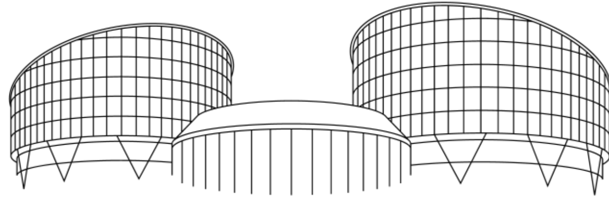

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RESHETNYAK v. RUSSIA

(Application no. 56027/10)

JUDGMENT

STRASBOURG

8 January 2013

FINAL

08/04/2013

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

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Reshetnyak v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 56027/10) 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 Vitaliy Vasilyevich Reshetnyak ("the applicant"), on 3 September 2010. The applicant was represented by Ms O. Druzhkova, a lawyer practicing in Moscow.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not benefited from adequate medical care in detention, that the conditions of his detention in a medical correctional colony had been inhuman and that there had not been effective remedies available to him to complain of a violation of his right to proper medical services and adequate conditions of detention.

4. On 16 May 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Further to the applicant's request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lived until his arrest in the city of Stavropol, Stavropol Region.

A. Criminal proceedings against the applicant

6. On 3 March 2006 the Stavropol Promyshlennyy District Court found the applicant guilty of aggravated robbery and sentenced him to six years and six months' imprisonment, which he was to serve in a medical correctional facility given that he suffered from tuberculosis.

B. Conditions of the applicant's detention

7. On 1 November 2006 the applicant was transferred to medical correctional colony no. 8 in the town of Neftekumsk, Stavropol Region. As stated in official reports submitted by the Government, colony no. 8 primarily accommodates inmates suffering from tuberculosis, irrespective of the detention regime that they have been sentenced to. It also has a hospital for inpatient treatment of inmates.

1. The Government's submissions

8. The Government, relying on certificates issued by the acting director of the colony in July 2011, submitted that the colony is composed of seven dormitory buildings measuring, in total, 5,296.6 square metres and having 1,100 sleeping places. At the material time, the inmate population was 995 persons. The Government stressed that during the entire period of the applicant's detention in the colony, the inmate population had not exceeded the maximum design capacity of the colony.

9. The Government further submitted that the applicant had been detained in dormitory rooms nos. 6 and 3 which, respectively, measured 117.4 and 74.1 square metres, had 40 and 24 sleeping places and accommodated 38 and 23 detainees. In contrast, as stated in the certificates issued by the acting director of the colony, dormitory room no. 6 was equipped with 39 sleeping places and dormitory room no. 3 had 27 sleeping places. Furthermore, the acting director noted that it was impossible to provide statistical information on the number of detainees kept together with the applicant in the dormitories, as daily logs of the prison population had not been drawn up. At the same time, given that the number of inmates had never exceeded the design capacity of the colony dormitories and the inmates had always been distributed evenly among the dormitories, there

was no doubt, in the acting director's view, that the applicant had always had a sleeping place. In particular, as confirmed by the certificates presented by the Government, each year between 2006 and 2011 the Stavropol Regional Service for the Execution of Sentences capped the number of detainees who could be detained in correctional colony no. 8. In particular, for 2006, 2007 and 2008 the cap was 833 persons, with the actual number of detainees being 807, 679 and 696 in 2006, 2007 and 2008, respectively. In 2009, when the cap was set at 1,035 inmates, the colony had accommodated 822 detainees. In 2010 and 2011 the maximum number of inmates detained in the colony had varied slightly between 1,040 and 1,057, with the maximum capacity of the facility having been set at 1,056 and 1,100 persons, respectively.

10. The Government further provided information on the housing and sanitary conditions in the dormitories. Each dormitory room had seven windows, with three of them measuring 90 centimetres in width and 110 centimetres in height and the other four windows being 110 centimetres high and 140 centimetres wide. Windows facing the colony grounds and widows facing another dormitory were covered by a steel mesh, with the distance between bars being no more than 100 to 200 millimetres. A small window casing 96 centimetres long to 36 centimetres wide could be opened to let fresh air in. The dormitories did not have an artificial ventilation system.

11. On certain occasions the applicant had also been kept in room no. 7 in the colony hospital, where he had undergone inpatient treatment. Seven other inmates had been detained together with the applicant in room no. 7, which measured 25.8 square metres and was equipped with eight bunks. The room had two windows each measuring approximately 3 square metres.

12. The Government provided the Court with the inmates' daily schedule. According to that schedule, following the wake-up call at 6.a.m., inmates were afforded an hour and a half in which to wash themselves and have their breakfast. Another hour between 8.30 and 9.30 a.m. was devoted to the morning roll call of the prisoners. Between 9.30 and 11.30 a.m. detainees underwent various medical procedures. After lunch, from 11.30 a.m. and 2.30 p.m., and another hour-long roll call, detainees were given more than three hours to take a bath in the colony bathhouse. Dinner from 6 to 8 p.m. preceded an hour and a half of personal time. The lights-out call was made at 10 p.m. The daily schedule of the colony population slightly varied on weekends, with educational and cultural activities or hobbies replacing the time afforded for medical procedures. The Government also submitted that the time for daily walks or personal time which inmates could spend outside the dormitories was never limited. The strict obligation to remain in the dormitory only applied at night time, between the lights-out and wake-up calls. Detainees could take walks in recreation yards, which

measured between 365 and 380 square metres for each of the dormitory buildings.

13. Dormitories were cleaned twice a day by inmates on duty. Supervision of the cleaning crew was ensured by the medical assistant on duty. The disinfection and disinfestations of the premises were performed once every three months. There had been no outbreak of infectious diseases in the colony in eight years.

14. The Government also submitted documents showing that the food rations provided to inmates were sufficient and included meat, fish, dairy products, vegetables, eggs, juice, bread, and so on. They also argued that the food was of good quality and asserted that inmates received an enriched diet in full compliance with medical recommendations.

2. The applicant's submissions

15. According to the applicant, the conditions of his detention in the colony had been appalling and extremely overcrowded. The colony, designed to accommodate six hundred detainees, had in fact housed more than a thousand inmates, leaving each inmate with less than 1.5 square metres of personal space. The applicant submitted that the situation had been particularly serious until 2009, when a new dormitory had been built in the colony. While not disputing the size of dormitory room no. 6, he argued that it had had 66 sleeping places. He, however, confirmed that he had at all times had an individual sleeping place. At the same time, given the number of detainees in the dormitory rooms, the entire space in them was taken up by two-tier bunks, thus leaving almost no personal space for inmates. He further submitted that the windows were not double glazed. In the absence of an artificial ventilation system, it was very cold in winter and hot in summer. The windows did not provide sufficient ventilation with fresh air, which had a further negative impact on the health of detainees suffering from tuberculosis. He insisted that inmates were not permitted to open window casings to let the fresh air in.

16. The applicant further disputed the Government's argument that inmates spent the major part of their day outside. He stressed that the recreation yard, which was used at least by four colony divisions, measured 50 metres in length and 22 metres in width. The four divisions were each formed of at least 250 persons. The recreation yard was clearly not meant to accommodate so many inmates. It also did not offer any protection from sun or rain.

17. The lavatory was installed outside the dormitory buildings and did not have hot water. Disinfection was performed on rare occasions, prior to the arrival of supervising authorities. The lavatory offered partial privacy. While lavatory pans were separated from each other by partitions, they were not separated from the passageway and the washbasin.

18. The food was scarce and of very poor quality. Inmates were provided with no more than forty percent of their daily ration. Products such as meat, butter, milk, fruit and sugar were entirely missing from their diet.

19. The applicant supported his submissions with colour photos of the dormitory, the lavatory and the recreation premises. The photos showed a rather sombre room with two long rows of two-tier bunks. A passageway sufficient for only two people to pass was left between the two rows. The bunks were separated from each other by a small cupboard. Inmates had hung linens and uniforms on the bunks to get some privacy. The bunks were installed in such a way that some of them blocked the windows. The photos also showed a heavily scratched floor and walls with peeling paint. The kitchen area had several large cupboards and a long table in a very dilapidated state. A similar state of dilapidation was shown on the photos of the lavatory. The recreation yard presented a rectangular asphalt-paved area surrounded by dormitory buildings. Grass and soil covered large parts of the yard where the asphalt had cracked. A large bucket for food waste was installed in the yard, near the dormitory entrance door.

C. Quality of medical care

20. The Government provided the Court with a copy of the applicant's medical records, written by hand and recording his condition from the start of his detention. They also submitted a typed version of the same records to facilitate the Court's task of deciphering the doctors' handwriting. At the same time, given discrepancies between the two versions, with pieces of the handwritten version missing from its typed copy and a selective approach in copying the specific wording from the handwritten version to the typed one, the Court will only base its findings on the handwritten version of the applicant's medical records.

21. As is evident from the records, the applicant was diagnosed with tuberculosis in 2000 and underwent treatment in tuberculosis hospitals in Stavropol on a number of occasions. In 2005 he suffered the reactivation of the illness. Between 13 June and 1 November 2006 he received treatment in the tuberculosis department of the prison hospital in colony no. 3.

22. Following his transfer to medical colony no. 8 the applicant was examined by a tuberculosis specialist, having been diagnosed with infiltrative, focal tuberculosis of the left lung. He was prescribed a dose of rifampicin and ethambutol. A chest X-ray examination performed on the following day confirmed the diagnosis. On 30 November 2006 another examination of the applicant led to his treatment being amended. The tuberculosis specialist drew up a list of drugs which were to comprise the applicant's chemotherapy regimen, including isoniazid, rifampicin, ethambutol, paracetamol and another medicine, which appears to have been an antibacterial drug. Three antibacterial drugs were crossed out from the

list, with only rifampicin being left. A certificate drawn up by the head of the Stavropol Regional Service for the Execution of Sentences on 27 March 2008 and submitted to the Court by the Government states that the colony bought a “sufficient” amount of anti-tuberculosis drugs whenever it received funds for that purpose, with the exception of izoniasid, kanamycin and reserve anti-tuberculosis drugs. In addition, the Government provided the Court with certificates issued by the deputy head of the medical department of colony no. 8. Those certificates recorded a calculation of the anti-tuberculosis medicines which remained in the colony on the last days of each year between 2006 and 2011. As is evident from those certificates, from 2006 to 2010 the colony did not have second-line anti-tuberculosis medicines, with the exception of kanamycin. The situation only changed in 2010, when the colony received at least two more types of the antibacterial medicines from the reserve list. The list further expanded in 2011.

23. Each subsequent examination between 4 December 2006 and October 2007 led to the applicant’s treatment being amended, to only include moderate analgesic and anti-inflammatory drugs, vitamins, nasal drops, cough medicine, hepatoprotectors and herbal sedatives. The only exception occurred in March 2007 after a prison doctor had received the results of the applicant’s clinical blood and sputum smear testing and a tomography scan. He prescribed the applicant a dose of antibacterial medicine based on a combination of isoniazid and ethambutol. The applicant did not cease to complain of coughing, fever, chest pain and headache. During that period he was twice subjected to a chest X-ray exam, with the most recent exam being performed on 19 September 2007. On the basis of that exam, the doctor concluded that the applicant’s tuberculosis had become destructive to lung tissue. A week later, ethambutol and a complex antibacterial drug based on isoniazid were introduced to his regimen. In October 2007 the applicant was sent for a chest tomography examination and his sputum and blood were taken for testing. Despite the fact that the doctor noted a clearly negative dynamic in the applicant’s condition, the examinations did not lead to any recommendations or amendments in the treatment until the applicant started coughing up blood in December 2007. Having given him an injection of potassium chloride and having prescribed a synthetic analogue of vitamin K, a cough medicine, nasal drops, paracetamol, a muscle relaxant and antibiotics, the prison doctor sent the applicant for testing. With the tests on 11 December 2007 having shown that the applicant was now smear positive, the prison doctor also added an antihistamine and drew a “net” of iodine solution on the applicant’s chest.

24. On 6 February 2008, after the prison doctors had finally diagnosed the applicant with infiltrative and disseminated destructive tuberculosis of the upper lobe of the left lung, he started receiving treatment with

rifampicin, ethambutol, and fenazid (a complex antibacterial drug based on isoniazid). In March 2008 a medical panel declared that the applicant should be classed as category 2 disabled. Until December 2008 the applicant complained of permanent pain in the chest, fever, fatigue, a dry mouth, and coughing up blood. With tests performed between February and December 2008 showing no positive changes in the applicant's condition, demonstrated through the continuous presence of mycobacterium tuberculosis (MBT) in his sputum, the doctors amended the treatment. While the prescription of the three antibacterial drugs was not reconsidered, each examination of the applicant led to another medicine being introduced into his regimen. Those medicines included analgesics, cough medicines, nasal drops, antihistamines, multivitamins, muscle relaxants, heart and anti-inflammatory medicines, antibiotics and so on. The handwritten version of the medical records shows that on a number of occasions the doctors noted that treatment was only being provided with medicines which the colony had or which were sent to the applicant from home.

25. At the start of December 2008 the applicant suffered a particularly severe bout of coughing up blood. After two days of complaints he was transferred to the colony hospital for inpatient treatment. On admission to the hospital doctors described his diagnosis as follows: infiltrative destructive tuberculosis of the upper lobe of the left lung, presence of MBT, tubercular intoxication and coughing up blood.

26. As is clear from the applicant's medical records, the chemotherapy regimen prescribed to him in the hospital did not include any new antibacterial drugs or any other medicines which he had not received before, comprising fenazid, ethambutol, rifampicin, vitamins, a cough medicine, potassium chloride and a hepatoprotector. Having considered that the applicant's condition had improved, on 4 February 2009 the doctors authorised his release from the hospital for further outpatient treatment.

27. The first chest X-ray examination and sputum culture tests performed within two weeks of the applicant's release from the hospital showed that the state of his lungs had not changed, with the diagnosis remaining infiltrative and disseminated destructive tuberculosis, and that he still tested positive for the presence of MBT. A series of repeated health complaints made by the applicant were addressed by the prison doctors through the introduction of vitamins, anti-inflammatory medicines and muscle relaxants to his treatment regime. In March 2009 the applicant started receiving a second-line antibacterial medicine. Three weeks later doctors recorded an escalation of the tuberculosis process and prescribed the applicant aspirin, tetracycline, paracetamol and an analgesic. With the tests showing that the applicant remained smear-positive and that his condition had not improved, given the growing number of his health complaints, including that of coughing up blood, the doctors continued amending his treatment, prescribing two of the three antibacterial drugs which the

applicant had already received and replacing one with another one when his condition appeared to deteriorate further.

28. Following a further escalation of the illness in March 2010, the applicant was admitted to the prison hospital. A month-long course of treatment with the same three antibacterial medicines and a number of drugs which he had received on his previous admission to the hospital resulted in the applicant's release from the hospital with the same diagnosis but the conclusion that his condition had improved.

29. Towards the end of May 2010 the applicant suffered another attack of the illness, having started coughing up blood again. He was diagnosed with pulmonary haemorrhage and was prescribed aminocapronic acid, to be administered through a drip. Having noted a continuous serious deterioration of the applicant's condition, in June 2010 the attending doctor prescribed a long list of medicines and vitamins and recommended his admission to the hospital at weekends. At the same time, the doctor noted the absence of ethambutol in the colony. On 15 July 2010 the applicant was transferred to the hospital for inpatient treatment. Having received treatment with isoniazid, rifampicin, ethambutol, vitamins, cough medicine and hepatoprotectors, the applicant was released from the hospital on 23 August 2010 following a determination that his condition had improved.

30. Less than a month later the applicant again complained of a significant deterioration of his health. The handwritten version of his medical records shows that the doctor intended to prescribe the applicant isoniazid but was unable to do so, having noted that the colony did not have a supply of that drug. The last two weeks of October 2010 were marked by the applicant's multiplying complaints of a serious fever, shivering, coughing up blood, chest pain, and so on. Having noted the complaints and the absence of any positive dynamic in the applicant's sputum and blood tests and his X-ray exams, and despite the applicant having continued to receive treatment with rifampicin, on 27 October 2010 the doctor authorised his admission to the hospital. The applicant was taken to the hospital on 7 November 2010. During the month that he was admitted to the hospital he finally started receiving treatment with second-line anti-tuberculosis drugs. The sputum smear tests performed in the hospital at the end of the applicant's treatment revealed no presence of MBT. The applicant was released from the hospital because the colony authorities were starting reconstruction works.

31. Following his release from hospital, the applicant continued receiving treatment with first-line anti-tuberculosis medicines, including ethambutol and a derivative of isoniazid. An X-ray exam and tests performed on 24 February 2011 revealed that the applicant had again tested positive for the presence of MBT and that he suffered from fibrous-cavernous and disseminated destructive tuberculosis of the left lung. Three days later the applicant again complained to the medical personnel that he

was coughing up blood. Despite the applicant's treatment being complemented by drugs reducing vascular permeability, analgesics, immunomodulators, vitamins, hepatoprotectors and sedatives, his condition continued deteriorating. In March 2011 he was again prescribed second-line antibacterial drugs. With no positive dynamic being recorded, on 8 April 2011 the applicant was relieved from participating in daily roll calls of the prisoners. A test performed at the end of May 2011 showed that the applicant was smear-negative. The most recent entries in the applicant's medical records state that he was feverish in the evenings and that doctors had tried to address his condition by supplementing his regimen with an antibiotic, aloe, vitamins and a cough syrup. At the same time, the attending doctor had authorised drug susceptibility testing. The test showed resistance to two of the four first-line antibacterial medicines and to at least one anti-tuberculosis drug from the reserve list.

32. In August 2011 the applicant was transferred to the tuberculosis department of detention facility no. 2 to undergo inpatient treatment. On admission to the hospital doctors recorded that he was again smear-positive, that he had multidrug resistance (MDR) and that he suffered from chronic tubercular intoxication, frequent hemoptysis, pulmonary heart disease and cachexia. A medical certificate issued by the head of the tuberculosis department on 23 August 2011 indicated that despite the treatment the applicant's condition was considered moderately severe and that he required inpatient treatment in a tuberculosis hospital.

D. Complaints to officials

33. A certificate submitted by the Government showed that the applicant sent an extremely large number of complaints to the President of the Russian Federation, the Prosecutor General, the Ministry of Health Care, the Federal Service for the Execution of Sentences and various prosecution officials concerning the conditions of his detention and the quality of medical care in the colony. A number of other inmates joined his complaints to those officials. The officials found no defects in the medical care afforded to the detainees and did not consider that the conditions of the applicant's detention in the colony were unsatisfactory. The applicant provided the Court with copies of some of his complaints and the responses to them.

II. RELEVANT DOMESTIC LAW

A. Provisions governing the quality of medical care afforded to detainees

34. The relevant provisions of domestic and international law governing the health care of detainees, including those suffering from tuberculosis, are set out in the following judgments: *A.B. v. Russia*, no. 1439/06, §§ 77-84, 14 October 2010; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, §§ 60-66 and 73-80, 27 January 2011; and *Pakhomov v. Russia*, no. 44917/08, §§ 33-39 and 42-48, 30 September 2011.

B. Provisions establishing legal avenues for complaints about the quality of medical assistance

1. Prosecutors Act (Federal Law no. 2202-1 of 17 January 1992)

35. The list of prosecutors' official powers includes the rights to enter premises, to receive and study materials and documents, to summon officials and private individuals for questioning, to examine and review complaints and petitions containing information on alleged violations of individual rights and freedoms, to explain the avenues for protection of those rights and freedoms, to review compliance with laws and regulations, to institute administrative proceedings against officials, to issue warnings about the unacceptability of violations and to issue reports pertaining to the remedying of violations uncovered (sections 22 and 27).

36. A prosecutor's report pertaining to the remedying of violations uncovered is served on an official or a body, which has to examine the report without delay. Within a month specific measures aimed at the elimination of the violation(s) should be taken. The prosecutor should be informed of the measures taken (section 24).

37. Chapter 4 governs prosecutors' competence to review compliance with laws and regulations by the prison authorities. They are competent to verify that prisoners' custody is lawful and that their rights and obligations are respected, as well as to oversee the conditions of their detention (section 32). To that end, prosecutors may visit detention facilities at any time, talk to detainees and study their prison records, require the prison administration to ensure respect for the rights of detainees, obtain statements from officials and institute administrative proceedings (section 33). Decisions and requests by a prosecutor must be unconditionally enforced by the prison authorities (section 34).

2. *Code of Civil Procedure: Complaints about unlawful decisions*

38. Chapter 25 sets out the procedure for the judicial review of complaints about decisions, acts or omissions of the State and municipal authorities and officials. Pursuant to Ruling no. 2 of 10 February 2009 by the Plenary Supreme Court of the Russian Federation, complaints by suspects, defendants and convicts of inappropriate conditions of detention must be examined in accordance with the provisions of Chapter 25 (point 7).

39. A citizen may lodge a complaint about an act or decision by any State authority which he believes has breached his rights or freedoms, either with a court of general jurisdiction or by sending it to the directly higher official or authority (Article 254). The complaint may concern any decision, act or omission which has violated rights or freedoms, has impeded the exercise of rights or freedoms, or has imposed a duty or liability on the citizen (Article 255).

40. The complaint must be lodged within three months of the date on which the citizen learnt of the breach of his rights. The time period may be extended for valid reasons (Article 256). The complaint must be examined within ten days; if necessary, in the absence of the respondent authority or official (Article 257).

41. The burden of proof as to the lawfulness of the contested decision, act or omission lies with the authority or official concerned. If necessary, the court may obtain evidence on its own initiative (point 20 of Ruling no. 2).

42. If the court finds the complaint justified, it issues a decision requiring the authority or official to fully remedy the breach of the citizen's rights (Article 258 § 1). The court determines the time-limit for remedying the violation with regard to the nature of the complaint and the efforts that need to be deployed to remedy the violation in full (point 28 of Ruling no. 2).

43. The decision is dispatched to the head of the authority concerned, to the official concerned or to their superiors, within three days of its entry into force. The court and the complainant must be notified of the enforcement of the decision no later than one month after its receipt (Article 258 §§ 2 and 3).

3. *Civil Code*

44. Damage caused to the person or property of a citizen shall be compensated in full by the tortfeasor. The tortfeasor is not liable for damage if he proves that the damage has been caused through no fault of his own (Article 1064 §§ 1, 2).

45. State and municipal bodies and officials shall be liable for damage caused to a citizen by their unlawful actions or omissions (Article 1069).

Irrespective of any fault by State officials, the State or regional treasury are liable for damage sustained by a citizen on account of: (i) unlawful criminal conviction or prosecution; (ii) unlawful application of a preventive measure; and (iii) unlawful administrative punishment (Article 1070).

46. Compensation for non-pecuniary damage is effected in accordance with Article 151 of the Civil Code and is unrelated to any award in respect of pecuniary damage (Article 1099). Irrespective of the tortfeasor's fault, non-pecuniary damage shall be compensated if the damage was caused: (i) by a hazardous device; (ii) in the event of unlawful conviction or prosecution or unlawful application of a preventive measure or unlawful administrative punishment; or (iii) through dissemination of information which was damaging to the victim's honour, dignity or reputation (Article 1100).

B. Provisions governing conditions of detention in medical colonies

47. Article 99 § 1 of the Penitentiary Code of 8 January 1997 lays down a minimum standard of two square metres of personal space for male convicts in correctional colonies and a minimum standard of five square metres of personal space for convicts in medical facilities.

48. Article 101 § 2 of the Code provides that special medical correctional colonies are established for the detention and outpatient treatment of convicts suffering from open tuberculosis. Specific medical facilities (such as tuberculosis hospitals) within the correctional system provide inpatient medical assistance to convicts.

THE LAW

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

49. The applicant complained that the authorities in colony no. 8 had not taken steps to safeguard his health and well-being, failing to provide him with adequate medical assistance in breach of Article 3 of the Convention. He also complained under the same Convention provision that the conditions of his detention in the medical colony had been appalling. Article 3 of the Convention reads as follows:

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

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

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

A. Submissions by the parties

50. The Government put forward two lines of argument, insisting that the applicant had had a choice of effective remedies before him but had not exhausted them and, at the same time, arguing that both the treatment provided to the applicant during the entire period of his detention and the conditions of his detention in colony no. 8 had corresponded to the highest 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 and that the conditions of his detention were unsatisfactory. The procedure for making claims before a court was established in Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's Ruling no. 2 of 10 February 2009. Having relied on two cases examined by the Russian courts and the Court's findings in the case of *Popov and Vorobyev v. Russia* (no. 1606/02, 23 April 2009), they submitted that it had also been open to the applicant to lodge a tort action claiming compensation for damage caused by the allegedly inadequate medical assistance and poor conditions of his detention. Relying on Resolution no. CM/ResDH(2010)35 adopted at the 1078th Meeting of the Committee of Ministers of the Council of Europe, the Government further noted that statistics and a number of cases presented to the Committee had demonstrated the developing practice of the Russian courts in awarding compensation for non-pecuniary damage caused by unsatisfactory conditions of detention. In the Government's opinion, the applicant's failure to apply to a Russian court with a complaint had to be interpreted by the Court as his unwillingness to comply with the admissibility requirements set out by Article 35 §§ 1 and 4 of the Convention. The Government stressed that his complaints under Article 3 should therefore be dismissed for failure to exhaust domestic remedies and the complaints under Article 13 were obviously manifestly ill-founded.

51. In the alternative, the Government argued that the applicant had been provided with adequate care throughout his detention in the medical colony. He had received effective treatment, both in the colony and its hospital. The medical personnel had possessed the necessary training and skills to treat the applicant. The facilities had been equipped with medicines and medical equipment according to established norms. The Government pointed out that the applicant had undergone 55 medical examinations, tests and procedures, including 27 X-ray exams, 27 clinical blood tests and 25

sputum smear tests. They also stressed that his current condition was considered satisfactory and that he was under medical supervision on account of his chronic disease.

52. As regards the conditions of the applicant's detention in colony no. 8, the Government argued that they had fully satisfied legal requirements. The colony was not overcrowded, with only 995 inmates being detained there – under the current cap of 1100 persons. The sanitary conditions were proper, with regular disinfection of the facilities. The applicant had been able to spend the major part of his day outside in the recreation yard without any limitation, save for the requirement to stay in the dormitory at night. The food was of good quality and sufficient in amount.

53. The applicant asked the Court to dismiss both arguments raised by the Government, emphasising that his complaints to various domestic authorities had either produced no response or had been dismissed for superficial reasons. He further stressed that he had been unable to obtain the medical assistance he needed while in detention. He relied on various medical records showing that his condition had continued deteriorating even after the authorities had acknowledged that he had become disabled. He noted that for years the colony had not received necessary antibacterial medicines. It did not employ a sufficient number of medical specialists. It was impossible for inmates to receive daily medical assistance, given that doctors only saw patients for two-and-a-half hours per day, thus affording only a very short visit to each inmate. The applicant submitted that a large number of inmates died each year, with the number of deaths being bigger than at any other correctional facility in Russia. The lack of medical assistance had subjected him to extreme suffering. The applicant further argued that his condition had been further exacerbated by the appalling conditions of his detention. He had been detained with many sick inmates in severely overcrowded conditions for years. His ability to leave the dormitory and to stay in the recreation yard could not have compensated for the lack of personal space, as the yard had also been too small to accommodate such a large number of inmates and had not offered any protection from the rain, sun or cold.

B. The Court's assessment

1. Admissibility

54. The Government raised the objection of non-exhaustion of domestic remedies by the applicant. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that he did not had at his disposal an effective remedy for the complaint that he had been subjected to inhuman and degrading treatment by being deprived of effective medical care and being detained in

inadequate conditions at the medical colony. Thus, the Court finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

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

2. *Merits*

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

i. General principles

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

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

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

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

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

61. The Court observes that its task in the present case is to examine the effectiveness of various domestic remedies suggested by the Russian Government or employed by the applicant in his attempts to draw the

authorities' attention to his state of health, the quality of medical care he was afforded and the conditions in which he was detained in the medical colony. The Court observes that the Government listed a complaint under Chapter 25 of the Code of Civil Procedure and a tort action as the legal avenues which the applicant had failed to pursue. The applicant, in turn, stressed that he had attempted to make use of such avenues as a complaint to a prosecutor. Furthermore, given the Government's reliance on the Court's findings in the case of *Popov and Vorobyev* (cited above, § 67, where, having declared the applicants' complaint of inadequate medical assistance inadmissible, it noted that they had not raised that issue before any domestic authority, including the detention centre authorities, the prosecutor's office and the courts), the Court is ready to consider whether, in addition to the avenues cited above by the Government and the applicant, a complaint to the administration of a detention facility could have been effectively used by the applicant to complain about the quality of medical care and the conditions of his detention.

ii. Analysis of existing remedies

α. Complaint to prison authorities

62. As regards a complaint to the administration of a detention facility, the Court notes that the primary responsibility of the prison officials in charge of a detention facility is that of ensuring appropriate conditions of detention, including adequate health care for prisoners. It follows that a complaint of inadequate prison conditions or that of negligence by prison medical personnel would necessarily call into question the way in which the prison management had discharged its duties and complied with domestic legal requirements. Accordingly, the Court does not consider that the prison authorities would have a sufficiently independent standpoint to satisfy the requirements of Article 35 of the Convention (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61): in deciding on a complaint concerning conditions of detention or an inmate's medical care for which they were responsible, they would in reality be judges in their own cause (see *Goginashvili v. Georgia*, no. 47729/08, § 55, 4 October 2011; and, more recently, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-118, 10 January 2012; and *Ismatullayev v. Russia* (dec.), § 26, 6 March 2012).

β. Complaint to a prosecutor

63. The Court will now consider whether a complaint to a prosecutor could have provided the applicant with redress for the alleged violation of his rights. The Court reiterates that the decisive question in assessing the effectiveness of raising a complaint of inhuman and degrading treatment before a prosecutor is whether the applicant could have done so in order to

obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. Even though the prosecutors' review undeniably plays an important part in securing appropriate conditions of detention, including the proper standard of medical care for detainees, a complaint to a supervising prosecutor falls short of the requirements of an effective remedy, because of the procedural shortcomings that have previously been identified in the Court's case-law (see, for instance, *Pavlenko v. Russia*, no. 42371/02, §§ 88-89, 1 April 2010, and *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 85-86, 12 March 2009, with further references). In particular, the Court has never been convinced that a report or order by a prosecutor, which both have a primarily declaratory character, could offer preventive or compensatory redress, or both, for allegations of treatment contrary to Article 3 of the Convention (see *Aleksandr Makarov*, § 86, cited above).

64. The Court further reiterates the Convention institutions' settled case-law, according to which a hierarchical complaint which does not give the person making it a personal right to the exercise by the State of its supervisory powers cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII, and *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, pp. 76 and 82). The Court accepts the assertion that detainees may send their complaints to a prosecutor. However, there is no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings, which would entirely be a matter between the supervising prosecutor and the supervised body. The complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint. The Court reiterates that, in the absence of a specific procedure, the ability to appeal to various authorities cannot be regarded as an effective remedy because such appeals aim to urge the authorities to utilise their discretion and do not give the complainant a personal right to compel the State to exercise its supervisory powers (see *Dimitrov v. Bulgaria*, no. 47829/99, § 80, 23 September 2004). Moreover, the Court does not lose sight of the fact that the applicant's complaints to various prosecutors resulted in their finding no flaws either in the level of the applicant's medical care or the quality of the conditions of his detention (see paragraph 33 above). Since the complaint to a prosecutor does not give the person using it a personal right to the exercise by the State of its supervisory powers, it cannot be regarded as an effective remedy.

γ. Tort action

65. The Court will further examine whether the tort provisions of the Civil Code constituted an effective domestic remedy capable of providing

an aggrieved detainee with redress for his or her detention in inhuman or degrading conditions or for absent or inadequate medical assistance.

66. The provisions of the Civil Code on tort liability impose special rules governing compensation for damage caused by State authorities and officials. Articles 1070 and 1100 contain an exhaustive list of instances of strict liability in which the treasury is liable for such damage, irrespective of the State officials' fault. Inadequate conditions of detention or poor medical care do not appear in this list. Only the unlawful institution or conduct of criminal or administrative proceedings gives rise to strict liability; in all other cases, the general provision in Article 1069 applies, requiring the claimant to show that the damage was caused through an unlawful action or omission on the part of a State authority or official.

67. The Court has already examined this remedy in several recent cases, in the context of both Article 35 § 1 and Article 13 of the Convention, and was not satisfied that it was an effective one. The Court found that, while the possibility of obtaining compensation was not ruled out, the remedy did not offer reasonable prospects of success, in particular because the award was conditional on the establishment of fault on the part of the authorities (see, for instance, *Roman Karasev v. Russia*, no. 30251/03, §§ 81-85, 25 November 2010; *Shilbergs v. Russia*, no. 20075/03, §§ 71-79, 17 December 2009; *Kokoshkina v. Russia*, no. 2052/08, § 52, 28 May 2009; *Aleksandr Makarov*, cited above , §§ 77 and 87-89; *Benediktov v. Russia*, no. 106/02, §§ 29 and 30, 10 May 2007; *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 109-116, ECHR 2009; and, most recently, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-118, 10 January 2012).

68. For instance, in the *Aleksandr Makarov* case, the Court found it questionable whether, in a situation where most aspects of the applicant's detention, including the lighting, food, medical assistance, sanitary conditions, etc., complied with domestic legal regulations, yet their cumulative effect was such as to constitute inhuman treatment in breach of Article 3 of the Convention (see *Aleksandr Makarov*, cited above, §§ 98-100), Mr Makarov would have been able to argue his case effectively before a court. It noted that the approach of the Russian courts offered no prospects of success for his tort action and rendered this remedy theoretical and illusory rather than adequate and effective.

69. Even in cases where the claimant was able to prove that the actual conditions of detention deviated from, or fell short of, the standards required by applicable Russian law, the Russian courts have routinely absolved the State of tort liability, finding that the inadequacy of material conditions was not attributable to some shortcoming or omission on the part of the prison authorities but rather to a structural problem, such as insufficient funding of the penal system (see *Skorobogatykh*, cited above, §§ 17-18 and 31-32; *Artyomov*, cited above, §§ 16-18 and 111-112; and *Roman Karasev*, cited

above, §§ 17, 24 and 82). The Court has considered this approach adopted by the Russian courts unacceptable because it has allowed a large number of well-founded cases where the unsatisfactory conditions of detention resulted from a lack of funds or the limited capacity of detention facilities to remain unresolved at the domestic level (see *Artyomov*, cited above, § 112).

70. Finally, the Court notes that even in cases where the Russian courts awarded compensation for conditions of detention that had been unsatisfactory in the light of the domestic legal requirements, the level of the compensation was unreasonably low in comparison with the awards made by the Court in similar cases (see, for instance, *Shilbergs*, cited above, where the applicant was awarded RUB 1,500, that is the equivalent of less than 50 euros (EUR), for his detention in an extremely cold and damp cell, without adequate lighting, food or a personal sleeping place). In the *Shilbergs* case, the Court was concerned with the reasoning of the Russian courts, which had assessed the amount of compensation by reference in particular to the "degree of responsibility of the management and its lack of financial resources". The Court found it anomalous for the domestic courts to decrease the amount of compensation to be paid to the applicant for a wrong committed by the State by referring to the latter's lack of funds. It considered that the scarcity of funds available to the State should not be accepted as mitigating its conduct, and were thus irrelevant in assessing damages under the compensatory criterion (see *Shilbergs*, cited above, § 71-79).

71. However, in its assessment of the effectiveness of tort proceedings, the Court finds the following considerations to be very important. To prove the existence of the selection and successful use of mechanisms of redress, the Government cited two cases in which claimants, former inmates, had been granted compensation for damage to health resulting from overcrowding and inadequate medical care in detention. Without embarking on an analysis of the relevance of those cases to the case at hand and deciding whether the two cases sufficiently demonstrate the existence of a developed, consistent and coherent practice of remedies being available for victims of Article 3 violations resulting from inadequate conditions of detention, a lack of medical assistance or its poor quality, the Court reiterates that to be adequate, remedies with which to hold a State accountable should correspond to the nature and kind of the complaints addressed to it. Given the continuous nature of the violation alleged by the applicant, in particular his complaint that he was suffering from an extremely serious medical condition, that his health was continuing to deteriorate in the absence of appropriate medical treatment and that he had continued to be detained in particularly poor conditions, the Court considers that an adequate remedy in such a situation should imply a properly functioning mechanism of monitoring the conduct of national authorities with a view to putting an end to the alleged violation of the applicant's

rights and preventing the recurrence of such a violation in the future. Therefore, a purely compensatory remedy would not suffice to satisfy the requirements of effectiveness and adequacy in a case of an alleged continuous violation of a Conventional right and should be replaced by another judicial mechanism performing both the preventive and compensatory functions.

72. The Court observes that the Government have never argued that a tort action could have offered the applicant any other redress than a purely compensatory award. Being convinced that a preventive remedial measure would have had an evidently pivotal role in a case such as the applicant's, with his pleas of ongoing deterioration of his health in view of a lack of proper medical care and poor detention conditions, the Court finds that a tort claim was not able to provide the applicant with relief appropriate for his situation. The purely monetary compensation afforded by a tort action could not extinguish the consequences created by the alleged continuous situation. A tort claim would not have entailed the ending or modification of the situation or the conditions in which the applicant found himself. It would not have brought about an order to put an end to the alleged violation and to compel the detention authorities to offer the applicant the requisite detention conditions and medical care, and it would not have provided for any sanction for failure to comply, thus depriving a court examining the tort claim of the opportunity to take practical steps to eliminate the applicant's further suffering or to deter wrongful behaviour on the part of the authorities. This logic has been applied in a large number of cases raising an arguable claim under Article 3, with the Court insisting that if the authorities could confine their reaction in such cases to the mere payment of compensation, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice. The State cannot escape its responsibility by purporting to erase a wrong by a mere grant of compensation in such cases (see, among many other authorities, *mutatis mutandis*, *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004; *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports* 1998-VI; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV; *Velikova v. Bulgaria*, no. 41488/98, § 89, ECHR 2000-VI; *Salman v. Turkey* [GC], no. 21986/93, § 83, ECHR 2000-VII; *Gül v. Turkey*, no. 22676/93, § 57, 14 December 2000; *Kelly and Others v. the United Kingdom*, no. 30054/96, § 105, 4 May 2001; and *Avşar v. Turkey* [GC], no. 25657/94, § 377, ECHR 2001-VII).

73. In the light of the above considerations, the Court finds that also in the present case, concerning the continuing situation of inadequate detention conditions and absent or inadequate medical care in detention, a civil claim for damages did not satisfy the criteria of an effective remedy.

δ. Judicial complaints of infringements of rights and freedoms

74. The Court's final task is to assess the effectiveness of a complaint under Chapter 25 of the Code of Civil Procedure. By virtue of the provisions of Chapter 25, Russian courts are endowed with supervisory jurisdiction over any decision, action or inaction on the part of State officials and authorities that has violated individual rights and freedoms or prevented or excessively burdened the exercise thereof. Such claims must be submitted within three months of the alleged violation and be adjudicated promptly within ten days of the submission. In those proceedings, the complainant must demonstrate the existence of an interference with his or her rights or freedoms, whereas the respondent authority or official must prove that the impugned action or decision was lawful. The proceedings are to be conducted in accordance with the general rules of civil procedure (see paragraphs 38-43 above).

75. If the complaint is found to be justified, the court will require the authority or official concerned to make good the violation of the complainant's right(s) and set a time-limit for doing so. The time-limit will be determined with regard to the nature of the violation and the efforts that need to be deployed to ensure its elimination. A report on the enforcement of the decision should reach the court and the complainant within one month of its service on the authority or official.

76. The Court notes that judicial proceedings instituted in accordance with Chapter 25 of the Code of Civil Procedure provide a forum that guarantees due process of law and effective participation for the aggrieved individual. In such proceedings, courts can take cognisance of the merits of the complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation. The proceedings are conducted diligently and at no cost to the complainant. The ensuing judicial decision will be binding on the defaulting authority and enforceable against it. The Court is therefore satisfied that the existing legal framework renders this remedy *prima facie* accessible and capable, at least in theory, of affording appropriate redress.

77. Nevertheless, in order to be "effective", a remedy must be available not only in theory but also in practice. This means that the Government should normally be able to illustrate the practical effectiveness of the remedy with examples from the case-law of the domestic courts. The Russian Government, however, did not submit any judicial decision showing that a complainant had been able to vindicate his or her rights by having recourse to this remedy. The Court, for its part, has not noted any examples of the successful use of this remedy in any of the cases relating to conditions of detention or medical assistance that have previously come before it (see, for similar reasoning, *Ananyev and Others,* cited above, § 110). The absence of established judicial practice in this regard appears all the more clear in the light of the fact that the Code of Civil Procedure,

including its Chapter 25, has been in force since 1 February 2003 and that Chapter 25 merely consolidated and reproduced the provisions concerning a substantially similar procedure that had been available under Law no. 4866-1 of 27 April 1993 on Judicial Complaints against Actions and Decisions which have Impaired Citizens' Rights and Freedoms ("the Citizens' Rights and Freedoms (Judicial Complaints) Act 1993"). The remedy, which has not produced a substantial body of case-law or a plethora of successful claims in more than eighteen years of existence, leaves genuine doubts as to its practical effectiveness. Admittedly, the ruling of the Plenary Supreme Court, which explicitly mentioned the right of detainees to complain under Chapter 25 about their conditions of detention, was only adopted in February 2009, but it did not alter the existing procedure in any significant way and its effectiveness in practice still remains to be demonstrated (see, for similar reasoning, *Ananyev and Others*, cited above, §§ 107-110). Furthermore, the Government also did not explain how, in the light of the ruling of the Plenary Supreme Court, which concerned complaints about conditions of detention, the Chapter 25 procedure would work in respect of complaints of ineffective medical care for detainees, given the specificity of those complaints.

78. The Court's doubts as to the effectiveness of the procedure prescribed by Chapter 25 of the Code of Civil Procedure are further strengthened by the Government's argument that every aspect of the conditions of the applicant's detention, including the floor space in the living premises of the dormitories, lighting, food, medical assistance, sanitary conditions, and so forth, had complied with applicable legal regulations. It is doubtful that in a situation where domestic legal norms prescribed such conditions of the applicant's detention, he would have been able to argue his case before a court or even state a cause of action that would have passed the admissibility stage of proceedings (see *Orlov v. Russia,* no. 29652/04, § 71, 21 June 2011, with further references).

79. The Court therefore finds that, although Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's ruling of 10 February 2009, provides a solid theoretical legal framework for adjudicating detainees' complaints of inadequate conditions of detention, and possibly their complaints of ineffective medical care, it has not been convincingly demonstrated that that avenue satisfies the requirements of effectiveness.

iii. Conclusion

80. In the light of the above considerations, the Court concludes that none of the legal avenues put forward by the Government, and none of the remedies employed by the applicant, constituted in the present case an effective remedy. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies and finds that the

applicant did not have at his disposal an effective domestic remedy for his complaints, in breach of Article 13 of the Convention.

(b) Alleged violations of Article 3 of the Convention

i. General principles

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

82. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

83. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most of the cases concerning the detention of people who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

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

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

ii. Application of the above principles to the present case

α. Violation of Article 3 on account of the level of medical care provided to the applicant

86. Turning to the facts of the present case, the Court observes that on 1 November 2006 the applicant was transferred to medical correctional colony no. 8 in view of his having a long history of suffering from tuberculosis. While not losing sight of the Government's argument that a large number of tests were performed during the applicant's detention in the colony, the Court observes that it took the Russian authorities almost five years to perform the most essential test which should have guided the applicant's treatment through all those years. Despite the authorities' knowledge of the applicant's long-term illness and his remaining a smear-positive patient for so many years without any positive dynamic in his condition being recorded, it was not until 2011 that drug susceptibility testing was performed (see paragraph 31 above). The test revealed that the applicant suffered from multidrug-resistant tuberculosis, being infected with strains resistant to at least two of the first-line drugs with which he had been treated during all those years. Without attempting to determine whether the applicant's MDR tuberculosis resulted from either primary infection with resistant bacteria or developed in the course of his treatment as a result, *inter alia*, of a failure to administer an adequate chemotherapy regimen, the Court finds it unsatisfactory that for so many years the colony medical

personnel did not take any steps to establish the cause of the applicant's failing treatment with the most effective, first-line anti-tuberculosis drugs, having disregarded the continuous deterioration of his condition.

87. While the Court finds the absence of proper testing in order to establish the most adequate treatment formula to be the major flaw in the medical care afforded to the applicant in detention, it also does not lose sight of numerous other errors and defects in the medical services he received in the colony. In particular, while accepting the Government's argument that the applicant was provided with anti-tuberculosis treatment, it reiterates that the mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Gladkiy v. Russia,* no. 3242/03, § 89, 21 December 2010, with further references). It does not escape the Court's attention that on a number of occasions the colony doctors recorded the absence of antibacterial medicines, having taken them out of the applicant's treatment regimen (see paragraphs 22, 29 and 30 above). It appears that the choice of medicines which the prison doctors were able to include in the applicant's treatment regimen was limited to those which the colony could obtain or the applicant's relatives could provide (see paragraph 24 above). While in other circumstances that situation may not be a matter of concern, the Court observes that in the applicant's case it was another sign of the colony's inability to provide him with adequate medical care. It reiterates that the authorities' inability to assure a regular, uninterrupted supply of essential anti-tuberculosis drugs to patients is a key factor in tuberculosis treatment failure (see, for similar reasoning, *Yakovenko v. Ukraine,* no. 15825/06, §§ 98-102, 25 October 2007). As is clear from the records presented by the Government, until 2010 the colony only received one second-line tuberculosis medicine. Another medical certificate showed that, until at least the beginning of 2008, the colony only received a scarce amount of that second-line drug (see paragraph 22 above). The Court is concerned that the absence of the reserve antibacterial drugs may well have been the reason behind the colony doctors' decision to delay the applicant's drug susceptibility testing.

88. Furthermore, the Court notes long delays between episodes of deterioration of the applicant's health and the authorities' response to them. For instance, almost two months passed between the tests revealing that the applicant had become smear-positive and his starting to receive treatment with antibacterial drugs (see paragraphs 23 and 24 above). The evidence put before the Court also shows that the treatment the applicant was able to receive was unregulated and erratic. It appears that with a limited choice of antibacterial drugs, the colony doctors were juggling them in an attempt to respond to the applicant's growing health complaints and given the absence of any signs that any of the prescribed medicines were proving effective

(see paragraph 27 above). While understanding the difficulty of the task faced by the colony medical personnel, the Court once again is not prepared to accept financial or logistical difficulties as circumstances relieving the domestic authorities of their obligation to organise the State's penal system in such a way so as to secure the health and well-being of detainees. The Court, accordingly, finds no excuse for the failure to promptly provide the applicant with anti-tuberculosis medicines appropriate for his state of health and notes with concern that the treatment which the applicant received on his admission to the colony hospital either did not differ at all or was substantially similar to that administered to him on an outpatient basis in the colony itself. The applicant's short-term admissions to the colony hospital demonstrated attempts by the colony personnel to at least temporarily stop the applicant's condition from further deteriorating. But at the same time, they also show the absence of any comprehensive plan to manage the applicant's illness. It does not escape the Court's attention that even when the treatment in the colony hospital was amended and led to a certain positive dynamic in the applicant's condition being recorded, on his release from the hospital the medical staff reinitiated treatment which had already proven to be ineffective, without giving any further thought to the necessity to reconsider that therapy (see paragraphs 30 and 31 above).

89. The Court thus finds that the applicant did not receive comprehensive, effective and transparent medical treatment for his illness during his detention in the medical correctional colony. It believes that, as a result of this lack of adequate medical treatment, the applicant was exposed to prolonged mental and physical suffering diminishing his human dignity. The authorities' failure to provide the applicant with the medical care he needed amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

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

β. Violation of Article 3 on account of the conditions of the applicant's detention in the medical colony

91. The Court observes that the applicant was detained in medical correctional colony no. 8 for almost five years. During that period he lived in a colony dormitory, save for short periods of admission to the colony hospital. Given that the parties did not argue that the conditions of the applicant's detention in the dormitory or the hospital had differed to a substantial degree, the Court will examine the entire period of the applicant's detention without dividing it into parts.

92. The parties have disputed many aspects of the conditions of the applicant's detention in the colony. The Court is accordingly faced with the task of establishing the facts on which the parties disagree. It reiterates in this respect that allegations of treatment contrary to Article 3 must 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*, 18 January 1978, § 161, Series A no. 25). However, Convention proceedings, such as the present application, 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) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. 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 validity of the applicant's allegations (see, among other authorities, *Kokoshkina v. Russia*, no. 2052/08, § 59, 28 May 2009, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

93. The Court observes at the outset that the applicant described the conditions of his detention in detail. He submitted colour photographs of his rooms in the dormitory, the sanitary facilities and recreation yard confirming his description. The Government, by contrast, confined their supporting evidence to numerous certificates from the colony management issued in July 2011, that is in the last month of the applicant's detention in the colony. They have not submitted any source materials on the basis of which the assertions of comfortable conditions of detention contained in those certificates could be verified. The Court would reiterate that on several previous occasions it has declined to accept the validity of similar certificates on the grounds that they could not be viewed as sufficiently reliable given the lapse of time involved and the absence of any supporting documentary evidence (see *Kokoshkina*, cited above, § 60; *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008; and *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007). When looking into the specific data provided by the Government to support their argument regarding how much personal space was afforded to detainees, the Court notes that the colony management either provided information which contradicted the Government's submissions (see paragraph 9 above, as regards the number of sleeping places) or provided no support for the Government's assertions, in view of the lack of any information on the basis of which the assertion could be made (see the same paragraph concerning the absence of inmate population logs). The certificates are therefore of little evidentiary value for the Court.

94. As regards the specific conditions, the applicant argued that he had been detained in overcrowded conditions during the entire period of his detention in the colony. He submitted that he had had less than 1.5 square metres of personal space, given the number of persons detained in the colony and its maximum design capacity. He supported his submissions with colour photos of the dormitory room, confirming that the inmates' personal space was limited to their sleeping place and a narrow passage

between the bunks. The Government argued that the applicant had had an individual sleeping place at all times and had been afforded between 2.75 and 3.13 square metres of personal space during the entire period of his detention, either in the colony dormitory or in its hospital. The Court, however, does not need to settle the differences between the parties' submissions for the following reasons.

95. The Court reiterates that in a number of cases the lack of personal space afforded to detainees in Russian remand centres was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention. In those cases applicants were usually afforded less than three-and-a-half square metres of personal space (see, among others, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007). At the same time, the Court has always refused to determine, once and for all, how many square metres should be allocated to a detainee in terms of the Convention, having considered that a number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise, the physical and mental condition of the detainee and so on, play an important part in deciding whether the detention conditions complied with the guarantees of Article 3 of the Convention (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007). As to post-trial detention facilities such as correctional colonies in Russia, the Court has considered that personal space should be viewed in the context of the applicable regime, providing for a wider freedom of movement enjoyed by detainees in correctional colonies during the daytime and their unobstructed access to natural light and air. In a number of cases the Court has found that the freedom of movement allowed to inmates in a colony and unobstructed access to natural light and air have served as sufficient compensation for the scarce allocation of space per convict (see, among others, *Valašinas v. Lithuania*, no. 44558/98, §§ 103 and 107, 24 July 2001; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004; *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009; and *Orlov,* cited above, § 77).

96. The present case is, however, different from the cases cited above. Even proceeding on the assumption that the Government's submissions pertaining to the personal space afforded are more accurate, the Court is not convinced that other aspects of the applicant's detention compensated for the cramped living conditions in the dormitory or the hospital. The Court does not lose sight of the fact that the colony where the applicant was detained was a medical detention facility, primarily meant to accommodate inmates suffering from serious forms of tuberculosis, including, such as the applicant, those who were smear-positive and thus extremely infectious. The applicant submitted, and the Government did not dispute that assertion, that the freedom of the inmates' movement was limited to their dormitory, the colony hospital, the sanitary facilities and the open recreation yard, which was used by approximately 250 detainees from the same division.

While accepting the Government's argument that inmates were not restricted in their freedom of movement within the aforementioned facilities from the wake-up call in the morning to lights out at night, the Court does not find it surprising that inmates, seriously ill individuals, spent the major part of their day inside the dormitory. In fact, photographs of the dormitory room submitted by the applicant showed a large number of inmates in the room during the daytime. In this respect, the Court also notes the applicant's argument, as well as the colour photographs submitted by him in support of his claims, that the recreation yard was too small to accommodate the entire dormitory population and, in addition, did not offer any protection from bad weather or too much sun. The yard did not have benches or any other equipment which could have been used for rest or recreation. In addition to being in a rather rundown state, the yard was also used for storing garbage.

97. The Court also does not lose sight of the fact that a lack of personal space was combined with a prolonged lack of privacy. The applicant had to share a room for almost five years with a large number of ill inmates, with a minimal distance separating their sleeping places. The photos attest to the inmates' attempts to obtain at least some privacy by barricading their bunks with uniforms or bedding. The Court considers that in such circumstances the lengthy detention of the applicant, a seriously ill inmate, in particularly cramped conditions without a minimum level of privacy being afforded to him amounted in itself to inhuman treatment.

98. In view of the above conclusion, it would be unnecessary to assess other aspects of the physical conditions of the applicant's detention. However, the Court takes note of the photographs showing the interior of the applicant's dormitory rooms, the recreation yard and the sanitary facilities. The dormitory rooms, as well as the service premises, were evidently in a deplorable state of repair and cleanliness. The concrete walls, the ceiling and the floor were damaged. The metal beds were rusty and dilapidated, while the bedding was worn out and dirty. The toilet facilities were decrepit and did not offer sufficient privacy. The washbasin appeared to be eaten away with rust (see paragraph 19 above). The Court considers that such conditions can only be described as degrading and unfit for human habitation (see, for similar reasoning, *Zakharkin v. Russia,* no. 12555/04, § 126, 10 June 2010).

99. Further, the Court observes that the applicant had limited access to natural light. While the photographs provided by the applicant showed no blinds or shutters on the windows, the rows of two-tier bunks were installed in such a way that they significantly reduced the amount of daylight that could penetrate into the dormitory rooms. The Court also considers that a metal net installed on the windows and visible on certain photographs served as an additional barrier to light. The Court therefore finds it established that the window arrangements in the dormitory rooms allowed little access to natural light and that the circulation of fresh air was equally

limited although the dormitories housed inmates, such as the applicant, suffering from a serious pulmonary disease and thus requiring a good supply of fresh air.

100. Having regard to the cumulative effect of the factors described above, the Court considers that the conditions in which the applicant was held in correctional colony no. 8 diminished his human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and thus amounted to inhuman and degrading treatment.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

104. The Government submitted that the claim was unwarranted and excessive.

105. The Court observes that it has found violations in the present case, resulting in the applicant being exposed to prolonged mental and physical suffering diminishing his human dignity. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Having regard to all the above factors, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

106. The applicant did not seek reimbursement of costs and expenses, and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Declares* admissible the complaints concerning the lack of adequate medical assistance and the conditions of detention in a medical colony, and the alleged absence of an effective domestic remedy in this connection, and *declares* inadmissible the remainder of the application;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy with which to raise claims of inadequate conditions of detention and a lack of medical assistance;

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

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention in a medical colony;

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

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

Done in English, and notified in writing on 8 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President