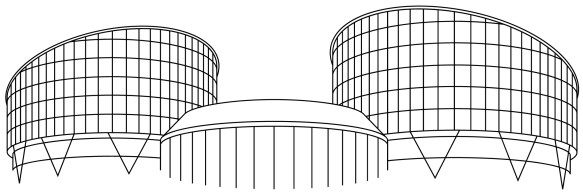

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAKHVADZE v. RUSSIA

(Application no. 15492/09)

JUDGMENT

STRASBOURG

10 January 2012

Request for referral to the Grand Chamber pending

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sakhvadze v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 15492/09) 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 Teymuraz Zurabovich Sakhvadze ("the applicant"), on 4 February 2009.

2. The applicant was represented by Mr F. Bagryanskiy, Mr A. Mikhaylov and Mr M. Ovchinnikov, lawyers practising in Vladimir. The Russian Government ("the Government") were represented by G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 30 September 2009 the President of the First Section decided to give priority treatment to the application and to give notice of it to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and is currently serving a prison sentence in the Vladimir region**.**

5. In 2004 and 2005 the applicant was convicted of a number of criminal offences and sentenced to eight years' imprisonment. He has served his sentence in prisons in the Vladimir region.

A. The applicant's medical conditions and health care from July 2006 to June 2009

6. From 20 July 2006 to 5 June 2009 the applicant was admitted to the tuberculosis unit in the hospital attached to Vladimir prison no. 3 ("the hospital"). On 5 June 2009 the applicant was transferred to medical facility LIU-8 in Kirzhach, in the Vladimir region.

1. The applicant's account

7. The applicant raised the following specific grievances concerning his medical history and state of health.

(a) Myelopathy

8. On an unspecified date the applicant was diagnosed with cervical spinal myelopathy accompanied by motor neuron impairment. In 2009 he described his condition as follows. He could bend his left knee but his right knee only bent with severe pain. As a result, the applicant hardly ever moved and his leg muscles were atrophied. His right-hand fingers were crooked; it was painful when he tried to straighten them. He suffered from severe pain in his right hand, left shoulder, small of the back, knees, neck, left foot and hip. His right-hand palm, back and right hip were covered with sores. He had sores on his right-hand fingers which suppurated.

9. During his admission and stay in the hospital from July 2006 to June 2009 the applicant was examined by neurologist K. The applicant's medical records indicate that the applicant was bedridden and, for a period of time, communicated with hospital staff by handwritten notes. The neurologist recommended an MRI scan and early release from prison on health grounds. For unspecified reasons, no MRI scan was carried out. Early release was refused in August 2006.

10. In September 2006 the applicant was examined by neurologist N., who prescribed physical therapy, vitamin-based treatment, pain relief medication and non-steroidal anti-inflammatory drugs. It was also recommended that the applicant be examined by a rheumatologist and a trauma specialist (see also paragraph 17 below). X-rays of the right wrist joint and left knee joint were indicated.

11. It is unclear what acts of medical care were performed in relation to the applicant's myelopathy from September 2006 to February 2007.

12. In reply to a letter from the applicant's lawyer, in February 2007 L., a neurologist at the Vladimir Region Clinical Hospital, wrote to him advising that myelopathy was a chronic and slowly progressing disease, leading to gradual deterioration of the patient's condition with increased symptoms related to the motor function, level of awareness, the function of the pelvic organs and bedsores. The neurologist concluded that "complex therapy was required in a specialised medical institution, including an

electromyography (EMG) test every six months, irrespective of the treatment's effectiveness".

13. In September 2007 the applicant complained to the national authorities in relation to inadequate medical assistance rendered to him and poor conditions of his detention (see paragraphs 41-58 below).

14. In 2008 one of the above-mentioned neurologists examined the applicant and prescribed massage, medication and vitamins.

15. According to the applicant, he was not provided with any specific treatment (medication or physical therapy) in relation to his myelopathy. Any mention in his medical records of a refusal to receive myelopahy-related treatment was forged. None of the refusals were written on a special form and none of them bore his signature, despite the requirements of national legislation (see also paragraph 18 below).

16. Since early 2009 the applicant has suffered from frequent convulsions and has had difficulties in holding items in his hands.

17. In May 2009 the applicant was examined by neurologist N., who made the following findings:

> "There is long-term and progressive post-traumatic damage to the lumbosacral plexus, which prevents active movement with the left leg. Damage to the lumbar spine and left leg prevents autonomous walking and results in a considerable reduction of autonomous movement. Thus, at the moment, the patient has a persisting dysfunction of the motor function of the left leg, impossibility of autonomous movement, dysfunction of the motor function of the right arm/hand...The patient requires constant help and active treatment. Focus should be on physiotherapeutic procedures and medical rehabilitation (electro-stimulation, anaesthetic/analgesic treatment). I recommend medication by Milgamma compositum, Berlition and adequate non-steroid anaesthetic/analgesic treatment and vascular medication with Kurantil and a course of Aktovegin... A consultation with a trauma specialist and a rheumatologist is necessary to [further] adapt [existing] medical procedures."[1]

Similar recommendations were made in September 2009.

(b) Other medical conditions and complaints

18. Since 1998 the applicant has been suffering from tuberculosis, which became drug-resistant and affected by haemoptysis (coughing up of blood) in July 2006. The applicant was prescribed medication and injections but refused them on numerous occasions because of acute negative side effects such as nausea. The applicant's medical records indicate that on several occasions medical staff talked to him about the need to continue treatment but to no avail.

19. On an unspecified date before his admission to hospital, the applicant underwent a gastrectomy, significantly reducing his stomach. The applicant has also had half of his tongue removed, due to which his speech

[1] Names of medical substances are given hereafter in accordance with the classification of drugs adopted in Russia.

is impaired. In 2009 the applicant weighed less than 56 kg for 180 cm in height.

20. The applicant has also suffered (and continues to suffer) from acute pain in the stomach area, the liver, the kidneys and from nausea. According to the applicant, he was not examined by a gastroenterologist or given any treatment. An endoscopy was carried out for the first time in 2008. On three occasions it was not carried out, although the applicant had not made a valid refusal. No medication was provided to him.

21. In January 2007 the applicant was given an electrocardiogram (ECG) test. No prior or subsequent tests or medication were provided, despite the applicant's acute and persistent heart pains. He was not examined by a cardiologist.

22. Since mid-2007 the applicant has also suffered from enuresis (urinary incontinence). It was recorded in late 2007 that the applicant had made verbal complaints to the unit supervisor about his treatment and had asked that his mattress be replaced because of a urine odour. His request was refused, as no smells were detected and the mattress was dry.

23. Despite his liver pains, he was not examined by a hepatologist; nor was he given any medication. He submitted that the latter was particularly important, given that he had received chemotherapy for his tuberculosis.

24. In July 2006 the applicant was examined by an ophthalmologist. In March 2007 he was diagnosed with slight nearsightedness and retinal angiospasm. In reply to a complaint he made of deteriorating eyesight, in April 2008 it was recorded that no visual acuity test could be carried out in the cell and no treatment was required.

25. The applicant has lost most of his teeth. His remaining teeth and his gums are rotten and cause him pain. The applicant had two consultations with a dentist; no treatment was given following those consultations.

26. According to the applicant, no medical assistance has been provided to him – in particular, from late December 2008 to June 2009 – in relation to his above-mentioned conditions (see also paragraph 27 below).

(c) Discharge from the hospital

27. A discharge certificate was issued on 12 January 2009. It is unclear whether the applicant remained in solitary confinement or was transferred to another part of the hospital. On 15 January 2009 he complained to a neurologist of pain in his extremities and was prescribed medicine. He was also examined by a therapist and was given medicines for headache and abdominal pains. He was examined on 22 January 2009 due to the worsening of his state of health and was given vitamins and medicines for intestinal disbacteriosis and colitis. Three days later he was examined by an ENT specialist, on whose prescription he was given an iodine-based liquid to rinse his mouth with. On 29 January 2009 he was examined by a dentist and an ENT specialist who confirmed a diagnosis of antritis. In February

2009 he was provided with a follow-up check-up and was told to continue the treatment.

2. The Government

28. The Government argued, with reference to the applicant's medical records, that on numerous occasions between 2006 and 2008 the applicant had refused to be examined, to take medicines (mainly tuberculosis related), to undergo medical examinations or to submit to laboratory tests. For instance, as could be seen from his medical records, the applicant had complained of pain in his body on 12 and 19 September 2007, pelvic pain on 8 October 2007 and pain in his arms on 7 March 2008 but had "plainly refused to submit to an examination".

29. In support of their statements, the Government relied on typed copies of the applicant's medical records for the period from July 2006 to January 2009, medical reports (*медицинские заключения*) of 21 December 2009 issued by the administration of prison no. 3, as well as on various certificates issued by the administrations of prisons no. 3 and LIU-8, their licences for providing medical care and documents confirming the qualifications of their medical staff.

30. The Government stated that the above documents were official documents submitted by duly authorised public officials in the performance of their official duties. These officials, by the nature of their functions, were aware of the fact that any false information could result in prosecution for abuse of power or forgery of official documents.

B. Material conditions of the applicant's confinement in the prison hospital

1. The applicant's account

31. In July 2006 the applicant was admitted to the tuberculosis unit of the hospital attached to prison no. 3.

32. Between July and November 2007 the applicant was kept in various cells accommodating, at various times, two to eight people. In the first cell there was no mandatory ventilation. The cells were dirty, poorly heated, filled with unpleasant kitchen odours and infested with insects and rodents.

33. In November 2007 the applicant was transferred to another cell in which he was kept alone. The cell window was covered with newspaper, hindering access to natural light. The temperature in the cell and the adjoining shower room was often low.

34. Being unable to shout for help owing to the fact that part of his tongue was missing, the applicant was obliged to attract the hospital attendants' attention by throwing items at the door or by knocking on his

bedside table. The door to the cell was kept locked and was unlocked by prison officers at the attendants' request.

35. The applicant needed assistance to use toilet and to wash himself. Once a month two detainees took him to the shower room and washed him. In addition, a hospital attendant brought a basin into the cell so that the applicant could wash his face. The applicant was provided with a piece of soap and a small roll of toilet paper once a month.

36. The cell was filled with a urine odour because of the applicant's enuresis. According to the applicant, his request for a new mattress and more frequent cleaning of bed linen was refused. The food was of poor quality. The applicant was not provided with drinking water and had to drink tap water. He was not taken outdoors during his stay in the hospital.

37. The applicant was not visited by doctors or given medication after 29 December 2008. On 12 January 2009 a prison doctor told him that he would soon be discharged from the hospital because he had completed his tuberculosis treatment and that further treatment would be of no use because the applicant was suffering from a drug-resistant form of the disease and his lungs were deteriorating.

38. Although he had been informed of his imminent discharge, the applicant was not transferred from the prison hospital. He was not examined by the doctors; once a day he received visits from hospital attendants who brought him food and water and cleaned his chamber pot. The doctors and nurses refused to examine him, claiming that he had been discharged and thus was not "on the hospital's books".

39. The applicant submitted written statements from several detainees, who, however, had not been kept in the same cell(s). Mr Po. described the general material conditions of confinement in the tuberculosis unit between 2004 and 2009. Mr V. described the conditions of his detention in the hospital in 2004 and "in and after 2005". Mr D. and Mr Ch. stated that since September 2007 they had been kept in rooms measuring approximately fourteen square metres and accommodating ten people. They added that they had heard about the applicant's solitary confinement; about his inability to move around and to take care of himself; and that he had not been taken outdoors for a long time.

2. The Government's account

40. According to the Government, the applicant had been kept alone under the constant supervision of one hospital attendant and twenty-four-hour assistance from on-duty staff had been available. At any moment the applicant could have asked to be helped by the attendant present. The applicant was able to access, alone or with assistance, a chamber pot or the toilet, which was two metres from his cell. The toilet was equipped with a flushing cistern; a sink was also made available there. The chamber pot was kept in the cell and was always cleaned after use.

Bedding had been cleaned and a shower had been available once per week. As could be seen from the applicant's medical records, in 2007 the applicant had not needed another mattress because he had not asked for it or because there had not been a urine odour in the cell. The cell had functioning mandatory ventilation and air was able to enter the cell through a window ventilator. The window provided access to natural light; this window was properly glazed. Artificial light was also available in the cell. The heating system functioned properly, achieving a room temperature of 20 degrees Celsius on average. The applicant had been fed in accordance with the regulations concerning ill detainees. The applicant had been taken, on foot or in a wheelchair, to outdoor exercise three times per day.

C. The applicant's complaints to national authorities

41. On 7 September 2007 the applicant and his lawyer requested that criminal proceedings be initiated concerning inadequate medical assistance rendered to the applicant and poor conditions of his detention. They referred to Article 124 ("failure to provide medical assistance") and Article 236 ("breach of sanitary and health regulations") of the Russian Criminal Code.

42. Subsequent events can be split into two parallel sets of proceedings, in which the applicant was represented by a lawyer before the national authorities, including the courts.

1. Proceedings under the Prosecutors Act and the Code of Civil Procedure

43. On 5 October 2007 an assistant to the Vladimir town prosecutor supervising penitentiary facilities ("the town prosecutor") examined the above complaint and issued a written opinion (*заключение*) stating that no action was required from the prosecutor under section 33 of the Prosecutors Act (see paragraph 59 below). The town prosecutor approved the assistant prosecutor's opinion; the applicant was informed accordingly.

44. The applicant brought court proceedings, challenging the opinion of 5 October 2007 and the town prosecutor's refusal to take action. By a judgment of 21 January 2008 the Oktyabrskiy District Court in Vladimir held that this refusal was unlawful because the inquiry had not been thorough for the following reasons: the applicant's medical records had not been assessed; no medical expert had been appointed; the material conditions of the applicant's confinement in hospital had not been inspected; the applicant and his counsel had not been heard; no assessment had been made of the applicant's complaints concerning lack of outdoor exercise, the deplorable quality of food, insufficiency of hygiene items and the sanitary condition of the shower room and toilets.

45. In February 2008 an assistant town prosecutor issued a new opinion, again concluding that that no action was required from the town prosecutor

under section 33 of the Prosecutors Act. This decision was confirmed by the town prosecutor. However, in March 2008 for unspecified reasons the town prosecutor reconsidered his own decision and ordered an additional inquiry. In April 2008 the assistant prosecutor issued a new refusal, which was then confirmed by the town prosecutor.

46. The applicant brought court proceedings to challenge this refusal. By a judgment of 16 June 2008 the District Court held that the refusal had not been properly reasoned because only part of the procedural shortcomings identified in the court decision of 21 January 2008 had been remedied in the resumed inquiry. The court held as follows:

> "The proper examination of the complaint relating to inadequate medical assistance within the penitentiary system required that an expert opinion should be sought from specialists unrelated to the penitentiary system... The refusal under review contained no assessment of the complaints concerning chest and heart pain; ... no assessment was made of the allegations concerning the lack of consultation with a cardiologist and the absence of any electrocardiogram...The prosecutor's findings as to the quality of the food was based on ... reports, while no indication was made as to the method used, for instance lab tests. No assessment was made of the relevant logbooks. The assessment concerning sanitary installations, the alleged presence of rodents and insects, and lack of outdoor exercise was not thorough..."

47. In March 2009 the regional tuberculosis hospital examined the applicant's medical records at the request of the Vladimir Regional Department of the Health Ministry. The hospital considered that the applicant had been provided with adequate tuberculosis-related treatment in prison no. 3 and that the effectiveness of this treatment had been adversely affected by the applicant's repeated refusals to take medicines and to comply with his doctors' recommendations.

48. Also, three people, apparently connected to the regional clinical hospital, examined the applicant's medical records and on 2 April 2009 issued a short report concerning illnesses affecting the applicant's nervous system. The panel held as follows:

> "The treatment provided [to the applicant] was in full compliance with the applicable standards, in line with the diagnosis established in 2003 and the recommendations issued by medical specialists in Moscow. Since 2003 the patient has been regularly supervised by neurologists from the regional hospital and medical institutions [in] Moscow and Cherepovets. The disease has developed gradually so that additional check-ups were necessary in the meantime. Conclusions: no cervical spine MRI scan has been carried out, despite a recommendation [that one should be conducted] after computer X-ray imaging; no consultation by a neurosurgeon has been arranged; no thioctic acid based medicine has been prescribed."

49. The town prosecutor asked the Vladimir Regional Department of the Health Ministry to carry out an inquiry regarding the medical care provided to the applicant in detention. The department's letter of 6 April 2009 indicated that the department had carried out an "independent" inquiry

involving unspecified "out-of-staff" leading medical professionals who had examined the applicant's medical records. They concluded as follows:

> "Treatment provided [to the applicant] in prison no. 3 was in compliance with the standard treatment required for patients suffering from drug-resistant tuberculosis... All relevant methods of treatment were used. The effectiveness of the treatment was affected by [the applicant's] repeated refusals to [take his] prescribed medicines, as confirmed by the medical records. Treatment of [the applicant's] somatic illnesses was fully compliant with the diagnosis and recommendations made by the Moscow-based specialists in 2003. Since 2003 the patient has been regularly supervised by neurologists from the regional hospital and medical institutions [in] Moscow and Cherepovets. The disease has developed gradually so that additional check-ups were necessary in the meantime. Conclusions: no cervical spine MRI scan has been carried out, despite a recommendation [that one should be conducted] after computer X-ray imaging; no consultation by a neurosurgeon has been arranged; no thioctic acid based medicine has been prescribed."

50. In his opinion of 18 April 2009, an assistant town prosecutor again considered that no action was required on the part of the prosecutor in reply to the applicant's complaint. The assistant town prosecutor held as follows:

> "The applicant has been admitted to hospital in relation to infiltrating pulmonary tuberculosis, as well as cervical spinal myelopathy affecting movement of the right arm and the legs...
>
> The main diagnosis (tuberculosis) has been confirmed by X-rays and bacteria analysis. The following medical acts were carried out: blood tests, an electromyography (EMG) test in September 2006, CT scanning in September 2007... As mentioned in the [applicant's medical] records, between November 2007 and January 2008 [the applicant] refused to take medicines for [treating his] tuberculosis... During his stay in the tuberculosis unit he was regularly examined by neurologist K. The latter explained that he had been supervising the patient since 2005.
>
> As can be seen from the medical history: in 2003 the patient was treated for post-traumatic plexopathy. He was given an EMG test, was examined by a specialist doctor and was diagnosed with osteochondrosis and discogenic radiculopathy... He received vascular therapy, B-group vitamins [and] non-steroidal anti-inflammatory drugs.
>
> In 2006 the applicant was diagnosed with pulmonary tuberculosis and was treated in a tuberculosis unit. He was given an EMG test, a CT scan and an X-ray. As a result, he was diagnosed with cervical spinal myelopathy... radiculopathy [and] sciatic neuralgia affecting the movement of [his] left foot.
>
> The patient was and is regularly examined by a neurologist. The [doctor's] recommendations included a course of vascular therapy, vitamin therapy and [the applicant] was instructed about the further intake of muscle [neuromuscular] relaxants...
>
> At present the patient's state of health is stable, he has been regularly examined by a neurologist but has refused to [take the medicines prescribed for him] in 2006 and 2007. On several occasions he was examined by specialist medical professionals (such

as a surgeon, a therapist and a dermatologist) but refused to be examined by a psychiatrist. At present, he is in section 1 of the hospital in prison no. 3.

In order to assess the medical care afforded [to the applicant], specialists from the regional department of the Ministry of Health were asked to examine [his] medical records together with regional specialists."

Having cited the letter of 6 April 2009 (see paragraph 49 above), the assistant prosecutor concluded that "independent specialists [had] considered that the patient had been treated in full compliance with the relevant standards".

Concerning the material conditions of the applicant's confinement, the assistant prosecutor made the following findings:

"The material in the file discloses that in March 2006 the prison received a favourable (preventive) epidemiological report. This report is valid until 2011... In February 2008 section 1 of the prison hospital was inspected; [the inspection] did not disclose any violations of sanitary regulations. Moreover, in September 2007 repair works were carried out in the tuberculosis unit. Thus, in 2008 it was not possible to inspect the sanitary conditions [pertaining in] the earlier period. Food provided to detainees complied with the relevant regulations concerning minimum rations for convicts. Food cooking and [detainees'] diet were controlled by medical professionals together with on-duty officers. [The applicant] was given a special diet for ill detainees. He was also provided with the required hygiene items, which could be confirmed by his signatures in the logbooks. Clothes and bedding had to be submitted for laundering once per week and would be disinfected.

During the inquiry detainees T., P. and S. were interviewed. Their testimony was not convincing, as they had been named by [the applicant's] lawyer. Detainees Kh., Z. and Pa. were also interviewed and stated that the material conditions in the living premises of the tuberculosis unit, including food, had been acceptable; cleaning had been regular. [The applicant] had been in the unit since October 2006 when the material conditions had been the same; he had been given medication and had had regular check-ups. An attending assistant had been assigned to him.

Zo. and Pi. had not answered the summons and could not be interviewed.

The prison has a contract with a private company for disinfecting the premises and eradicating rodents and insects. This work was done on a weekly basis. No complaints were made by detainees or staff.

Consequently, the arguments raised by the [applicant's] lawyers were examined during the additional inquiry and should be dismissed as unfounded."

51. The applicant sought judicial review of the refusal of 18 April 2009 under Chapter 25 of the Code of Civil Procedure (see paragraph 60 below). The applicant argued that the report of 2 April 2009 (see paragraph 48 above) had not been "independent" and thorough because: there had been no information about the professional status and the medical specialities of the experts, who may or may not have been the report's signatories; the applicant had not been examined by any of those individuals; the report had

contained no findings concerning the adequacy of the applicant's medical care in relation to his neurological illness, various (liver, stomach and heart) pains, eyesight or his dental care. Thus, a court-ordered forensic examination was indispensable.

52. By a judgment of 3 August 2009 the Oktyabrskiy District Court in Vladimir examined the applicant's complaint against the above refusal of 18 April 2009 and rejected the complaint. The court considered that a public prosecutor was empowered to ensure that no inhuman or degrading treatment was inflicted on detainees. To comply with this function the prosecutor was empowered to carry out inquiries, which should result in reasoned decisions. Such an inquiry had been carried out between 2007 and 2009. In the court's view, the prosecutor had examined all relevant medical documents, including expert reports, and had interviewed a number of public officials, detainees, the applicant and his counsel. The court also held as follows:

> "A number of medical professionals were charged with the task of assessing the treatment provided to the applicant. An independent expert examination concluded that the applicable standards for treating tuberculosis had been respected; the treatment had been affected by the applicant's repeated refusals, as recorded, to comply with the recommended course of treatment. The applicable standards of treating somatic diseases had been equally respected. From 2003 the applicant had been supervised by neurologists; no cervical spine MRI scan had been carried out, despite a recommendation [that one should be conducted] after computed X-ray imaging; no consultation by a neurosurgeon had been arranged; no thioctic acid based medicine had been prescribed.
>
> As to the complaints concerning chest or heart pain, as indicated in the inquiry report, the applicant had been examined by cardiologists, had had an electrocardiogram test and had received treatment.
>
> No sufficient argument was adduced by the applicant for commissioning yet another independent expert report. In any event, this argument had not been raised during the inquiry.
>
> As to food, the applicant was given and continues to receive a special diet. The food control record indicates that [his] rations, their quality and quantity were in line with applicable instructions and standards.
>
> As to sanitary installations, the competent authority has issued a report confirming the sanitary conditions [were] proper. It was established that in September 2007 significant repair works had been ongoing in the tuberculosis unit. Thus, it had been impracticable to inspect the units, the shower room or the toilet facilities to which the applicant had previously had access. The findings concerning the absence of rodents and insects in the detention facility had been made with reference to a valid contract for disinfection services, the current reports concerning the performance of the contract and due to the absence of any complaints from the [facility's] personnel or detainees. Hygiene items had been given to the applicant against his signature on a monthly basis. Clothing and bedding was and is disinfected and cleaned once per week.

> In view of the foregoing, the court concludes that the 2009 inquiry report and its conclusions were reasoned and thorough, and comply with the requirements of [applicable] legislation".

53. The applicant appealed. On 6 October 2009 the Regional Court upheld the judgment of 3 August 2009. It held as follows:

> "The applicant's arguments concerning the correctness of [his] medical diagnosis and the scope and correctness of [his] treatment were thoroughly examined and dismissed by the first-instance court. The latter's assessment was based on all available medical evidence, which had been received from, amongst other sources, sources unrelated to the penal authorities."

2. Proceedings under the Code of Criminal Procedure

54. In the meantime, the applicant complained that no decision had been taken as to the institution of criminal proceedings, as requested. By a decision of 23 November 2007 the regional prosecutor's office refused to institute criminal proceedings, considering there had not been the *corpus delicti* required under Articles 124 and 236 of the Criminal Code in the actions of the hospital's staff. On 21 January 2008 the higher investigating authority quashed this decision, considering that it was necessary to interview the medical staff of the detention facility.

55. On 31 January 2008 the investigating authority issued a new refusal to institute criminal proceedings for lack of a criminal offence. On 6 March 2008 the Oktyabrskiy District Court in Vladimir dismissed the applicant's appeal and upheld this refusal. On 10 April 2008 the Vladimir Regional Court upheld the first-instance decision of 6 March 2008.

56. For unspecified reasons, the inquiry was resumed. On 12 May 2008 an investigator in the Vladimir Investigations Department issued another refusal to institute criminal proceedings.

57. On 23 July 2008 the Leninskiy District Court in Vladimir examined the applicant's complaint against the refusal of 12 May 2008 under Article 125 of the Code of Criminal Procedure and rejected the complaint. The court held as follows:

> "Since 2007 the inquiry proceedings have been resumed on several occasions... The applicant is being detained in a medical facility and has been and is being provided with appropriate medical assistance. It has been established that on a number of occasions he impeded treatment and refused to make medicines. It has not been established that the deterioration of his health was due to inaction on the part of the medical staff. No dangerousness on account of a breach of sanitary regulations, required by Article 236 of the Criminal Code, has been established."

58. On 11 September 2008 the Regional Court upheld the above judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Complaints procedures

59. Section 33 of the Prosecutors Act (Federal Law no. 2202-I of 17 January 1992) provided at the time that a prosecutor was empowered to order a detention facility to take measures necessary in order that a detainee's rights and freedoms be respected.

60. In accordance with ruling no. 2 of 10 February 2009 made by the Plenary Supreme Court of Russia, complaints brought by detainees in relation to inappropriate conditions of detention (for instance, a lack of adequate medical assistance), as well as complaints against decisions imposing disciplinary penalties, should be examined by a court under a procedure prescribed by Chapter 25 of the Code of Civil Procedure. According to this procedure, a person may lodge a court action if an action or omission by a public authority or official has violated an individual's rights or freedoms, has impeded their exercise or has unlawfully imposed an obligation or liability (Articles 254 and 255 of the Code). This action should be lodged within three months of the date when the person learnt about the violation of his rights or freedoms (Article 256). If the court considers that the complaint is justified, the court shall order the respondent authority or official to remedy the violation (Article 258).

B. Health care in detention

61. Section 29 of the Health Care Act (Federal Law no. 5487-I of 22 July 1993) provides that detainees have a right to medical assistance, such assistance being provided if necessary in public or municipal medical institutions and at public or municipal expense.

62. Detailed regulation of medical care in detention is provided in a Regulation adopted by the Federal Ministry of Justice and the Federal Ministry of Health and Social Development (decree no. 640/190 of 17 October 2005). It provides that medical assistance in detention should be the same as that guaranteed by the general programme of free health care provided in Russia (Rule 9 of the Regulation). Outpatient health files and prescription records should not be handed over to detainees; detainees have a right to receive information relating to their state of health and should be given access to medical documents (Rule 65).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

63. The applicant alleged that the conditions of his detention and the health care in the prison hospital had been so inadequate as to amount to inhuman and degrading treatment, in breach of Article 3 of the Convention. He also contended that the respondent State should be held liable for having failed to investigate his allegations and that the domestic inquiry had fallen short of the requirements 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. Admissibility

64. The Government argued that the applicant had not exhausted domestic remedies because he had not brought a civil action for compensation in respect of non-pecuniary damage caused by inadequate health care and the conditions of his detention. For the Government, such an action would have had reasonable prospects of success as it would not have been based on any allegedly systemic problem of cell overpopulation, as in some other cases before the Court.

65. The applicant submitted that he had sufficiently raised his grievances before the national authorities (see paragraphs 41-58 above).

66. The Court reiterates that in the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. 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 had in fact been 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 (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

67. The Court observes that the applicant raised his grievances in two separate proceedings, including judicial review at two levels of jurisdiction, in respect of the decisions taken by the investigating or supervising authorities. The first proceedings were carried out under the Criminal Code

and the Code of Criminal Procedure and ended with a final decision of 11 September 2008 (see paragraphs 41-53 above). The second proceedings were carried out under the Prosecutors Act and the Code of Civil Procedure and ended with the final decision of 6 October 2009 (see paragraphs 54-58 above).

68. The respondent Government have not argued, and the Court does not consider, that the remedies used by the applicant, who was assisted by a lawyer, were manifestly inappropriate and devoid of any reasonable prospects of success (see, for comparison, *Skorobogatykh v. Russia*, no. 4871/03, §§ 32 and 33, 22 December 2009; see also the Supreme Court's ruling cited in paragraph 60 above). The applicant lodged this application in February 2009, while he was still in the prison hospital. The Court does not consider in the present case that before lodging an application before this Court the applicant should have brought a civil action for compensation in respect of non-pecuniary damage. The Court is satisfied that this action would not have offered reasonable prospects of success in view of the factual findings made in the above-mentioned second set of proceedings (see, for comparison, *Romokhov v. Russia*, no. 4532/04, §§ 101-112, 16 December 2010, and *Gladkiy v. Russia*, no. 3242/03, §§ 120 and 121, 21 December 2010). In view of the foregoing, the Court dismisses the Government's objection.

69. The Court also considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

70. The applicant argued that he had not been provided with any specific treatment in relation to his myelopathy. Despite a doctor's recommendations in 2006, he had not been examined by a rheumatologist or a trauma specialist; no X-rays of his right wrist joint and left knee joint had been taken. Despite a doctor's recommendation in 2007, an electromyography (EMG) test had not been carried out every six months. Despite pain in the stomach area and nausea, he had not been examined by a gastroenterologist and had not been given any treatment for these symptoms. The referral for an endoscopy had only been acted upon in 2008. It had failed to be acted upon on three previous occasions. As to his heart pain, an electrocardiogram (ECG) had only been carried out in January 2007. No previous or

subsequent tests or medication had been provided, despite his acute and persistent heart pains. He had not been examined by a cardiologist. Despite his liver pains, he had not been examined by a hepatologist; nor had he been given any medication. Such medication had been particularly important given that he had received chemotherapy for his tuberculosis. No medical assistance had been provided in relation to the deterioration in his eyesight or his dental problems. All mentions in his medical records of refusals to receive treatment had been forged. None of the refusals had been recorded on a special form and none of them bore his signature, despite the requirements of national legislation. Lastly, the applicant alleged that no medical care had been provided to him between late December 2008 and June 2009 in relation to the aforementioned medical conditions.

71. The applicant further argued that it was incumbent on the respondent Government to refute his allegations, which were sufficiently specific and detailed. He noted in that connection that as a detained and seriously ill person, he had been under the control of the staff of the prison hospital. All relevant medical records had been kept by the hospital. He had had no opportunity to verify or challenge the notes made in these records. Moreover, he had been detained alone and had had a limited ability to speak. In the applicant's submission, the Government had not responded to his allegations, thereby failing to discharge the burden of proof.

72. Furthermore, the applicant contended that the material conditions of his confinement in the prison hospital, in particular during his solitary confinement, had been unacceptable (for details see paragraphs 33-39 above).

73. Lastly, the applicant argued, with reference to the Court's case-law concerning the procedural limb of Article 3 of the Convention (*Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), that the respondent State had been under an obligation to investigate his complaints relating to his medical care and the material conditions of his confinement. Although domestic inquiries had been carried out at the domestic level, they had not satisfied the requirements for an "effective and thorough" investigation, as required under Article 3 of the Convention.

(b) The Government

74. The Government argued that the applicant had been and was being provided with all necessary medical assistance for the illnesses which he had already had and those which had developed during his time in detention, as confirmed by the reports of 23 March and 6 April 2009. Between July 2006 and January 2009 he had been detained in a medical facility under the constant supervision of its medical staff, including during the evening and at night. He had been regularly examined by a tuberculosis specialist; the progress of the applicant's condition and treatment had been recorded. The applicant had also been regularly examined by several

neurologists, as well as by a surgeon, an ophthalmologist, a dermatologist, an otolaryngologist and a psychiatrist. The applicant had undergone the requisite examinations, including biochemical tests, X-rays, an ultrasound examination, an endoscopy, an EMG test, an ECG, a pneumogram and a CT scan. He had been given appropriate medication for his tuberculosis. His treatment had been adversely affected by his repeated refusals to take his prescribed medicine, as noted in his medical records.

75. As to the conditions of the applicant's detention in the hospital, the Government submitted that the applicant, who was suffering from an infectious disease, had been kept alone. The Government insisted that the conditions of his confinement in the tuberculosis unit had not offended against Article 3 of the Convention.

76. Lastly, the Government argued that the applicant's grievances had received a thorough examination by the national authorities.

2. The Court's assessment

(a) General principles

(i) Ill-treatment

77. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], cited above, § 119). However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on 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).

78. Ill-treatment that attains such a minimum level of severity usually involves 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).

79. In the context of deprivation of liberty, the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention (see, *mutatis mutandis*, *Tyrer v. the*

United Kingdom, 25 April 1978, § 30, Series A no. 26, and *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161).

80. Regarding the issue of health care in detention facilities, the Court reiterates that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure 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 ensured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

81. Where complaints are made about a failure to provide requisite medical assistance in detention, it is not indispensable for such a failure to lead to any medical emergency or otherwise cause severe or prolonged pain in order to find that a detainee was subjected to treatment incompatible with the guarantees of Article 3 (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 114, 15 June 2010). The fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to reach a conclusion that such treatment was in breach of that Article (ibid).

82. Thus, although Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds save for exceptional cases (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001), a lack of appropriate medical treatment may raise an issue under Article 3, even if the applicant's state of health does not require his immediate release.

83. The national authorities must ensure that diagnosis and care in detention facilitates, including prison hospitals, are prompt and accurate, and that, where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing his or her condition from worsening (see *Pitalev v. Russia*, no. 34393/03, § 54, 30 July 2009, with further references).

84. On the whole, while taking into consideration "the practical demands of imprisonment", the Court reserves sufficient flexibility in deciding, on a case-by-case basis, whether any deficiencies in medical care were "compatible with the human dignity" of a detainee (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

(ii) Establishment of facts and assessment of evidence

85. The Court reiterates that allegations of ill-treatment should be supported by appropriate evidence. In assessing evidence, the Court has

generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, cited above, § 161).

86. It has not been the Court's purpose to borrow the approach of the national legal systems that use that standard. The Court's role is not to rule on criminal guilt or civil liability, but rather on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; and *Akdivar and Others*, cited above, § 168).

87. The Court is mindful of the objective difficulties experienced by detained applicants in collecting evidence to substantiate their claims about the conditions of their detention. Owing to the restrictions imposed by the prison regime, detainees cannot realistically be expected to be able to furnish photographs of their cell or give precise measurements of its dimensions, temperature or the amount of natural light. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific factors, such as the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. A credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government.

88. As to health care in detention, an unsubstantiated allegation of no, delayed or otherwise unsatisfactory medical care is normally insufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question, related medical prescriptions which were sought, made or refused, as well as some evidence – for instance, expert

reports – capable of disclosing serious failings in the applicant's medical care.

89. Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. Failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the plausibility of the applicant's allegations (see, in various contexts, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 179, ECHR 2007-IV; *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004; *Aleksandr Leonidovich Ivanov v. Russia*, no. 33929/03, §§ 27-35, 23 September 2010; and *Boris Popov v. Russia*, no. 23284/04, §§ 65-67, 28 October 2010).

90. Without establishing the truthfulness of each and every allegation made by the applicant, the Court has previously chosen in conditions-of-detention cases to concentrate on the allegations that have not been disputed by the respondent Government, or those in respect of which the Government did not comment, although they had been clearly and consistently formulated before the domestic authorities and later before the Court (see *Trepashkin v. Russia*, no. 36898/03, § 85, 19 July 2007, and *Shteyn (Stein) v. Russia*, no. 23691/06, § 73, 18 June 2009).

91. As to domestic remedies, the Court has previously stated, for instance in the context of Article 2 of the Convention, that if an infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case (see *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII; see also, in the context of Article 3 of the Convention, *Yazgül Yılmaz v. Turkey*, no. 36369/06, §§ 56 and 57, 1 February 2011). For example, in the sphere of medical negligence, the obligation may also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability on the part of the doctors concerned to be established and any appropriate civil redress to be obtained (ibid.).

92. Concerning its own scrutiny, the Court reiterates that, in view of the subsidiary nature of its role, it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a case. The Court has held in various contexts that where domestic proceedings have taken place, as in the present case, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among others, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179 and 180, 24 March 2011). Although the Court

is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (ibid).

93. At the same time, as already mentioned, in accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In its assessment of issues under Article 3 of the Convention, the Court gives thorough scrutiny to the question of the authorities' compliance with prescriptions issued by medical professionals, in the light of specific allegations made by the applicant.

(b) Application of the principles to the present case

94. The Court observes at the outset that the applicant has a relatively long history of health problems, covering a period dating back to at least 2003. His complaint in the present case concerns one period of his detention from July 2006 to June 2009 in one medical facility (prison hospital no. 3). Thereafter, the applicant was transferred to another detention facility, of which he does not complain.

95. The Court also observes, and it is common ground between the parties, that some of the applicant's medical conditions during the relevant period of time were undeniably serious and required a wide range of treatment, including medication, supervision and monitoring.

96. It is fundamental for the proper examination of the case to determine the scope of the complaints raised by the applicant *vis-à-vis* the respondent State (see paragraph 70 above). In the applicant's submission, he had not been provided with adequate medical care in relation to his myelopathy, the deterioration of his eyesight, dental problems, and stomach, heart and liver pains. It is common ground between the parties that these complaints may be qualified as credible and sufficiently serious.

97. It is also noted that responsibility for the above grievances was attributed to the State, given that the applicant, who was a convict serving a prison term, was held in a prison hospital run by the State.

98. The Court observes, and it is not in dispute, that the applicant was provided with adequate medical care for his tuberculosis, which was the main reason for his admission to the prison hospital in July 2006. Nevertheless, it appears that this treatment gave no significant positive result and that the applicant's state of health progressively deteriorated. This inevitably affected other aspects of his health and the treatment to be prescribed.

99. In September 2007, after more than one year of confinement in the hospital, the applicant's lawyer lodged a complaint in which he raised a number of specific issues pertaining to the alleged lack or inadequacy of medical care, also providing a detailed account of the allegedly degrading conditions of confinement in the hospital. Counsel sought to have a

prosecutor ordered to take action under the Prosecutors Act to remedy the above grievances (see paragraphs 43 and 59 above).

100. By domestic standards, the applicant's allegations appeared prima facie credible, and an inquiry under the Prosecutors Act was ordered. This initial inquiry, which was completed within one month, concluded that no action was required. As subsequently acknowledged by the national court, this inquiry had not been thorough because, amongst other reasons, the applicant's medical records had not been assessed, no medical expert had been appointed and the applicant and his counsel had not been heard (see paragraph 44 above). After a new refusal to take action, the national court again considered that the proper examination of the complaint of inadequate health care in detention required that an expert opinion should be sought outside the prison system. The national court pointed out that the recent refusal had not contained an assessment of the applicant's complaints concerning his chest and heart pain and the authorities' failure to arrange for the applicant to have a consultation with a cardiologist and an ECG (see paragraph 46 above).

101. In March and April 2009 the national authorities obtained two medical reports concerning the applicant's medical conditions and medical care provided to him. While upholding in general the treatment provided to the applicant, one of the reports concluded that no cervical spine MRI scan had been carried out, despite a recommendation that one should be conducted after computer X-ray imaging; no consultation by a neurosurgeon had been arranged; no thioctic acid based medicine had been prescribed (see paragraphs 47 and 48 above).

102. These reports served as a basis for a new decision to refuse to order any action on the part of the prosecutor. The prosecutor also examined a number of relevant medical documents, interviewed the applicant, his lawyer, and a number of public officials and detainees. Subsequently, the national courts at two levels of jurisdiction upheld the refusal on judicial review (see paragraphs 50-53 above).

103. The Court reiterates that its task is to determine whether the circumstances of a given case disclose a violation of the Convention in respect of an applicant, rather than to assess *in abstracto* national legislation of the respondent State, its regulatory schemes or the complaints procedure used by an applicant. Thus, mere reference to the domestic compliance with such legislation or schemes, for instance as regards licensing of medical institutions or qualifications of medical professionals, does not suffice to oppose an alleged violation of Article 3 of the Convention. It is fundamental that the national authorities dealing with such an allegation apply the standards which are in conformity with the Convention principles as interpreted by the Court (see paragraphs 77-83 above).

104. It has not been argued that the applicant omitted to raise in substance in the domestic proceedings certain specific complaints

concerning his medical conditions. Thus, it is assumed that the domestic authorities, including the courts, should have dealt with the substance of such complaints, making relevant findings of fact and of law. However, it does not follow from the material available to the Court or from the Government's own submissions before it that the applicant's complaints concerning his eyesight and dental treatment were dealt with. In fact, the respondent Government centred their submissions on the tuberculosis-related matters. In the absence of a proper explanation from the respondent Government, the Court is inclined to give credence to the applicant's submission that he required medical care in relation to the aforementioned medical conditions and that no adequate medical care was provided to him.

105. Between 2006 and 2009 a number of neurologists made various recommendations in relation to the applicant's myelopathy, after having examined the applicant and/or his medical file (see paragraphs 8-14 above). The applicant contended that he had not received any specific treatment (for instance, medication or physiotherapeutic procedures) in relation to his myelopathy. The Government provided no convincing evidence which could confirm that the applicant had refused to take any medicine prescribed for that illness or that the doctors' recommendations were complied with. For instance, it has not been specified what acts of medical care were performed in relation to the applicant's myelopathy from September 2006 to February 2007.

106. In addition, neither at the domestic level nor before the Court did the Russian authorities assess the findings of the two expert reports stating that: no cervical spine MRI scan had been carried out, despite a recommendation that one should be conducted after computer X-ray imaging; no consultation by a neurosurgeon had been arranged; no thioctic acid based medicine had been prescribed (see paragraphs 47 and 48 above). The Court is not ready to dismiss these findings as minor or clearly incapable of affecting the adequacy of the health care provided to the applicant.

107. The respondent Government also submitted another medical report dated 21 December 2009 issued by the detention facility which was in charge of the medical care at issue in the present case (see paragraph 29 above). While the fact that experts are employed by one of the parties to domestic proceedings may give rise to apprehension as to the neutrality of the experts, what is decisive are the positions taken by the experts throughout the proceedings, the manner in which they perform their functions and the way the courts assess the expert opinion. An opinion given by a court-appointed expert is likely to carry significant weight in the judicial assessment of the issues within that expert's competence (see, albeit in the context of Article 6 of the Convention, *Shulepova v. Russia*, no. 34449/03, § 62, 11 December 2008). In the Court's view, the available

reports in the present case do not effectively disprove the applicant's allegations.

108. Also, while noting that the applicant was able to benefit from legal representation and that the national courts acknowledged a number of shortcomings in the course of the domestic inquiry, the Court observes with concern that this inquiry spanned over two years, which is worrisome when an individual's current and serious medical conditions and medical care are at issue (see *X v. France*, 31 March 1992, §§ 31-49, Series A no. 234-C). Indeed, the applicant's medical conditions evolved over time during the inquiry, thus making each delay an additional factor contributing to the complexity of the issues to be determined.

109. The Court's findings in the preceding paragraphs concerning the assessment of the applicant's medical care at the domestic level make it unnecessary to make any further findings in relation to the applicant's arguments about the alleged ineffectiveness of the inquiries carried out in the present case.

110. In view of the available material, the Court is not satisfied that the applicant was provided with adequate medical care between January and June 2009 (see paragraph 27 above). None of the available medical reports gives any adequate assessment of the applicant's medical care in respect of this period of time after the formal discharge of the applicant from the hospital.

111. While it is true that the Court was provided with a typed copy of the applicant's medical file, the Court is struck by the unspecific and summary nature of the respondent Government's observations in the present case, which sits ill with the specific and detailed nature of the grievances raised by the applicant and the gravity of his medical conditions, as recorded in his medical file.

112. In view of the foregoing, the Court concludes that there has been a violation of Article 3 of the Convention in relation to the applicant's health care from July 2006 to June 2009.

113. Having reached the above conclusion, the Court does not need in the present case to make separate findings concerning the material conditions of the applicant's confinement in the medical facility.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

116. The Government considered that the claim was excessive and that a finding of a violation would suffice.

117. The Court observes that it is undeniable that the applicant must have suffered physical pain and mental anguish in relation to his serious medical conditions. It should also be accepted that he must have suffered distress, frustration and anxiety related to his inadequate health care. Having regard to the nature of the violation, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

118. The applicant also claimed EUR 10,000 for lawyers' fees incurred before the Court.

119. The Government submitted that there was no proof of payment of this sum to the applicant's lawyers.

120. 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. The respondent Government have not argued that the legal assistance agreement between the applicant and his lawyers was not enforceable under Russian law or that the applicant was not under a contractual obligation to pay the fees agreed (see, for comparison, *Flux v. Moldova (no. 2)*, no. 31001/03, § 60, 3 July 2007, and *Salmanov v. Russia*, no. 3522/04, § 98, 31 July 2008). Regard being had to the documents in its possession and to the above criteria, the Court finds it reasonable to award the applicant EUR 5,000, plus any tax that may be chargeable to him thereon.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* by five votes to two that there has been a violation of Article 3 of the Convention in respect of the applicant's health care from July 2006 to June 2009;

3. *Holds* by five votes to two that there is no need to examine the complaints concerning the conditions of detention;

4. *Holds* by five votes to two
   (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 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Lorenzen and Møse is annexed to this judgment.

N.V.
S.N.

JOINT DISSENTING OPINION OF JUDGES LORENZEN AND MØSE

In our view, the Court should attach particular importance to the existence of domestic inquiries and judicial proceedings, which ended with the judgment of 3 August 2009, as upheld on appeal (see paragraphs 43 to 53 of the judgment). The national authorities assessed the applicant's medical records and obtained testimonies and medical opinions. The applicant, who was represented, was afforded an adequate opportunity to present his arguments and evidence, as well as to contest the other party's submissions, in adversarial proceedings. It appears that the applicant and his counsel had access to the relevant documents, including the applicant's medical records, necessary for substantiating their allegations. The applicant's grievances relating to the effectiveness of the domestic inquiries are not convincing.

Although it is regrettable that the inquiry took nearly two years, we find no sufficient reason to depart from the factual findings made by the domestic authorities, as confirmed on judicial review, concerning the various aspects of the applicant's complaints about his health care.

In particular, it has not been convincingly established that any alleged failure to carry out specific treatment or make arrangements for consulting specialist medical professionals, including between late December 2008 and the applicant's transfer to another detention facility, was contrary to any previous medical prescriptions or – more generally – led to treatment below an adequate standard. In this context, it should be taken into account that the applicant had a variety of different health problems, including tuberculosis and a chronic and progressing neurological disease which inevitably affected other aspects of his health; that the authorities provided medical care on numerous occasions; and that he on occasions refused to take the necessary medication (see paragraphs 18, 28-30 and 57-58).

It is true that two medical reports indicated that no cervical spine MRI scan had been carried out, despite a recommendation that one should be conducted after computer X-ray imaging; no consultation by a neurosurgeon had been arranged; and no thioctic acid based medicine had been prescribed. But we are not convinced that the fact that these recommendations were not followed up affected the adequacy of the health care provided to the applicant to such an extent that it amounted to ill-treatment within the meaning of Article 3 of the Convention.

We therefore conclude that there has been no violation of Article 3 in relation to the health care provided to the applicant from July 2006 to June 2009.

Turning to the material conditions in the hospital, we note that also these submissions by the applicant were duly assessed at the domestic level. The applicant, who was assisted by a lawyer at the domestic level and before the

Court, has not put forward convincing arguments which lead us to disagree with the domestic courts' assessment. Consequently, there was also no breach of Article 3 with respect to the material conditions in the hospital.