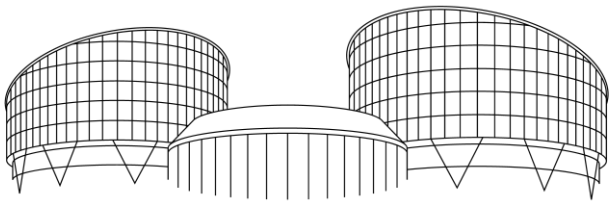

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF A.B. v. RUSSIA

(Application no. 1439/06)

JUDGMENT

STRASBOURG

14 October 2010

FINAL

14/01/2011

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

In the case of A.B. v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 23 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 1439/06) 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 A.B. ("the applicant"), on 14 November 2005.

2. The applicant was represented by Ms M. Belinskaya, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 18 April 2006 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On 20 February 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

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 1963 and lives in St Petersburg. At the time of introduction of the application he was detained in remand prison IZ-47/1 in St Petersburg.

A. Pre-trial proceedings

7. On 18 May 2004 criminal proceedings were instituted against the applicant and third persons for attempted swindling. At 9.10 p.m. on the same day the applicant was arrested. He was placed in the temporary detention facility of the Nevskiy District of St Petersburg.

8. On 20 May 2004 the Nevskiy District Court of St Petersburg ("the trial court") remanded the applicant in custody. He was transferred to remand prison IZ-47/1 in St Petersburg ("the remand prison"). The court held that the applicant was charged with a serious crime, had a disposition to commit crimes and could continue to pursue criminal activities if at liberty. The ruling was not appealed against.

9. On 15 July 2004 the Kuybyshevskiy District Court of St Petersburg granted a request by the investigator to extend the applicant's detention until 26 August 2004, holding that investigative measures could not be taken prior to that date. The ruling was not appealed against.

10. On 23 August 2004 the Smolninskiy District Court of St Petersburg prolonged the applicant's detention until 26 October 2004.

11. On 25 October 2004 the Kuybyshevskiy District Court of St Petersburg prolonged the applicant's detention until 26 December 2004.

12. On 24 December 2004 the bill of indictment was drawn up and the case file was transferred to the trial court.

13. On 4 February 2005 the trial court scheduled a hearing for 25 March 2005. The issue of the application of a preventive measure to the applicant was not decided upon pursuant to Article 236 of the Code of Criminal Procedure ("the CCP").

14. At the preliminary hearing of 24 March 2005 the trial court, relying on Article 237 of the CCP, returned the case to the prosecutor because certain procedural rules had not been complied with. In particular, some pages of the case file had been wrongly numbered and the accused had not been provided with the opportunity to study some documents. The trial court further noted that no application to vary the preventive measure had been lodged. The trial court found that the measure applied was lawful and appropriate in view of the gravity of the charges and the information about the accused, and ordered that it should remain unchanged. The trial court

observed that the decision could be appealed against to the St Petersburg City Court within ten days from the date of its delivery. The applicant and his counsel N. were present at the hearing.

15. The ruling of 24 March 2005 was not appealed against and became final on 4 April 2005. On 5 April 2005 the case file was transmitted to the prosecutor.

16. On 7 April 2005 the prosecutor returned the case to the investigator for additional investigative measures. Having obtained the endorsement of the St Petersburg City Prosecutor, the investigator requested a court to extend the applicant's custodial detention for one month until 5 May 2005 so that the aggregate term of his detention amounted to eight months and five days. He argued that the extension sought would allow him to take the requisite investigative measures and to comply with the trial court's instructions.

17. On 8 April 2005 the Kuybyshevskiy District Court of St Petersburg, relying on Article 109 of the CCP, granted the investigator's request to extend the applicant's detention for "one month, up to eight months and five days in total, that is, until 5 May 2005". The applicant and his counsel M. were present at the hearing. His counsel M. objected, stating that the applicant had a permanent place of residence, had no intention of absconding – on the contrary, he had actively cooperated with the investigation – and that his state of health had worsened. The court held that the investigator's request should be granted and that there was no reason to vary the preventive measure in respect of the applicant since the circumstances that had constituted the grounds for its application had not changed. The applicant was charged with a serious offence and had no permanent job and no assets. Furthermore, he was suspected of having committed a further offence similar to the one he had been charged with. Therefore, if released, he might abscond, hinder the criminal prosecution and engage in further criminal activity. Moreover, certain investigative measures had to be conducted before the case was sent for trial. The court also found that the arguments put forward by the applicant's counsel concerning the applicant's personality and his state of health were not sufficient grounds for refusing the investigator's request. In particular, no medical documents had been provided to prove that placement in a remand prison was damaging to the applicant's health.

18. The applicant appealed against the ruling of 8 April 2005, claiming that Article 109 of the CCP did not provide for the possibility of extending a period of detention pending additional investigation.

19. On an unspecified date the applicant requested the Oktyabrskiy District Court of St Petersburg to declare that the prosecutor had not received the case file from the trial court as required by the ruling of 24 March 2005.

20. On 26 April 2005 the Oktyabrskiy District Court of St Petersburg held a hearing on the complaint, during which the applicant was advised that the case file had already been sent to the prosecutor. The applicant then brought another complaint about the prosecutor's actions between 5 and 8 April 2004, claiming that the latter had failed to take the requisite measures to ensure the applicant's release from custody. The court dismissed the complaint, stating that the prosecutor's actions were lawful, and observed that the ruling could be appealed against to the St Petersburg City Court within ten days from the date of its delivery.

21. It follows from the parties' submissions that the applicant did not appeal against the ruling of 26 April 2005.

22. On 5 May 2005 the Kuybyshevskiy District Court of St Petersburg granted a request lodged by the St Petersburg City Prosecutor to extend the applicant's detention for one month to 5 June 2005 so that the aggregate term of his detention amounted to nine months and five days. The applicant and his counsel P. objected on the grounds that the court had no evidence of the applicant's intention either to abscond or to engage in further criminal activity. The court dismissed the objections and ordered the extension of the applicant's detention on the same grounds as those given in the ruling of 8 April 2005. The applicant's counsel P. was a legal-aid lawyer appointed by the court. At the beginning of the hearing the applicant applied to the court to have counsel replaced because he wished to be assisted by his own counsel, B., who had not been notified of the hearing. The court found that counsel B. had been notified by telephone of the hearing that had initially been scheduled for 4 May 2005. However, she had neither appeared nor provided any documents justifying her failure to do so. The hearing had then been postponed to 5 May 2005 and counsel B. had been notified accordingly. However, she had said that she could not attend the hearing because she was involved in other proceedings. Nevertheless, she had failed to provide any supporting documents. The applicant appealed.

23. On 12 May 2005 the final bill of indictment was drawn up.

24. On 13 May 2005 the case was sent to the trial court.

25. On 14 May 2005 the trial court received the case file.

26. On 27 May 2005 the trial court scheduled a hearing for 5 July 2005. It also ordered that the preventive measure imposed on the applicant was to remain unchanged.

27. On 15 June 2005 the St Petersburg City Court dismissed the applicant's appeal against the ruling of 8 April 2005. The appeal court held that when a case was returned to the prosecutor, new time-limits for the investigation were to be fixed and a decision concerning a preventive measure was to be taken accordingly. It also upheld the first-instance court's findings that, if released, the applicant might abscond and engage in further criminal activity.

28. On 12 July 2005 the St Petersburg City Court dismissed the applicant's appeal against the trial court's ruling of 5 May 2005. The appeal court upheld the first-instance court's conclusion that, if released, the applicant might abscond, engage in further criminal activity and hinder the prosecution. It also found that counsel B. had been duly notified of the hearing of 5 May 2005. However, she had not appeared and had failed to provide appropriate justification.

29. On 22 November 2005 the St Petersburg City Court dismissed the applicant's appeal against the ruling of 14 May 2005.

30. On 10 October 2006 the trial court sentenced the applicant to five years and two months' imprisonment.

31. On 19 February 2007 the applicant's sentence became final.

32. On 4 April 2007 the St Petersburg City Court dismissed the applicant's appeal against the decision of the Oktyabrskiy District Court of St Petersburg of 26 April 2005 concerning his complaint about the prosecutor's inaction. It held, in particular, that the prosecutor had requested authorisation of the applicant's detention for a period including the days that had preceded the court's ruling, that is, between 5 and 8 April 2005. It rejected the applicant's argument that his detention during that period had been unlawful, for the reason that "there was a judicial decision extending the detention for the period from 5 to 8 April 2005". No reference as to which judicial decision had authorised that period was given.

B. The applicant's state of health and conditions of detention

1. The applicant's account

33. On 30 April 1997 the applicant was diagnosed with hepatitis C. He underwent treatment between 30 April and 26 May 1997 and was subsequently diagnosed with chronic hepatitis C.

34. On 20 May 2004, on his admission to remand prison IZ 47/1, the applicant was diagnosed as HIV-positive on the basis of a routine blood test.

35. According to the applicant, his state of health had been deteriorating since October 2004. He had shown symptoms of immunodeficiency and there had been bad bouts of his chronic illnesses. The applicant had applied to the medical unit of the remand prison for treatment to boost his immune system. In reply, he had been advised to take aspirin, papaverine and analgesics. After the applicant had stated that this treatment would obviously be insufficient, he had been threatened with confinement in a solitary cell.

36. On 29 October 2004 the applicant was placed in solitary cell no. 129 in wing 2/1 with restricted access. The wing was designed for the detention of inmates sentenced to life imprisonment.

37. On 19 January 2005 the applicant was transferred to solitary cell no. 123 in wing 2/1 with restricted access. According to the applicant, the cell was the equivalent of a disciplinary cell. However, he had neither requested to be placed in solitary confinement, nor had there been any grounds for such placement since he had not broken prison rules. The cell was in the basement where there was no central heating, and the winter temperature there was about 7-10ºC.

38. On account of the conditions of detention in the solitary cell the applicant's health had deteriorated further. He had been put on a special diet which included a supplementary daily portion of margarine and sugar. Despite his regular requests, he had never been provided with either antiviral treatment or treatment stimulating liver function and had been offered only febrifuges and analgesics. Medical staff of the remand prison had stated that they had no medicines for HIV-positive prisoners because of lack of funding.

39. The applicant requested to be placed in a hospital in August and September 2004. However, he was refused admission to the hospital at remand prison IZ 47/1 on the grounds that there were too many HIV-positive patients and not enough places. He was likewise refused admission to the hospital of the Federal Penitentiary Service, because the hospital only treated convicted prisoners and did not have the status of a remand prison.

40. The applicant lodged numerous complaints concerning his inadequate medical assistance. However, he did not receive any formal replies to his complaints or a formal refusal to place him in a hospital. The replies he received were given in the course of private conversations. Nor was he provided with any documents confirming that his complaints had been forwarded to the appropriate authorities. According to the applicant, the officials of the remand prison had forwarded only his correspondence relating to his criminal case and had not provided his counsel B. with the medical documents contained in his personal file.

2. The Government's account

(a) Medical assistance available to the applicant

41. While detained in IZ-47/1 the applicant was on several occasions examined by specialist doctors and general practitioners.

42. On 21 May 2004 the applicant was examined by a medical commission composed of a general practitioner, a surgeon, a psychiatrist and a dermatologist. He made no complaints concerning his state of health.

43. On 22 May 2004 the applicant underwent a chest X-ray. No pathological condition was discovered.

44. On 25 May 2004 a blood test carried out on the applicant indicated that he was HIV-positive.

45. On 3 June 2004 the applicant underwent a complex medical check-up at the Botkin City Clinical Hospital of St Petersburg and was diagnosed with stage 2Б HIV infection.

46. On 24 June 2004 the applicant was examined by an infectious-disease specialist. He was also registered as HIV-positive with the IZ-47/1 infirmary and was prescribed a special diet.

47. Between 24 June and 12 July 2004 the applicant was treated by a dermatologist for an acute skin disease (parasitical dermatitis) and was cured.

48. Between August and September 2004 the applicant did not request to be admitted to hospital.

49. On 30 September 2004 the applicant underwent a routine check-up with a general practitioner. He made no complaints concerning his state of health.

50. On 26 July and 25 November 2004 the applicant underwent chest X-rays, which did not detect any pathological condition.

51. On 11 January and 27 July 2005 the applicant was examined by a general practitioner and was found to be in a satisfactory state of health. He did not make any complaints.

52. On 26 February 2006 a general practitioner examined the applicant and found no medical data to confirm that the HIV infection had progressed.

53. On 15 March and 20 October 2006 and on 19 March 2007 the applicant underwent chest X-rays, which did not reveal any pathological condition.

54. On 22 October 2006 and 12 April 2007 the applicant was examined by a general practitioner. A general blood test carried out on 12 April 2007 showed no pathological changes in the blood.

55. The applicant's HIV infection had not been clinically manifested. The applicant did not require antiretroviral therapy.

56. According to a certificate issued by the authorities of the remand prison on 19 April 2007, the applicant's state of health had not deteriorated since 21 May 2004, he had not lost any weight and his lymph glands had not been dilated.

(b) Conditions of detention in the remand prison

57. While in IZ-47/1, the applicant was detained in cells nos. 781, 170, 226, 188, 749 and 123. Cell no. 781 measured 9.8 square metres; each of the remaining five cells measured 7.5 square metres.

58. The Government could not submit information on the number of inmates who had shared cells with the applicant owing to the fact that the registration logs had been destroyed.

59. Every cell in which the applicant was kept was equipped with a lavatory pan, a flush tank and a sink, which were separated from the

sleeping area by a curtain. There was running hot and cold water supplied by the city water system in each cell.

60. The applicant and other inmates washed themselves and had their bedding changed once a week.

61. Every cell in which the applicant was kept had access to daylight through windows; they were also equipped with lamps. All cells had both natural and mandatory ventilation systems. The cells were equipped with tables, benches and necessary utensils. The windows were glazed and had air ducts. The cells had a central heating system connected to the remand prison's boiler house. The average temperature in the cells was between 18ºC (in winter) and 22ºC (in summer).

62. The applicant was at all times provided with an individual sleeping place and bedding.

63. While in the remand prison, the applicant was fed three times a day. From 26 June 2004 he received a special diet. The food available to the applicant was in compliance with the relevant standards and regulations.

64. The applicant was allowed to have a daily one-hour walk during which he could perform physical exercises.

65. The cells were regularly cleaned and disinfected.

66. On 29 October 2004 the applicant was placed in cell no. 123, where he was kept in solitary confinement to secure his safety. The cell was heated by the remand prison's boiler house.

67. According to a certificate of microclimate measurement provided by the Government, on 2 December 2004, when the outside temperature was-1ºC, the level of humidity in cell no. 123 amounted to 75% (50% being normal), the temperature in the cell was 17ºC (19ºC to 21ºC being normal) and the level of lighting was 40 lx (90 lx being normal).

68. According to a certificate of 19 April 2007 issued by the remand prison authorities, microclimate measurements in the remand prison cells were taken once a month; the average temperature in the cells was 18ºC in winter and 22ºC in summer.

69. According to a certificate on the sanitary conditions in cell no. 123, on 14 December 2004 the cell was in a satisfactory condition. It was equipped with a sink and a lavatory pan; the sanitary installations were in order. There was hot and cold running water, natural ventilation, central heating, natural light and one light bulb. The cell measured 216 cm (width) by 354 cm (length) by 230 cm (height). The cell was designed to accommodate four persons. There was a window measuring 108 cm by 100 cm. The cell had been renovated in November 2003.

70. The applicant did not lodge any complaints concerning the conditions of his detention with the remand prison authorities or with prosecutors' offices.

3. Written statements by the applicant's fellow inmates

71. The applicant submitted written statements by Mr A.M. and Mr N.M.

72. Mr A.M., who had been sentenced to life imprisonment, was kept in cells nos. 120, 122, 126, 128 and 141 of wing 2/1 of the remand prison on various occasions between June 2004 and July 2007. In his submission, wing 2/1 was reserved for inmates sentenced to life imprisonment at first instance pending the examination of their cases on appeal. The conditions of detention in all the cells were nearly identical. There were no chairs or desks in the cells. The beds were made of concrete. The cells were in a deplorable state. The humidity was high. There was no hot water or heating. The temperature in the cells in winter was as low as outside. There was no mandatory ventilation. Lavatory pans were not separated from the rest of the cells. All inmates in wing 2/1 were kept in solitary confinement. Access to the wing was limited. Paramedics occasionally visited the wing but claimed that they had no medication. At some point in 2005 Mr A.M. had a glimpse inside cell no. 123 and saw that it was no different from the cells in which he had been kept, save for the fact that there was an iron bed, not a concrete one. He also repeatedly heard the applicant asking paramedics for medication.

73. Mr N.M. was sentenced to life imprisonment. He was kept in cell no. 121 of wing 2/1 of the remand prison. In his submission, all the cells in the wing were nearly identical. There was no furniture in the cells. The temperature in the cells in winter was as low as 3ºC. There was no hot water. The cells were very humid so that the walls were covered with mould. The lavatory pans were not secluded. The food was of poor quality. Medical personnel rarely visited the wing and did not have effective medication. Mr N.M. had overheard the applicant's numerous complaints to the remand prison authorities concerning his state of health. Initially the applicant had been placed in cell no. 129 and in January 2005 he had been transferred to cell no. 123.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

74. After arrest the suspect is placed in custody “pending investigation”. The period of detention “pending investigation” cannot exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level further to a request lodged by a prosecutor (or an investigator or inquirer with a prosecutor's prior approval) (Article 109 § 2). Further extensions up to twelve months

may be granted on an investigator's request approved by a prosecutor of the Russian Federation only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). The period of detention "pending investigation" is calculated up to the date on which the prosecutor sends the case to the trial court (Article 109 § 9).

75. From the time the prosecutor sends the case to the trial court, the defendant's detention is "pending trial". The period of detention "pending trial" is calculated up to the date on which the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

76. The trial judge can return the case to the prosecutor for defects impeding the trial to be remedied, for instance if the judge has identified serious deficiencies in the bill of indictment or a copy of it was not served on the accused. The judge must require the prosecutor to comply within five days (Article 237 § 2) and must also decide on a preventive measure in respect of the accused (Article 237 § 3). By Federal Law no. 226-FZ of 2 December 2008, Article 237 was amended to the effect that, if appropriate, the judge should extend the term of detention with due regard to the time-limits in Article 109 of the Code.

B. Federal Law on prevention of the propagation of HIV infection, no. 38-FZ of 30 March 1995

77. HIV-positive persons have the right to receive all types of medical assistance required by clinical data. They enjoy all the rights guaranteed by laws of the Russian Federation on public health protection (section 14).

C. Case-law of the Constitutional Court of the Russian Federation

78. On 22 March 2005 the Constitutional Court of the Russian Federation adopted Ruling no. 4-*P* on a complaint lodged by a group of individuals concerning the *de facto* extension of detention after the transfer of a case file to a trial court by the prosecution. In part 3.2 of the ruling the Constitutional Court held:

> "The second part of Article 22 of the Constitution of the Russian Federation provides that ... detention is permitted only on the basis of a court order ... Consequently, if the term of detention, as defined in the court order, expires, the court must decide on the extension of the detention, otherwise the accused person must be released ...
>
> These rules are common to all stages of criminal proceedings, and also cover the transition from one stage to another. ... The transition of the case to another stage does not automatically put an end to a preventive measure applied at previous stages."

D. Standards of medical assistance rendered to HIV-positive persons

79. The Ministry of Health of the Russian Federation, by its Decree No. 474 of 9 July 2007, adopted Standards of Medical Assistance Rendered to HIV-positive Persons ("the Standards"), which were recommended for use in State-owned and municipal health-care institutions.

80. According to the Standards, adult HIV-positive persons suffering from the disease in stages 2А, 2Б, 2В, 3, 4А, 4Б and 4В require CD4 testing as a diagnostic measure once every twelve months.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Detention of persons with HIV

81. The 11th General Report (CPT/Inf (2001) 16) prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning transmissible diseases reads, in so far as relevant, as follows:

> "31. The spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/AIDS has become a major public health concern in a number of European countries ...
>
> ... [T]he act of depriving a person of his liberty always entails a duty of care ...
>
> The use of up-to-date methods for screening, the regular supply of medication ... constitute essential elements of an effective strategy ... to provide appropriate care to the prisoners concerned.
>
> ... [T]he prisoners concerned should not be segregated from the rest of the prison population unless this is strictly necessary on medical or other grounds. In this connection, the CPT wishes to stress in particular that there is no medical justification for the segregation of prisoners solely on the grounds that they are HIV-positive."

82. The relevant parts of the Appendix to Recommendation no. R (98) 7 of the Committee of Ministers of the Council of Europe to Member States concerning the ethical and organisational aspects of health care in prison read as follows:

> "38. The isolation of a patient with an infectious condition is only justified if such a measure would also be taken outside the prison environment for the same medical reasons.
>
> 39. No form of segregation should be envisaged in respect of persons who are HIV antibody positive, subject to the provisions contained in paragraph 40.
>
> 40. Those who become seriously ill with Aids-related illnesses should be treated within the prison health care department, without necessarily resorting to total

isolation. Patients, who need to be protected from the infectious illnesses transmitted by other patients, should be isolated only if such a measure is necessary for their own sake to prevent them acquiring intercurrent infections ...”

83. The 1993 Guidelines on HIV infection and AIDS in prisons issued by the World Health Organization (WHO) read, in so far as relevant, as follows:

“27. Since segregation, isolation and restrictions on occupational activities, sports and recreation are not considered useful or relevant in the case of HIV-infected people in the community, the same attitude should be adopted towards HIV-infected prisoners. Decisions on isolation for health conditions should be taken by medical staff only, and on the same grounds as for the general public, in accordance with public health standards and regulations. Prisoners' rights should not be restricted further than is absolutely necessary on medical grounds, and as provided for by public health standards and regulations ...

28. Isolation for limited periods may be required on medical grounds for HIV-infected prisoners suffering from pulmonary tuberculosis in an infectious stage. Protective isolation may also be required for prisoners with immunodepression related to AIDS, but should be carried out only with a prisoner's informed consent. Decisions on the need to isolate or segregate prisoners (including those infected with HIV) should only be taken on medical grounds and only by health personnel, and should not be influenced by the prison administration ...

32. Information regarding HIV status may only be disclosed to prison managers if the health personnel consider ... that this is warranted to ensure the safety and well-being of prisoners and staff ...”

B. Administering antiretroviral therapy

84. The WHO published on 30 November 2009 a document entitled “Rapid Advice: Antiretroviral Therapy for HIV Infection in Adults and Adolescents”. The recommendations concerning the commencement of administering treatment are as follows. It is strongly recommended to start antiretroviral treatment in all patients with HIV who have a CD4 count of lower than 350 cells per mm^3 irrespective of clinical symptoms. CD4 testing is required to identify if HIV-positive patients with WHO clinical stage 1 or 2 disease need to start antiretroviral treatment. Furthermore, it is strongly recommended to start antiretroviral treatment in all patients with HIV with WHO clinical stage 3 or 4 irrespective of CD4 count.

THE LAW

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

85. The applicant complained about the poor conditions of his detention in wing 2/1 of remand prison IZ-47/1 and about the fact that he had been placed in solitary confinement and thus put in social isolation. He relied on Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

1. The Government

86. The Government contested the applicant's allegations. They submitted that the applicant had been kept in decent conditions in each cell which he had occupied while in the remand prison. His placement in the individual cell had been based on a valid reason since the police had informed the remand prison authorities of threats to his life and limb made by the applicant's accomplices. The authorities had verified the information provided by the police and decided on 29 October 2004 that the applicant should be transferred to a solitary cell to ensure his safety.

87. The applicant had not complained about the conditions of his detention either to the remand prison authorities or to prosecutors. He had not made any complaints concerning the fact of his placement in cell no. 123. Moreover, the applicant had not raised the issue of the alleged lack of medical assistance with the remand prison authorities.

2. The applicant

88. The applicant maintained his complaints concerning his detention in wing 2/1. He argued that he had repeatedly complained about the matter at domestic level, in particular in 2004 while in cell no. 129, but to no avail. He had repeatedly asked to be transferred from the wing for those serving life sentences to a shared cell. The applicant had not been made aware of the ruling of 29 October 2004 on his transfer to a solitary cell and thus had not been able to appeal against it. Furthermore, the applicant noted that in his statement of 10 April 2007 referred to by the Government in their observations he had mentioned his repeated oral complaints and remarked that the statement had been written under the control of the remand prison

official. The official had insisted that the applicant state that he had not lodged any written complaints.

89. The applicant further contested the Government's allegation that his placement in a solitary cell had been justified by threats from his accomplices. His only co-accused was a close friend of his who had not been detained on remand. No other accomplices' identities had been established in the course of the investigation. The applicant concluded that the remand prison authorities had placed him in solitary confinement for no valid reason.

90. Wing 2/1, in which cells nos. 123 and 129 were located, had never been properly cleaned. The cleaning schedule for the premises provided by the Government did not include wing 2/1 and therefore could not serve as evidence to disprove the applicant's allegations. Cells nos. 123 and 129 had not been equipped with mandatory ventilation. The floors in the cells had been concrete, not wooden. A sanitary inspector had never visited the cells in which the applicant had been kept; the visit of cell no. 123 of 14 December 2004 had taken place while the applicant had been held in cell no. 129. The Government's submissions concerning the temperature in cell no. 123 were incorrect.

91. The applicant concluded that his rights guaranteed by Article 3 of the Convention had been breached.

B. The Court's assessment

1. Admissibility

(a) Scope of the case

92. The Court points out that throughout the proceedings before it the applicant complained about the conditions of his detention in wing 2/1. It observes in this connection that it is disputed between the parties whether the applicant was transferred from the shared cell to cell no. 123 or to cell no. 129. However, it does not deem it necessary to establish in which of these cells the applicant was placed on 29 October 2004, given that both of them were located in the same special access wing and that the conditions of detention in each of them were identical.

93. The Court will therefore examine the applicant's complaint concerning the conditions of his detention in respect of the period which started on 29 October 2004, once he had been placed in solitary confinement in wing 2/1.

(b) Exhaustion of domestic remedies

94. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law (see *Guliyev v. Russia*, no. 24650/02, § 51, 19 June 2008, with further references).

95. The Court further reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

96. The Court takes note of the Government's argument that the applicant did not complain to the remand prison authorities or to prosecutors about the allegedly appalling conditions of his detention in wing 2/1 and that he did not complain at all about the fact of his solitary confinement. However, the Government did not specify what type of complaints to either the remand prison authorities or prosecutors or any other domestic body would have been an effective remedy in their view and did not provide any further information as to how such complaints could have prevented the alleged violations or their continuation or provided the applicant with adequate redress. In the absence of such evidence and having regard to the above-mentioned principles, the Court finds that the Government have not substantiated their claim that the remedies that the applicant had allegedly failed to exhaust in relation to his complaints under Article 3 of the Convention were effective (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003).

97. Accordingly, the Court dismisses the Government's objection concerning non-exhaustion of domestic remedies.

(c) Well-foundedness of the complaints

98. The Court considers that the applicant's complaints concerning the fact of his placement in solitary confinement and physical conditions of his detention in the wing 2/1 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

99. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). In order to fall under Article 3, ill-treatment must attain a minimum level of severity. 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*, 18 January 1978, § 162, Series A no. 25, and *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010-...). 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 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

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 *Enea v. Italy* [GC], no. 74912/01, § 56, ECHR 2009-...). Measures depriving a person of his liberty may often involve an element of suffering or humiliation. However, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Cenbauer v. Croatia*, no. 73786/01, § 44, ECHR 2006-III).

101. Turning to the circumstances of the present case, the Court points out that the decision of 29 October 2004 by the remand prison authorities required the applicant to spend an unspecified period of his detention in a situation amounting to solitary confinement.

102. The Court reiterates at the outset that the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not

in itself amount to inhuman treatment or punishment (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 191, ECHR 2005-IV). In many States parties to the Convention more stringent security measures, which are intended to prevent the risk of escape, attack or disturbance of the prison community, exist for dangerous prisoners (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 138, ECHR 2006-IX). Whilst prolonged removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005).

103. Turning to the circumstances of the present case, the Court points out that it is not clear from the parties' submissions whether the applicant has ever been transferred away from wing 2/1 of the remand prison. Nonetheless, it transpires from the applicant's observations on admissibility and merits of the case that by 1 November 2007 he was still being kept there. It follows that the applicant spent at least three years in solitary confinement.

104. The Court observes that solitary confinement is one of the most serious measures which can be imposed within a prison. Bearing in mind the gravity of the measure, the domestic authorities are under an obligation to assess all relevant factors in an inmate's case before placing him in solitary confinement (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 83, 27 January 2009, and *Onoufriou v. Cyprus*, no. 24407/04, § 71, 7 January 2010).

105. The applicant was suspected of a non-violent economic crime and had no record of disorderly conduct while in the remand prison. It is noteworthy that the Government have not claimed that the applicant was in any manner dangerous, either to himself or to others (see, by contrast, *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V). In the Government's submission, the only reason for his placement in solitary confinement was to protect him from a vague risk to his life and limb.

106. The applicant, in his turn, claimed that he was segregated from other inmates under the false pretext that his life was at peril. It follows from the applicant's submissions that he was not promptly informed of the reasons for his transfer to wing 2/1. Moreover, the remand prison authorities did not explain to him what danger, in their view, he would have faced if kept in a shared cell. The Court is deeply concerned by the fact that a person may be placed in an individual cell designed for prisoners convicted to life imprisonment without being offered at the very least an explanation for such isolation. The situation is even more disquieting considering that by 29 October 2004 the applicant had not been tried by a court and therefore was to be presumed innocent.

107. Owing to the Government's failure to provide detailed information on the matter, the Court is not in a position to assess whether the remand prison authorities had valid reasons to suspect that third parties had intended to harm the applicant. Assuming, however, for the sake of argument that the remand prison authorities did indeed have solid grounds to believe that the applicant's life was at peril prior to deciding on his transfer to wing 2/1, the Court will now examine whether after a certain lapse of time they were under an obligation to reassess the necessity of his continued isolation.

108. The Court reiterates in this connection that, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by. Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement (see *Ramirez Sanchez*, cited above, § 139, and *Onoufriou*, cited above, § 71).

109. The Court cannot but observe in astonishment that in the present case the remand prison authorities for three years made no attempts to justify the applicant's protracted detention in solitary confinement, let alone its extension. It does not follow from the Government's submissions that any measures – however formal or superficial – were taken at any point to verify whether the presumed risk to the applicant's life still existed. Moreover, the parties have not disputed the fact that the applicant's physical or psychological aptitude for long-term isolation was never assessed by a medical specialist.

110. The Court also takes into account the fact that the Government have provided no information to refute the applicant's allegations that he was kept in nearly absolute social isolation (see *Rohde*, cited above, § 97).

111. Lastly, the Court wishes to emphasise that it is essential that a prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement (see *Ramirez Sanchez*, cited above, § 145). It does not appear from the Government's submissions that domestic law enabled the applicant to institute such proceedings.

112. In view of the above the Court finds that the applicant's prolonged solitary confinement amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. In these circumstances, the Court does not need to consider separately the applicant's arguments concerning the physical conditions of his detention.

113. There has therefore been a violation of Article 3 of the Convention on account of the applicant's solitary confinement.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE INADEQUATE MEDICAL ASSISTANCE AVAILABLE TO THE APPLICANT IN DETENTION

114. The applicant complained, invoking Articles 2 and 3 of the Convention, that inadequate medical assistance had been available to him in remand prison IZ-47/1. The Court considers that these complaints fall to be examined under Article 3 of the Convention.

A. The parties' submissions

1. The Government

115. The Government insisted that the applicant had received adequate medical assistance while in the remand prison.

116. He had regularly been examined by a general practitioner and had also undergone specialist check-ups by competent doctors. The applicant had been subjected to a number of medical tests, such as general blood tests, which had sufficed to assess his state of health. He had received treatment appropriate to his state of health.

117. There had been no clinical indications that the applicant had required antiretroviral therapy.

118. The applicant had not complained about his health to the remand prison authorities; nor had he requested them to administer treatment to him.

2. The applicant

119. The applicant maintained that he had not been provided with adequate medical assistance while in detention.

120. Since June 2004 he had not been examined by an infectious-diseases specialist. Biannual examinations by a general practitioner had been insufficient given the nature of his illnesses. The general practitioner had provided him only with Analgin and Papaverine.

121. The applicant's complaints concerning liver pains had been entered in his medical record only after the case had been communicated to the Government.

122. The Government's statement that on 3 June 2004 the applicant had undergone a check-up in the Botkin City Clinical Hospital was untruthful as the applicant had not been taken to any hospital on that or any other day.

123. He further argued, referring to the rulings of 15 July and 25 October 2004, as well as to those of 8 April and 5 May 2005, that he had raised the issue of the lack of medical assistance provided to him in the remand prison with the Kuybyshevskiy District Court of St Petersburg.

B. The Court's assessment

1. Admissibility

124. As to the Government's statement that the applicant had not complained to the remand prison authorities about his state of health, which may be understood as a plea of non-exhaustion, the Court, reiterating the principles cited in paragraph 95 above, considers that the Government failed to substantiate their claim that the remedy referred to was effective. Moreover, it was clearly not for the applicant, a patient with no medical background, to request that specific treatment be administered to him in the absence of a doctor's prescription. The Government's objection in this respect must therefore be dismissed.

125. The Court further considers that the applicant's medical condition gave rise to a continuing situation and that it has competence to examine the complaint concerning the allegedly inadequate medical assistance in respect of the period from 20 May 2004, when the applicant was diagnosed with HIV.

126. The Court finds that the complaint concerning the applicant's alleged lack of adequate medical assistance in the remand prison is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

127. Referring to the aforementioned general principles relating to the prohibition of ill-treatment (see paragraph 99 above), the Court further reiterates that, although Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds save in exceptional cases (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001), the lack of appropriate medical treatment in prison may in 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*, cited above, §§ 93-94).

128. In order to establish whether the applicant received the 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 the timely diagnosis and treatment of his illness (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006, and *Mechenkov v. Russia*, no. 35421/05, § 102, 7 February 2008).

129. Turning to the circumstances of the present case, the Court points out that the applicant contested the Government's submission that he had undergone a check-up at Botkin Hospital. However, the Court does not deem it necessary to establish whether in fact he was admitted to the medical institution in question since this is not crucial for its assessment.

130. The main dispute between the parties is the issue of whether antiretroviral treatment should have been administered to the applicant while in detention. The Court first observes that the information at its disposal pertaining to the medical assistance rendered to the applicant while in detention is scarce. It further notes that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *Altun v. Turkey*, no. 24561/94, § 42, 1 June 2004). However, it will not establish whether the applicant in fact required antiretroviral treatment since it is not its task to rule on matters lying exclusively within medical specialists' field of expertise. Instead, in order to determine whether Article 3 of the Convention has been complied with, the Court will focus on determining whether the domestic authorities provided the applicant with the minimum scope of medical supervision to ensure the timely commencement of the requisite treatment.

131. The Court takes note of the Government's submission that the applicant was regularly subjected to complete blood counts (see paragraph 116 above). According to the information obtained by the Court of its own motion, a complete blood count is a routine test panel that gives information about white blood cells (leucocytes), red blood cells (erythrocytes) and platelets (thrombocytes) in a patient's blood. However, such tests do not detect HIV and are therefore insufficient for effective monitoring of an HIV-positive person's condition.

132. According to the recommendations by the World Health Organization, a specific blood test – the CD4 count – is required to identify if patients with HIV with WHO clinical stage 1 or 2 disease need to start antiretroviral treatment (see paragraph 84 above). The Standards adopted at national level also recommend that a CD4 count in HIV-positive patients be carried out at least once a year (see paragraph 80 above). In the Government's submission, the applicant was diagnosed with HIV with WHO clinical stage 2 disease as early as June 2004 (see paragraph 45 above). Nonetheless, there is no indication in the material at the Court's disposal that the applicant has undergone a CD4 count since then.

133. The Court is gravely concerned by the Government's submission that the clinical data did not suggest that antiretroviral treatment should be administered to the applicant (see paragraph 117 above), when no requisite diagnostic measures had been taken to carry out a CD4 count, which is a primary source for the data in question. Such failure to monitor the applicant's state of health for more than six years is regrettable.

134. In the light of the above, the Court finds that the applicant was not provided with the minimum scope of medical supervision for the timely treatment of his HIV infection while in detention and thus did not receive adequate medical assistance for his condition, a situation amounting to inhuman and degrading treatment.

135. Therefore, there has been a violation of Article 3 of the Convention on account of the inadequate medical assistance available to the applicant while in detention.

III. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

136. In his application form the applicant complained that his detention from 24 March to 12 May 2005 had not been "in accordance with a procedure prescribed by law". He relied on Article 5 § 1 (c) of the Convention, which reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ..."

A. The parties' submissions

1. The Government

137. The Government contested the applicant's allegations. The applicant's continued detention in custody had been duly authorised by a competent court pursuant to the procedure established by domestic law. The applicant had had legal assistance and had been entitled to appeal against the first-instance rulings.

138. The applicant had not appealed to a higher court against the first-instance decisions on his placement in custody and the extensions of his detention. Moreover, he had not complained about the decision of

24 March 2005 to return the case to the prosecutor to a higher court and thus had failed to exhaust domestic remedies on that account.

139. Referring to the Constitutional Court's ruling of 22 March 2005, the Government argued that legal provisions governing custodial detention were common to all stages of criminal proceedings and that therefore Article 109 of the CCP applied where a criminal case had been returned to a prosecutor.

140. According to the Government, the applicant's detention had not been retroactively authorised by the decision of 8 April 2005 since between 24 March and 8 April 2005 the applicant had been detained pursuant to the decision of 24 March 2005 to the effect that the preventive measure should remain unchanged.

2. The applicant

141. The applicant complained that after the trial court's decision of 24 March 2005 to return his case to the prosecutor his detention had not been "in accordance with a procedure prescribed by law". He argued that Article 237 of the CCP provided that if a judge returned the case to the prosecutor, the latter should rectify the flaws indicated within five days. However, the prosecutor had returned the case to the investigator two weeks after the ruling of 24 March 2005, and it had remained with the investigator for over a month.

142. The Kuybyshevskiy District Court's decision of 8 April 2005 to extend his pre-trial detention had been unlawful because the court had relied on Article 109 of the Code of Criminal Procedure, which did not apply to instances where a case had been returned by a court to the investigative authorities. Furthermore, in the ruling of 8 April 2005 the court had granted the prosecutor's request to extend the applicant's detention for one month until 5 May 2005. Therefore, the court had retrospectively authorised his detention between 5 and 8 April 2005 in breach of the domestic procedure.

143. In his observations of 17 August 2007 on the admissibility and merits of the application, the applicant complained for the first time that two periods of his detention had been unlawful: between 26 December 2004 and 24 March 2005, and between 12 and 27 May 2005.

B. The Court's assessment

1. Admissibility

(a) Detention between 26 December 2004 and 24 March 2005 and between 12 and 27 May 2005

144. The Court observes that the applicant raised in substance the complaints regarding the above periods of his detention only on 17 August

2007 (see paragraph 143 above) and hence failed to comply with the six-month rule.

145. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention.

(b) Detention between 24 March and 5 April 2005

146. The Court notes at the outset that, in so far as the applicant may be understood to be complaining that the decision of 24 March 2005 was unlawful, he did not appeal to a higher court against the trial court's decision although he was entitled to do so (see paragraph 14 above). Therefore, the Government's plea of non-exhaustion should be allowed.

147. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(c) Detention between 5 and 8 April 2005

148. The Court considers, in the light of the parties' submissions, that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. No other ground for declaring it inadmissible has been established. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

(d) Detention between 8 April and 12 May 2005

149. The Court reiterates that where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports of Judgments and Decisions* 1998-VI; *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII; and *Dzhurayev v. Russia*, no. 38124/07, § 66, 17 December 2009).

150. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the

circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

151. Bearing in mind the above principles, the Court will now examine the applicant's argument that, pursuant to Article 237 of the CCP, the prosecutor should have eliminated the flaws in the investigation indicated by the trial court within five days, failing which the applicant's detention during the period of the additional investigation had been unlawful.

152. In the Court's view, the wording of Article 237 of the CCP does not warrant the conclusion that the five-day time-limit for the elimination of flaws, provided for in paragraph 2, is to be taken into consideration when establishing time-limits for custodial detention pending additional investigation. The only reference to custodial detention made in Article 237 § 3 of the CCP merely concerns the fact that a court should decide on a preventive measure in a decision to refer a case for additional investigation and does not imply that there are any specific time-limits for detention pending additional investigation. In such circumstances the Court cannot conclude that detention pending additional investigation for a term exceeding five days would be *ipso facto* unlawful as breaching Article 237 § 2 of the CCP.

153. The Court further points out that it has on many occasions examined the peculiar feature of the Russian legal framework consisting of detention "pending investigation" and detention "pending trial", and the corresponding methods of calculating relevant periods of detention. In such a framework, several non-consecutive periods of detention within one set of criminal proceedings can be classified as "pending investigation" or "pending trial" (see *Shteyn (Stein) v. Russia*, no. 23691/06, § 91, 18 June 2009).

154. The Court observes that the Kuybyshevskiy District Court, when deciding to extend the term of the applicant's detention, expressly relied on Article 109 of the CCP (see paragraph 17 above), which was fully compatible with the position reflected in the case-law of the Constitutional Court of the Russian Federation (see paragraph 78 above). The Court thus sees no reason to doubt that time-limits for custodial detention pending additional investigation are to be found in Article 109 of the CCP. The mere fact that the applicant disagreed that this legal provision was applicable in his case does not indicate that the national courts erred in their interpretation and application of domestic law.

155. In order to determine whether the applicant's detention between 8 April and 13 May 2005 was compatible with the requirements of Article 109 of the CCP, the Court will now establish whether the terms of detention "pending investigation" laid down in this provision were complied with.

156. The applicant's detention "pending investigation" consisted of two periods. The first one started on 18 May 2004, when the applicant was arrested, and ended on 24 December 2004, when his criminal case was transferred to the trial court. It lasted for seven months and seven days. Upon receipt of the case file by the trial court the applicant was detained "pending trial" in accordance with Article 255 of the CCP. The second period of the applicant's detention "pending investigation" commenced on 5 April 2005, when the case was transferred to the prosecutor, and ended on 13 May 2005, when the case was taken up by the trial court. It thus lasted one month and seven days. The overall period of the applicant's detention "pending investigation" therefore amounted to eight months and fourteen days.

157. Article 109 § 2 of the CCP allows for the extension of the term of custodial detention "pending investigation" up to twelve months provided that a detainee is charged with a serious or particularly serious crime and that a prosecutor of a constituent entity ("subject") of the Russian Federation supports a request for such extension. Both conditions were met in the applicant's case as he had been charged with attempted swindling, a serious crime under the domestic classification, and the requests for extension examined by the Kuybyshevskiy District Court on 8 April and 5 May 2005 had been endorsed by the St Petersburg City Prosecutor.

158. In such circumstances the Court finds no grounds to conclude that the applicant's detention "pending investigation" exceeded the time-limits established by domestic law and thus cannot declare that it was unlawful. Thus, the Court is satisfied that the national law was complied with in that respect.

159. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must therefore be declared inadmissible.

2. Merits

160. The Court reiterates at the outset that Article 5 of the Convention protects the right to liberty and security. This right is of primary importance "in a democratic society" within the meaning of the Convention (see, amongst many other authorities, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12; *Assanidze v. Georgia* [GC], no. 71503/01, § 169, ECHR 2004-II; and *Ladent v. Poland*, no. 11036/03, § 45, ECHR 2008-...).

161. All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 (see *Medvedyev and Others, v. France* [GC], no. 3394/03, § 77, ECHR 2010-...). Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention

refers essentially to national law. It requires at the same time that any deprivation of liberty be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008-...).

162. No detention which is arbitrary can be compatible with Article 5 § 1, the notion of "arbitrariness" in this context extending beyond the lack of conformity with national law. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. Moreover, the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see *Mooren v. Germany* [GC], no. 11364/03, § 77, ECHR 2009-...).

163. Turning to the issue of the lawfulness of the applicant's detention between 5 and 8 April 2005, the Court reiterates that it is unable to examine on the merits the applicant's complaint regarding the detention pursuant to the decision of 24 March 2005 owing to the fact that the applicant failed to exhaust the available domestic remedies in this respect (see paragraph 146 above). However, without assessing the lawfulness of the decision of 24 March 2005, the Court observes that it did not specify any time-limits for the applicant's detention. In such circumstances it is crucial for the Court to establish on which date the decision by the Kuybyshevskiy District Court ceased to suffice to justify the detention and a new judicial authorisation for the applicant to remain in custody was required.

164. The Court is perplexed by the fact that on 8 April 2005 the applicant's detention was extended for "one month, up to eight months and five days in total, that is, until 5 May 2005" (see paragraph 17 above). It is clear that if the one-month period had been calculated from 8 April 2005, it would have ended on 8 May 2005, and not three days earlier. The Court doubts that the domestic court would have kept referring to the date of 5 May 2005 throughout the proceedings simply by reproducing a clerical error.

165. The Court points out that Article 109 of the CCP, on which the Kuybyshevskiy District Court based its decision, does not allow retrospective authorisation of detention "pending trial" (see paragraph 74 above). However, it follows from the appeal ruling of 4 April 2007 by the St Petersburg City Court that the prosecutor was well aware of the fact that the applicant's detention after 5 April 2005 should have been extended by a new judicial decision (see paragraph 32 above). It is thus plausible to assume that in the view of the Kuybyshevskiy District Court the previous authorisation of the applicant's detention "pending investigation" had expired on 5 April 2005.

166. The Court finds it difficult to understand how the domestic authorities calculated the moment at which the investigation of the applicant's case needed to be prolonged and is struck by the fact that the Kuybyshevskiy District Court blatantly failed to explain why it extended his detention for twenty-seven days while referring to this period as "one month". Given that the legal grounds for the applicant's detention between 5 and 8 April 2005 were imprecise, the Court is bound to conclude that during this period the applicant was arbitrarily deprived of his liberty.

167. In the light of the above considerations, the Court concludes that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's detention between 5 and 8 April 2005.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

168. In his initial application form the applicant complained under Article 6 § 3 (b) and (c) about the Kuybyshevskiy District Court's refusal to replace his counsel at the hearing of 5 May 2005. In his observations of 1 November 2007 on the admissibility and merits of the case he complained under Article 5 § 4 of the Convention that his appeal against the ruling of 26 April 2005 had been examined only on 4 April 2007.

169. Having regard to all the material in its possession, and in so far as these complaints fall 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

170. 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

171. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

172. The Government contended that this claim was excessive and that the finding of a violation would constitute adequate just satisfaction.

173. The Court notes that it has found a number of violations of the Convention. In these circumstances, the Court considers that the applicant's

suffering and frustration cannot be compensated for by a mere finding of violations. Making its assessment on an equitable basis, the Court awards the applicant EUR 27,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

174. The applicant claimed 350,000 Russian roubles (EUR 10,091) in total for the costs and expenses incurred before the domestic courts and the Court. He submitted invoices confirming that the sums had been paid to his lawyer. The applicant also claimed translation fees related to his correspondence with the Court; however, he did not provide any evidence that such expenses had actually been incurred.

175. The Government asserted that the sums claimed were excessive and that part of the claim was not supported by relevant evidence.

176. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and 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 10,091, covering costs under all heads.

C. Default interest

177. 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 complaints under Article 3 of the Convention concerning the applicant's solitary confinement and the lack of adequate medical assistance available to him in remand prison IZ-47/1, as well as the complaint under Article 5 § 1 of the Convention as regards his detention between 5 and 8 April 2005, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's solitary confinement;

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

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's detention between 5 and 8 April 2005;

5. *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 27,000 (twenty-seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, as well as EUR 10,091 (ten thousand and ninety-one euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 14 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President