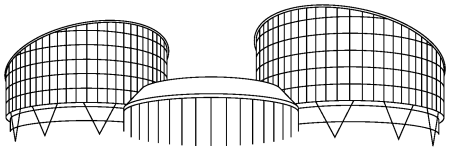

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ANDREY LAVROV v. RUSSIA

(Application no. 66252/14)

JUDGMENT

STRASBOURG

1 March 2016

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

In the case of Andrey Lavrov v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 9 February 2016,

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

PROCEDURE

1. The case originated in an application (no. 66252/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Borisovich Lavrov ("the applicant"), on 7 October 2014.

2. The applicant was represented by Ms I. Khrunova, a lawyer practising in Kazan. The Russian Government ("the Government") were represented Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had not received adequate medical assistance while in detention.

4. On 16 October 2014 the President of the Section, acting upon the applicant' s request, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should be immediately examined by medical experts independent from the prison system, with a view to determining (1) whether the treatment he was receiving in the temporary detention facility was adequate for his condition; (2) whether his state of health was compatible with the conditions of his detention; and (3) whether his condition required his placement in a specialised hospital or release.

5. On 4 March 2015 the application was communicated to the Government. Among other matters, the Court asked the Government whether their response to the Court's decision of 16 October 2014 to impose an interim measure under Rule 39 of the Rules of Court could entail a breach of Article 34 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in Chelyabinsk.

A. The applicant's state of health

7. In 2012 the applicant, while serving a prison sentence, was diagnosed with lymphoma. He was admitted to prison hospital no. 3 of the Chelyabinsk Region and underwent two courses of chemotherapy.

8. In December 2012 a court authorised the applicant's early release on health grounds. He was then monitored by an oncologist in a civil hospital, having continued with chemotherapy. The Government submitted that in May 2013 the applicant had undergone an in-depth examination in the oncology department of the Chelyabinsk regional hospital, where he was diagnosed with lymphoproliferative disorder affecting the cervical, axillary, mediastinal and retroperitoneal lymph nodes. The applicant did not complete the medical examinations or treatment, including chemotherapy. He was arrested on 10 September 2013.

9. By judgments of 30 September 2013, 22 November 2013, and 16 December 2013 the applicant was convicted of fraud, robbery and theft respectively. He was sent to serve his sentence in detention facility no. 3. On 3 March 2014 he was transferred to the prison tuberculosis hospital.

10. On 13 March 2014 a medical panel, comprising the deputy head of the prison tuberculosis hospital and doctors from the same hospital, examined the applicant and diagnosed him with progressive non-Hodgkin lymphoma in acute III B stage, with lesions of the cervical, axillary and abdominal lymph nodes. The panel concluded that the applicant was eligible for early release as he suffered from malignant formations of lymphatic and haematogenous tissues, a disease included in the List of serious illnesses precluding the serving of sentences in correctional institutions, as provided for by Decree no. 54 of the Government of the Russian Federation of 6 February 2004 (hereinafter "the List").

11. On 10 April 2014, with reference to the conclusions of the medical panel, the applicant made an application for early release. On 26 May 2014 the Metallurgicheskiy District Court of Chelyabinsk dismissed the application. Having accepted that the applicant's illness was included in the List, and describing his condition as "stable [but] serious", the court, nevertheless, found that the drugs necessary for his treatment were available in the prison tuberculosis hospital, and that the applicant was undergoing the necessary medical procedures. The court further pointed out that it was not clear who would take care of the applicant in the event of his release from prison. The applicant did not appeal against the decision.

12. On 30 June 2014 the applicant's sister gave a written undertaking to take care of the applicant should he be released.

13. According to a certificate issued by the prison tuberculosis hospital at the request of the applicant's lawyer, the drugs necessary for the applicant's chemotherapy were unavailable at the hospital.

14. On 1 July 2014 the medical panel from the prison tuberculosis hospital again examined the applicant. The diagnosis was that the applicant had progressive non-Hodgkin lymphoma in acute IV B stage with lesions of the abdominal lymph nodes. It was once again noted that the applicant was eligible for release on health grounds.

15. The applicant made another application for release at the end of July 2014. He submitted that his disease had progressed to its final stage and that he had relatives who could take care of him.

16. On 12 September 2014 the Metallurgicheskiy District Court held a hearing. B., a doctor from the prison tuberculosis hospital, testified that the applicant needed chemotherapy and radiation therapy, but was unable to receive such treatment in detention since the necessary equipment was unavailable at the hospital. On the same date the District Court dismissed the application for release once again, noting that the applicant had a tendency to reoffend and concluding that he was receiving adequate medical care in detention.

17. The applicant appealed.

B. Rule 39 request

18. In October 2014 the applicant asked the Court to apply Rule 39 of the Rules of Court and to authorise his immediate release from detention as an interim measure. The applicant claimed that he was not receiving the necessary medical assistance and treatment in detention, despite his suffering from a life-threatening and rapidly progressing illness. He relied on a certificate from the prison hospital confirming the absence of drugs for his chemotherapy (see paragraph 13 above).

19. On 16 October 2014 the Court decided to indicate to the Russian Government, under Rule 39, that it was desirable in the interests of the proper conduct of the proceedings that the applicant be immediately examined by medical experts, including an oncologist, independent from the prison system with a view to determining: (1) whether the treatment he was receiving in detention was adequate for his condition; (2) whether his current state of health was compatible with detention in the conditions of a correctional colony or prison hospital; and (3) whether his current condition required his placement in a specialised hospital or release. The Russian Government were also asked to ensure the applicant's immediate transfer to a specialised hospital if the medical experts concluded that the applicant required placement in such a hospital.

20. On 7 November 2014 the Government responded to the Court's letter of 17 October 2014, submitting the following documents:

- a handwritten copy of the applicant's medical history drawn up during his detention. The history included a form for consent to treatment, signed by the applicant. It also contained a detailed schedule showing the daily intake of drugs by the applicant. As appears from that document, he received basic analgesic and anti-inflammatory drugs, antihistamines, sleeping pills, antidepressants, antiemetics and neuroleptics.

- certificates issued by the acting head of the prison tuberculosis hospital, indicating that the applicant had not been provided with chemotherapy for his lymphoma as he had not consented to that treatment when it had been offered to him, in March and June 2014. According to the acting head of the hospital, the applicant had refused to make a written statement to that effect. The certificate also indicated that an oncologist had examined the applicant four times, once in March and September 2014 and twice in October 2014. At the end of October 2014 the applicant's condition was considered to be serious: he was suffering severe pain and increasing asthenia, had coughed blood, and his lymph nodes continued to grow. In another certificate, the acting head of the hospital stressed that the applicant was suffering from a life-threatening oncological disease, particularly taking into account the advanced stage of his illness. In addition, in a separate certificate, the acting head of the hospital noted that the prison tuberculosis hospital where the applicant was detained employed an oncologist and had the necessary medicines for the applicant's treatment.

- copies of the applicant's complaints to various Russian officials, including the Chelyabinsk regional ombudsman, the Prosecutor General's office, the regional department for the execution of sentences and the acting head of the prison tuberculosis hospital, about the poor quality of his medical care in detention. The complaints also contained a request for a medical examination and for his early release on health grounds.

21. The Government also answered the three questions which, in its letter of 17 October 2014, the Court had asked them to refer to independent medical experts. In particular, in their answer to the first question concerning the adequacy of the applicant's treatment, the Government stressed that the applicant had regularly undergone in-patient treatment and examinations in relation to his oncological illness. They noted that the applicant's condition was considered to be moderately serious and stressed that in March and June 2014 he had failed to consent to the cancer treatment. They further directed the Court to the documents enclosed with their reply (see paragraph 20 above).

22. In their response to the second question about the compatibility of the applicant's state of health with the conditions of the correctional colony and prison hospital, the Government emphasised that the applicant's hospital employed the necessary specialists, and had the necessary

equipment and drugs to treat him. They further noted that the applicant was in pain and was weak, that he occasionally coughed blood and that his lymph nodes continued to grow. The Government continued by indicating that he would be provided with chemotherapy as soon as the general blood test results allowed and the applicant consented.

23. In replying to the third question as to whether the applicant needed to be transferred to a specialised hospital or be released, the Government observed that the applicant's oncological illness was incurable and could lead to his death. They relied on the two reports issued by the doctors from the prison tuberculosis hospital on 13 March and 1 July 2014, according to which the applicant was suffering from a condition included in the list of serious illnesses precluding the serving of sentences in correctional institutions, as provided for by Decree no. 54 of the Government of the Russian Federation. However, the Russian courts had refused to release the applicant on health grounds. Another examination of the applicant by the hospital medical panel had been scheduled for November 2014.

C. Developments after the application of the interim measure

24. The applicant informed the Court that on 28 November 2014, acting upon his appeal, the Chelyabinsk Regional Court had quashed the decision of 12 September 2014 and ordered his release. With reference to B.'s testimony, the Regional Court held that the District Court's findings as to the adequacy of the treatment received by the applicant in the hospital were not in accordance with the established facts. It also pointed to the District Court's failure to comment on the undertaking by the applicant's sister to take care of the applicant after his release.

25. On an unspecified date after 28 November 2014 the applicant was released.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

26. The relevant provisions of Russian and international law on the medical care of detainees are set out in the following judgments: *Amirov v. Russia*, no. 51857/13, §§ 50-57, 27 November 2014; *Pakhomov v. Russia*, no. 44917/08, 30 September 2011; and *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, 27 January 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

27. The applicant argued that the Government's failure to have his medical examination performed with a view to answering the three questions asked by the Court had been in breach of the interim measure indicated by the Court under Rule 39 of the Rule of Court and had thus violated his right to individual application. He relied on Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals 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."

Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

A. Submissions by the parties

28. The Government opened their argument with an assertion that it could not be inferred from Article 34 of the Convention or "from any other source" that the interim measure indicated under Rule 39 of the Rules of Court was legally binding. They further stressed that the Rules of Court, and accordingly the interim measure applied, did not have binding force on the State Party and that, accordingly, their failure to submit answers to the questions raised by the Court in its letter of 17 October 2014 did not entail a violation of Article 34, or of any other provision of the Convention.

29. The Government continued by arguing that the applicant's right to communicate with the Court had in no way been interfered with. The applicant had retained counsel, who had submitted his application to the Court. The applicant and his counsel had continued to communicate freely with the Court and still did so. Lastly, the Government submitted that in response to the questions in the letter of 17 October 2014 they had provided the Court with medical reports prepared by specialists from the prison hospital whose independence and competence "did not raise any doubts", particularly in view of the fact that they had repeatedly recommended the

applicant's release on grounds of ill health. The Government also stressed that in their response of 7 November 2014 they had already answered the three questions raised.

30. The applicant argued that the situation was analogous to the case of *Amirov* (cited above) in which the Court had found a violation of Article 34 of the Convention following the Government's failure to comply with an interim measure imposed under Rule 39. As in the *Amirov* case (ibid.), the Russian authorities had again failed to comply with an order by the Court to provide an expert opinion by independent medical specialists assessing the applicant's state of health.

B. The Court's assessment

1. General principles

31. The Court reiterates that, pursuant to Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, and this has been consistently reaffirmed as a cornerstone of the Convention system (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005‑I). Although the object of Article 34 of the Convention is essentially that of protecting an individual against any arbitrary interference by the authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there are positive obligations inherent in Article 34 of the Convention requiring the authorities to furnish all the necessary facilities to make possible the proper and effective examination of applications. Such an obligation will arise in situations where applicants are particularly vulnerable (see *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010; *Savitskyy v. Ukraine*, no. 38773/05, § 156, 26 July 2012; and *Iulian Popescu v. Romania*, no. 24999/04, § 33, 4 June 2013).

32. According to the Court's established case-law, a respondent State's failure to comply with an interim measure entails a violation of the right of individual application (see *Mamatkulov and Askarov*, cited above, § 125, and *Abdulkhakov v. Russia*, no. 14743/11, § 222, 2 October 2012). The Court cannot emphasise enough the special importance attached to interim measures in the Convention system. Their purpose is not only to enable an effective examination of the application to be carried out, but also to ensure that the protection afforded to the applicant by the Convention is effective. Such measures subsequently allow the Committee of Ministers to supervise the execution of the final judgment. Interim measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention (see *Mamatkulov and Askarov*, cited above, § 125; *Shamayev and Others*

v. Georgia and Russia, no. 36378/02, § 473, ECHR 2005‑III; *Aoulmi v. France*, no. 50278/99, § 108, ECHR 2006‑I; and *Ben Khemais v. Italy*, no. 246/07, § 82, 24 February 2009).

33. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, only in truly exceptional cases and on the basis of a rigorous examination of all the relevant circumstances. In most of these cases, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. The vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also requires that the utmost importance be attached to the question of the States Parties' compliance with the Court's indications in that regard (see, *inter alia*, the firm position on that point expressed by the States Parties in the Izmir Declaration and by the Committee of Ministers in Interim Resolution CM/ResDH(2010)83 in the above-mentioned case of *Ben Khemais*). Any laxity on this question would unacceptably weaken the protection of the core rights in the Convention and would not be compatible with its values and spirit (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161); it would also be inconsistent with the fundamental importance of the right of individual petition and, more generally, undermine the authority and effectiveness of the Convention as a constitutional instrument of European public order (see *Mamatkulov and Askarov*, cited above, §§ 100 and 125, and, *mutatis mutandis*, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 75, Series A no. 310).

34. Article 34 of the Convention will be breached if the authorities of a Contracting State fail to take all the steps which could reasonably be taken in order to comply with an interim measure indicated by the Court (see *Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009). It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (ibid., §§ 92-106; see also *Aleksanyan v. Russia*, no. 46468/06, §§ 228-32, 22 December 2008, in which the Court concluded that the Russian Government had failed to honour their commitments under Article 34 of the Convention as a result of their failure to promptly transfer a seriously ill applicant to a specialised hospital and to subject him to an examination by a mixed medical commission including doctors of his choice, in disregard of an interim measure imposed by the Court under Rule 39).

2. Application to the present case

35. Turning to the circumstances of the present case, the Court notes that in a letter sent on 16 October 2014 it indicated to the Russian Government, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, that the applicant should be immediately examined by medical experts independent from the penal system with a view to determining three issues: (1) whether the treatment he was receiving in the prison hospital was adequate for his condition; (2) whether his state of health was compatible with the conditions of his detention; and (3) whether the applicant's condition required his placement in a specialised hospital or his release. The Government responded by submitting the applicant's medical record drawn up by the detention authorities, certificates prepared by the acting head of the prison hospital, and copies of the applicant's complaints to various officials. They further cited two medical reports of 13 March and 1 July 2014, each prepared by doctors from the prison tuberculosis hospital. The Government themselves answered the three questions put by the Court (see paragraphs 20-23 above).

36. Following the communication of the case, the Government insisted that they had fully complied with the interim measure by submitting the two medical reports and by providing detailed answers to the Court's questions in their letter of 7 November 2014. The Court is not convinced by the Government's argument. It reiterates that the aim of the interim measure in the present case – as formulated in the Court's decision of 16 October 2014, of which the Government were notified in a letter of 17 October 2014 – was to obtain an independent medical expert assessment of the state of the applicant's health, the quality of the treatment he was receiving and the adequacy of the conditions of his detention in view of his medical needs. That expert evidence was necessary to decide whether, as the applicant argued, his life and limb were at real risk as a result of the alleged lack of requisite medical care in detention. In addition, the Court was concerned with the contradictory nature of the evidence collected by the applicant and submitted with his application and his request for an interim measure, in particular the medical certificate from the applicant's prison hospital confirming the unavailability of the necessary drugs (see paragraph 13 above), and the findings of the Russian courts that the applicant was receiving the necessary medical assistance. The interim measure in the present case was therefore also meant to ensure that the applicant could effectively pursue his case before the Court (see, *mutatis mutandis*, *Shtukaturov v. Russia*, no. 44009/05, § 141, ECHR 2008).

37. Whilst the formulation of an interim measure is one of the elements to be taken into account in the Court's analysis of whether a State has complied with its obligations under Article 34 of the Convention, the Court must have regard not only to the letter but also to the spirit of the interim

measure indicated (see *Paladi*, cited above, § 91) and, indeed, to its very purpose. The main purpose of the interim measure, as indicated by the Court in the present case – and the Government did not claim to be unaware of this – was to prevent the applicant's exposure to inhuman and degrading suffering in view of his poor health and his remaining in a prison hospital that was – according to him – unable to ensure that he received adequate medical assistance. There could have been no doubt about either the purpose or the rationale of that interim measure.

38. The Court does not need to assess the professional expertise or qualifications of the doctors who prepared the medical reports of 13 March and 1 July 2014, or their independence from the penal system, as it considers that their opinion as reflected in the two reports did not provide any answers to the three questions put by the Court. The aim of the two medical examinations, the results of which were set out in those reports, was to compare the applicant's medical condition with the exhaustive list of illnesses provided for by the Government decree, and which could have warranted his release. At no point during the examinations did the doctors from the prison hospital assess the applicant's state of health independently from that list or evaluate whether his illness, given its current manifestation, nature and duration, required his transfer to a specialised hospital. Nor did they pay any attention to the quality of the medical care he had been receiving while in detention, or to the conditions in which he was being detained. The reports therefore have no relevance to the implementation of the interim measure indicated by the Court to the Russian Government in the present case (see, for similar reasoning, *Amirov*, cited above, § 91).

39. The Government further argued that they themselves had responded to the three questions put by the Court in its decision of 16 October 2014. The Court notes in this connection that in view of the vital role played by interim measures in the Convention system, they must be strictly complied with by the State concerned. The Court cannot conceive, therefore, of allowing the authorities to circumvent an interim measure such as the one indicated in the present case by replacing expert medical opinion with their own assessment of the applicant's situation. Yet that is exactly what the Government did in the present case (see paragraphs 20-23 above). In so doing, the State has frustrated the purpose of the interim measure, which sought to enable the Court, on the basis of relevant, independent medical opinion, to effectively respond to and, if need be, prevent the possible continued exposure of the applicant to physical and mental suffering in violation of the guarantees of Article 3 of the Convention (see *Khloyev v. Russia*, no. 46404/13, § 67, 5 February 2015, and *Salakhov and Islyamova v. Ukraine*, no. 28005/08, § 222, 14 March 2013.

40. The Government did not demonstrate any objective impediment preventing compliance with the interim measure (see *Paladi*, cited above, § 92). Consequently, the Court concludes that the State has failed to comply

with the interim measure indicated by it in the present case under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained that he had been unable to obtain effective medical care while in detention, which had put him in a life-threatening situation and subjected him to severe physical and mental suffering, in violation of the guarantees of 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. Submissions by the parties

42. Having referred to the general principles laid down by the Court in a number of judgments concerning the standards of medical care of detainees (see *Aleksanyan*, cited above; *Mirilashvili v. Russia*, no. 6293/04, 11 December 2008; *Mouisel v. France*, no. 67263/01, ECHR 2002-IX; and *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), the Government stressed that the applicant had received comprehensive medical care in detention. They relied on documents enclosed with their reply of 7 November 2014. The Government further submitted that the applicant had failed to exhaust effective domestic remedies. They stressed that a complaint to the administration of the detention facility, the regional department for execution of sentences or a prosecutor's office could have resulted in the "termination of a violation" and could have prevented "the occurrence of negative consequences", while a complaint to a court could have led to appropriate redress. The applicant, however, while applying to the Russian courts, had always sought his release and had never attempted to assess the quality of the medical care afforded to him. The Government noted that a Russian court had performed that assessment on 28 November 2014, having ordered the applicant's release. The Government concluded by stressing the full capacity of the Russian judicial system, based on the principle of humanism, to effectively protect human rights, including those of the applicant.

43. The applicant argued that the medical care he had received in detention had been extremely ineffective and had led to a steady deterioration in his health. The applicant stressed that he was seriously ill and that his illness was life-threatening. His illness had rapidly progressed, having moved from stage III B to the critical IV B stage in merely three months. He was in desperate need of chemotherapy and radiotherapy, the specific medical treatment for a patient in his condition. However, the

treatment had never been provided because, as was evident from the statements of Dr B. made in open court, as well as the findings of the Regional Court on 28 November 2014, the prison hospital had not had the necessary equipment or medicine to provide the treatment.

44. The applicant further addressed the Government's objection of non-exhaustion. In particular, he noted that the Government had provided the Court with his complaints to various Russian officials, including the head of the prison hospital, a prosecutor's office and the prison service. Thus, the authorities had been well aware of his grievances. Moreover, he had brought a claim before a Russian court, which, despite clear evidence to the contrary, had considered that he had received adequate medical care and had refused to release him.

B. The Court's assessment

1. Admissibility

45. The Government claimed that the applicant had failed to bring his grievances to the attention of the Russian authorities, including the courts, and submitted that his complaint should be rejected for failure to comply with the requirements of Article 35 § 3 of the Convention.

46. The Court reiterates its earlier finding that, at present, the Russian legal system does not offer an effective remedy for the alleged violation, or the continuation of such a violation, which could provide the applicant with adequate and sufficient redress for his allegedly inadequate medical care in detention. Accordingly, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies (see *Dirdizov v. Russia*, no. 41461/10, §§ 80-90, 27 November 2012) in respect of this part of the application.

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

2. Merits

(a) General principles

(i) As to the Court's evaluation of the facts and the burden of proof

48. In cases in which there are conflicting accounts of events, the Court is inevitably confronted with the same difficulties as those faced by any first-instance court when establishing the facts. It reiterates that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on

criminal guilt or civil liability, but on Contracting States' responsibility under the Convention. The specific nature of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention - determines its approach to issues of evidence and proof. In proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by a free evaluation of all the evidence, including such inferences as may flow from the facts and the parties' submissions. In accordance with its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specific nature of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012, and the cases cited therein).

49. Furthermore, it should be pointed out that Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio*. The Court reiterates its case-law under Articles 2 and 3 of the Convention to the effect that where the events at issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries, damage and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; and *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008). In the absence of such an explanation the Court can draw inferences which may be unfavourable for the respondent Government (see, for instance, *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002, and *Buntov v. Russia*, no. 27026/10, § 161, 5 June 2012).

(ii) As to the application of Article 3 of the Convention and standards of medical care for detainees

50. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a 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, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, 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 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 sex, age and state of health of the victim (see, among other authorities, *Verbinț v. Romania*, no. 7842/04, § 63, 3 April 2012, with further references).

51. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

52. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most cases concerning the detention of persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that even though Article 3 of the Convention does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the State to provide detainees with the requisite medical assistance (see *Kudła*, cited above, § 94; *Kalashnikov*, cited above, § 95; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

53. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Yevgeniy Alekseyenko*, cited above, § 100; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; and, *mutatis mutandis*, *Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05,

§ 79, 4 October 2005; and *Popov*, cited above, § 211). The Court further reiterates that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same medical treatment that is available in the best health establishments outside prison facilities (see *Cara-Damiani v. Italy*, no. 2447/05, § 66, 7 February 2012).

54. On the whole, the Court reserves to itself sufficient flexibility in defining the required standard of health care, determining it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan*, cited above, § 140).

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

55. Turning to the circumstances of the present case, the Court observes that the applicant suffers from an oncological illness, non-Hodgkin lymphoma, with lesions affecting his cervical, axillary and abdominal lymph nodes. Both parties acknowledge the high-grade or aggressive, and thus life-threatening, nature of the applicant's condition, given the progress of the cancer in less than four months (see paragraphs 10 and 14 above).

56. The applicant's main contention was that he did not receive vital chemo- and radiotherapy for his illness. The Government disagreed. They insisted that he had received comprehensive medical assistance in detention. They also pointed to the applicant's alleged refusals, in March and June 2014, to undergo chemotherapy (see paragraph 20 above).

57. The Court has already stressed the difficult task it faces in evaluating the differing and even mutually contradictory evidence submitted by the parties in the present case (see paragraph 36 above). Its task has been further complicated by the need to assess evidence calling for expert knowledge in various medical fields. In this connection, it emphasises 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 *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a "particularly thorough scrutiny" (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010).

58. The Court has examined a large number of cases against Russia raising complaints of inadequate medical services afforded to inmates (see, among the most recent examples, *Koryak v. Russia*, no. 24677/10, 13 November 2012; *Dirdizov v. Russia*, no. 41461/10, 27 November 2012; *Reshetnyak v. Russia*, no. 56027/10, 8 January 2013; *Mkhitaryan v. Russia*,

no. 46108/11, 5 February 2013; *Gurenko v. Russia*, no. 41828/10, 5 February 2013; *Bubnov v. Russia*, no. 76317/11, 5 February 2013; *Budanov v. Russia*, no. 66583/11, 9 January 2014; and *Gorelov v. Russia*, no. 49072/11, 9 January 2014). In the absence of an effective remedy in Russia to air those complaints, the Court has, of necessity, to undertake the role of a court of first instance and performed a first-hand evaluation of the evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention had been observed. In that role, paying particular attention to the vulnerability of applicants in view of their detention, the Court has called on the Government to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention.

59. Coming back to the medical reports and certificates submitted by the applicant in the present case, the Court is satisfied that there is prima facie evidence in favour of his submissions and that the burden of proof should shift to the respondent Government.

60. Having regard to its findings under Article 34 of the Convention, the Court is prepared to draw inferences from the Government's conduct and, having closely scrutinised the evidence submitted by them in support of their position, it finds that they have failed to demonstrate conclusively that the applicant received effective medical treatment for his illnesses while in detention. The evidence in question is unconvincing and insufficient to rebut the applicant's account of the treatment to which he was subjected in detention. In such circumstances, the Court considers that the applicant's allegations have been established to the requisite standard of proof. The Court's conclusion becomes even more salient in view of the decision of the Chelyabinsk Regional Court on 28 November 2014 to authorise the applicant's release, given the prison authorities' inability to provide adequate treatment for him (see paragraph 24 above).

61. The Court thus finds that the applicant was left without the essential medical care for his illnesses. He did not receive cancer-related treatment and the medical supervision afforded to him was insufficient to maintain his health. There was no thorough evaluation of his condition. The medical personnel at the prison hospital did not take any steps to deal with the rapid progress of his illness. The Court expresses its concern with the findings of the Russian lower-instance court, which despite clear evidence to the contrary, including the statements by the attending prison doctor, concluded that the applicant had been provided with proper medical care (see paragraph 16 above). The Court is equally concerned with the documents prepared by the Russian prison authorities and submitted to it by the Government, from which it appears that the sole reason for the applicant not receiving medical treatment was not the absence of the necessary equipment or medication, but rather his alleged refusal to submit to that treatment. The Court finds it particularly striking that the documents in question were

prepared by the Russian authorities in October 2014, after the doctor from the same hospital had confirmed in open court that the authorities were unable to treat the applicant owing to the lack of equipment and drugs.

62. To sum up, the Court considers that the lack of comprehensive and adequate medical treatment had the effect of exposing the applicant to prolonged mental and physical suffering and constituted an affront to his human dignity. The authorities' failure to provide the applicant with the medical care he needed thus amounted to inhuman and degrading treatment for the purposes of Article 3 of the Convention.

63. Accordingly, there was a violation of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government argued that the claim was unsubstantiated.

67. The Court awards the applicant the sum claimed in respect of non-pecuniary damage in full, plus any tax that may be chargeable on that amount.

B. Costs and expenses

68. The applicant also claimed EUR 1,000 in legal fees for his representation before the Court. The applicant supported his claim with a schedule signed by his lawyer, Ms Khrunova, describing the amount of work done at each stage of the proceedings before the Court.

69. The Government submitted that the applicant had not provided a copy of the contract with his lawyer.

70. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria, and to the documents in its possession, including the documents prepared by the applicant's lawyer in the course of the proceedings before the Court and the detailed schedule of work done, the Court considers it reasonable to award the sum of EUR 1,000 covering costs for the proceedings before it, plus any

tax that may be chargeable to the applicant on that amount. The sum is to be paid into the bank account of the applicant's representative.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the respondent State has failed to comply with the interim measure indicated by the Court under Rule 39 of the Rules of Court, in violation of its obligation under Article 34 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 1,000 (one thousand euros), in respect of costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant, to be paid to the bank account of the applicant's representative;
   (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.

Done in English, and notified in writing on 1 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Luis López Guerra
President