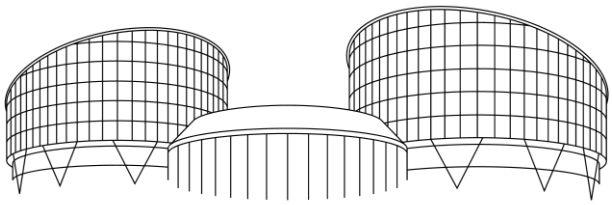

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF IVAKHNENKO v. RUSSIA

(Application no. 12622/04)

JUDGMENT

STRASBOURG

4 April 2013

FINAL

04/07/2013

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

In the case of Ivakhnenko v. Russia,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Helena Jäderblom,
Aleš Pejchal,
Dmitry Dedov, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 12 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 12622/04) 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 Aleksandr Sergeyevich Ivakhnenko ("the applicant"), on 2 March 2004.

2. The applicant, who had been granted legal aid, was represented by Mr P. Finogenov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 21 October 2008 the application was declared partly inadmissible and the complaints concerning an alleged lack of adequate medical assistance and the conditions of the applicant's detention were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mr Aleksandr Sergeevich Ivakhnenko, is a Russian national who was born in 1960.

A. Conditions of the applicant's detention in remand prison IZ-36/1 in Voronezh

5. On 8 August 2002 the applicant was arrested. On 30 June 2003 a jury found him guilty of murder and rape; the Voronezh Regional Court sentenced him to twenty-one years' imprisonment. On 22 December 2003 the Supreme Court of the Russian Federation upheld the conviction with minor changes.

6. From 16 August 2002 until 23 January 2004 the applicant was held in remand prison IZ-36/1 in Voronezh.

7. The parties submitted the following information on the characteristics of the cells in which the applicant had been detained:

Cell number	Cell measurements (sq. m)		Number of beds		Number of inmates	
	Government	Applicant	Government	Applicant	Government	Applicant
28	30	38	7	18	7	22
33	30	38	7	18	7	10
80	7	13	1	4	1	4
81	7	13	1	2	1	2
86	29	38	7	14	7	29
95	28	38	7	14	7	20
122	28	39	6	12	6	25
132	27	39	6	12	6	18

8. The Government submitted that the number of detainees "had not exceeded the number of sleeping places". In support of their submissions, they enclosed certificates signed by the prison governor and wardens on 12 December 2008. The Government also submitted two reports of 26 February 2006 and 5 April 2007, according to which the relevant prison documentation (including the prison population registers covering the period up to 2 August 2003) had been destroyed due to the expiry of the storage time-limits.

9. The applicant produced a copy of a letter from the Voronezh Regional prosecutor's office dated 24 October 2005 in response to his complaint about the conditions of detention, in which the prosecutor acknowledged, in particular, the existing overcrowding in the cells in IZ-36/1 and indicated that he had requested the prison governor to remedy the breach of the domestic legal requirements on the conditions of detention.

B. The applicant's state of health and medical assistance

1. The applicant's account

10. In October 2002 the applicant had trouble urinating and was diagnosed with prostatitis. He was told that he needed surgery; however it

was not possible to perform it in pre-trial detention. The applicant was given injections and medicines that his relatives provided. The applicant produced a medical certificate of 30 November 2005 from the prison doctor confirming the diagnosis.

11. In August 2002 the applicant hurt his wrist. The wrist was bandaged and the applicant was given an ointment. The swelling went down. During transport to the correctional colony on 23 January 2004 the applicant hurt his wrist once again. He asked to be examined by a doctor. On 29 March 2004 an X-ray revealed a triple contracture of this wrist, and the applicant received treatment in the prison hospital, but the wrist mobility could not be restored.

12. The applicant complained to the Prosecutor's Office that he had not had the necessary medical care. In his reply of 24 October 2005, the prosecutor informed the applicant that surgery on his wrist and adenoma were considered unnecessary.

2. The Government's account

13. The Government submitted the applicant's medical records from IZ-36/1 and his current place of imprisonment.

14. On admission to the Voronezh remand prison following his arrest on 19 August 2002, the applicant underwent a comprehensive examination. He did not make any complaints concerning his health. The following diagnosis was noted in the medical record: "varicosity of the lower limbs, encephalopathy, and flexion contracture of the right wrist". The applicant underwent a urine test.

15. During his detention in IZ-36/1 remand prison the applicant contracted an allergic dermatitis and an abscess in his right buttock. Each time prison doctors gave him medication and the applicant felt better.

16. When he arrived at the correctional colony on 23 January 2004, the applicant did not make any complaints concerning his health. A medical examination confirmed the previous diagnosis of varicosity of the lower limbs.

17. On 17 May 2004 the applicant was examined by a prison doctor for his urination problem. The doctor noted in the applicant's medical record: "prostatitis?", and recommended consultation with a urologist.

18. On 20 May 2004 a surgeon from the Voronezh Regional Prison Hospital examined the applicant and recommended him a further examination in the Regional Prison Hospital.

19. On 11 June 2004 the applicant was transferred to the Voronezh Regional Prison Hospital. There the flexion contracture of the right wrist was confirmed and the applicant was prescribed out-patient treatment. The applicant had undergone some blood and urine tests. No prostatitis was diagnosed.

20. On 4 August 2004 the applicant was examined by the prison doctor who did not confirm a suspicion of the prostatitis.

21. On 9 January 2005 the applicant was examined by a prison doctor regarding his problems with urination. The doctor noted in the applicant's medical record: "urethritis?", and ordered some blood and urine tests.

22. On 10 January 2005 the results of the tests were within the normal limits and the diagnosis was not confirmed.

23. On 24 August 2006 the applicant was examined by the prison doctor. He did not have any particular urination complaints.

24. The Government – referring to the medical summary of 12 December 2008 prepared by the prison doctor – submitted that the applicant's state of health did not require any surgical intervention on the adenoma, as he did not have any, or the wrist.

II. RELEVANT DOMESTIC LAW

25. For a summary of the relevant domestic and international law provisions governing the conditions of pre-trial detention and the health care of detainees, see the cases of *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 25-58, 10 January 2012, and *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, §§ 60-64 and 73-80, 27 January 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTIONON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

26. The applicant complained that the conditions of his detention in remand prison IZ-36/1 from August 2002 to January 2004 had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The Government submitted that the conditions of the applicant's detention had been compatible with the requirements of Russian law and Article 3 of the Convention.

29. The applicant submitted that the cells had been severely overcrowded and that the Voronezh prosecutor had acknowledged the existing overcrowding problem. He did not have an individual sleeping place, which indicated a violation of Article 3 of the Convention. In addition, he suffered from extreme cold and heat because the mandatory ventilation and heating systems did not function, and from a lack of privacy when using the toilet.

30. The Court considers that it does not need to establish the truthfulness of each and every allegation, since it finds a violation of Article 3 on the basis of the evidence that have been presented or is undisputed by the Government, for the following reasons.

31. The Court observes 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 a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). Thus, the first issue to be examined is whether on the basis of the facts of the present case the Government's failure to submit copies of the relevant prison documentation has been properly accounted for.

32. In this connection, the Court would note that the destruction of the relevant documents due to expiry of the time-limit for their storage, albeit regrettable, cannot in itself be regarded as an unsatisfactory explanation for the failure to submit the relevant documents (see *Shcherbakov v. Russia*, no. 23939/02, § 77, 17 June 2010). The archived documents containing that information were destroyed due to the expiry of the storage time-limits on 26 February 2006 and 5 April 2007, that is, one or two years before 27 October 2008, which is the date on which the case was communicated to the respondent Government. However, the documents destroyed included the prison population registers covering the period until 2 August 2003. The Government did not claim that the registers covering the period of the applicant's detention after 2 August 2003 and until 24 January 2004 had been also destroyed. These registers could have been an important and reliable piece of evidence but the Government did not account for their failure to produce them to the Court.

33. As to the certificates and statements from the prison governor and warders which were all drafted in 2008, the Court has pointed out on many occasions that documents prepared after a considerable period of time

cannot be viewed as sufficiently reliable sources, given the length of time that has elapsed (see *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009). Finally, the Court notes that the information in the certificates was undermined by the finding contained in the cotemporaneous letter from the Voronezh prosecutor who admitted a general overcrowding problem in that remand prison in October 2005 (see paragraph 9 above).

34. Having regard to the Government's failure to submit the original documents for the period after 2 August 2003, to the applicant's detailed description of his conditions of detention and to the finding of the regional prosecutor, the Court finds that at the material time the remand prison was overcrowded. The overcrowding in Russian remand prisons has been a matter of particular concern to the Court (see *Ananyev and Others v. Russia*, cited above). In a great number of cases, the Court has consistently found a violation of the applicants' rights on account of a lack of sufficient personal space during their pre-trial detention. The present case is no exception in this respect. Having regard to the above, the Court considers the applicant's allegations concerning the overcrowding of the remand prison to be credible.

35. The Court has found in many previous cases that where the applicants had at their disposal less than three square metres of floor surface, the overcrowding was considered to have been so severe as to justify in itself a finding of a violation of Article 3 (see *Starokadomskiy v. Russia*, no. 42239/02, § 43, 31 July 2008; *Svetlana Kazmina v. Russia*, no. 8609/04, § 70, 2 December 2010; *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

36. There has therefore been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in remand prison IZ-36/1 in Voronezh from 16 August 2002 until 23 January 2004, which the Court considers to have been inhuman and degrading treatment within the meaning of that provision.

II. ALLEGED VIOLATION OF ARTICLE 3 ON ACCOUNT OF QUALITY OF MEDICAL ASSISTANCE IN DETENTION

37. The applicant further complained under Article 3 of the Convention that he had not been provided with adequate medical assistance in the detention.

A. Submissions by the parties

38. The Government put forward two lines of argument, insisting that the applicant, who had had a choice of effective remedies before him, had not exhausted them and, at the same time, arguing that the treatment

provided to the applicant during the entire period of his detention corresponded to the standards. As to the first argument, the Government stressed that the applicant had not complained to a court that he was not receiving adequate medical assistance. The Government stressed that his complaint under Article 3 should therefore be dismissed for failure to exhaust domestic remedies.

39. In the alternative, the Government argued that the applicant had been provided with adequate care, irrespective of the type of detention facility in which he had been held. He had received medical assistance appropriate to his condition. He had been regularly examined by the prison doctor as well as by specialist doctors, had undergone the necessary medical examinations, such as X-rays and blood and urine tests, and had received treatment. His state of health had been monitored by the medical staff and had remained satisfactory during his entire stay in the detention centre. The doctors had reacted without delay to all of his complaints and symptoms by providing adequate treatment. The medical personnel possessed the necessary training and skills to treat the applicant. The facilities were equipped with medicines and medical equipment according to established norms. They also stressed that his current condition was considered satisfactory and that he had never been diagnosed with prostatitis.

40. The applicant maintained his claims.

B. The Court's assessment

1. Exhaustion of domestic remedies

41. The Government claimed that the applicant had failed to bring his grievances to the attention of the national courts and considered that his complaint should be rejected for failure to comply with the requirements of Article 35 § 3 of the Convention.

42. As to this Government's argument, the Court reiterates its earlier finding that, at present, the Russian legal system does not offer an effective remedy for the alleged violation or its continuation which could provide the applicant with adequate and sufficient redress for the allegedly inadequate medical assistance in the detention. Accordingly, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies (see *Dirdizov v. Russia*, no. 41461/10, §§ 80-90, 27 November 2012) in respect of this part of the application.

2. General principles related to medical assistance in detention

43. The Court reiterates that although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other

things, providing them with the requisite medical assistance (see *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII). The Court has held on many occasions that the lack of appropriate medical care may amount to treatment contrary to Article 3 (see, for example, *Wenerski v. Poland*, no. 44369/02, §§ 56 to 65, 20 January 2009).

44. 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, and *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109, 114).

45. 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).

3. Application of the above principles to the present case

46. The medical records show that the applicant was examined by a doctor immediately after his arrest and he did not have any particular complaints. During the entire period of his detention in the Voronezh remand prison and colony the applicant regularly sought, and obtained, medical attention. His medical record shows that each time he was unwell he was examined by a doctor and was prescribed treatment which had its effect. There is no reason to believe that the treatment administered to him was inadequate.

47. The applicant was also regularly examined by specialists, including by an urologist and surgeon immediately after the prison authorities had been notified of the visiting doctor's opinion that the applicant might suffer from prostatitis. Basing on the results of examination in the Regional Prison Hospital, the prison doctor found no indication of prostatitis. As regards the certificate of 30 November 2005 provided by the applicant which mentioned "prostatitis", that diagnosis subsequently found no corroboration in any other medical papers.

48. As to the flexion contracture of the right wrist, the applicant was prescribed out-patient supervision, and the allegations of the applicant about necessity of the surgical treatment are also unsubstantiated.

49. The Court further notes that, whilst the applicant disputed the adequacy of his treatment as a whole, he did not provide any medical opinion confirming his point of view.

50. Given that the applicant's health was monitored by medical professionals and that he received regular treatment, the Court considers that during the entire period of his detention the applicant was provided with the requisite medical assistance.

51. As regards the applicant's complaint concerning an alleged lack of medicines in detention facilities, the Court reiterates that the unavailability of necessary medicines may only raise an issue under Article 3 if it has negative effects on the applicant's state of health or causes suffering of certain intensity (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). The applicant failed to explain how he had been affected by the alleged shortage of medicines in the correctional colony, and the Court cannot conclude that his state of health was affected by a lack of certain medicines in the colony to the extent that caused him suffering reaching the level of severity to amount to inhuman or degrading treatment.

52. It follows from the above that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government submitted that his claims were excessive.

56. The Court accepts that the applicant suffered distress and frustration which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,250 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

57. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

58. 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 complaint concerning the conditions of the applicant's detention admissible and, by a majority, the remainder of the application inadmissible;

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;

3. *Holds* unanimously
   (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, EUR 6,250 (six thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President