FIRST SECTION

CASE OF MECHENKOV v. RUSSIA

(Application no. 35421/05)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/07/2008

This judgment may be subject to editorial revision.

In the case of Mechenkov v. Russia,

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

Christos Rozakis, *President,*
Loukis Loucaides,
Nina Vajić,
Anatoli Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann, *judges,*
and Søren NIELSEN, *Section Registrar*,

Having deliberated in private on 17 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 35421/05) 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 Stepanovich Mechenkov ("the applicant"), on 18 August 2005.

2. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mrs V. Milinchuk.

3. On 27 June 2006 the President of the Chamber decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On 1 September 2006 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.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and lives in Novosibirsk. He is currently serving a sentence in correctional facility IK-18 of the Novosibirsk Region.

A. The applicant's state of health and the medical treatment available to him

1. Events before 28 October 2001

7. On 6 April 1993 the applicant was sentenced to nine years' imprisonment.

8. On 10 June 1996 the applicant swallowed a piece of electrode and was admitted to the surgical unit of medical penitentiary institution LIU-10, Novosibirsk (*«лечебно-исправительное учреждение № 10»*, hereafter LIU-10). He had a chest X-ray and was diagnosed with infiltrative tuberculosis of the upper lobes of the lungs in the active phase. The applicant was treated with ethambutol[1] and isoniazid[2].

9. On 28 May 1998 the applicant was discharged from LIU-10 to Prison UF-91/21, Novosibirsk

(*«УФ-91/21»*, hereafter UF-91/21) with a diagnosis of infiltrative tuberculosis resulting in fibrosis and dense foci in the upper lobes of the lungs.

10. On 12 April 2000 the applicant was again placed in LIU-10 on account of suspected relapse of tuberculosis. After a medical examination he was diagnosed with infiltrative tuberculosis of the upper lobes of the lungs with dense foci and prescribed with streptomycin, isoniazid, rifampicin[3], ethambutol, pyrazinamide, methionine, diasoline, vitamin B6 and sodium thiosulfate. On 3 May 2000 the applicant stated in writing that he refused to take the prescribed treatment. According to the Government, the course of treatment continued.

11. Having been granted amnesty, the applicant was released from LIU-10 on 16 August 2000.

12. According to the Government, on his release from detention the applicant failed to apply for registration to the centre for prevention of tuberculosis ("the prophylactic centre"). The applicant submitted that his attempt to register at the prophylactic centre had been futile as he had had no valid permanent residence registration.

13. On 4 June 2001 the applicant was placed on the list of the prophylactic centre of Krasnozersk Hospital and diagnosed with focal tuberculosis of the upper lobes of the lungs in the resorption and induration phase.

14. On 29 June 2001 the applicant presented himself at the prophylactic centre. He underwent a medical examination and was issued with a certificate confirming that he was fit to work as an operator of agricultural machinery.

2. The applicant's detention after 28 October 2001

(a) Detention between 28 October 2001 and 26 April 2002

15. On 28 October 2001 the applicant was arrested on charges of infliction of bodily injuries and incarcerated in the temporary detention facility of the Krasnozerskiy District Department of the Interior of the Novosibirsk Region. Upon the arrest he was not given blood tests for hepatitis C.

16. On 29 October 2001 the applicant complained to his guards that he was spitting blood. They escorted him to the prophylactic centre of Krasnozersk Hospital. The applicant had a chest X-ray and was diagnosed with clinical recovery from tuberculosis resulting in infrequent calcifications. No medical evidence of haemoptysis (coughing blood) was found.

17. On 14 November 2001 the applicant was transferred to remand centre SIZO No. 2, Kuybyshev, the Novosibirsk Region, and underwent a medical examination there.

18. On 26 February 2002 the Krasnozerskiy District Court of the Novosibirsk Region convicted the applicant and sentenced him to eight years' imprisonment.

19. On 8 April 2002 the Novosibirsk Regional Court amended the judgment on appeal and reduced the sentence to seven years' imprisonment.

(b) Detention in prison UF-91/13

20. On 26 April 2002 the applicant was transferred to serve his sentence in Prison UF-91/13, Novosibirsk (*УФ-91/13*, hereafter UF-91/13).

21. On 31 July 2002 the applicant was placed in LIU-10 and diagnosed with clinical recovery from pulmonary tuberculosis resulting in fibrosis and dense foci, stenocardia and extra-systolic arrhythmia. On 8 August 2002 he was discharged from LIU-10 and transferred back to UF-91/13.

22. On 30 September 2002 the applicant went on hunger strike, which led to a deterioration in his state of health. On 7 October 2002 the applicant declined the prison authorities' offer to place him in hospital. On 9 October 2002 the applicant was admitted to the prison infirmary of UF-91/13 and ended his hunger strike. According to the Government, while in the UF-91/13 infirmary, the applicant did not keep to the prescribed diet and refused to undergo certain tests or take treatment. On 23 October 2002 he was discharged from the UF-91/13 infirmary for failure to comply with its rules.

23. On 13 January 2003 the applicant was transferred away from UF-91/13 to an unspecified penitentiary institution.

(c) Medical assistance available to the applicant after 2 April 2003

24. Between 2 April 2003 and 20 August 2004 the applicant was kept in Prison UF-91/15 (*УФ-91/15*, hereafter UF-91/15).

25. On 5 November 2003 the applicant was placed in the inter-regional tuberculosis hospital (*«межобластная туберкулезная больница»*, hereafter MSTB), a specialised facility within LIU-10, for clinical confirmation of diagnoses of ischaemia and chronic hepatitis. On 18 December 2003 he was discharged from the MSTB to UF-91/15 with a diagnosis of compound gastritis, pyloric spasm and emotionally unstable personality disorder.

26. On an unspecified date in 2004 the applicant was transferred to UF-91/21. On arrival he was listed in the prison medical register. The Government submitted that on several occasions the applicant had refused to take preventive anti-tuberculosis medications. According to the applicant, shortly after the transfer to UF-91/21 he was placed in its prison infirmary where he received injections with non-disposable syringes.

27. On 25 October 2004 the applicant was placed in the MSTB on account of suspected relapse of tuberculosis and underwent general and biochemical blood tests, as well as a chest X-ray. He was diagnosed with recurrence of infiltrative tuberculosis of the upper lobe of the left lung.

28. According to the Government, on 29 November 2004 the applicant's blood test revealed antibodies to viral hepatitis C. Relying on the test results, the LIU-10 doctors diagnosed the applicant with chronic hepatitis C and treated him with essenciale, cerucal, riboksin and vitamins C, B1 and B6. The applicant submitted that at some point Mr G., the deputy head of LIU-10, referring to scarce budgetary financing, offered to purchase some costly hepatoprotective medicines for him at his own expense.

29. On 16 December 2004 and 27 January 2005 the applicant's blood tests revealed no acute hepatitis C. The applicant was then prescribed ninety-three doses of anti-tuberculosis medications, such as isoniazid, rifampicin, ethambutol, protionamid and streptomycin. On 26 January 2005 the MSTB doctor filed with the head of LIU-10 a report stating that the applicant had taken none of the prescribed doses.

30. On 7 February 2005 the applicant was discharged from the MSTB and placed in the LIU-10 infirmary. He was prescribed five anti-tuberculosis medicines, vitamins and hepatoprotective treatment. According to the Government, on several occasions, namely on 11 February, 2 and 30 March, 8 and 12 April, 20 June and 12 July 2005, as well as on 2 February 2006, the applicant refused to take the prescribed anti-tuberculosis treatment.

31. On 30 March 2005 the doctors of the LIU-10 infirmary prescribed the applicant with a course of anti-tuberculosis medication comprising sixty doses.

32. According to the Government, the applicant's tuberculosis had been stabilised by August 2005.

33. On 25 October 2005 the applicant took blood tests and was diagnosed with infiltrative tuberculosis and hepatitis C in a partial remission stage. No acute hepatitis C was revealed at that time. According to the applicant, he received no antiviral or hepatoprotective treatment.

34. On 9 December 2005 the LIU-10 infirmary doctor issued a certificate confirming that the applicant had taken none of the sixty doses of the prescribed anti-tuberculosis medication.

35. On 18 April 2006 the applicant was transferred to the MSTB for inpatient treatment and allegedly placed in a cell with active tuberculosis carriers. On 27 April 2006 the applicant was discharged from the MSTB and transferred back to LIU-10.

36. On an unspecified date in 2007 the applicant was transferred from LIU-10 to correctional facility IK-18 of the Novosibirsk Region.

B. Proceedings instituted by the applicant

1. Complaints at domestic level

37. On unspecified dates in 2005 the applicant complained to the prosecutor's office of the Novosibirsk Region ("the regional prosecutor's office") about his infection with hepatitis C and lack of medical assistance in LIU-10. By letters of 11 and 13 April 2005 the regional prosecutor's office informed the applicant that his complaints had been dismissed as unsubstantiated.

38. At some point the applicant complained to the Main Department of the Federal Service for the Execution of Sentences in the Novosibirsk Region. On 4 July 2005 they replied that the applicant had been

refusing to comply with doctors' instructions and had taken only six out of sixty prescribed doses of anti-tuberculosis treatment. They commented that the applicant had been provided with appropriate and comprehensive medical assistance.

39. The applicant applied for conditional release on health grounds. On 15 April 2005 the Novosibirskiy District Court of the Novosibirsk Region dismissed his request. Apparently the applicant did not appeal against the decision.

40. The applicant sued a regional branch of the Federal Penitentiary Service claiming compensation for damage to health. On 28 February 2005 the Dzerzhinsk District Court of Novosibirsk returned the statement of claims to the applicant for elimination of discrepancies. It appears that the applicant did not comply with the court's request. He lodged another statement of claims, which was returned to him for a failure to eliminate discrepancies by the Dzerzhinsk District Court of Novosibirsk on 1 August 2005. Apparently the applicant did not appeal against the decision.

41. The applicant believed that his property rights had been infringed by a private company and lodged against it two statements of claims, one of which was returned to him for elimination of discrepancies on 8 November 2005. On 3 April 2006 the second action was disallowed for failure to pay a court fee. The applicant did not appeal against the rulings.

42. The applicant complained to the regional prosecutor's office that Mr G. had made death threats to him. He also complained about his infection with hepatitis C and interference with his correspondence with the Court.

43. By letter of 27 March 2006 the regional prosecutor's office informed the applicant that they had dismissed the entire set of his complaints as unsubstantiated. They observed, in particular, the following:

> "<...> [Medical] data obtained in the course of the objective examination excludes viral hepatitis' activity and the need to administer antiviral treatment.
>
> The infection with hepatitis C could have occurred as a result of repeated acts of self-mutilation [that damaged] the epidermis and the mucous membrane of the stomach, committed in March and May 1995 and June and September 1996. Since 2000 [medical] facilities of the Novosibirsk Region penitentiaries have used only disposable syringes and needles; thus the possibility of infection with viral hepatitis C in these facilities is excluded.
>
> <...> In 2005 [the applicant] sent no applications to the European Court via the LIU-10 administration; however, he received acknowledgment of receipt dated 16 January 2006 of his application form dated 9 November 2005. In 2006 [the applicant] sent two letters to the European Court, namely a sealed letter of 14 February 2006 and [the applicant's] explanation of 17 February 2006; by 22 March 2006 LIU-10 had not received any replies to these letters."

44. On 29 August 2006 the regional prosecutor's office received the applicant's complaint of poor detention conditions and insufficient medical assistance in LUI-10, as well as about the disciplinary sanctions imposed on him by the LIU-10 authorities.

45. On 29 September 2006 the regional prosecutor's office informed the applicant that they had carried out an inquiry into the facts complained of and established the following. In 2006 LIU-10 had been fully supplied with anti-tuberculosis treatment and thus the necessary medication had been available to the applicant. The applicant's allegations that Mr G. had extorted foreign currency from him in exchange for expensive hepatoprotective medicines were rebutted, as Mr G. had only advised the applicant of his right to purchase additional treatment.

2. Application to the Court and further developments

(a) The applicant's correspondence with the Court

46. On 18 August 2005 the applicant sent his first letter to the Court.

47. On 8 December 2005 the applicant, referring to his poor state of health and lack of adequate medical assistance in LIU-10, requested the Court to indicate to the Government interim measures under Rule 39 of the Rules of Court. He submitted that he was unable to submit copies of his medical record kept in LIU-10.

48. On 26 January 2006 the President of the Chamber requested the Government to submit factual information on the case.

49. On 20 April 2006 the Court forwarded the factual information submitted by the Government to the

applicant for comments, to be submitted before 1 June 2006. On 4 May 2006 the LIU-10 authorities received the Court's letter. According to the applicant, he was served with it only on 25 May 2006.

50. On 26 July 2006 the Court acknowledged receipt of the applicant's letter. On 11 August 2006 the Court's letter reached LIU-10. The letter carries the LIU-10 incoming mail stamp.

51. On 8 September 2006 the Court informed the applicant that his case had been communicated to the Government. On 22 September 2006 the Court's letter reached LIU-10. The letter carries the LIU-10 incoming mail stamp placed next to a signature of the Section Registrar.

52. On 13 September 2006 the Court acknowledged receipt of the applicant's letter. On 2 October 2006 the Court's letter reached LIU-10. The letter carries the LIU-10 incoming mail stamp placed next to a signature of a lawyer of the Registry.

53. On 19 September 2006 the Court acknowledged receipt of the applicant's letters. On 13 October 2006 the Court's letter reached LIU-10. The letter carries the LIU-10 incoming mail stamp placed next to a signature of a lawyer of the Registry.

54. On 22 September 2006 the Court acknowledged receipt of the applicant's letters. On 13 October 2006 the Court's letter reached LIU-10. The letter carries the LIU-10 incoming mail stamp placed next to a signature of a lawyer of the Registry.

(b) Sanctions imposed on the applicant

55. Between 13 February 2002 and 4 May 2005 the applicant was placed in a disciplinary cell six times and reprimanded five times for failure to comply with prison regulations.

56. The applicant was placed in a disciplinary cell a further nine times. In particular, on 28 October 2005 he was sanctioned for storing prohibited items; on 1 and 22 March, 14 April, 24 May and 21 July 2006 for unauthorised visits to certain areas of a penitentiary institution; on 14 June 2006 for smoking outside the designated area. On 29 September 2006 he was again confined in a disciplinary cell for swearing at an officer, and on 13 October 2006 he was punished for sending a complaint to the Prosecutor General without the authorities' permission.

57. On 17 March and 6 September 2006 the applicant was reprimanded for swearing. Two more reprimands were given him, on 10 July and 14 August 2006, for unauthorised visits to certain areas of a penitentiary institution.

(c) Conversations with the LIU-10 officials

58. On 14 February 2006 the applicant handed over to the LIU-10 authorities a sealed letter to the Court. On the same date Mr S., the new deputy head of LIU-10, and two other officials, Mr K. and Mr L., organised a meeting with the applicant and discussed the contents of the letter. The case file contains a certificate signed by the three officials, which reads as follows:

> "On 14 February 2006 a conversation was held with the convict Mechenkov in the educational work unit [of LIU-10] concerning the sealed complaint he had lodged. In the course of the conversation Mechenkov refused to inform the [LIU-10] officers of the purpose of the complaint and of its content."

59. According to the applicant, on 27 March 2006 Mr S. in the presence of Mr K. said to the applicant, alluding to the latter's application to the Court, that he "had got mixed up with the State that had no mercy" and that even if he survived in prison, he might be hit by a car after his release.

60. On 7 July 2006 Mr S., Mr K. and Mr L. held another meeting with the applicant and issued a certificate analogous to that of 14 February 2006. On the same date they sent the applicant's letter to the Court.

61. On 2 August 2006 Mr S., Mr K. and Mr L. discussed his sealed complaint to the Court with the applicant and issued a certificate to that effect.

62. On 19 and 27 October 2006 Mr S., Mr K. and Mr L. issued certificates confirming that they had had conversations with the applicant concerning his sealed complaints and stating that the applicant had refused to disclose their contents. On the same dates the LIU-10 authorities sent the applicant's letters to the Court.

63. On 17 December 2006 and 9 January 2007 Mr L. issued certificates confirming that he had conversed

with the applicant and that the latter had refused to disclose the contents of his sealed letters. On 18 December 2006 and 9 January 2007 the LIU-10 authorities sent the applicant's letters to the Court.

II. MEDICAL DOCUMENTS SUBMITTED BY THE GOVERNMENT

64. The Government submitted to the Court copies of a number of documents related to the applicant's medical history. Most of the copies are of poor quality.

65. Majority of the documents relate to the events between June 1996 and March 2003 and concern the treatment that the applicant received on account of tuberculosis. The documents submitted that relate to the applicant's hepatitis C may be summarised as follows.

66. A barely legible one-page document entitled "Discharge summary" is dated 18 December 2003; it is unclear which medical institution issued it. It transpires from the document that by 18 December 2003 the applicant had been diagnosed with chronic hepatitis of unconfirmed aetiology in inactive phase.

67. A record dated 5 November 2004 that appears in a document entitled "Medical record" lists the applicant's diagnosises, including chronic viral hepatitis C with zero activity.

68. The case file contains one page of the "Discharge summary". It is clear from the content of the document that the discharge summary contains more than one page. The document confirms that between 25 October 2004 and 7 February 2005 the applicant was kept in the MSTB and diagnosed with infiltrative tuberculosis concurrent with chronic viral hepatitis C with zero activity. It transpires from the document that the applicant had unspecified blood tests, chest X-ray and electrocardiogram.

69. According to a one-page document that presumably forms part of a medical record, on 11 February 2005 the applicant visited a doctor and complained that he had been infected with hepatitis C in UF-91/15. The applicant, who had refused to take anti-tuberculosis treatment, was prescribed with essenciale, vitamin B6 and two more medicines, the names of which are illegible.

70. The case file contains a barely legible one-page document from which it transpires that the applicant spent some time in an unspecified medical institution with a diagnosis of recurrence of tuberculosis concurrent with viral hepatitis C with zero activity. The document contains no information concerning the treatment prescribed to the applicant.

III. RELEVANT DOMESTIC LAW

71. Article 91 § 2 of the Russian on Execution of Sentences of 1997 («*Уголовно-исполнительный Кодекс РФ»)*, as amended on 8 December 2003, as well as Rule 53 of the Internal Regulations of Correctional Facilities adopted by Decree no. 205 of the Russian Ministry of Justice of 3 November 2005, provide that all detainees' incoming and outgoing correspondence is subject to censorship by the administration of the correctional facility. Correspondence with courts, prosecutors, penitentiary officials, the Ombudsman, the public monitoring board and the European Court is not subject to censorship.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INFECTION WITH HEPATITIS C

72. The applicant complained under Article 3 of the Convention that he had been infected with hepatitis C after his incarceration in October 2001. Article 3 of the Convention provides:

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

A. Submissions by the parties

73. The Government submitted that the applicant could not have contracted hepatitis C in any penitentiary facility after 28 October 2001 because since that date all medical procedures in the penitentiary system's facilities had been done with disposable or sterile instruments. In the Government's view, the applicant had not been duly diligent as regards to his health and could have contracted hepatitis C in the usual ways before his arrest in October 2001.

74. The applicant contested the Government's submissions. He submitted that in 1995 and 1996 he had undergone three surgical procedures while in detention that the Government had failed to mention. He also explained that between August 2000 and October 2001 he had undergone medical check-ups that had revealed no hepatitis C.

B. The Court's assessment

75. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months of the final decision in the process of exhaustion. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

76. The Court further points out that it is not open to it to set aside the application of the six-month rule solely because a respondent Government have not made a preliminary objection based on that rule, since the said criterion, reflecting as it does the wish of the Contracting Parties to prevent past events being called into question after an indefinite lapse of time, serves the interests not only of respondent Governments but also of legal certainty as a value in itself. It marks out the temporal limits of the supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

77. Turning to the circumstances of the present case, the Court notes that, according to the Government, the applicant was diagnosed with chronic hepatitis C for the first time on 29 November 2004 (see paragraph 28 above). The applicant did not allege that he had become aware of the diagnosis at a later date. The present application was lodged on 18 August 2005, more than six months after 29 November 2004.

78. The Court further notes that the applicant attempted to bring his grievances to the attention of the domestic authorities. In particular, early in 2005 he complained about his infection with hepatitis C to the prosecutor's office. He also lodged a statement of claims with a district court, but did not take the appropriate steps to have the case finally decided. Given that the Government did not plead non-exhaustion, the Court is not in a position to determine whether the applicant had exhausted effective domestic remedies available to him, if any, in respect of the infection complaint. In any event, the Court does not deem it necessary to determine the benchmark for the calculation of the six-month period for the following reason.

79. The Court observes that the circumstances of the applicant's infection with hepatitis C were contested between the parties. At the outset of the proceedings before the Court the applicant insisted that he could have become infected with the virus of hepatitis C after his arrest in October 2001. The Government refuted his allegations and presumed that the infection could have occurred before the arrest. The applicant did not agree with the Government and noted that in 1995 and 1996 he had undergone surgical procedures, which the Government had not mentioned. He asserted that between August 2000 and October 2001 he had undergone medical check-ups which had revealed no hepatitis C.

80. The Court notes that an ordinary medical check-up does not suffice to reveal chronic hepatitis. Considering that the applicant did not submit any medical evidence that he had undergone a specific blood test for hepatitis C before his incarceration in October 2001, the Court concludes that the applicant's allegations relating to his infection with the hepatitis C virus did not go beyond speculation and assumption.

81. In the light of the above, the Court finds that the material in the case file does not enable it to conclude beyond all reasonable doubt that the applicant contracted chronic hepatitis C after his incarceration

on 28 October 2001 and that such infection could be imputable to the respondent State.

82. 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 RISK OF RECURRENCE OF TUBERCULOSIS AND INFECTION WITH HEPATITIS A

83. The applicant complained under Article 3 of the Convention that in LIU-10 he had been held with inmates suffering from active tuberculosis and hepatitis A and thus could have become infected with those illnesses.

A. Submissions by the parties

84. The Government contested the applicant's allegations. They submitted that the applicant had never shared a cell with active tuberculosis carriers. They further insisted that no case of infection with hepatitis had been registered in the penitentiary institutions of Russia since 28 October 2001.

85. The applicant disagreed with the Government and rebutted their allegations and claimed that one of his inmates had contracted hepatitis A in LIU-10, while a number of other detainees had been infected with HIV and hepatitis there. He did not produce any evidence in support of his position.

B. The Court's assessment

86. The Court observes at the outset that it has already examined cases concerning alleged violations of Article 3 of the Convention on account of poor conditions of detention entailing high risks of contracting tuberculosis (see, for example, *Kalashnikov v. Russia*, no. 47095/99, § 98, ECHR 2002-VI, and *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007). Accordingly, it considers that the applicant's complaint about risks of recurrence of tuberculosis and infection with hepatitis A could fall within the ambit of Article 3 of the Convention.

87. However, the Court notes that the applicant's allegations were not supported by any proof. It 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)). Accordingly, it was open to the applicant to provide the Court with written statements by those of his inmates who had suffered from active tuberculosis or hepatitis A, which he failed to do.

88. Thus, the Court is not persuaded that the applicant made a *prima facie* case as regards the alleged risks of recurrence of tuberculosis and infection with hepatitis A.

89. 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 INADEQUATE MEDICAL ASSISTANCE

90. The applicant complained under Article 3 of the Convention that the LIU-10 personnel had not provided him with medical treatment adequate to his hepatitis C concurrent with tuberculosis.

A. Submissions by the parties

91. The Government contended that the medical assistance provided to the applicant while in detention had been adequate. The applicant had not been subjected to medical tests for hepatitis C upon his arrest and placement in custody because he had demonstrated no clinical evidence of the illness and the prison regulations then in force had not provided for mandatory hepatitis C tests. The Government submitted that they could not produce a copy of the applicant's medical record for the period between 10 June 1996 and 28

May 1998 because it had been destroyed. On 29 November 2004 the applicant had been diagnosed with chronic hepatitis C. The absence of acute hepatitis had proven that the infection with the virus had occurred before the placement in the penitentiary facility. Once the illness had been revealed, the applicant had received essenciale, cerucal, riboksin and vitamins. The applicant had not suffered from acute hepatitis C while in LIU-10 and had not required inpatient treatment. In the absence of clinical evidence of acute hepatitis C the applicant had been provided with palliative care and subjected to monitoring of blood biochemical characteristics and dynamic therapeutic control. The applicant had been repeatedly placed in LIU-10 on account of tuberculosis where he had been prescribed with anti-tuberculosis treatment. However, on several occasions he had refused to take the prescribed medicines. According to the Government, the existing system of providing detainees with medical assistance is compatible with Article 3 of the Convention and the applicant's complaint was entirely unsubstantiated.

92. The applicant maintained his submissions and insisted that his rights under Article 3 of the Convention had been infringed.

B. The Court's assessment

1. Admissibility

93. 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) Establishment of facts

94. The Court observes that the parties to the present case presented differing accounts of the medical assistance rendered to the applicant in respect of his illnesses. It also notes the difficulties for the applicant in obtaining the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case of treatment contrary to Article 3 of the Convention and the Court is prevented from reaching factual conclusions for lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred (see, *mutatis mutandis*, *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005; *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-... (extracts)).

95. The Court observes that, when communicating this case, it asked the Government whether the medical treatment available to the applicant on account of his tuberculosis and hepatitis C had been adequate for his condition and sufficient for preventing further deterioration of his health.

96. The Government submitted their written observations in this respect. Regrettably, they did not produce a copy of the applicant's entire medical file. Instead they provided copies of a few documents, some of which were barely legible. The information that can be obtained from them relates mostly to the applicant's tuberculosis. The data at the Court's disposal relating to the treatment available to the applicant on account of his hepatitis C are sparse (see paragraphs 64 – 70 above).

97. The Government stated that the applicant's medical records for 1996 to 1998 had been destroyed. The Court reiterates that the authorities of the penitentiary institution should have kept a record of the applicant's state of health and the treatment he underwent while in detention (see *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-... (extracts)). The Court further notes that the Government gave no reason for their failure to submit legible copies of the applicant's medical file that should have contained records made after 1998. Moreover, the Government did not provide any medical record related to the applicant's hepatitis made after 25 October 2005 (see paragraph 33 above). It follows that the Government disregarded the opportunity to support their submissions by evidence to which they had sole access.

98. The Court therefore considers that, where necessary, it can legitimately draw inferences from the Government's failure to provide legible medical documents.

(b) General principles enshrined in the Court's case-law

99. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Labita v. Italy*, judgment of 6 April 2000, *Reports of Judgments and Decisions* 2000-IV, § 119). Such ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the state of health of the victim (see *Ireland v. the United Kingdom,* judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (e.g. *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

100. The Court has consistently stressed that 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 *Labita*, cited above, § 120). Nevertheless, in the light of Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI), with the provision of the requisite medical assistance and treatment (see, *mutatis mutandis*, *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1966, §§ 64 et seq.).

101. Although the medical assistance available in prison hospitals may not always be at the same level as in the best medical institutions for the general public, 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 *Kudla*, cited above, § 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). Furthermore, if the authorities decide to maintain a seriously ill person in detention, they must demonstrate special care in guaranteeing such conditions of detention that correspond to his special needs resulting from his disability (see *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004).

(c) Application of the above principles to the present case

102. In order to establish whether the applicant received requisite medical assistance while in detention, it is crucial to determine whether the State authorities provided him with the minimum scope of medical supervision for timely diagnosis and treatment of his illnesses (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006).

103. First, the Court will consider whether the applicant was promptly diagnosed with chronic hepatitis C.

104. According to the Government, the applicant was not subjected to blood tests for hepatitis C upon his incarceration on 28 October 2001 for the reason that by that time such tests had not been mandatory. The Court agrees that it may be excessive to subject each and every detainee to a range of medical tests for all contagious diseases. Nevertheless, certain tests may be indispensable for proper assessment of a patient's state of health; a decision whether to carry out certain diagnostics or not should be based on an individual's medical history.

105. The Court notes that from 1996 the applicant was regularly prescribed and received hepatotoxic anti-tuberculosis treatment (see paragraphs 8, 10 and 29 above), which may cause liver damage. In such circumstances it considers that the minimum scope of medical supervision required for the applicant's condition could have included regular blood tests for hepatitis.

106. The Court observes that the evidence in its possession does not allow establishing with certainty the exact date on which the applicant was diagnosed with chronic hepatitis C. The medical records submitted by the Government indicate that the applicant had been diagnosed with hepatitis of unconfirmed aetiology by 18 December 2003 (see paragraph 66 above). In their observations the Government submitted that the applicant

had undergone the first test for hepatitis on 29 November 2004 (see paragraph 91 above). The Court points out that more than eleven months elapsed between the moment when the applicant's hepatitis had been for the first time mentioned in his medical record and the date when the first blood test was administered to confirm the diagnosis. In such circumstances the Court cannot conclude that the applicant was diagnosed with chronic hepatitis C in timely fashion.

107. Secondly, the Court must determine whether the applicant received requisite treatment in relation to his hepatitis C.

108. The medical documents at the Court's disposal do not reveal whether the applicant received any antiviral treatment on account of his chronic hepatitis C after he had been diagnosed with it. According to the Government, the LIU-10 doctors found that in the absence of active hepatitis process such treatment was unnecessary. The Court readily accepts that it was for the doctors who physically examined the applicant to assess whether he required antiviral treatment. However, the materials in the Court's possession do not allow it to be established with clarity on what date and which doctor made such a decision.

109. The Court takes note of the Government's submissions that the applicant had been subjected to monitoring of blood biochemical characteristics and dynamic therapeutic control on account of his chronic hepatitis C (see paragraph 91 above). However, the Government did not submit detailed description of measures taken in the course of the monitoring and control. Furthermore, they provided no information as to whether the applicant had ever been examined by a hepatologist, which would be at least reasonable considering the hepatotoxic treatment that the applicant had received on account of his tuberculosis.

110. Neither did the Government provide the Court with information on the treatment available to the applicant after 25 October 2005 (see paragraph 33 above). In such circumstances the Court finds itself in a position to infer from the Government's failure to submit copies of relevant medical documents that the applicant did not receive adequate medical assistance on account of his chronic hepatitis C after that date in LIU-10 and IK-18.

111. In the light of the above, the Court finds that the applicant was not provided with the minimum scope of medical supervision for timely diagnosis and treatment of his hepatitis C while in detention and thus did not receive the medical assistance required for his condition, which amounted to inhuman and degrading treatment.

112. Therefore, there has been a violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION ON ACCOUNT OF CONVERSATIONS WITH THE OFFICIALS

113. The applicant complained under Article 34 of the Convention that the LIU-10 authorities had put illicit pressure on him in relation to his complaint to Strasbourg. In particular, he alleged that the LIU-10 authorities had demanded that he disclose the contents of his letters to the Court and that they had impeded his correspondence with the Court on a regular basis. He also insisted that the LIU-10 authorities had unfairly sanctioned him for his complaints to Strasbourg. Article 34 of the Convention reads, in so far as relevant, as follows:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

114. The Government submitted that the LIU-10 officials had had ten conversations with the applicant related to Strasbourg proceedings: on 14, 17 and 28 February, 1 and 20 March, 3 and 14 April, 1 and 21 August, as well as on 13 October 2006. Two of those had been organised in order to clarify the reasons why he had lodged the application with the Court, but the applicant had refused to give any explanations. Eight conversations had been aimed at helping the applicant to resolve the questions he might have had while preparing the documents for the Court and at the protection of his rights and legitimate interests; the applicant had declined the assistance offered. The conversations had taken place in the presence of several officials and

inmates, who had denied the applicant's allegations of threats and psychological pressure. The Government submitted written statements by the LIU-10 officials, confirming that they had not put any pressure on the applicant in the course of their conversations with him concerning the application to Strasbourg. On 16 February and 12 April 2006 the LIU-10 officials had had meetings with the applicant concerning the translation of the Court's letters into Russian. On several occasions two officials of the regional prosecutor's office had discussed with the applicant the numerous complaints he had lodged with them, but they had not touched upon the application with the Court. The Government further claimed that the applicant's sealed letters sent via the LIU-10 administration had not been opened or censored. The applicant had been served with all replies from the Court in sealed envelopes within seventy-two hours of their receipt by LIU-10. The Government also submitted that between 13 February 2002 and 13 October 2006 the applicant had been confined fifteen times in a punishment cell. Each confinement had been imposed on the applicant as a sanction for a breach of prison rules. Furthermore, between 18 March 2003 and 6 September 2006 the applicant had received nine reprimands for breaches of prison rules. None of the sanctions had been related to his application to the Court. In sum, they insisted that there had been no hindrance with the applicant's right to individual petition.

115. The applicant contested the Government's submissions and asserted that he had refused to disclose the contents of his letters to the Court to the LIU-10 authorities because he had not trusted them. He further submitted that he had been served with the Court's letters with regular and substantial delays. According to the applicant, some of his letters sent via the LIU-10 authorities had never reached the Court. Furthermore, he insisted that he had never asked the LIU-10 authorities to translate the Court's letters into Russian but had requested that they provide him with an independent translator. Lastly, the applicant disagreed with the Government and claimed that their allegations that he had breached the prison rules on many occasions had been false.

B. The Court's assessment

1. Conversations with the LIU-10 officials

116. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, cited above, § 105, and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2288, § 105). The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy or having a "chilling effect" on the exercise of the right of individual petition by applicants and their representatives (see *Fedotova v. Russia*, no. 73225/01, §§ 48-51, 13 April 2006; *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references).

117. Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see the *Akdivar and Others* and *Kurt* judgments, cited above, p. 1219, § 105, and pp. 1192-93, § 160, respectively). The applicant's position might be particularly vulnerable when he is held in custody with limited contacts with his family or the outside world (see *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003).

118. The Court notes that the LIU-10 authorities regularly held meetings with the applicant to discuss the contents of his sealed letters to the Court. The first meeting took place on 14 February 2006, shortly after the Court's request for factual information had been sent to the Government. The Government admitted that the LIU-10 authorities had discussed the applicant's complaints to Strasbourg with him ten times. Furthermore, the case file contains certificates confirming that further meetings were organised on 2 August, 19 and 27 October 2006, as well as on 9 January 2007.

119. According to the Government, the conversations had been organised with the sole intention of helping the applicant. The Court is disinclined to accept this argument. In its view, the LIU-10 officials should have inferred from the applicant's constantly displayed reluctance to answer their questions that he had not needed their assistance.

120. The Court emphasises that the present application concerned primarily the quality of medical assistance available to the applicant in LIU-10, where he had been detained for a lengthy period. In the Court's view, his health and well-being depended largely on the LIU-10 personnel. In such circumstances regular conversations with the officials of the very same facility might have indeed had a "chilling effect" on the applicant's intention of pursuing a Strasbourg remedy.

121. The Court considers that the applicant must have felt intimidated by the repeated conversations with the LIU-10 officials apparently held against his will and could have experienced a legitimate fear of reprisals (see *Popov*, cited above, § 250). Accordingly, such conversations constituted illicit pressure, which amounted to undue interference with the applicant's right of individual petition.

122. Therefore, there has been a violation of Article 34 of the Convention in this respect.

2. The applicant's correspondence with the Court

123. The Court reiterates that it is important to respect the confidentiality of its correspondence since it may concern allegations against prison authorities or prison officials. The opening of letters from the Court or addressed to it undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Klyakhin v. Russia*, no. 46082/99, § 118, 30 November 2004).

124. The Court emphasises that, pursuant to the Russian law in force, correspondence of detainees with the Court is not subject to censorship (see paragraph 71 above). The Court further notes that at least five of its letters to the applicant bear LIU-10 incoming mail stamps in the letter body (see paragraphs 50 – 54 above). The Government did not put forward any explanation as to the origin of those stamps and insisted that the Court's letters had been sealed when given to the applicant.

125. Having regard to the materials at its disposal, the Court cannot accept the Government's argument and is bound to conclude that the LIU-10 authorities opened its letters to the applicant and stamped them as regular incoming mail. The Court further observes that it is not in a position to establish whether those letters were read by the authorities. Nevertheless, the mere fact that those letters were opened leaves room for reasonable suspicion that the applicant's correspondence with the Court was censored by the authorities in breach of the domestic law and Article 34 of the Convention.

126. Therefore, there has been a violation of Article 34 of the Convention on this account.

3. Sanctions imposed on the applicant and threats by the LIU-10 official

127. The Court notes that the applicant insisted that he had been unlawfully persecuted by the LIU-10 authorities. However, there is nothing in the materials reviewed by the Court to suggest that the LIU-10 authorities had intended to punish the applicant for his complaint to the Court when confining him to a disciplinary cell or reprimanding him. The Court is satisfied with the Government's explanations regarding the grounds for the disciplinary sanctions imposed on the applicant. Consequently, it finds that those sanctions did not amount to a hindrance of the applicant's right to individual petition.

128. Furthermore, the applicant complained to the Court that one of the LIU-10 officials had implied that his life would be endangered unless he withdrew his complaint to Strasbourg. However, those allegations were not supported by any evidence.

129. Accordingly, the Court finds that there has been no violation of Article 34 of the Convention in this respect.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

130. The applicant raised a number of complaints alleging breach of his rights. In particular, he relied on

Article 6 of the Convention complaining of overall unfairness of the proceedings against him that ended on 8 April 2002 and of lack of access to court as regards the civil proceedings against a private company. He further complained under Article 13 of the Convention that the domestic authorities had not provided him with a legal-aid lawyer to represent him before the Court. Moreover, the applicant relied on Article 1 of Protocol No. 1 to the Convention alleging that he had been deprived of property by the private company. He further complained under Article 2 of Protocol No. 4 that his freedom of movement had been restricted by the fact that after the collapse of the Soviet Union he had been granted Russian citizenship against his will. Lastly, the applicant complained under Article 1 of Protocol No. 12 that the domestic authorities' refusal to conditionally release him on health grounds had been discriminatory and alleged that his infection with hepatitis C had amounted to capital punishment contrary to Article 1 of Protocol No. 13.

131. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicant's submissions disclose no appearance of violations of the rights and freedoms set out in the Convention or its Protocols. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The applicant asked the Court to determine the amount of compensation for the suffering and distress caused by the alleged violations of his rights.

134. The Government noted that the applicant had not specified the amount of his claims for just satisfaction.

135. The Court considers that the applicant must have suffered distress and frustration resulting from the lack of adequate medical assistance available to him, aggravated by the fact that the State authorities had interfered with his right to individual petition, and that this cannot be sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

136. The applicant did not make any claim in respect of the costs and expenses incurred before the domestic courts and before the Court within the time-limits set by the Court.

137. Accordingly, the Court makes no award under this head.

C. Default interest

138. 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 alleged lack of adequate medical assistance available to the applicant while in detention admissible and the remainder of the complaints inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the inadequate medical assistance provided to the applicant while in detention;

3. *Holds* that the State has failed to fulfil its obligation under Article 34 not to hinder the effective exercise of the right of individual petition in respect of the State authorities' conversations with the applicant and opening of his correspondence with the Court;

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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Christos ROZAKIS
Registrar President

[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.

MECHENKOV v. RUSSIA JUDGMENT