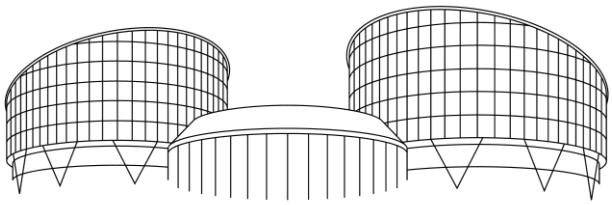

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANDREY GORBUNOV v. RUSSIA

(Application no. 43174/10)

JUDGMENT

STRASBOURG

5 February 2013

FINAL

05/05/2013

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

In the case of Andrey Gorbunov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 43174/10) 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 Andrey Vitalyevich Gorbunov ("the applicant"), on 2 August 2010.

2. The applicant was represented by Mr R. Valiullin, a lawyer practising in Izhevsk. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 May 2011 the application was given priority (Rule 41 of the Rules of Court) and 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and is serving a sentence of imprisonment in the Kurgan Region.

5. He was arrested on 26 February 2009 in the town of Izhevsk on suspicion of drug trafficking.

6. The applicant suffers from heroin addiction, chronic infectious endocariditis, tricuspid insufficiency and hepatitis C. From

27 February 2009 to 10 July 2010 he was detained in detention centre no. 18/1 in the Udmurtiya Region, and in hospitals for detainees.

7. On 16 April 2009 the applicant sought release, referring to a deterioration in his health and the unavailability of medical assistance in the detention facility, which, in his submission, would lead to his death. He also claimed that he required urgent surgery. The investigator in charge of the criminal case dismissed the application for release, considering that before his arrest the applicant had had "enough time to obtain adequate medical care in the town of Perm as regards heart surgery".

8. On 23 April 2009 the Industrialniy District Court of Izhevsk examined the investigator's request for the extension of the applicant's detention. The court examined the defence's arguments concerning his state of health, and concluded that they were insufficient grounds for dismissing the request since it had not been established that the applicant's medical condition was incompatible with detention.

9. Another extension request was examined on 16 July 2009. The court granted it, having concluded that there were no impediments to the applicant's detention in a remand centre; the applicant's medical condition, in itself, did not require release because the applicant had been, and continued to be, provided with medical care in detention. The nature of the treatment and compliance with it were not specified.

10. While still in detention, the applicant was admitted to a hospital for treatment from 28 July to 20 August 2009 in connection with his chronic infectious endocarditis and tricuspid insufficiency.

11. The criminal case against the applicant was submitted for trial in the District Court. On 25 August 2009 the applicant asked the judge to order a forensic expert examination to determine whether he needed in-patient treatment or surgery, and whether he was fit to participate in the court hearings.

12. On the same day, the senior medical officer at the remand centre issued a certificate, indicating that the applicant's medical condition was being monitored by the medical staff of the remand centre and no in-patient treatment in a hospital was required; a consultation by a cardiologist was to be provided "as scheduled", or in the case of deterioration in the applicant's medical condition.

13. Having regard to the above certificate, the judge dismissed the applicant's request. The judge considered that, as confirmed by the applicant, his state of health was satisfactory; the attending doctor had also stated that the applicant was fit to take part in the proceedings; and that he was being provided with medical care. The nature of the treatment and compliance with it were not specified.

14. Apparently thereafter, the judge wrote to the administration of the remand centre where the applicant was then detained, requesting an opinion concerning the need for a forensic expert examination of the applicant by

cardiologists and rheumatologists in order, eventually, to determine whether any surgery or hospitalisation was required; whether the applicant's current state of health was compatible with detention; and whether the applicant was fit to take part in court hearings.

15. In addition to the certificate of 25 August 2009, the senior medical officer of the remand centre wrote to the trial judge on 28 August 2009 indicating that the applicant did not require any urgent surgery, and that he was receiving out-patient monitoring by the medical staff of the remand centre and had four check-ups per year. The nature of the treatment and compliance with it were not specified.

16. Medical assistance had to be provided to the applicant during court hearings on thirteen occasions between 24 August 2009 and 30 March 2010.

17. On 12 October 2009 the presiding judge wrote to the remand centre inquiring whether the applicant was fit to continue with his participation in the trial hearings and whether a medical examination by cardiologists and rheumatologists was necessary. The remand centre replied on 19 October 2009 that the applicant was fit to participate in hearings but only if they were of a limited duration and held in a well-aired room. It was also stated that, noting the deterioration in the applicant's health and the need to decide whether urgent surgery was necessary, the applicant should be examined by rheumatologists.

18. On 13 November 2009 the district prosecutor's office asked the trial judge to order an examination of the applicant by a cardiologist. The applicant suggested that the following issues be raised during such an examination: whether he needed in-patient treatment and urgent surgery (with an indication of the time-frame, in the case of an affirmative reply), and whether he was fit to participate in the trial and remain in a detention facility.

19. On the same day, the trial judge commissioned an expert report, to be drawn up by the State office for forensic expertise. The expert was invited to determine whether the applicant was fit to participate in the trial (and under what conditions). The remaining issues raised by the applicant were dismissed as unrelated to the trial.

20. On 30 November 2009 the applicant was examined by a cardio-rheumatologist, who adjusted his previous prescription for medication. Also in November 2009, the applicant had an echocardiogram and an electrocardiogram.

21. A panel of medical professionals at the State office for forensic expertise issued the following expert report:

> "... Having examined the available documents, we consider that [the applicant's] heart disease is now in a phase of stable pathology and that he is fit to take part in court hearings under normal conditions (as regards microclimate and duration) with the necessary compliance with the recommendations made by the cardiologist on 30 November 2009, in particular as regards his intake of medication."

22. On 9 December 2009 a panel of medical professionals at prison hospital no. 8 also issued a report, which reads as follows:

> "... In view of the degree of damage to the cardiac valves, and considering the possible consequences of their being affected, we recommend that detention be replaced by another preventive measure which will facilitate [the applicant's] admission to a specialised cardiac hospital for surgery".

23. On 25 December 2009 the District Court examined the applicant's renewed application for release. Having examined the above-mentioned medical reports, the court gave weight to the report of the State office for forensic expertise and maintained the applicant's detention.

24. On 7 April 2010 the applicant was convicted of drug trafficking and sentenced to five years and three months' imprisonment.

25. On 12 May 2010 the applicant was examined by a cardiologist.

26. The applicant sought a consultative opinion from the Forensic Medicine and Law Unit of the St Petersburg Medical University as to the appropriate treatment and its availability in the detention facility. Having examined a number of documents (see paragraph 20 above), in their consultative opinion dated 11 June 2010 a group of three medical specialists made the following findings:

> "Long-term prognosis in respect of infectious endocartitis is based, to a large extent, on the impairment of cardiac function ... The damage to the valvic structure of the heart ... discloses bi-ventricular (total) chronic heart decompensation, which is an aggravated type of heart decompensation. This is accompanied by pulmonary arterial hypertension, which is a factor of progressing heart decompensation ... We are unable to make any further findings regarding a prognosis because the most recent available material dates back to November 2009. However, it is clear that the disease will inevitably progress in the absence of adequate treatment.
>
> As to treatment, the only radical method [for the applicant's situation] is cardiac surgery. This method may only be ruled out where there is a medical contraindication to surgery ...
>
> Under the relevant legal provisions, an in-patient examination in a specialised cardiac facility is necessary for deciding whether there is any such contraindication, and for determining the appropriate type of surgery and the corresponding timeframe and conditions ...
>
> [The applicant] should no longer be treated in the medical unit of a detention facility because, under the relevant regulations, such a medical unit is suitable only for in-patient admission and care for no longer than fourteen days, for the temporary isolation of infectious patients, [and] for recovery treatment after discharge from a hospital ..."

27. On 22 June 2010 the appeal court upheld the sentence and it became final.

28. On 25 June 2010 the applicant's medical record was sent to the Bakulev cardiac hospital in order to obtain a prescription for surgery, which is an instruction written by a medical practitioner that authorises a patient to be issued with treatment.

29. On 27 June 2010 the prison medical unit issued a report stating that there were no contraindications to the surgery and recommending that it should be carried out in a specialised cardiology centre.

30. On 10 or 11 July 2010 the applicant was transferred from prison no. 8 in the Udmurtiya Region, which apparently had an overpopulation problem, to prison no. 1 in the Kurgan Region. He arrived there on 29 July 2010 and was admitted to the tuberculosis unit of the prison. On the same day, the applicant's mother received formal notification of the prescription for surgery from the cardiac hospital stating that the applicant should be admitted to it by 25 August 2010.

31. In the meantime, on 14 July 2010 the applicant's counsel brought proceedings under Chapter 25 of the Russian Code of Civil Procedure against detention centre no. 18/1 before the Pervomayskiy District Court of Izhevsk. The applicant argued that, despite the medical reports of 9 December 2009 and 11 June 2010 (see paragraphs 22 and 26 above), the staff of the detention facility had authorised his transfer to a detention facility in a distant region of Russia and failed to inform his relatives of his planned or actual transfer. The court noted that the applicable legislation required that a convicted person be detained in the region where he had been convicted or resided. He could be transferred to another region (i) in exceptional circumstances relating to his health or security, or at his own request; or (ii) if the right type of facility was not available or there was shortage of places in the region. In August 2010 the District Court rejected the applicant's claims.

32. On 9 August 2010 prison no. 1 received a "quota prescription" which allowed the applicant to be admitted to the Bakulev hospital for cardiac surgery in Moscow on 25 August 2010. On 10 August 2010 the detention facility asked the supervising prison department for permission to convey the applicant from Kurgan to Moscow. On 17 August 2010 the "operational unit" of the department gave its approval. However, since the approval of the "medical unit" of the department could not be obtained in time, the detention facility reached an agreement with the Bakulev hospital to re-schedule the applicant's admission for 7 December 2010.

33. According to the Government and an information note from prison no. 1, the tuberculosis unit had access to services provided by medical professionals at the regional cardiac hospital and the regional civic hospital.

34. From October 2010 to an unspecified date in 2010 the applicant was kept in prison no. 2 in the Kurgan Region. Fresh approval was sought from the medical unit of the supervising prison department.

35. On 8 December 2010 the medical staff of prison no. 1 concluded that the applicant "required to be conveyed to the Bakulev hospital in Moscow, the dates for transfer to be specified later on". Apparently, at the request of the medical staff, the applicant's admission to the cardiac hospital was

rescheduled for 16 December 2010. It was subsequently rescheduled, for unspecified reasons, for 1 February 2011.

36. According to the Government, "having detected violations of the law in relation to [the applicant's] transfer to a medical facility, the regional prosecutor issued a decision and a warning to avoid similar shortcomings".

37. The Government submitted to the Court a certificate issued on 1 August 2011 by the acting director of prison no. 1 which stated that the applicant's life was at no immediate risk and his disease was in remission.

38. Between October 2011 and May 2012 the applicant was kept in the therapeutic unit of the hospital attached to Moscow detention centre no. 1.

39. It can be seen from a certificate issued on 18 October 2011 by the Bakulev hospital that it was recommended that a coronary angiography be carried out and that the applicant undergo surgery with extracorporeal circulation.

40. In a letter of 23 November 2011 the Bakulev hospital provided the following information to the Moscow remand centre:

> "Surgery may be provided to [the applicant] in the Bakulev hospital under general conditions. His admission to the hospital is to include surgery with extracorporeal circulation in a sterile surgical unit, as well as the patient's placement in a reanimation and intensive therapy unit during the immediate post-surgery period. This admission will also involve his subsequent presence in the surgery unit. The premises of the Bakulev hospital are not suitable for the admission of patients under a detention regime. The hospital cannot make arrangements for the treatment of [the applicant] under the supervision of four officers from your facility."

41. The Government submitted a certificate dated 2 August 2012 issued by the acting chief officer of prison no. 2. It reads as follows:

> "... [The applicant] received a consultation from a cardiac surgeon from the Bakulev hospital in Moscow on 18 October 2011 ... Surgery with extracorporeal circulation was recommended (after a coronary angiography).
>
> However, admission to the hospital was subsequently refused, owing to its inability to handle patients who were detainees.
>
> On 29 May 2012 [the applicant] was seen by a cardiac surgeon from Moscow hospital no. 15. Surgery was not recommended because of the [applicant's] stable condition, as well as on account of the high risk of complications during the post-surgery period while in detention."

42. There is no indication that thereafter there has been any significant change of the circumstances relating to the issue of medical care. It appears that the applicant is currently being kept in prison no. 2 in the Kurgan Region.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. Chapter 25 of the Code of Civil Procedure (CCP) sets out the procedure for the judicial examination of complaints about decisions, acts or

omissions of the State, municipal authorities or 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 about inappropriate conditions of detention must be examined in accordance with the provisions of Chapter 25 (point 7).

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

45. The complaint must be lodged within three months of the date when the citizen learned of the breach of his rights. The time-limit may be extended for valid reasons (Article 256). The complaint must be examined within ten days (Article 257). 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).

46. 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).

47. The decision is dispatched to the head of the authority concerned, to the official concerned or to their superiors, within three days of the date it becomes enforceable. 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained about the allegedly inadequate medical care in detention, in particular, that the prison authorities had obstructed his access to surgical treatment, thus putting his life at risk. He also mentioned, in general terms, the conditions of transport and his transfer to a distant region of Russia for the serving of his prison term. Article 3 reads as follows:

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

A. The parties' submissions

49. The Government argued that, in addition to his complaints before the prosecutors, the applicant should have brought court proceedings against the detention facilities in relation to his complaint of inadequate medical care. In particular, he could have brought an action under Chapter 25 of the Code of Civil Procedure or a claim for compensation in respect of damage to his health and/or non-pecuniary damage. They noted that the Court itself had previously dismissed complaints relating to medical care for non-exhaustion of domestic remedies (see *Popov and Vorobyev v. Russia*, no. 1606/02, § 67, 23 April 2009).

50. As to the substance of the complaint, the Government affirmed that between 2009 and 2011 the applicant had been provided with all requisite medication; there had been no indication of the worsening of his medical condition and there was no urgency for the carrying out of the surgery. The applicant's detention had been and remained compatible with his state of health. At the same time, the Government admitted that unspecified "violations of law in relation to [the applicant's] transfer to a medical facility" had been detected and that the regional prosecutor had issued "a decision and a warning to avoid similar shortcomings". Subsequently, the Government submitted that in October 2011 the applicant had been examined by a cardiac surgeon from the Bakulev hospital in Moscow; that, having examined the applicant in May 2012, another cardiac surgeon had stated that, at that time, no immediate surgery was recommended; and that the applicant was not eligible for early release for health-related reasons (see paragraph 41 above).

51. The applicant submitted that both an independent expert and a medical professional at the detention facility had acknowledged that he required admission to a specialised cardiac hospital for possible surgery (see paragraph 26 above). The applicant insisted that such recommendations required that he be released from detention pending trial and, later on, be absolved from serving the prison term to which he had been sentenced by the trial court. The applicant's transfer to a distant region had deprived him of an opportunity to benefit from the formal appointment for surgery arranged in late 2010.

B. The Court's assessment

1. Admissibility

52. The Court observes at the outset that the applicant's reference to the conditions of transport lacks detail and is unsubstantiated. The applicant has

not shown that any established facts relating to his transport, for instance between the detention facilities in the two regions of Russia, were such as to disclose treatment in breach of Article 3 of the Convention.

53. As to the issue of medical care, the Court observes that, despite the Government's assertion, the applicant did bring court proceedings under Chapter 25 of the CCP when he challenged his transfer to a detention facility in a distant region of Russia, a decision which impeded his admission to a cardiac hospital in Moscow (see paragraph 31 above). The Government have not specified what other type of claim the applicant could usefully have raised in such proceedings under the CCP (see paragraphs 43-47 above).

54. In addition to the above proceedings and a number of complaints to various law-enforcement and executive authorities, the applicant lodged a number of complaints with a court, seeking release and/or his transfer to a hospital. The domestic authorities took cognisance of the merits of the complaints, sought opinions on the appropriateness of the applicant's detention in the conditions of the regular detention facility, and based their conclusions on medical reports and the assurances of the facility authorities, taking the view that the conditions in the detention facility were appropriate for the detention of the applicant. Thus, the authorities were made aware of the applicant's allegations relating to his medical care.

55. The Court observes that the Government did not argue that, in pursuing the above avenues of judicial review, the applicant had removed from the courts the option of examining the relevant issues.

56. As to the Government's argument pertaining to the applicant's failure to lodge a tort action against a detention facility, the Court observes that the Government merely suggested that a tort action was also a formal judicial avenue available to the applicant. The Court, however, does not find it unreasonable that in a situation where the domestic courts had analysed the applicant's complaint of inadequate medical care a number of times, he did not lodge a separate action in accordance with the formal tort procedure under the Russian Civil Code. In circumstances where the domestic courts had examined and dismissed his complaints, finding that his detention fully complied with the domestic legal norms, the Court does not consider that the applicant was also required to bring a tort action (see *Arutyunyan v. Russia*, no. 48977/09, § 64, 10 January 2012).

57. The Court also considers that, to be adequate, remedies for the implementation of responsibility in respect of a State should correspond to the nature of the complaints. Given the continuous nature of the violation alleged by the applicant, the Court considers that an adequate remedy in such a situation would imply a properly functioning mechanism for monitoring the conduct of the national authorities with a view to putting an end to the alleged violation of the applicant's rights. In the Court's view, a purely compensatory remedy would not suffice to satisfy the requirements

of effectiveness and adequacy where there is an alleged continuous violation of a Conventional right. Lastly, the Court observes that the Government's remaining arguments lack detail or substantiation. Therefore, the Government's non-exhaustion plea should be dismissed.

58. The Court notes that the applicant's complaint relating to medical care 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.

2. Merits

(a) General principles

59. The Court reiterates that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately ensured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

60. Where complaints are made about a failure to provide necessary medical assistance in detention, it is not indispensable for such a failure to have led to a medical emergency or have otherwise caused severe or prolonged pain in order for the Court to find that a detainee was subjected to treatment incompatible with the guarantees of Article 3 (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 114, 15 June 2010). Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds, save for in exceptional cases (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001), or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment. However, a lack of appropriate medical treatment may raise an issue under Article 3 even if the applicant's state of health does not require his immediate release.

61. The national authorities must ensure that diagnosis and care in detention facilities, including prison hospitals, are prompt and accurate, and that, where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing his or her condition from worsening (see *Sakhvadze v. Russia*, no. 15492/09, § 83, 10 January 2012).

62. On the whole, while taking into consideration "the practical demands of imprisonment", the Court reserves sufficient flexibility in deciding, on a case-by-case basis, whether any deficiencies in medical care were

"compatible with the human dignity" of a detainee (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

63. The Court reiterates that an unsubstantiated allegation of no, delayed, or otherwise unsatisfactory medical care is normally not sufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question, medical prescriptions that were sought, made or refused, and some evidence – for instance, expert reports – capable of disclosing serious failings in the applicant's medical care (see *Valeriy Samoylov v. Russia*, no. 57541/09, § 80, 24 January 2012).

64. The Court also reiterates that its task is to determine whether the circumstances of a given case disclose a violation of the Convention in respect of an applicant, rather than to assess *in abstracto* the national legislation of the respondent State, its regulatory schemes or the complaints procedure used by an applicant. Thus, mere reference to the domestic compliance with such legislation or schemes, for instance as regards licensing of medical institutions or qualifications of medical professionals, does not suffice to oppose an alleged violation of Article 3 of the Convention. It is fundamental that the national authorities dealing with such an allegation apply standards which are in conformity with the principles embodied in Article 3 (ibid., § 81).

65. In accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In its assessment of issues under Article 3 of the Convention, the Court gives thorough scrutiny to the question of the authorities' compliance with the prescriptions issued by medical professionals, in the light of the specific allegations made by an applicant (see *Vladimir Vasilyev v. Russia*, no. 28370/05, § 59, 10 January 2012).

(b) Application of the principles to the present case

66. The applicant was arrested in February 2009 and detained in relation to a criminal case. In April 2010 he was convicted and sentenced to five years and three months' imprisonment. It appears that his heart disease pre-dates his detention.

67. The Court will focus on the main thrust of the applicant's grievance, which relates to the alleged failure of the domestic authorities, since 2009, to take him to a specialised cardiac hospital in Moscow.

68. The Court observes in this connection that the necessity for this measure has been acknowledged on several occasions at the domestic level from December 2009. It is clear that, beyond being desirable, this was considered to be a medical necessity for the proper planning of eventual surgery. This is confirmed by the consultative medical report which was obtained by the applicant in June 2010 and whose conclusions were not contested by the respondent Government (see paragraph 26 above). That

report stated, in particular, that an in-patient examination in a specialised cardiac facility was necessary for deciding whether there was any contraindication to surgery, and for determining the appropriate type of surgery, its timeframe and conditions. The report also indicated that the treatment of the applicant in the medical unit of a detention facility was no longer appropriate.

69. Even before the report, in December 2009, the prison medical staff had recommended that detention be replaced by another preventive measure in order to facilitate the applicant's admission to a specialised cardiac hospital for surgery (see paragraph 22 above).

70. Having regard to the information available, the Court is satisfied that the applicant made out a credible complaint which was capable of disclosing serious failings in his medical care (see *Valeriy Samoylov*, cited above, § 80).

71. Relying on the available medical documents, the respondent Government affirmed in substance that the surgery recommended for the applicant was not a matter of emergency/urgency and thus its delay did not entail the pain or suffering required for it to reach the "minimum threshold of severity" to fall with the scope of Article 3 of the Convention.

72. It is noted that the applicant mentioned the urgency of surgery as an argument in support of his application for release in April 2009. However, the available material does not disclose that this argument was corroborated by any medical evidence at the time. In August 2009 the senior medical officer of the remand centre wrote to the trial judge affirming that the applicant did not require any urgent surgery. Later on, in November 2009, the applicant unsuccessfully sought that a forensic expert be asked to clarify whether surgery was a matter of urgency. The trial judge considered that such a matter was unrelated to the trial or the assessment of the applicant's ability to participate in it.

73. For its part, the Court considers that the material in its possession does not confirm that during the period under consideration surgery was a matter of averred urgency (see, by way of comparison, *Gadamauri and Kadyrbekov v. Russia*, no. 41550/02, §§ 43-53, 5 July 2011, and *Geppa v. Russia*, no. 8532/06, § 82, 3 February 2011). However, the Court reiterates that the absence of a medical emergency does not necessarily exclude the possibility of a violation of Article 3 of the Convention. Therefore, the Court still has to determine whether the course of action adopted by the national authorities *vis-à-vis* the applicant's medical condition was such as to offend the requirements of Article 3 of the Convention.

74. Fortunately, the delay in the applicant's admission to a specialised cardiac hospital has not led to any dramatic consequences (see, by contrast, *Anguelova v. Bulgaria*, no. 38361/97, § 125, ECHR 2002-IV, and *Romokhov v. Russia*, no. 4532/04, § 93, 16 December 2010). The Court

does not exclude that certain delays in medical care, although unfortunate, may be without any significant physical or psychological impact on the person concerned or, for instance, on the course of treatment (see *Shchebetov v. Russia*, no. 21731/02, § 74, 10 April 2012, and, by contrast, *Vasyukov v. Russia*, no. 2974/05, § 75, 5 April 2011).

75. It can be seen from the information submitted by the Government that the applicant had a consultation with a cardiac surgeon from the Bakulev hospital in Moscow in October 2011.

76. At the same time, it is common ground between the parties that the purpose of the applicant's admission to the specialised facility was, *inter alia*, to clarify the question of the urgency of surgery. The Court has no reason to disagree that the appropriate course of action in respect of the applicant's medical condition was admission to such a facility, together with an examination by a cardiac surgeon. While the Court accepts that the authorities took certain steps aimed at providing the applicant with specialist treatment outside the prison system, the applicant's consultation with a cardiac surgeon was postponed between 2009 and October 2011.

77. In fact, the Government mentioned that certain shortcomings, in particular in respect of the chain of communication between various units of the supervising prison department and the detention facilities, had contributed to a situation in which the applicant could effectively not be taken to the cardiac hospital, because of the need to comply with the time-related and other constraints imposed by the "quota prescription" procedure.

78. The Court has been unable to determine whether the practical arrangements for the consultation in May 2012, and the earlier one in October 2011, were such as to fully comply with the recommendations made in the 2010 report.

79. The Court considers that as regards the period of time under review, the applicant's medical condition did not receive an adequate and timely response from the domestic authorities, essentially on account of logistical difficulties. It does not appear that a reasonable effort was made to deal with these difficulties, with due regard to the gravity of the applicant's medical condition (see *Wenerski v. Poland*, no. 44369/02, § 68, 20 January 2009).

80. Having made the above findings, the Court cannot overlook that both the most recent medical opinions (of October 2011 and May 2012) which were made available to it essentially mention the applicant's detainee status as a current or eventual impediment to carrying out surgery (see paragraph 41 above). As stated by the Bakulev hospital, it was impracticable to ensure the permanent presence of convoy officers during and after the surgery to supervise the applicant (see paragraph 40 above). At the same time, the Government conceded that the applicant's medical condition did not require early release from detention on health grounds. In this connection, the Court cannot but reiterate the principle under which it is for the national authorities to organise the internal legal system in such a

way as to ensure compliance with the State's Convention obligations. This also applies to the issue of medical care in the context of the practical demands of imprisonment. The national authorities must ensure that diagnosis and care in detention facilities are prompt and accurate, and that, where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy (see *Sakhvadze*, cited above, § 83).

81. In May 2012 the applicant was consulted by a cardiac surgeon who considered that surgery was not indicated owing to the applicant's stable condition. The Court assumes that that reflected the real medical condition of the applicant at the material time. However, beyond mere conjecture, it appears that the authorities' attitude towards the applicant's medical condition was, to some extent, dependent on their unwillingness or inability to make the practical arrangements for surgery.

82. The Court considers that the relative gravity of the applicant's condition and the authorities' unjustified delay in putting into practice their own decision to take the applicant to the specialised cardiac hospital, at least as regards the period before May 2012, disclosed a serious failing on the part of the respondent State leading to a situation in which the applicant could be said to have been subject to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. The Court considers that the authorities' failing amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

83. In view of the above conclusions, the Court does not find it necessary to delve into the question of whether the applicant's medical condition was incompatible with his continued detention pending trial and/or after his conviction by the trial court.

84. There has been a violation of Article 3 of the Convention in the circumstances of the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

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

87. The Government disagreed.

88. The Court considers that the applicant must have suffered physical pain and mental anguish in relation to his serious medical conditions. It must be accepted that he also suffered distress, frustration and anxiety on account of the above-mentioned failing of the national authorities in respect of his medical care. Having regard to the nature of the violation, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

89. Since the applicant made no claim in respect of costs and expenses, the Court makes no award.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint relating to medical care admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President