not had at his disposal an effective remedy for these violations of the guarantee against ill-treatment, as required under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...."

A. Submissions by the parties

39. The Government argued that a number of effective remedies had been open to the applicant in order for him to complain about the alleged violations of his rights under Article 3 of the Convention, at least in so far as he complained of a lack of medical care in detention and about the conditions of his detention in the correctional facility. They cited a complaint to the administration of the facility, a prosecutor or a court as possible routes for effectively alerting the authorities to his situation. The Government further drew the Court's attention to two judgments adopted by Russian courts in response to complaints by inmates about "unlawful placement in an inmate disciplinary unit" and unsatisfactory conditions of detention in a correctional facility. The two inmates had been awarded 25,000 and 50,000 Russian roubles respectively. The Government

concluded that the applicant had not exhausted available domestic remedies in respect of his complaints about the quality of the medical services and the conditions of his detention after conviction. In addition, while acknowledging the lack of remedies under Article 13 of the Convention for complaints about conditions of detention in temporary detention facilities, as established by the Court in the case of *Ananyev and Others v. Russia* (cited above), the Government submitted that the applicant could not claim to be a victim of a violation of Article 13 of the Convention as he had never complained to a court about the conditions of his detention in facility IZ-47/1.

40. The Government further submitted that should the Court find that the applicant had maintained his victim status and had exhausted domestic remedies, his complaints about lack of medical care, his solitary confinement in facility no. IZ-47/1, and the conditions of detention in the correctional facility were in any event manifestly ill-founded. In particular, the Government noted that after his conviction and sentencing to life imprisonment the applicant had been transferred to a cell where he had been detained alone from 10 December 2008 until 8 October 2010. That decision had been taken in full compliance with Russian law, which required prisoners to be detained separately from the rest of the inmate population. The decision had had the purpose of guaranteeing the security of the other detainees in facility IZ-47/1. The applicant had been kept in conditions which complied with the requirements of Article 3 of the Convention.

41. As to the conditions of the applicant's detention in the correctional facility, the Government argued that despite "difficult sanitary conditions" in the facility linked to the absence of centralised water-supply and sewage systems, the conditions did not attain the minimum level of severity to fall within the scope of Article 3 of the Convention. The Government went on to state that the medical care provided to the applicant had been of the highest quality; he had been regularly examined by various specialists and had received appropriate treatment, including in a prison hospital. After the applicant had been diagnosed with tuberculosis, he had been placed on an intensive antibacterial drug regimen. His condition had improved and he was no longer sputum-smear positive.

42. Finally, the Government accepted that the conditions of the applicant's detention in facility IZ-47/1 from 23 December 2002 until 10 December 2008 had run counter to the guarantees of Article 3 of the Convention in view of the overcrowding and lack of personal space in the facility.

43. The applicant began his argument with a submission relating to domestic remedies. In particular, he drew the Court's attention to a number of cases against Russia where it had found a violation of Article 13 of the Convention in view of a lack of domestic remedies in respect of complaints about the poor conditions of detention. He referred to his complaints to

various authorities, including prosecutors, which had not brought about any improvements to his situation. He further maintained his description of the conditions of his detention both in the temporary detention centre and the correctional facility. He argued that the lack of personal space in facility IZ-47/1, his lengthy solitary confinement, and the degrading sanitary conditions in the correctional facility had been in contravention of the requirements of Article 3 of the Convention. With regard to the issue of his solitary confinement, he stressed that it had only been authorised in view of his life sentence. There had been no other considerations which could have required his detention alone in a cell for almost two years. It had never been argued that he was a danger to himself or other inmates or guards. He had never attempted self-mutilation or escape, or attacked those around him. The authorities had never reconsidered his solitary confinement and whether it could be cancelled. They had never assessed his physical and mental health to determine whether he was fit for solitary confinement.

44. The applicant proceeded with a description of the quality of the medical services afforded to him in detention which, in his opinion, were manifestly inadequate. He stressed that he had been infected with tuberculosis in detention, for which the authorities should bear full responsibility.

B. The Court's assessment

1. Admissibility

(a) Objection as to non-exhaustion and victim status

45. The Government raised an objection in respect of non-exhaustion of domestic remedies by the applicant, claiming also that he did not have victim status in respect of his complaint of lack of effective remedies. The Court considers that these two issues are closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for his complaints concerning inhuman and degrading treatment on account of being detained in inadequate conditions, including in solitary confinement, and being deprived of effective medical care. The Court thus finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

(b) Six-month issue in respect of the complaint about the conditions in the temporary detention facility

46. The applicant complained about his stay from 23 December 2002 to 8 October 2010 in temporary detention facility IZ-47/1, where he had been sent to serve his sentence. The Government submitted that the applicant's stay in facility IZ-47/1 had been interrupted on 14 August 2003 when he

had been transferred to temporary detention facility IZ-47/6. He had returned to facility IZ-47/1 on 23 October 2003.

47. The Court reiterates that a period of detention should be regarded as a "continuing situation" if the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regimen, either within or outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months of the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (see *Ananyev and Others v. Russia*, cited above, § 78).

48. In the instant case, despite the applicant's arguments to the contrary, the Court has no reason to doubt the veracity of the Government's submissions concerning the applicant's transfer. It regrets that neither of the parties provided information on the purpose of the applicant's transfer or the material conditions of his detention for those two months in the new facility. The Court has previously examined the situation of the applicants who had been transferred from a remand prison to a correctional colony to serve their sentence and who had later returned to the same prison in connection with proceedings in a different criminal case. Their departure to the colony being definitive at the material time and their subsequent return to the same prison being a mere happenstance, the Court reached the conclusion that their transfer marked the end of the situation complained about and that the six-month period should run from the day they left the prison (see *Mitrokhin v. Russia*, no. 35648/04, § 36, 24 January 2012, and *Yartsev v. Russia* (dec.), no. 13776/11, § 30, 26 March 2013). By contrast, in the present case it is clear from the Government's submissions that the applicant's transfer to facility IZ-47/6 was of a temporary nature. Moreover, and more importantly, the Government did not argue that the applicant's detention in facility IZ-47/1 could not be regarded as a "continuous situation" because of his short transfer to another facility. In acknowledging that the applicant's rights guaranteed by Article 3 of the Convention were violated as a result of his lengthy stay in overcrowded conditions, the Government treated his detention from 23 December 2002 to 10 December 2008, when the applicant was placed in solitary confinement, as one single period. The Court accordingly finds that the applicant's short period of absence from facility IZ-47/1 had no effect on the continuous nature of his detention (see, for similar reasoning, *Sorokin v. Russia*, no. 67482/10, §§ 24-27, 10 October 2013). It therefore finds that the applicant complied with the six-month rule in respect of his complaint relating to the entire period of his detention after 23 December 2002.

(c) Conclusion as to admissibility

49. The Court further notes that the applicant's complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention

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

51. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. However, once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement.

52. The Court would emphasise that the application of this rule must make due allowance for the fact that it is being applied in the context of

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

53. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law, in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła*, cited above, §§ 157-158, and *Wasserman v. Russia* (no. 2), no. 21071/05, § 45, 10 April 2008).

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

55. Turning to the facts of the present case, the Court notes the Government's argument that the applicant did not attempt to make use of any avenues for exhausting remedies proposed by them as effective. However, it is not convinced by these submissions. In particular, some of the documents produced by the applicant, such as copies of letters from various domestic authorities, show that he complained to prosecutors, the Service for the Execution of Sentences and the governors of the detention

facilities. The applicant employed these remedies in an attempt to draw the authorities' attention to his state of health and the conditions in which he was detained. Such fact alone has been sufficient for the Court on many occasions to dismiss the Government's objection of non-exhaustion (see, for instance, *Gurenko v. Russia*, no. 41828/10, § 78, 5 February 2013).

56. However, the Court observes that its task in the present case is to examine the effectiveness of various domestic remedies suggested by the Russian Government and not merely to determine whether the applicant made his grievances sufficiently known to the Russian authorities. In this connection, the Court observes that it has on many occasions examined the effectiveness of the domestic remedies suggested by the Government. It found, in particular, that in deciding on a complaint concerning breaches of domestic regulations governing conditions of detention or the provision of medical care to detainees, the prison authorities would not have a sufficiently independent standpoint to satisfy the requirements of Article 35 of the Convention (see *Dirdizov v. Russia*, no. 41461/10, § 75, 27 November 2012, and *Ananyev and Others*, cited above, § 101). Even though review by a supervising prosecutor plays an important part in securing appropriate conditions of detention, a report or order by a prosecutor is primarily a matter between the supervising authority and the supervised body and is not geared towards providing preventive or compensatory redress to the aggrieved individual (see *Dirzidov*, § 76, and *Ananyev and Others*, § 104, both cited above). A civil claim for compensation under the tort provisions of the Civil Code, such as those cited by the Government by way of example, cannot offer the applicant any other redress than a purely compensatory award and cannot put an end to a situation where there is an on-going violation, such as lack of personal space or of specific accommodation in a given detention facility, or inadequate medical care (see *Reshetnyak v. Russia*, no. 56027/10, §§ 65-73, 8 January 2013). Moreover, such a remedy did not offer reasonable prospects of success, in particular because the award was conditional on the establishment of fault on the part of the authorities, which was extremely improbable in a situation where domestic legal norms prescribed the application of a certain measure, for instance, certain conditions of detention or solitary confinement (see *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 84-89, 12 March 2009, and *A.B. v. Russia*, no. 1439/06, § 96, 14 October 2010). Furthermore, the Court has noted that, even in cases where the Russian courts have awarded compensation for conditions of detention that were unsatisfactory in the light of the domestic legal requirements, the level of compensation was unreasonably low in comparison with the awards made by the Court in similar cases (see *Ananyev and Others*, cited above, §§ 113-118).

57. In the light of the above considerations, the Court concludes that none of the legal avenues put forward by the Government constituted an

effective remedy that could have been used to prevent the alleged violations or their continuation and provide the applicant with adequate and sufficient redress for his complaints under Article 3 of the Convention. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies. As regards their objection relating to the applicant's victim status, given his alleged failure to employ the above-mentioned ineffective domestic remedies before bringing his complaint to Strasbourg, the Court observes that the applicant could not be required to have recourse to remedies which could not afford him redress in respect of the breaches alleged. The Court also reiterates that he attempted, albeit unsuccessfully, to make use of at least two of the legal avenues proposed by the Government. The Government's objection in this regard is therefore dismissed.

58. To sum up, the Court finds that the applicant did not have at his disposal an effective domestic remedy for his complaints, in breach of Article 13 of the Convention.

(b) Alleged violations of Article 3 of the Convention

(i) General principles

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

60. 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).

61. 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 care 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)).

62. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006; *Yevgeniy Alekseyenko*, cited above, § 100; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; and, *mutatis mutandis*, *Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov*, cited above, § 211).

63. 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).

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

(α) Conditions of detention from 23 December 2002 to 10 December 2008

64. The Government acknowledged that the applicant's conditions of detention from 23 December 2002 to 10 December 2008 did not comply with the requirements of Article 3 of the Convention. The Court reiterates that it has already found a violation of Article 3 of the Convention on account of an acute lack of personal space in the cells of facility IZ-47/1 in respect of the time during which the applicant was held there (see *Andrey Frolov v. Russia*, no. 205/02, §§ 43-51, 29 March 2007; *Seleznev v. Russia*, no. 15591/03, §§ 38-48, 26 June 2008; *Lutokhin v. Russia*, no. 12008/03,

§§ 53-59, 8 April 2010; *Petrenko v. Russia*, no. 30112/04, §§ 35-41, 20 January 2011; *Tsarenko v. Russia*, no. 5235/09, §§ 47-53, 3 March 2011; and *Popandopulo v. Russia*, no. 4512/09, §§ 84-89, 10 May 2011).

65. Having regard to the parties' submissions in relation to the overcrowding problem and to the findings in the above-mentioned cases, the Court considers that the conditions of the applicant's detention from 23 December 2002 to 10 December 2008 amounted to inhuman and degrading treatment.

66. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 23 December 2002 to 10 December 2008.

(β) Conditions of detention from 10 December 2008 to 8 October 2010

67. The Court observes that from 10 December 2008 to 8 October 2010 the applicant was held alone in wing 2/1 of facility IZ-47/1, in cells measuring 8 square metres. As the size of the cells by itself does not raise an issue under the Convention, the Court will have to determine whether the cumulative effect of other aspects of the physical conditions of the applicant's detention was such as to amount to inhuman and/or degrading treatment in breach of Article 3 of the Convention.

68. The parties disputed many aspects of the detention conditions in wing 2/1 of the facility. In this regard the Court reiterates that in certain instances the respondent Government alone have access to information capable of firmly corroborating or refuting allegations under Article 3 of the Convention, and that a failure on the Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-founded nature of the applicant's allegations (see *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts), and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). The Court will therefore focus on the facts presented to it which the respondent Government either accepted or failed to refute, but without establishing the veracity of each and every allegation.

69. The Court firstly observes that, in so far as the sleeping arrangements in the cells are concerned, the applicant claimed that the cells in which he was detained were not equipped with bunks, but with concrete platforms (see paragraph 9 above). The Court notes that the Government made no specific comments on this allegation, merely stating that the cells had had two "sleeping places".

70. Secondly, as regards the natural lighting in the cells, the applicant contended that each cell had a small window covered by three rows of metal bars and a dense metal mesh separating the window from the living area. The applicant argued that that arrangement had blocked the access of natural light and fresh air. The Government again did not comment on that point. As far as the artificial lighting was concerned, according to the

parties, the cells were lit during the day by a 60-watt bulb and at night by a 40-watt bulb.

71. Thirdly, the applicant alleged that outside exercise had been limited to one hour a day and that on some days it had not been available at all (see paragraph 9 above). The Government did not comment on whether in fact the applicant had been deprived of outside exercise on court days or on other occasions.

72. Having regard to the foregoing, the Court observes that from 10 December 2008 to 8 October 2010 the applicant had to spend a considerable part of each day practically confined to his cell, with inadequate sleeping arrangements, insufficient daylight and extremely poor artificial lighting. The Court further observes that this is not the first time it has had to examine the conditions of detention in wing 2/1 of facility IZ-47/1. In particular, in the case of *A.B. v. Russia* (cited above, §§ 57-73), the applicant gave a description of wing 2/1 similar to the one provided by the applicant in the present case, supported by written statements by his fellow inmates. While in the former case the Court decided not to examine the material conditions of the applicant's detention in wing 2/1, but concentrated on the fact of the solitary confinement itself, in the present case the Court is prepared to treat the description given by Mr A.B. as evidentiary support for the applicant's complaint. Moreover, the Court recalls another case where it was asked to look into the detention conditions in wing 2/1: it reiterates that in the case of *Popandopulo v. Russia* (cited above, §§ 90-96), basing its findings on a similar description of the conditions of detention, the Court found that the limited access to outdoor exercise, natural light and air, the poor ventilation and the inadequate sleeping arrangements in the cells of the said wing ran counter to the requirements of Article 3 of the Convention. It sees no reason to reach a different conclusion in the present case.

73. The Court therefore finds that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility IZ-47/1 from 10 December 2008 to 8 October 2010.

(γ) Solitary confinement

74. The Court observes that on 10 December 2008, immediately after he was convicted and sentenced to life imprisonment, the applicant was transferred to wing 2/1 of facility IZ-47/1, where he remained in conditions of solitary confinement until his transfer to a correctional facility on 8 October 2010.

75. The Court reiterates at the outset that the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 191, ECHR 2005-IV). In many States parties to the Convention more stringent security measures,

which are intended to prevent the risk of escape, attack or disturbance of the prison community, exist for dangerous prisoners (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 138, ECHR 2006-IX). Whilst prolonged removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 6933/01, § 93, 21 July 2005). Solitary confinement is one of the most serious measures which can be imposed within a prison. In view of the gravity of the measure, the domestic authorities are under an obligation to assess all relevant factors in an inmate's case before placing him in solitary confinement (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 83, 27 January 2009, and *Onoufriou v. Cyprus*, no. 24407/04, § 71, 7 January 2010).

76. Turning to the facts of the present case, the Court notes that the applicant spent twenty-two months in solitary confinement. For six years up to his transfer to wing 2/1 he remained in the same facility, unseparated from the rest of the inmate population. The Government did not argue that he had any record of disorderly conduct in the facility, had ever mounted threats against other inmates or warders, or had himself been the subject of such threats of violence (see, by contrast, *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V). In the Government's submission, the only reason for his placement in solitary confinement was a domestic legal norm requiring inmates sentenced to life imprisonment to be separated from the remaining detainees (see paragraph 36 above). In this respect, the Court observes that Articles 125 and 127 of the Russian Code on the Execution of Criminal Sentences only called for the solitary confinement of a life prisoner upon his demand or for safety reasons (see paragraph 37 above). The Court further notes that there was no assessment of the necessity to cut the applicant off from the rest of the inmate population. The very fact that he was serving a life sentence was sufficient for him to be isolated. However, the Court finds that such a sentence alone cannot justify solitary confinement, particularly in the case of a detainee, such as the applicant, who despite many years of being in contact with other inmates, had no history of violence or other disorderly or disturbing behaviour.

77. The Court further reiterates the guarantees it has laid down in respect of compliance of solitary confinement with Article 3 of the Convention. In particular, it has stated in a number of cases where a protracted period of solitary confinement was extended that, in order to avoid any risk of arbitrariness, substantive reasons must be given. The relevant decision should thus make it possible to establish that the authorities carried out a reassessment that took into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons needs to be increasingly detailed and compelling as time goes by. Furthermore, such

measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement. It is essential that a prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement (see *Ramirez Sanchez*, cited above, §§ 139 and 145; *Onoufriou*, cited above, § 71; and *A.B. v. Russia*, cited above, § 108, 14 October 2010).

78. The Court is of the opinion that neither of these guarantees was respected in the present case. It cannot but observe that in the present case the prison authorities were not required to justify the applicant's detention in solitary confinement for almost two years. Moreover, the Russian law did not require them to reassess the necessity of his continued isolation as the months of his confinement went by. It does not appear from the Government's submissions that measures were required at any point to verify whether the applicant could continue being detained in isolation. The parties have not disputed the fact that the applicant's physical or psychological aptitude for long-term isolation was never assessed. The Court reiterates in this regard that solitary confinement without appropriate mental and physical stimulation is likely, in the long term, to have damaging effects, resulting in the deterioration of mental faculties and social abilities (see *Csüllög v. Hungary*, no. 30042/08, § 30, 7 June 2011). It further notes in this connection the conclusions of the Committee for the Prevention of Torture, which in its 2011 general report stated that the damaging effects of solitary confinement can be immediate, and increase the longer the measure lasts and the more indeterminate it is. Given the potentially very damaging effects of solitary confinement, it should be used only in exceptional cases and as a last resort, and for the shortest possible period of time (see paragraph 35 above).

79. The Court also takes into account the fact that the Government have provided no information to counter the applicant's allegations that he was kept in nearly absolute social isolation (see *Rohde*, cited above, § 97). It also does not appear from the Government's submissions that domestic law enabled the applicant to institute proceedings by which he could have challenged the grounds of his protracted solitary confinement and the necessity for its continuation.

80. To sum up, the Court finds that the applicant was placed in solitary confinement purely in view of the general legal requirement, without any evaluation of his individual situation, in the absence of any objective assessment of whether the application of the measure in question was appropriate or pursued any specific aim, in disregard of the applicant's physical and mental condition, and in disregard of the effects long-term solitary confinement could have on his mental, physical and social health. In

view of the above, the applicant's prolonged solitary confinement amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

81. There has therefore been a violation of Article 3 of the Convention on account of the applicant's solitary confinement.

(δ) Medical care in detention

82. Turning to the circumstances of the present case, the Court observes that the crux of the applicant's complaint was that he had been infected with tuberculosis in detention and had had no access to appropriate medical care for that illness, or for other chronic or acute conditions he had been suffering from while in detention.

83. The Court notes that following a fluorography test on 2 May 2012, almost ten years after his arrest in December 2002, the applicant was diagnosed with tuberculosis which, according to the results of several X-ray examinations performed during his detention, he had not suffered from prior to his arrest. The Government did not argue that the applicant had had any history of tuberculosis before his placement in temporary detention facility IZ-47/1.

84. While finding it particularly disturbing that the applicant's infection with tuberculosis occurred in a detention facility within the State's control, the Court reiterates its constant approach that even if an applicant did contract tuberculosis while in detention, that in itself would not imply a violation of Article 3, provided that he received treatment for it (see *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005, and *Pitalev v. Russia*, no. 34393/03, § 53, 30 July 2009, with further references). However, the State does have a responsibility to ensure treatment for prisoners in its charge and a lack of adequate medical assistance for serious health problems not suffered from prior to detention may amount to a violation of Article 3 (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 108 et seq., 29 November 2007). Absent or inadequate treatment for tuberculosis, particularly when the disease has been contracted in detention, is most certainly a subject of concern for the Court. It is therefore bound to assess the quality of medical services rendered to the applicant in the present case and to determine whether he was deprived of adequate medical assistance as he claims and, if so, whether this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005).

85. Having studied the applicant's medical records produced by the Government, the authenticity and reliability of which the applicant did not dispute, the Court finds it established that after admission to the detention facility the applicant was under constant medical supervision. It observes that following the discovery of tuberculosis changes in the right lung in May 2012 the applicant was immediately subjected to a number of additional tests to determine the stage and form of the illness and was

placed on an antibacterial drug regimen. The Court would like to stress at this juncture that the medical assessment of the applicant conducted during the first days following the discovery of the illness appears to have complied fully with international standards of tuberculosis control policy in prisons, a recognised setting for the transmission of tuberculosis. In particular, the Court notes that the applicant was seen without delay by a tuberculosis specialist, who studied his medical history, recorded his complaints and scheduled specific additional testing. The doctor's recommendations were promptly put into practice. Subsequent tests were also performed without undue delay.

86. The Court further observes that the quality of the treatment provided to the applicant following the detection of the tuberculosis appears to have been adequate. In particular, the evidence put before the Court indicates that the Russian authorities employed all existing tools for the correct diagnosis of the applicant, taking into account the extent of the disease and determining the severity of the tuberculosis in order to prescribe appropriate therapy.

87. After being placed on the strict medication regimen required for tuberculosis treatment, the applicant received a number of anti-tuberculosis medicines, which were administered to him at the requisite dosage, at the right intervals and for the appropriate duration. Throughout the period of his treatment the applicant was subjected to regular and systematic clinical and radiological assessment and bacteriological monitoring, which formed part of the comprehensive therapeutic strategy aimed at curing the disease. Necessary amendments to the treatment were made in response to complaints made by the applicant in relation to his chronic gastric condition. After closely supervising his response to these amendments, the doctors reintroduced a more efficient antibacterial regimen as soon as the ulcer problem was relieved. The detention authorities also effectively implemented the doctors' recommendations regarding the special diet necessary for the improvement of the applicant's health (see, by contrast, *Gorodnitchev v. Russia*, no. 52058/99, § 91, 24 May 2007).

88. Furthermore, the Court attributes particular weight to the fact that the authorities not only ensured that the applicant was seen by doctors, his complaints were heard, and he was prescribed a trial course of anti-tuberculosis medication, but they also created the necessary conditions for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116). The Court notes that the intake of medicines by the applicant was supervised and directly observed by the facility's medical personnel throughout the treatment regimen. The authorities' actions enabled the applicant to adhere to the treatment and ensured that the prescribed regimen was complied with, a key factor in successful tuberculosis treatment.

89. The Court is also mindful of the fact that the prison medical personnel sought second opinions from specialists at the tuberculosis hospital in the town of Ivdel. When he was transferred back to the correctional facility from the hospital the applicant was no longer sputum smear-positive. The Court interprets that fact as a sign that the applicant's treatment had been effective, meaning that he was recovering. The transfer from the tuberculosis hospital was accompanied by recommendations for the amendment of the treatment regimen, which the prison doctors complied with. The applicant continued with the prescribed treatment regimen. Nothing in the case-file leads the Court to a conclusion that the applicant did not receive comprehensive medical assistance during that stage of his tuberculosis treatment. The list of tests submitted by the Government included regular X-ray, sputum smear tests, further clinical analysis, and examinations by tuberculosis specialists. The applicant did not deny that medical supervision had been provided and tests had been carried out, or that the prescribed medication had been provided, as indicated in the medical records submitted by the Government.

90. Finally, the Court is satisfied that the authorities efficiently addressed any other health complaints that the applicant had, such as gastric problems, trauma, and so on. The records provided by the Government indicate that the applicant's complaints were promptly addressed by the medical personnel, that the necessary specialists were called upon to assist in properly diagnosing the applicant and that the recommended treatment was provided.

91. To sum up, the Court considers that the Government provided sufficient evidence to enable it to conclude that the applicant received comprehensive, effective and transparent medical care while in detention. Accordingly, there has been no violation of Article 3 of the Convention on account of the alleged failure to provide the applicant with the requisite medical care during his imprisonment.

(ε) Conditions of detention in the correctional facility

92. The Court observes that the applicant arrived at correctional facility IK-56 in the Sverdlovsk Region on 4 November 2010 and, save for a short period during which he was transferred to the tuberculosis hospital in November 2012, he has been detained there ever since. According to the parties' submissions, over the period of his detention in the facility the applicant has been kept in two types of cell. The larger of these cells measure 18 square metres and the applicant was kept there either alone or with another inmate. On three occasions the applicant was detained alone for approximately a month in smaller cells of 4 square metres. However, the applicant has not complained about the lack of personal space or the fact of his solitary confinement, but rather of degrading treatment relating to the lack of water-supply and sewage systems in the facility, and the absence of

proper sanitary installations in the cells. The treatment he complained of consisted of the necessity to relieve himself in a bucket, often in the presence of another inmate, and to endure difficulties as a result of the lack of sanitary facilities, such as the unpleasant odor in the cells, poor hygiene and the daily obligation to empty and clean the bucket. The Court observes that the Government did not dispute the applicant's description of the facility's sanitary arrangements.

93. The Court considers, as does the Committee for the Prevention of Torture, that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining inmates' sense of personal dignity (see paragraph 33 above). Not only are hygiene and cleanliness an integral part of the respect that individuals owe to their bodies and to the neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean (see point 15 of the Standard Minimum Rules for the Treatment of Prisoners; point 19.4 of the European Prison Rules; and *Ananyev and Others*, cited above, § 156).

94. The Court therefore concludes that the lack of access to proper sanitary facilities, particularly for such a long period of time and, it appears from the Government's submissions, in the absence of any hope of improvement in the near future, is in itself sufficient for the finding of a violation of Article 3 of the Convention. The Court is of the view that the prison conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him (see, for similar reasoning, *Kasperovičius v. Lithuania*, no. 54872/08, §§ 38-39, 20 November 2012, in which the applicant did not have access to proper sanitary facilities for several days). Given this finding, it is not necessary for the Court to examine further the conditions of the applicant's detention in the correctional facility. However, it cannot leave this part of the complaint without commenting on two other aspects of the detention which, in its view, aggravated the treatment to which the applicant was and continues to be subjected.

95. In particular, the Court observes that the applicant had a right to daily outside walks of one and a half hours in one of eight recreation yards of the facility. The Court notes that the largest recreation yards were 18 square metres and that the smallest ones only measured 7 square metres. Those arrangements hardly afforded any real possibility for exercise. The yards were surrounded by walls open to the sky but were covered by wire netting. The Court considers that the restricted space, coupled with its confined nature, undermined the purpose of these recreation and recuperation facilities (see, for similar reasoning, *Moiseyev v. Russia*, no. 62936/00, § 125, 9 October 2008). Moreover, the short time allowed for the outdoor walk and the inadequate arrangement of the recreation facilities

further exacerbated the general restrictions on access to natural light and air resulting from the small size of the windows in the applicant's cells and the horizontal and vertical rows of metal bars fitted to the windows. The Court has repeatedly emphasised the importance of giving prisoners unobstructed and sufficient access to natural light and fresh air within their cells (see, for instance, *Shilbergs v. Russia*, no. 20075/03, § 97, 17 December 2009; *Grigoryevskikh v. Russia*, no. 22/03, § 64, 9 April 2009; *Aleksandr Makarov*, § 96, cited above; and *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005). The window arrangements in the applicant's cells allowed little access to natural light and limited the circulation of fresh air, which the Court finds particularly disturbing given that the applicant, who was suffering from a serious pulmonary disease, needed a good supply of fresh air.

96. The Court is also concerned by the parties' description of the bathing arrangements in the facility. While the parties disagreed as to the manner in which the water was provided for the bathhouse (see paragraphs 16 and 17 above), the common point they made was as follows: the applicant and his fellow inmates could only bathe once a week for a short period of time. In this connection, the Court would like to reiterate that weekly visits to bathing facilities cannot provide an inmate with an adequate opportunity to maintain personal hygiene. Restricting prisoners' access to bathing facilities to once a week means they are denied the opportunity to wash themselves properly (see *Ananyev and Others*, cited above, § 158). The Court is therefore of the opinion that this shortcoming further contributed to the cumulative effect of the conditions of detention in violation of Article 3 of the Convention (see *Čuprakovs v. Latvia*, no. 8543/04, §§ 44-45, 18 December 2012).

97. Having regard to the cumulative effect of the factors described above, the Court considers that the conditions in which the applicant was and continues to be held in correctional facility IK-56 amount to inhuman and degrading treatment.

98. There has accordingly been a violation of Article 3 of the Convention in this respect.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. 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 the 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

100. 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

101. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

102. The Government submitted that the applicant's claims were unsubstantiated and excessive. They considered that, although the applicant's detention in facility IZ-47/1 from 23 December 2002 to 10 December 2008 had run counter to the requirements of Article 3 of the Convention, a sum of EUR 19,875 should be considered sufficient just satisfaction.

103. 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 on account of his detention for a long period in conditions which did not comply with the requirements of Article 3 of the Convention, and his having no remedies for complaining about the alleged violations, 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 25,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

104. The applicant also claimed EUR 4,000 for the legal costs incurred before the Court.

105. The Government did not comment.

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant provided the Court with copies of contracts for legal representation setting up an aggregate fee of EUR 4,000. Having regard to the documents submitted and the rates for the lawyers' work, the Court is satisfied that those rates are reasonable. However, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees on account of the fact that some of

the applicant's complaints were either declared inadmissible or no violation was found. In this connection, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 2,000, together with any tax that may be chargeable to him.

C. Default interest

107. 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. *Joins* the Government's objection as to the alleged non-exhaustion of domestic remedies and lack of victim status in respect of the applicant's complaints under Article 3 to the merits of his complaint under Article 13 and *rejects* it;

2. *Declares* admissible the complaints concerning the conditions of detention in temporary detention facility IZ-47/1, including in solitary confinement, and correctional facility IK-56, lack of adequate medical assistance, and the alleged absence of an effective domestic remedy in this connection, and *declares* inadmissible the remainder of the application;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention from 23 December 2002 to 10 December 2008;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention from 10 December 2008 to 8 October 2010;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's solitary confinement between 10 December 2008 and 8 October 2010;

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

8. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in correctional facility IK-56;

9. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;

(iii) any tax that may be chargeable to the applicant on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Elisabeth Steiner
President