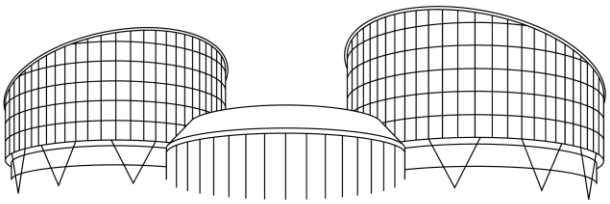

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF PITALEV v. RUSSIA

(Application no. 34393/03)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Pitalev v. Russia**,**

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Rait Maruste,
Anatoly Kovler,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 34393/03) 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 Sergey Gennadyevich Pitalev ("the applicant"), on 24 September 2003.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Mrs V. Milinchuk and subsequently by Mr G. Matyushkin, Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of Article 3 of the Convention on account of the conditions in the correctional facilities.

4. On 28 April 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3) and to give priority to the case under Rule 41 of the Rules of Court.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970. He is currently serving his sentence in penitentiary institution УЩ-349/2 in Yekaterinburg.

A. Criminal proceedings against the applicant

7. On 28 April 2001 the applicant was arrested and remanded in custody on suspicion of inflicting grievous bodily harm resulting in the death of the victim. On 27 June 2002 the Podolskiy Town Court convicted the applicant of inflicting grievous bodily harm resulting in death and sentenced him to eight years' imprisonment. On 14 October 2002 the Moscow Regional Court upheld the judgment. The applicant was held in a pre-trial detention facility till 3 December 2002.

B. Conditions of the applicant's detention in correctional colony IK-3

8. Between 3 December 2002 and 9 June 2005, excluding three periods from 4 July to 12 September 2003, from 22 June to 9 July 2004 and from 19 November to 10 December 2004, the applicant served his sentence in correctional colony IK-3, Ryazan Region (*ИК-3 Рязанской области, учреждение ЯМ 401/3*).

9. The applicant was kept in units (*отряды*) nos. 3 and 5. The parties' descriptions of conditions in IK-3 differ in a number of respects.

1. The applicant's account

10. The applicant submitted that in unit no. 5 there were approximately another seventy detainees and in unit no. 3 around fourteen detainees. He had an individual sleeping place for the whole period of detention; however, the sanitary conditions in the colony were inadequate. The central heating in their dormitory was insufficient, and during the winter the convicts slept fully clothed. In summer it was very hot in the cell, and due to its overcrowding the air was stale and musty. The toilet was situated in a separate unheated area, and it was extremely cold there in winter. No hygiene facilities were provided. Food was of a very poor quality, the usual ration included white bread, barley porridge and semi-sweet tea in the morning, barley soup and porridge at lunch time, and mashed potatoes made from powder in the evening. While a supplementary diet was prescribed for him by the doctor, the applicant claimed that he had only received milk

before November 2003 and after March 2004; butter and eggs were provided as of September 2004.

11. Furthermore, there was not enough light and heating in the sewing workshop where the applicant and other prisoners worked. There was not sufficient light in the bedroom either, because the windows were obstructed by bunk beds.

2. The Government's account

12. Unit no. 5 measured 240 sq. m., and its bedroom measured 150 sq. m. The unit housed approximately 70 inmates. After he was diagnosed with tuberculosis in June 2003, the applicant was transferred to unit no. 3 to a dormitory which measured 42 square meters and housed fifteen inmates. The applicant was at all times provided with an individual bed, bedding and clothes – a cotton suit, cap, cold-weather cap, sweater and boots. The relevant records were submitted to the Court.

13. The Government, relying on the certificates provided by the Federal Service for the Execution of Sentences, further submitted that the cells were ventilated both naturally through the windows and by a ventilation shaft, which was mandatory. The windows in the cells were double glazed and allowed sufficient natural light through. The cells were also equipped with satisfactory artificial lighting.

14. The units were equipped with a central heating system; bedrooms had a seven-unit heating device which provided an average temperature of 18 degrees Celsius in winter, also in the toilets. The lighting in the sewing workshop was sufficiently provided by luminescent lamps in accordance with the relevant regulations. The applicant was provided with three special diet meals a day appropriate to his health condition.

C. Conditions of the applicant's detention in the prison hospital

15. From 4 July to 12 September 2003, from 22 June to 9 July 2004 and from 19 November to 10 December 2004 the applicant was held in a medico-prophylactic penitentiary institution (*ЯМ-401/Б УИН МЮ РФ по Рязанской области*, hereinafter – "the prison hospital"), where he was placed in the "enhanced regime" cell (*палата усиленного контроля*) of the tuberculosis department. The parties' descriptions of the conditions in the prison hospital differ substantially.

1. The applicant's account

16. The applicant submitted that one of his inmates in the prison hospital had had tuberculosis, and another one had had suspected tuberculosis. In the prison hospital the applicant was kept in two cells in similar conditions. In the corner of one of the cells there was a pail covered with a polyethylene lid which served as a toilet. The applicant asserted that the pail was not

separated from the living area, was emptied once a day (around 11.30 a.m.) and that the stench from it was unbearable. The window was covered with a metal shutter.

17. The artificial light was never switched off, disturbing the applicant's sleep. There was no water in the cell; the wash stand was situated in the hospital's basement and inmates were taken there once a day. No laundry facilities were available. Detainees were allowed to take a shower once a week, but between July and September 2003 they had had to wash in cold water.

18. Only one hour's exercise was available every day, and for the rest of the day inmates remained in their cells. Detainees repeatedly complained about the inadequate conditions to a commission from the local administration, the Federal Service for the Execution of Sentences and the Prosecutor's Office, which visited the hospital every Wednesday, but were told that there were no financial resources available to improve their situation.

2. The Government's account

19. From 4 July to 12 September 2003 the applicant was kept in the prison hospital in cell no. 4, which measured 7.7 sq. m. From 3 July to 22 July there were four inmates; from 22 July to 19 August, three inmates; from 19 to 26 August 2003 two inmates; and from 26 August to 12 September 2003 three inmates. From 22 June to 9 July 2004 and from 19 November to 10 December 2004 the applicant was held in cell no. 3, which also measured 7.7 sq. m., with three other inmates during the former period and two other inmates during the latter one.

20. The cells had been ventilated naturally through the windows; both cells were also equipped with the mandatory ventilation system. The cells had natural and artificial light. The partition around the toilet offered sufficient privacy and there was a dining table for four persons. Once a week the detainees had the opportunity to take a shower and to change their bedding. Laundry facilities were available, and the hot water had never been cut off. Access to water was unrestricted.

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

21. On 24 and 25 June 2003 the applicant underwent a medical examination and was diagnosed with suspected tuberculosis. On 4 July 2003 he was transferred to the prison hospital, where he underwent a further X-ray examination on 9 July 2003. In the course of a check-up, tuberculosis in the right lung was detected.

22. After initial treatment with further prescriptions, on 12 September 2003 the applicant was transferred back to the IK-3 of the Ryazan Region despite having alleged that he felt unwell. An X-ray examination conducted on 22 October 2003 showed that the applicant's

tuberculosis was advancing. In the hospital the applicant was treated with ethambutol[1], isoniazid[2] and rifampicin[3]. In the IK-3 he was given a stronger analogue of rifampicin – myrin-p. According to the applicant, no liver-protective medication, which should normally accompany such a strong anti-tuberculosis treatment, was offered. Additionally, an inguinal hernia was detected, but the required operation was never conducted. This lack of necessary treatment led to a skin disease and poor eyesight.

23. The Government submitted the applicant's medical records from IK-3 and the prison hospital, which confirmed that since the applicant had been diagnosed with tuberculosis he had been regularly examined and all the necessary medication for his condition had been provided. The list of tests submitted by the Government included regular x-rays, advanced blood tests, further clinical tests and examinations by a number of specialists, including a tuberculosis specialist, an ophthalmologist, a surgeon, and a dermatologist, who prescribed necessary treatment. Two x-rays conducted in June and November 2004 showed a "positive dynamic of the tuberculosis process and dispersion of niduses of tuberculosis". On 25 June 2004 the applicant was discharged from the hospital with a final diagnosis of infiltrative tuberculosis of the upper lobe of the right lung in the phase of dispersion. As concerns the inguinal hernia which the applicant had been suffering from since 1976, an operation was recommended after a full recovery from tuberculosis had been made.

II. RELEVANT DOMESTIC LAW

24. Article 99 § 1 of the Penitentiary Code of 8 January 1997 provides for a minimum standard of two square metres of personal space per male convict in correctional colonies and five square meters in medico-prophylactic penitentiary institutions.

III. RELEVANT INTERNATIONAL DOCUMENTS

25. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in penitentiary institutions reads as follows:

> 45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

1. Names of medical substances are given hereafter in accordance with the classification of drugs adopted in the Russian Federation.
2. Hepatotoxic medication that may cause liver damage.
3. Idem.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system....

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding... Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2)...

46. In the course of the 2001 visit, the CPT's delegation also noted that the regular supply of anti-tuberculosis drugs in sufficient quantities was ensured in the regions visited. This is another important achievement...

92. ...Hardly any complaints were heard about the quality and quantity of the food served. Prisoners with tuberculosis and HIV positive prisoners benefited from a special diet which entitled them to milk and margarine. However, a verification of the food stocks by a medical member of the delegation revealed that prisoners rarely consumed meat. Further, the level of proteins in the prisoners' diet was rather low...

The CPT recommends that:
- efforts be made to decrease occupancy levels in the dormitories with the most cramped conditions ..., *inter alia* through a more even allocation of prisoners between the units; as already indicated (cf. paragraph 53 of the report on the 1999 periodic visit, document CPT (2000) 7), the aim should be to provide in due course a minimum living space of 4 m² per prisoner...

THE LAW

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

26. The applicant complained that the poor conditions of his detention in correctional colony ИК-3 and in the prison hospital ЯМ-401/Б had been inhuman and degrading in breach of Article 3 of the Convention, which provides as follows:

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

A. The parties' submissions

1. The Government

27. The Government submitted at the outset that the Court only had competence to examine the conditions of the applicant's detention during the six months preceding the submission of his application form. If detainees were allowed to complain about long periods of detention, this would impose a disproportionate burden on the authorities to store detention facility registers indefinitely. Accordingly, the Government invited the Court to reject the applicant's complaints relating to the period prior to 24 March 2003 for non-compliance with the six-month rule.

28. Furthermore, the applicant failed to lodge a claim for damages caused by allegedly improper detention conditions in the above institutions, and thus has not exhausted the available domestic remedies. To prove the effectiveness of that remedy, they mentioned the case of Mr D., who had challenged the inadequate conditions of his detention in a correctional colony and had been awarded 25,000 Russian roubles (RUB) by the Novgorod Town Court in respect of non-pecuniary damage.

29. The Government further submitted that detention conditions in IK-3 and prison hospital had been adequate. They relied on certificates issued by the Federal Service for the Execution of Sentences confirming that in both facilities the applicant had been provided with an individual sleeping place, sufficient food, clothes and bedding; and that the sanitary, hygienic and temperature norms had been met (set out in paragraphs 12-14 and 19-20 above) and claimed that detention conditions in both penitentiary facilities had been compatible with Article 3 of the Convention. The Government enclosed statements by several inmates who confirmed that in IK-3 there had been sufficient heating and that the detainees had never slept in their clothes.

2. The applicant

30. The applicant challenged the Government's description of the conditions in IK-3 and the prison hospital and insisted that they had been unacceptable. He submitted that in both facilities the heating had been insufficient, that the toilet in IK-3 had not been heated at all, and that the lighting had been dim. While he agreed with the Government's account on the clothes provided to him, he underlined that these clothes had obviously not been sufficient. The same concerned bedding – the applicant stated that he had received bedding only once in IK-3 and that after repeated washing it had become unfit for use. The mattress had been of poor quality.

31. With respect to conditions in the prison hospital, the applicant particularly underlined severe overcrowding, lack of fresh air and light, and the fact that the pail which had served as a toilet had not been separated

from the living area. His account of the detention conditions in both facilities is set out in paragraphs 10-11 and 16-18 above.

32. In so far as the Government relied on witness statements which contradicted those submitted by the applicant, he pointed out that the Government had only obtained statements from persons who were still in detention and therefore within the power of the prison authorities, who could exert pressure on them.

B. The Court's assessment

1. Admissibility

(a) Exhaustion of domestic remedies

33. The Court observes that in a number of cases against Russia it found that the Government had failed to demonstrate what redress could have been afforded to the applicants by a prosecutor or a court, taking into account that the problems arising from the conditions of their detention had apparently been of a structural nature and had not concerned their personal situations alone (see, for example, *Benediktov v. Russia* (no. 106/02, §§ 29-30, 10 May 2007, *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004, and *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006). In the instant case, the Government submitted no evidence to enable the Court to depart from these findings with regard to the existence of an effective domestic remedy for the structural problem of overcrowding in Russian detention facilities. Although they referred to a case in which a domestic court had granted a detainee compensation for non-pecuniary damage incurred due to inadequate conditions of detention, the Court notes that the Government did not produce a copy of the judgment to which they referred, and thus it is unclear on what grounds the damages were awarded. Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

(b) Compliance with the six-month rule

34. In so far as the Government objected to the examination of the conditions of the applicant's detention as a continuous situation and invited the Court not to examine the applicant's complaints relating to the period up to six months preceding the submission of his application (that is, prior to 24 March 2003), the Court reiterates that the concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII), and in cases where there is a continuing situation, the six-month period runs from the

cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

35. The Court has previously established that the continuous nature of detention, even in two different detention facilities with similar conditions, warranted examination of the detention without dividing it into separate periods (see *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008; and *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008). In the present case between 3 December 2002 and 4 July 2003 the applicant was held in the same detention facility continuously. The Court does not see any reason to depart from its previous case-law and to divide a continuous situation into two parts based on the date when the application was submitted to the Court. Therefore, the Government's objection should be dismissed.

(c) Conclusion

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

2. Merits

(a) Conditions of detention in correctional colony IK-3

37. The Court recalls 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, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). However, in order to fall under Article 3, ill-treatment must attain a minimum level of severity (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 162). The Court observes that, according to its constant case-law, measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, it is incumbent on the State to 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 secured (see *Valašinas v. Lithuania*, no. 44558/98, §§ 101-02, ECHR 2001-VIII).

38. When examining conditions of detention, the Court draws a distinction between the cases concerning remand prisons and those concerning correctional colonies. In particular, allegations of overcrowding in the correctional institutions have been examined on the assumption that

the personal space in the dormitory must be viewed in the context of the wide freedom of movement enjoyed by detainees in correctional colonies during the daytime, which ensures that they have unobstructed access to natural light and air (see *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004, and *Valašinas v. Lithuania*, no. 44558/98, §§ 103 and 107, ECHR 2001-VIII). For example, a complaint about conditions of detention, dismissed by the Court as manifestly ill-founded, concerned a correctional facility where the applicant was allocated 2.17 sq. m of personal space in the sleeping area and a further 1.16 sq. m in the communal areas of the unit and was at all times provided with an individual bunk bed (see *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007). At the same time, the absence of an individual sleeping place combined with a deficiency of private space (2.04 sq. m of personal space in the dormitory) was found by the Court to have amounted to inhuman and degrading treatment (see *Polufakin and Chernyshev v. Russia*, no. 30997/02, §§ 149-159, 25 September 2008).

39. Turning to the circumstances of the present case, the Court notes that the parties have not disputed the number of detainees and unit measurements in IK-3. The Government submitted that the bedroom in unit no. 5 measured 150 sq. m. for 70 inmates (that is, 2.14 sq. m. per person). The communal area was 90 sq. m. which allowed a further 1.28 sq. m. per detainee. In the dormitory of unit no. 3 the applicant was allocated 2.8 sq. m. of personal space. It is also not disputed that in both dormitories the applicant was at all times provided with an individual bunk bed. The Court thus observes that these figures conform to the domestic standard of 2.0 sq. m. per male convict in correctional colonies, viewed in the context of the wide freedom of movement enjoyed by detainees in these penitentiary institutions (see *Solovyev*, cited above). The applicant worked in the sewing workshop during the daytime, and he did not allege that his outdoor exercises had been insufficient.

40. As regards the sanitary conditions, the Court notes that the applicant's allegations of inadequate lighting, ventilation and heating have been presented in general terms and lack sufficient details. He has not contested the documents submitted by the Government in a comprehensive manner. Furthermore, the Court takes into consideration that the applicant might have experienced difficulties in procuring documentary evidence. Nevertheless, the Court points out that in cases where detainees were unable to produce documents to support their complaints it has relied on other evidence, for example, written statements signed by eyewitnesses (see, for example, *Khudobin v. Russia*, no. 59696/00, § 87, ECHR 2006-... (extracts), and *Seleznev v. Russia*, no. 15591/03, §§ 14 and 42, 26 June 2008). Accordingly, it was open to the applicant to provide the Court with written statements by his inmates, which he failed to do. Thus in the present case it cannot be established "beyond reasonable doubt" that the ventilation, lighting and heating in IK-3 were unacceptable from the standpoint of

Article 3; nor is it possible to contest the information produced by the Government in this respect.

41. It has also not been alleged in the present case that the living areas were unduly dirty or infested with insects (see, by contrast, *Kalashnikov*, cited above, § 98). The Court takes note of the applicant's description of deficient catering and insufficient clothing; however it finds that it does not appear from the parties' submissions that the conditions in IK-3 went beyond the threshold tolerated by Article 3 of the Convention.

42. In view of the above considerations the Court finds that there is not sufficient evidence for it to conclude that there has been a violation of Article 3 of the Convention on account of the conditions of detention in correctional colony IK-3.

(b) Conditions of detention in the prison hospital ЯМ-401/Б

43. Referring to the principles set out in paragraphs 37-38 above, the Court notes that, as distinct from the above examined regime in correctional colonies, the detainees in the prison hospital do not enjoy the same freedom of movement. The applicant's opportunity for outdoor exercise was limited to one hour a day, the rest of the time he was locked up in the cell, which was not contested by the Government. In this respect the detention regime in the prison hospital can be compared to one in pre-trial detention. The Court recalls that it has found a violation of Article 3 of the Convention in a number of cases against Russia on account of a lack of personal space afforded to detainees who were confined to their cells for twenty-three hours a day (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-X (extracts); *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; and *Labzov v. Russia*, no. 62208/00, § 41 et seq., 16 June 2005).

44. The Court observes that the parties disagreed as to the specific conditions of the applicant's detention. However, there is no need for the Court to establish the truth of each and every allegation, since it considers that those facts that are not in dispute give it sufficient grounds to make substantive conclusions on whether the conditions of the applicant's detention amounted to treatment contrary to Article 3 of the Convention.

45. It follows from the Government's submissions concerning cell measurements and number of inmates per cell (see paragraph 19 above) that at different periods of the applicant's confinement to the prison hospital the living area per inmate was 1.9, 2.6 and 3.85 sq. m.; wherein the latter figure represents only a short period of detention from 19 to 26 August 2003. Furthermore, part of the cells' surface was occupied by beds for the occupants, a toilet, which according to the Government was separated by a partition, and a table for four persons. This arrangement left inmates with almost no free space in which they could move.

46. The Court cannot overlook the fact that the applicant's situation was gravely exacerbated by the fact that he had tuberculosis and thus required

sufficient circulation of clean air. Instead, he was kept for twenty-three hours a day in cramped conditions with other sick detainees. The Court observes that even the domestic standards, namely, 5 sq. m. per detainee in medico-prophylactic penitentiary institutions (see paragraph 24 above), were not met.

47. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court reiterates that in previous cases where the applicants had at their disposal less than three square metres of personal space, it found that the overcrowding was severe enough to justify in its own right a finding of a violation of Article 3 of the Convention. Accordingly, it was not necessary to assess other aspects of the physical conditions of detention (see *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and, for even shorter periods of detention, *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; and *Labzov*, cited above, § 44).

48. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The very fact that the sick applicant was obliged to live, sleep and use the toilet in particularly limited space with other sick inmates, combined with the lack of access to fresh air, was sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

49. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the prison hospital ЯМ-401/Б, which must be considered inhuman within the meaning of this provision.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INFECTION WITH TUBERCULOSIS AND LACK OF MEDICAL ASSISTANCE IN IK-3 AND THE PRISON HOSPITAL

50. The applicant complained under Article 3 of the Convention that he had contracted tuberculosis in detention and had not been provided with adequate medical assistance in IK-3 and the prison hospital.

51. The Government provided a detailed account of the applicant's medical examinations and prescriptions for tuberculosis throughout his detention in the above institutions and supplemented it with copies of relevant records from his medical file (see paragraph 23 above). They asserted that all the necessary check-ups had been thoroughly carried out and all medication had been timely provided. They also submitted a

certificate confirming that the budget of the medical unit of IK-3 was RUB 64,000[4] in 2003 and RUB 117,000[5] in 2004.

52. The applicant, on the contrary, maintained that the treatment had been unsatisfactory. In particular, he alleged that the wording in his medical record "positive dynamic of the tuberculosis process" (see paragraph 23 above) meant that his tuberculosis had developed, which corroborated his allegations of inadequate treatment. Further, relying on the figures presented by the Government with respect to the budget of the medical unit of IK-3, he underlined that the resources allocated had been obviously insufficient, given the number of detainees in that penitentiary institution.

53. The Court notes that even if the applicant had contracted tuberculosis while in detention, this fact in itself would not imply a violation of Article 3, provided that he received treatment for it (see *Babushkin v. Russia*, no. 67253/01, § 56, 18 October 2007, and *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005). However, a lack of adequate medical assistance for serious diseases which one did not suffer from prior to detention may amount to a violation of Article 3 (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 108 et seq., 29 November 2007).

54. The Court accepts that the medical assistance available in prison hospitals may not always be of the same standard as in the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Hurtado v. Switzerland*, 28 January 1994, Series A no. 280-A). The authorities must also ensure that the diagnoses and care are prompt and accurate (see *Hummatov*, cited above, § 115; *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006; 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 curing the detainee's diseases or preventing their aggravation (see *Hummatov*, cited above, §§ 109, 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006).

55. In the present case the Court observes that the Government produced an ample medical record for the applicant, according to which the latter was under constant medical supervision and had received adequate medical assistance when the tuberculosis was detected. The medical records showed a "positive dynamic and the dispersion of niduses of tuberculosis", which, contrary to the applicant's interpretation, meant that he was recovering. The Court further notes that, whilst the applicant disputed the adequacy of his

4. Around 1,882 euros (EUR).
5. Around EUR 3,343.

treatment as a whole, he did not provide any medical opinion confirming his point of view. Nothing in the case file can lead the Court to the conclusion that the applicant did not receive comprehensive medical assistance in relation to his stage of tuberculosis.

56. Furthermore, the applicant did not deny that medical supervision had been provided and tests had been carried out, or that prescribed medicaments had been provided as stated by the Government. His allegation that the necessary liver-protective treatment was not given to him is not corroborated by any medical evidence that he ever required such treatment. He did not suggest, nor it can be seen from the medical documents submitted, that his liver was affected. The required operation on an inguinal hernia, which the applicant had been suffering from for about twenty years, was recommended only after his full recovery from tuberculosis.

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

58. In view of the above considerations the Court finds that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

59. The applicant further complained about inhuman and degrading conditions in several pre-trial detention facilities he had been kept in prior to his conviction. He also complained under Article 5 of the Convention that his pre-trial detention throughout the period between 2001 and 2002 had been unlawful. He finally complained under Article 6 §§ 1, 2 and 3 (b), (c) and (d) that a hearing in the course of criminal proceedings against him had been unfair.

60. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed EUR 350,000 in respect of non-pecuniary damage allegedly caused by improper conditions of his detention in IK-3 and the prison hospital. He also claimed EUR 200,000 in compensation for the alleged violation of his right to a fair trial.

63. The Government suggested that a finding of a violation would constitute sufficient just satisfaction in the present case.

64. The Court accepts that the applicant suffered humiliation and distress because of the degrading conditions of his detention in the prison hospital. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

65. Without mentioning a particular sum, the applicant claimed reimbursement for legal costs incurred in the proceedings before the Court.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Taking into account that the amount of EUR 850 has already been paid to the applicant by way of legal aid, the Court does not consider it necessary to make an award under this head.

C. Default interest

67. The Court considers it appropriate that the default interest 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 concerning the conditions of the applicant's detention in correctional colony IK-3 and the prison hospital ЯМ-401/Б admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's detention in correctional colony IK-3;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the prison hospital ЯМ-401/Б;

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

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

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Peer Lorenzen President