FIRST SECTION

CASE OF GRISHIN v. RUSSIA

(Application no. 30983/02)

JUDGMENT

STRASBOURG

15 November 2007

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

In the case of Grishin v. Russia,

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

Mr L. Loucaides, *President,*
Mrs N. Vajić,
Mr A. Kovler,
Mrs E. Steiner,
Mr D. Spielmann,
Mr S.E. Jebens,
Mr G. Malinverni, *judges,*

and Mr S. Nielsen, *Section Registrar*,

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 30983/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Ivanovich Grishin ("the applicant"), on 20 July 2002.

2. The applicant, who had been granted legal aid, was represented by Ms S. Davydova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the

Russian Federation at the European Court of Human Rights.

3. On 8 June 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. 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

5. The applicant was born in 1944 and lives in Krasnoyarsk.

6. On 14 September 1999 the applicant, at the material time a prosecutor with the Krasnoyarsk Environmental Protection Prosecutor's Office, was arrested under suspicion of instigating a murder. On the same day the police conducted a search at the applicant's home and seized certain documents. On 23 September 1999 he was placed in pre-trial detention in SIZO-1 in Krasnoyarsk (referred to in certain documents as IZ 24/1, hereafter SIZO-1). The applicant was released on bail on 26 October 2000.

7. In November-December 2000 certain newspapers and television programmes described the applicant as a “criminal” in affirmative terms and disseminated allegedly negative information about him.

8. On 12 March 2001 the Krasnoyarsk Regional Court examined the charges against the applicant. During the trial the court allegedly refused to summon certain defence witnesses. The court found the applicant guilty of instigating a murder and sentenced him to eight years' imprisonment. On the same date the applicant was taken into custody.

9. On 30 January 2002 the Supreme Court of Russia upheld the judgment.

10. On 16 April 2002 the applicant was transferred to correctional colony IK-272/3, a penitentiary facility in Irkutsk, to serve his sentence.

11. In 2005 the applicant was granted early release on parole. He left prison on 11 July 2005.

A. The applicant's state of health and his medical treatment in prison

12. On 23 September 1999, after the applicant's arrest, he was examined by a medical panel which, on the basis of the applicant's own explanations, noted that he suffered from ischaemic heart disease, exertional angina, hypertension, myopia and chronic bronchitis.

13. On 11 April 2000 he developed acute hypertension and was transferred to the prison hospital of the facility UP 288/18. On arrival at the hospital he was diagnosed with second-degree hypertension, cardiac ischaemia, cardiac angina, high-degree myopia, second-degree encephalopathy and a second to third-degree prostate adenoma. The applicant followed a course of treatment with antihypertensive medicines, nitrates, Inosine, aspirin and supplements. On 28 May 2000 the applicant was discharged from the hospital with a diagnosis of second-degree hypertension, second-degree atherosclerotic cardiosclerosis, first-degree encephalopathy, aggravated high-degree myopia, a second to third-degree prostate adenoma and a number of related conditions, and was transferred back to SIZO-1. The applicant was advised to continue constant treatment with antihypertensive medicines, nitrates and aspirin.

14. On 31 October 2000, after the applicant had been released on bail, he

underwent a full inpatient medical examination in the hospital of the Krasnoyarsk research centre of the Russian Academy of Sciences. He was diagnosed with repeated cerebral blood supply disturbance (stroke), third-degree hypertension, cardiac angina, cardiac ischaemia, a first-degree prostate adenoma, chronic bronchitis, emphysema and a wide range of related conditions. In the hospital the applicant received treatment for his hypertension and cardiac disease, including medicines in the form of pills and injections, physiotherapy and inhalations which, according to the medical report, improved his condition.

15. During his treatment the applicant had several consultations with a neurologist and an ultrasonic encephalogram. The notes made by the neurologist recorded the applicant's complaints of headaches, a feeling of pressure on the eyes during episodes of acute hypertension, blocked ears and vertigo; the symptoms observed by the neurologist, namely numbness in the left arm, dysarthria, memory impairment and speech disorder; and a reference to a concussion suffered by the applicant in 1967. The applicant was diagnosed with encephalopathy of mixed origin – vascular, atherosclerotic and post-traumatic.

16. On 28 November 2000 the applicant was discharged from the hospital with recommendations for regular medical supervision by a cardiologist, a neurologist and a urologist, and a prescription for a diet and a range of medication for relief of his cardiac symptoms and hypertension.

17. On 30 November 2000 the applicant was checked in for outpatient treatment at the local clinic in connection with the above-mentioned diseases.

18. On an unspecified date in December 2000 the applicant filed a motion to have the trial adjourned on account of his poor state of health. On 19 December 2000 the Krasnoyarsk Regional Court ordered an expert examination in order to determine whether the applicant was fit to participate in the trial. On 27 December 2000 seven experts from the Krasnoyarsk Regional Forensic Expert Bureau examined the applicant in person and studied the medical documents in the applicant's criminal file.

19. On 9 January 2001 the panel of experts issued a forensic report stating that the applicant had been diagnosed with repeated cerebral blood supply disturbance (stroke), cerebral and cardiac ischaemia, exertional angina, cardiac decompensation with cardiac asthma attacks, ventricular premature beats, third-degree hypertension and second to third-degree encephalopathy of mixed origin. It was also noted that, according to the medical documents, the applicant had chronic obstructive bronchitis, emphysema, pneumosclerosis, first-degree respiratory compromise, chronic hepatitis, chronic cholecystitis, generalised osteochondrosis, high-degree myopia of both eyes, a first-degree prostate adenoma and a post-operative inguinal hernia.

20. The experts concluded that the applicant's condition was of medium gravity, corresponding to a second-degree disability. The report further stated that he did not require urgent medical treatment but needed outpatient supervision and periodic inpatient treatment. The applicant was found fit to stand trial, although “further deterioration of [the applicant's] health could not be excluded”. Having studied the forensic report, the Krasnoyarsk Regional Court dismissed the motion for adjournment of the trial.

21. On 14 March 2001, two days after the applicant, following his conviction, was placed in SIZO-1 for the second time, he was inspected by the medical staff who noted, on the basis of his own explanations, that he had been diagnosed with cerebral blood supply disturbance (stroke) leading to limited function of his right arm, memory impairment, third-degree myopia, ischaemic heart disease, exertional angina, hypertension and chronic bronchitis.

22. Between 2002 and 2005, while the applicant was serving his sentence in IK-272/3, his medical supervision included four mandatory consultations with a general practitioner and a month-long course of inpatient treatment per year, the details of which are given in paragraphs 23, 24 and 26 below. In

addition to that, on three occasions – in July 2002, July 2003 and August 2004 – he was granted temporary leave from prison, which he spent at home in Krasnoyarsk.

23. On 30 April 2002 the applicant was admitted to the hospital of penitentiary facility UK-272/6 for a course of periodic inpatient treatment. He stayed there until 27 May 2002, undergoing tests and treatment for cardiac ischaemia, exertional angina and hypertension. On 23 May 2002 the applicant was examined by a panel of medical experts and was recognised as having a third-degree disability (low). Before the applicant left the hospital he was prescribed four mandatory consultations with a general practitioner in the course of 2002 and an inpatient examination in 2003.

24. On 29 April 2003 the applicant was admitted to the hospital of facility UK-272/6, where he stayed until 27 May 2003, undergoing tests and consultations with a wide range of medical specialists and being given treatment for cardiac ischaemia, exertional angina and hypertension. On 8 May 2003 the applicant was examined by a panel of medical experts and was recognised as having a second-degree disability (medium). On 16 May 2003 he underwent an examination with a urologist and was diagnosed with first-degree benign prostatic hypertrophy. He was given recommendations to follow but no treatment was prescribed. Before the applicant left the hospital his condition was assessed as improved; he was prescribed four mandatory consultations with a general practitioner in the course of 2003 and an inpatient examination in 2004.

25. On 4 July 2003, while he was on leave from prison, the applicant underwent a urological x-ray examination, which established that he had a prostate adenoma. The x-ray report contained no prescription or further recommendations.

26. On 23 April 2004 the applicant was placed in the hospital of facility UK-272/6, where he stayed until 18 May 2004, undergoing tests and treatment for cardiac ischaemia and exertional angina. He was prescribed four mandatory consultations with a general practitioner in the course of 2004 and an inpatient examination in 2005.

27. According to the applicant, in summer 2004, while he was on leave from prison, he underwent examination by a urologist, who allegedly recommended him to have his prostate adenoma operated.

28. The parties' submissions as to whether the applicant was allowed medicines in the prison cell differ. The applicant claimed that the prison regulations prohibited having any medication and that he would have had to rely on the facility's pharmacy in an emergency. The Government, on the other hand, submitted that the applicant was allowed to keep certain medicines in the cell at all times because he suffered from ischaemia, exertional angina and hypertension, conditions listed as giving grounds for keeping non-narcotic medicines in the cell.

29. On 9 August 2004 the applicant applied to the Kuybyshev District Court of Irkutsk for a reduction of his sentence, relying on a new law that allegedly mitigated the offence of which he had been convicted. On 7 September 2004 the head of IK-272/3 filed a motion in support of the applicant's request, stating, *inter alia*, as follows:

> "... while serving his sentence [the applicant] fell ill with a number of serious diseases and his state of health is a cause of concern ... several times he underwent inpatient treatment but there was no improvement. [His] diseases are progressive in nature ... In the conditions of the colony it is impossible not only to treat all these diseases but even to maintain his condition at a more or less stable level: the absence of the expensive medicines and equipment required makes treatment impossible, in breach of [the applicant's] constitutional rights. [His] treatment needs to be carried out in an inpatient setting by practitioners specialising in the specific medical fields."

30. On 16 September 2004 the court dismissed the request, having found no lawful grounds for a reduction in sentence. No appeal was lodged against this decision. As indicated above, the applicant was released on parole on 11 July 2005.

B. Alleged ill-treatment

31. The facts concerning the alleged ill-treatment of the applicant are in dispute between the parties.

32. According to the applicant, he was beaten by the investigating officers immediately after his arrest and was ill-treated on several occasions thereafter. He also alleged that on an unspecified date in 2000 during his detention in SIZO-1 he had been severely beaten by his cellmates, who caused him injuries including several broken teeth and a serious cerebral trauma.

33. The Government submitted that the applicant had not been ill-treated in detention, either by officials or cellmates, and that his extensive medical file contained no mention of injuries during that period, in particular broken teeth or cerebral trauma.

34. In October 2002 the applicant's spouse complained to the prosecutor's office about the allegedly unlawful search conducted on 14 September 1999, and alleged that the investigator of the applicant's criminal case had been rude while questioning her. She also alleged that on one occasion in November 1999 the applicant had been left for a long time in a transit van and had had to cry for help, following which he was placed in a disciplinary cell. In her view, all of the above constituted ill-treatment.

35. On 9 October 2002 the applicant was questioned about the events alleged in his spouse's complaint, and explained that he had sustained unidentified injuries during his arrest and placement in SIZO-1. He claimed that this was one of the causes of a cerebral disorder that he had developed later.

36. In a letter dated 22 October 2002 the prosecutor's office informed the applicant's spouse of the results of the inspection conducted on the basis of her complaint. The letter stated as follows:

> "The allegations of the complaint … were shown to be unfounded within the course of the inspection. During [the applicant's] detention he was provided with outpatient medical assistance in SIZO-1, as well as with inpatient treatment in [the prison hospital], as required by his chronic illnesses.
>
> Likewise, your allegations concerning [ill-treatment] of your husband by the officers of [SIZO-1], ... were shown to be unfounded."

37. In April 2003, during the applicant's annual inpatient treatment in the hospital of facility UK-272/6, he was interviewed for the purposes of his medical file and submitted that he had sustained a "head trauma" in 2001.

38. On 28 July 2005 the Krasnoyarsk Regional Prosecutor's Office decided to verify the applicant's allegations. They questioned investigators D. and V., reviewed the relevant documents in the applicant's criminal file and found that the allegations of ill-treatment were unsubstantiated. On 1 August 2005 a decision was taken to dispense with criminal investigation of the events at issue.

C. Conditions of the applicant's detention

39. From 23 September 1999 to 26 October 2000, pending his trial, the applicant was detained in the detention facility SIZO-1 in Krasnoyarsk. On 12 March 2001, when the first-instance court convicted the applicant, he was placed in the same detention facility, where he remained until 16 April 2002 while his case was reviewed by the court of appeal. Throughout this latter period the applicant was held consecutively in the following cells:

- cell no. 22, measuring 28.75 sq. m, intended for 12 inmates;
- cell no. 93, measuring 31.8 sq. m, intended for 8 inmates;
- cell no. 257, measuring 21 sq. m, intended for 6 inmates.

40. According to the applicant, he spent most of this time in cells nos. 22 and 93 and only a few weeks in cell no. 257.

1. Number of inmates per cell

41. The Government did not indicate the number of inmates actually held in the above cells at the material time. They claimed that the relevant records had been destroyed on expiry of their archiving period. They submitted, however, a copy of the receipt certifying that the applicant had received individual bedding.

42. The applicant, on the other hand, submitted that the cells had been severely overcrowded. The number of detainees in cell no. 93 varied between 40 and 45, although it was fitted with only 18 sleeping places. Cell no. 22 housed 50 or more detainees and was fitted with three tiers of beds. The detainees had to take turns to sleep, and for the rest of the time they sat around the cell on their bags, on cardboard boxes or on the floor. No separate bedding was provided.

43. In support of his statements the applicant submitted testimonies by Mr Ch., Mr Z. and Mr D., all of whom had shared a cell with the applicant during his detention in SIZO-1. Their submissions on the number of detainees in the cells are similar to the figures provided by the applicant; they also stated that the detainees had to sleep in shifts.

2. Light and ventilation

44. Each of the above cells had a window measuring 95x95 cm (cells nos. 22 and 93) and 85x105 cm (cell no. 257). In the cold season the windows were fitted with glazed window frames. The Government submitted that the cells had sufficient daylight for reading. The cells were equipped with an automatic ventilation system, and the windows each had a small opening pane for natural ventilation.

45. The applicant agreed with the Government on the size of the windows, but submitted that the windows were not glazed and were curtained with blankets. In cell no. 93, the window was also fitted with metal bars and a metal sheet fixed outside the window which screened off the daylight and did not let fresh air through the window. Cell no. 22 was situated in the basement and had hardly any access to daylight or fresh air. Cells nos. 93 and 22 were lit around the clock with one 60-100 watt bulb. The ventilation was insufficient given that most detainees smoked in the cells. In addition to that, they had to wash and dry their laundry in the cell, which aggravated the staleness of the air.

46. The applicant's submissions as regards the light and ventilation in cells nos. 93 and 22 are reiterated, in substance, in the statements of Mr Ch., Mr Z. and Mr D.

3. Sanitary facilities

47. The cells were each equipped with a wash basin and a toilet at floor level. According to the Government, the toilet in cell no. 22 was currently separated by a 150 cm-high brick partition wall. In cell no. 93, prior to 2003, there had been a 100 cm-high metal partition, which was later replaced by a brick partition wall 150 cm in height to separate the sanitary area. To ensure privacy the partitions were fitted with doors. The detainees were allowed to take a 15-minute shower once a week. The applicant was subjected to daily bodily checks for lice, but none were found on him, and he made no such complaints at the material time.

48. The applicant contested the assertion that the sanitary facilities had partitions. Referring in particular to cells nos. 93 and 22, he claimed that the lavatory offered no privacy to the person using the toilet, who was in view of both his cellmates and a prison guard observing the cell through a peep-hole in the door. The detainees had to eat their meals at a dining table which was only a metre away from the toilet, which was always filthy. The weekly shower could not last longer than 8-10 minutes because there were at least twice as many detainees simultaneously taking a shower as there were

showerheads. The cells were infested with cockroaches and blood-sucking insects.

49. The applicant's submissions as regards the light, ventilation and sanitary facilities in cells nos. 93 and 22 are supported by the statements of Mr Ch., Mr Z. and Mr D. Stating that the toilet had no partition walls of any sort, Mr Z. submitted, in particular, that the applicant "who was seriously ill ... had to suffer physical and psychological pain when [squatting to] 'rinse his piles' several times a day in front of all his cellmates ... subjecting him to mockery and sneers".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT

50. The applicant complained under Article 3 of the Convention that he had been beaten by investigating officers after his arrest and later by his cellmates in SIZO-1 in Krasnoyarsk. Article 3 of the Convention reads as follows:

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

A. Submissions by the parties

51. The Government contested the applicant's allegations that he had been ill-treated. They contended that neither the applicant nor his lawyer had lodged any complaints following the alleged instances of ill-treatment. The first complaint on the matter was lodged by the applicant's spouse about one and a half years later. The complaint was followed up, but no facts supporting her allegations were found. In 2005, the Prosecutor's Office of the Krasnoyarsk Region conducted another check into the circumstances alleged by the applicant in his application to the Court, and found no proof that these events had taken place. The prosecutor's office issued a formal decision not to institute criminal proceedings on the basis of the applicant's allegations. The Government, furthermore, claimed that the applicant had not exhausted domestic remedies in respect of these complaints, because he had not brought proceedings before the domestic courts following the decision not to institute criminal proceedings or challenged it before a higher prosecutor.

52. The applicant, meanwhile, asserted that he had been ill-treated on numerous occasions while in detention. He claimed, in particular, that his stay on the medical ward between 11 April 2000 and 28 May 2000 had been the result of ill-treatment. According to his submissions, he sustained a cerebral trauma and had several broken teeth, all resulting from the beatings. He pointed out, in particular, that the diagnosis of encephalopathy indicated that it had a "traumatic origin"; he claimed that this constituted proof that he had been ill-treated. Furthermore, he contested the Government's argument that he had not exhausted domestic remedies, claiming that he and his spouse had "constantly complained to various authorities about the unlawful methods used by the investigating authorities". His complaints, however, were not treated seriously. As regards the checks referred to by the Government, the applicant claimed that they had been superficial and ineffective, in particular the one in 2005, which had been conducted by the same prosecutor's office implicated in his complaints. The applicant himself learned about that check only from the Government's submissions to the Court.

B. The Court's assessment

Admissibility

53. The Court reiterates that, in assessing evidence, it has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

54. In the present case, the applicant gave very few details concerning his alleged ill-treatment. In particular, he failed to indicate even the approximate dates on which he was ill-treated. However, at least one occasion must have been before 11 April 2000, since he claimed that his admission to the medical ward on that date was the result of ill-treatment. As for the rest, the applicant indicated only that they took place "in the course of 2000". The period under the Court's examination accordingly lies between 14 September 1999, when the applicant was arrested, and 26 October 2000, when he was released on bail.

55. The applicant relied on two facts in support of his allegations of ill-treatment. Firstly, as mentioned above, he claimed that there had been a connection between his alleged beatings and his inpatient treatment in hospital between 11 April 2000 and 28 May 2000. The Court notes that on the former date the applicant was indeed admitted to the prison hospital following an episode of acute hypertension (see paragraph 11 above). However, the medical records relating to that period contain no mention of any injuries, either complained of by the applicant or found by the doctors who examined him. Neither does the applicant's diagnosis – hypertension, cardiac ischaemia, cardiac angina, myopia, encephalopathy and a prostate adenoma – suggest by itself that his condition had anything other than natural causes. Moreover, the medical records show that he had been suffering from hypertension, cardiac ischaemia, exertional angina and myopia before his arrest.

56. Secondly, the applicant relied on the results of his medical examination in October-November 2000, when he was diagnosed with encephalopathy of mixed origin – vascular, atherosclerotic and post-traumatic. He said that the "post-traumatic origin" meant that he had been injured in detention. The Court observes that the extensive medical file recording the consultations and tests which the applicant underwent in October-November 2000 contains no reference to any cerebral trauma or other recent injuries. During his various visits to a neurologist the applicant made no related complaints either. The only trauma mentioned in the records is, in fact, the concussion sustained by the applicant in 1967, and it appears that the neurologist's conclusion about the post-traumatic origin of the applicant's encephalopathy related to that event. It is particularly noteworthy that the medical examination at issue took place outside the prison, while the applicant was released on bail, when he could freely express and pursue complaints about any injuries sustained in detention. However, no such complaints were made by him at that stage.

57. The Court further notes that in 2003 the applicant mentioned to a doctor conducting his routine examination that he had had a "head trauma" in 2001. However, the Court cannot see any connection between this incident and the alleged ill-treatment, as they relate to different periods (see paragraph 54 above), and no further details have been provided that would suggest a link between the two.

58. The Court also takes note of the applicant's submission that he had several broken teeth because of the beatings. However, it observes that the applicant presented no medical certificate stating that his teeth had ever been damaged.

59. It follows that the applicant has failed to adduce any proof to substantiate his allegations that he was ill-treated after his arrest, or later during his detention.

60. In so far as the applicant may be understood to complain of the lack of an effective investigation into his allegations, the Court notes that he did not lodge any request for investigation at the material time. The complaints lodged subsequently by his spouse did not furnish any concrete facts or a detailed account of the alleged events and were therefore not of a kind that could provide any ground for investigation. In any event, the applicant has never challenged the failure to institute criminal proceedings into the alleged facts, before either a court or a higher prosecutor's office.

61. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INADEQUATE MEDICAL ASSISTANCE

62. The applicant complained under Article 3 of the Convention of the lack of adequate medical assistance in correctional colony IK-272/3. He alleged that the medical service was inadequate generally and, in particular, that there had been a failure to arrange for surgery on his prostate adenoma; he also complained of the ban on keeping medicines in the cell, which meant that he would have had to rely on the colony's health care personnel in the event of a heart attack, a stroke or a deterioration in one of his other conditions.

A. Submissions by the parties

63. The Government contended that the medical assistance provided to the applicant while he was serving his sentence had been thorough and appropriate to his condition. The medical clinic of IK-272/3 carried out regular supervision and had frequently provided the necessary treatment to the applicant. The clinic was staffed with medical specialists whose qualifications were sufficient to provide outpatient assistance to inmates, including monitoring their health and prescribing appropriate treatment. The applicant had been supervised by a general practitioner, an ophthalmologist, an otolaryngologist, a surgeon, a urologist, a neurologist, a psychiatrist and a dermatologist. His condition was monitored by means of various medical tests, including clinical blood tests, urine examinations, biochemical blood screening, chest x-rays, internal ultrasonic examinations, electrocardiography, instrumental tests of the visual and auditory organs and digital rectal examinations. These were sufficient to assess the applicant's condition and to prescribe appropriate treatment, which included antianginal, antihypertensive, antiaggregant and anxiolytic medication, vitamins, medication to improve microcirculation and cerebrovascular circulation and non-steroidal anti-inflammatory medicines.

64. Once a year the applicant was admitted to the hospital of another penitentiary facility, UK-272/6, to undergo a full medical examination and a month-long course of treatment for his chronic diseases. The details of his inpatient examinations and treatment are set out in the Facts section above. Moreover, on three occasions the applicant was granted leave from prison; his condition allowed him to travel alone, unaccompanied by medical personnel.

65. The Government claimed that before his detention the applicant had already had a number of chronic diseases, and the treatment he received in the penitentiary facility had been aimed at preventing the progressive deterioration

of his health. They alleged that during his imprisonment in IK-272/3 the applicant's condition had not deteriorated, and there had been no recurrence of his cerebral blood supply disturbance (stroke).

66. They contested the assertion that there had been a failure to carry out surgery on the applicant's prostate adenoma and pointed out that the urologist who examined the applicant in 2003 and diagnosed him with a prostate adenoma had not recommended surgery, but had prescribed medication. Had such an operation been prescribed it could have been carried out in the hospital of UK-272/6, which was suitably equipped for it. However, the applicant did not submit to the prison authorities any medical report proposing an operation.

67. Finally, the Government asserted that the applicant had been allowed to have in his cell at all times medicines prescribed for continuous use, at least from 2004, when he was recognised as having a second-degree disability. They claimed that he had been handed out about 20 different medicines daily. Throughout his sentence no medication had been seized from him and he had never been charged with a disciplinary offence for keeping unauthorised medication. In any event, medical assistance was available to him around the clock in the event of a stroke, heart attack or acute pain.

68. The applicant, on the other hand, maintained that the medical assistance available in the penitentiary facility had been insufficient. He alleged that his condition required monitoring by encephalography, CT scan and neurosonography, and that he should have been operated on for a prostate adenoma. None of this had been done. He also alleged that at one point he had been diagnosed with cochlear neuritis, but was not sure whether any audiogram test had been carried out. He claimed that the medicines prescribed to him were not available in the prison pharmacy and that his family had to supply him with medicines which were then kept in the pharmacy and given out to him. Furthermore, he could not access his supply of medication at night time, and in the event of a heart attack he could have died. Finally, he submitted that he had not been prescribed any specific treatment for his various related conditions (myopia, chronic bronchitis, hepatitis, and so forth), nor did he receive the physiotherapy that he allegedly needed.

69. In support of his allegations the applicant relied on the letter from the head of IK-272/3 dated 7 September 2004 supporting the applicant's request for a reduction in sentence on health grounds (see paragraph 29 above).

B. The Court's assessment

Admissibility

70. The Court refers to its general principles for assessing evidence cited in paragraph 53 above and further reiterates that, in order to fall under Article 3, ill-treatment must be at least marginally severe. This margin is relative and depends, for example, on the duration of a particular treatment, on its physical and mental effects and on the victim's sex, age, and health (see *Ireland v. the United Kingdom*, cited above, p. 65, § 162). On the other hand, the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, *mutatis mutandis*, *Tyrer v. the United Kingdom*, judgment of 25 April 1978, Series A no. 26, p. 15, § 30, and *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 39, § 100). Measures depriving a person of his liberty may often involve such an element.

71. The Court further reiterates that Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of

medical treatment. However, in exceptional cases, where the state of a detainee's health is absolutely incompatible with detention, Article 3 may require the release of such a person under certain conditions (see *Papon v. France (no. 1)* (dec.), no. 64666/01, CEDH 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001; see also *Mouisel v. France*, no. 67263/01, §§ 40-42, ECHR 2002-IX, and *Farbtuhs v. Latvia*, no. 4672/02, § 55, 2 December 2004).

72. Finally, the Court notes that the lack of appropriate medical treatment in prison may by itself raise an issue under Article 3, even if the applicant's state of health does not require his immediate release. The State must ensure that given the practical demands of imprisonment, the health and well-being of a detainee are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI; see also *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79). In particular, unavailability of the necessary medical equipment 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).

73. In the particular context of complaints concerning the absence of necessary medicines in a prison pharmacy the Court has held that, in so far as the applicant was not dependent on the pharmacy's stocks, for instance where his relatives were able to procure the necessary medicines for him and he was not restricted in taking them, he may not claim to have been affected by the shortage (ibid.).

74. Turning to the facts of the present case, the Court notes that although the applicant disputed the adequacy of his treatment as a whole he did not provide a medical opinion confirming his point of view. In fact, the applicant did not submit any medical certificates in respect of the period when he was serving his sentence in IK-272/3, apart from one x-ray report dated July 2003 observing that he had a prostate adenoma. There does not appear to be any good reason for this omission since while serving his sentence the applicant was granted leave from prison at least three times and could have sought an independent medical assessment of his health and an evaluation of the treatment he was receiving. At the latest, he could have done so after his final release in July 2005.

75. The applicant's more specific allegations concerning the failure to perform an encephalogram, a CT scan, a neurosonogram or an audiogram and to prescribe him physiotherapy and other additional treatments, or to operate on him for his prostate adenoma are, likewise, unsupported by any medical opinion stating that any of the above was required in his particular case.

76. In so far as the applicant relied on the letter of 7 September 2004 from the head of IK-272/3, the Court notes that this letter contained no more than a general observation that the applicant's condition had not improved despite treatment and that early release would give him access to a wider range of medical care than in penitentiary institutions. The head of IK-272/3 did not rely on any medical report, and it is impossible on the basis of his letter to identify a particular medicine, piece of equipment or specialist advice that was allegedly inaccessible to the applicant in the hospitals of the penitentiary facilities. Nor does it follow from this letter that the poor state of the applicant's health was attributable to inadequate treatment rather than to the natural course of his diseases. While the Court is prepared to accept that in principle the resources of medical facilities within the penitentiary system are limited compared to those of civil clinics, nothing in the present case indicates that this disparity was so great as to have adversely affected the applicant's state of health or to have caused him suffering.

77. As to the complaint about the absence of certain medicines in the pharmacy of IK-272/3, the applicant acknowledged that he had received all the necessary medicines from his family and therefore was not dependent on the facility pharmacy. In so far as he claimed, contesting the Government's

submissions, that he did not have free access to his supply of medicines during the night, the applicant did not allege that there had actually been an instance when he needed medicine during the night and could not receive it, or that he had ever been denied urgent medical assistance, day or night.

78. Having examined all the materials in its possession, the Court finds no basis to conclude that the medical assistance provided to the applicant while he was serving his sentence was inadequate, that during this period his state of health deteriorated beyond the natural course of his diseases, or that he suffered extensively as a result of insufficient medical care.

79. It follows 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONDITIONS OF DETENTION

80. The applicant complained that his detention in SIZO-1 in Krasnoyarsk from 23 September 1999 to 26 October 2000 in appalling conditions was in breach of Article 3 of the Convention.

A. Submissions by the parties

81. The Government provided an account of the applicant's conditions of detention, as set out in the Facts (section I-C above) and claimed that the conditions in SIZO-1 in Krasnoyarsk were satisfactory, corresponded to the regulatory norms and were in compliance with the guarantees of Article 3 of the Convention.

82. The applicant contested the Government's submissions and claimed that the cells in which he had been detained were severely overcrowded and had poor lighting, ventilation and sanitary facilities. He referred, in particular, to the excessive number of detainees in cells nos. 93 and 22, alleging that they had to sleep in two or three shifts. He also argued that the windows in the cells had been blocked so that no natural light or fresh air penetrated the cell and alleged that the quality of air in the cells had been further aggravated by the presence of large numbers of smokers. He further alleged that the toilet facilities, which were not separated from the living area of the cell, had been a source of humiliation and poor hygiene. The applicant relied on witness testimonies by three former cellmates who confirmed his allegations.

B. The Court's assessment

1. Admissibility

83. The Court first recalls that Article 35 § 1 of the Convention permits it to deal with a matter only if the application is lodged within six months from the date of the final decision in the process of exhaustion of domestic remedies. It also reiterates that 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). In the present case, the applicant's complaints about the conditions in SIZO-1 relate to two distinct periods of detention, from 23 September 1999 to 26 October 2000 and from 12 March 2001 to 16 April 2002. Between these periods the applicant was released and there existed no circumstances preventing him from lodging these complaints with the Court. It follows that these two periods cannot be regarded as a continuous situation. The Court will therefore limit the scope of its examination of this complaint to the second period of the applicant's pre-trial detention, from 12 March 2001 to 16 April 2002.

84. The Court further 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

85. 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 truthfulness 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.

86. The main characteristic which the parties did agree upon is the size of the cells. The cells in which the applicant was held were designed to afford inmates between 2.4 and 4 sq. m of personal space. However, the applicant claimed that the cell population greatly exceeded the capacity for which the cells were designed; the Government failed to indicate the exact number of inmates actually held in these cells.

87. In this connection, the Court observes that 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 well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

88. Having regard to the above-mentioned principles, together with the fact that the applicant supported his allegations with three witness statements, the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions.

89. According to the applicant, the cells were constantly filled to three times their capacity or even more, resulting in a situation where each inmate had less than 1.0 sq. m of personal space and occasionally even less than 0.6 sq. m. Consequently, the detainees, including the applicant, had to share the sleeping facilities, taking turns to rest, and had to sit around in the cell for the rest of the time.

90. The Court reiterates that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova*, cited above, § 63, and *Benedictov*, cited above, § 37).

91. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

92. 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. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that he was obliged to live, sleep and use the sanitary and other facilities in the same cell as so many other inmates for over a year in a severely restricted space, was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of

humiliating and debasing him.

93. Furthermore, the Government did not contest that at the material time the cell windows had been covered with metal shutters which blocked access to fresh air and natural light and that there were large numbers of smokers in the cells.

94. The Court observes that the parties disagreed on whether the sanitary facilities in the cell were separated from the living area of the cell. While the Government contended that there were either brick or metal partitions, the applicant claimed that the partitions were absent altogether. The Court, however, notes that at least one witness could observe on numerous occasions the applicant's attempts to maintain intimate hygiene, as required by his health condition. It appears from Mr Z.'s statement that the applicant had to endure humiliation and pain having to perform these attempts in the sight of his cellmates, and would rather have done so privately if at all possible. It follows that whether or not there existed any partitioning of the sanitary facilities in the respective cells, the overall sanitary arrangements did not ensure sufficient privacy given the applicant's personal situation, and were inadequate in view of his health problems. In addition, it appears that when it came to using the communal showering facilities, no allowance was made for the excessive number of detainees; this further contributed to the poor standard of hygiene.

95. Thus, for over a year the applicant was confined to an extremely congested cell with inadequate sanitary facilities, poor levels of hygiene and insufficient levels of daylight and ventilation.

96. It follows that, while in the present case it cannot be established "beyond reasonable doubt" that the separation of the lavatory and the pest control in the facility were unacceptable from the standpoint of Article 3, the foregoing considerations (see paragraphs 92, 96 and 97 above) are sufficient to enable the Court to conclude that the applicant's conditions of detention went beyond the threshold tolerated by Article 3 of the Convention.

97. There has therefore been a violation of Article 3 of the Convention on account of the degrading conditions of the applicant's detention in the SIZO-1 facility.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. Lastly, the applicant complained under Article 6 § 2 of the negative press coverage of his criminal case during his trial; under Article 6 § 3 (b) of the Convention that he had not had adequate time for preparation of his defence; under Article 6 § 3 (d) of the Convention of the court's refusal to summon a witness in his favour; under Article 8 of the Convention of the allegedly unlawful search of his home in September 1999 and the fact that he was not allowed to be visited by his spouse at SIZO-1; and under Article 1 of Protocol No. 1 of the Convention of the seizure of certain documents during the search in September 1999.

99. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its jurisdiction, the Court finds that 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 must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 338,800 euros (EUR) in respect of pecuniary damage and EUR 290,400 in respect of non-pecuniary damage.

102. The Government disputed this claim as unsubstantiated on the grounds that they considered the application manifestly ill-founded. They further contended that, should the Court find a violation in this case, that would in itself constitute sufficient just satisfaction.

103. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. On the other hand, it accepts that the applicant suffered humiliation and distress because of the degrading conditions of his detention, and awards him EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

104. The applicant claimed EUR 8,000 for the costs and expenses incurred before the domestic courts. However, he explained that he could not provide any receipts relating to his representation in the domestic proceedings because the law firm which had assisted him closed down while he was in prison and it was impossible to find any documents relating to his legal assistance.

105. The Government alleged that the claim for costs and expenses should be rejected as manifestly ill-founded, along with the application itself.

106. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable on that amount.

C. Default interest

107. 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 from 12 March 2001 to 16 April 2002 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and costs and expenses, 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 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 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Loukis Loukaides President