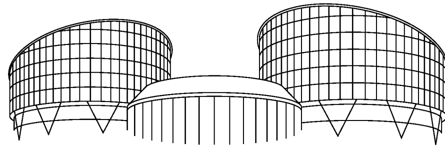

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF G. v. RUSSIA

(Application no. 42526/07)

JUDGMENT

STRASBOURG

21 June 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.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of G. v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 31 May 2016,

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

PROCEDURE

1. The case originated in an application (no. 42526/07) 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 G. ("the applicant"), on 1 October 2007.

2. The applicant was represented by Mr F. Bagryanskiy and Mr M. Ovchinnikov, lawyers practising in Vladimir. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had not received adequate medical care in detention, that the conditions of his detention while in prison on remand had been poor and incompatible with his state of health and that his lengthy detention pending the investigation and trial had lacked justification.

4. On 23 November 2007 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should urgently have colorectal surgery in a specialist hospital, and that an X-ray computed tomography (a CT scan) and a surgical puncture of a space-occupying lesion of the liver be performed.

5. On 14 October 2008 the President of the First Section decided to lift the interim measure indicated under Rule 39 because the Government had fully complied with it.

6. On 8 November 2011 the application was communicated to the Government. Furthermore, on 31 May 2016 it was decided to grant the applicant *ex officio* anonymity under Rule 47 § 4 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1955 in the village of Z., the Omsk Region. Until his arrest he lived in the village of O. in the same region.

8. The applicant suffers from various illnesses, including rectal cancer. He has twice had colorectal surgery, in 1994 and 1995, and has been certified as having a second-degree disability.

A. Criminal proceedings

9. On 1 November 2006 the applicant was arrested on suspicion of committing, with accomplices, large–scale bank fraud by abuse of position. After being questioned by the police the applicant was released.

10. Two days later, the Kuybishevskiy District Court of Omsk authorised his detention pending investigation. The court concluded that he could abscond or hamper the investigation if released and that he had attempted to influence witnesses after they had been interviewed by the police. The applicant was taken to remand prison no. IZ-55/1 in Omsk.

11. The defence appealed, stating that the applicant had serious health problems and was therefore not fit enough to exert pressure on witnesses. The defence also referred to the non-violent nature of the offence and the fact that it was not a particularly serious crime.

12. On 13 November 2006 the Omsk Regional Court rejected the appeal, endorsing the reasoning of the District Court.

13. On 27 December 2006 the District Court extended the applicant’s detention until 14 March 2007. Despite arguments by the defence that his health was fragile and that he was unable to receive the necessary care in the detention facility, which did not employ a proctologist, the court, after examining medical evidence submitted by the prosecution, found that his health condition did not call for his release. Having cited the risks of the applicant absconding and obstructing justice, the court also noted that the case was complex and that the investigating authorities were proceeding with it with due promptness. The applicant’s continued detention was therefore warranted.

14. The defence challenged the detention order, referring mainly to the applicant’s deteriorating condition and a lack of adequate medical care in detention. They stated that the applicant was in need of constant medical assistance, supervision and treatment in a surgical department of a hospital.

15. On 29 December 2006 the Regional Court, without addressing the defence’s arguments, found the detention order to be lawful and well-founded.

16. On 9 March 2007 the District Court concluded that the circumstances which had called for the applicant's arrest and detention had not changed. His further detention was necessary so that the authorities could complete the investigation. The detention was extended until 14 June 2007.

17. On 14 March 2007 the Regional Court upheld the detention order, stressing that the accused's health was not the decisive factor in the assessment of the need for detention. The court also noted that Russian law guaranteed medical treatment to every detainee.

18. On 9 June 2007 the applicant's detention was extended until 14 September 2007. The court endorsed its previous reasoning, namely the risks of absconding and influencing witnesses and the necessity to complete the investigation.

19. In appeal statements, the defence disagreed that there was a risk of influencing witnesses, and cited the applicant's serious health condition and the detention facility's continued failure to ensure his transfer to a hospital. The lawyers also argued that the investigative authorities had been idle in the previous three months.

20. On 18 June 2007 the Regional Court upheld the detention order without going into the defence arguments.

21. On 31 August 2007 the Tsentralniy District Court of Omsk extended the detention until 1 November 2007, given that the bill of indictment had not yet been drafted or served on the applicant.

22. The detention order was upheld on appeal on 10 September 2007, including a specific reference to the detention authorities' consent to ensure the applicant's prompt admission to a civilian hospital if necessary.

23. Another extension followed on 29 October 2007 when the Regional Court ordered that the applicant had to remain in custody until 1 December 2007 because one of his alleged accomplices had not yet finished studying the case file. The court noted that there were no grounds for concern about the applicant's access to medical aid since the authorities had made assurances about his transfer to an adequate medical facility if needed.

24. On 6 February 2008 the Supreme Court of Russia upheld the detention order of 29 October 2007, finding it to be well-reasoned.

25. In the meantime, the pre-trial investigation was closed and the applicant was committed to stand trial before the Russkaya Polyana District Court of the Omsk Region.

26. On 30 November 2007 the Russkaya Polyana District Court held a preliminary hearing in the case in which it extended the applicant's detention in view of the continued presence of the factors which had initially warranted his arrest.

27. On 13 December 2007 the Regional Court dismissed an appeal against the extension order, noting the lawfulness and reasonableness of the District Court's findings.

28. In early 2008 the applicant sought release from detention on medical grounds. He cited colorectal surgery, which he had undergone in December, and his inability to take part in court hearings for three or four months given his need for bed rest.

29. On 8 February 2008 the District Court found that the circumstances justifying the applicant's continuous detention had ceased to exist. His health condition had become serious. Against that background the gravity of the charges no longer sufficed to justify continued detention. The court ordered the applicant's release against a written undertaking not to leave his home town. The criminal proceedings against the applicant were stayed. Three days later the applicant was released from detention. The release order became final.

30. The parties have not provided any information on subsequent progress in the case.

B. Medical treatment

31. Following admission to remand prison no. IZ-55/1 on 3 November 2006, the applicant was examined by the prison doctor, who noted that he had twice undergone colorectal surgery and that he was suffering from various illnesses, including coronary disease, angina pectoris, mild hypertension, moderate obesity, chronic gastritis and chronic enterocolitis.

32. In December 2006 a large part of the applicant's sigmoid colon prolapsed and fell out of the rectum, resulting in the development of faecal incontinence. On 21 December 2006 a generalist surgeon from Omsk Regional Penitentiary Hospital no. 11 ("the Penitentiary Hospital") examined the applicant and prescribed the use of adult absorbent briefs and the washing of his intimate areas twice a day. A consultation by a proctologist was recommended.

33. The authorities did not provide the applicant with adult absorbent briefs. It is apparent from a certificate signed by the detention authorities that the applicant received a small number of absorbent briefs from his relatives.

34. According to a written statement by Mr. P., a detainee who claimed to have shared a cell with the applicant between November 2006 and January 2007, the applicant complained of acute pain which intensified during the night. On a number of occasions the applicant lost consciousness owing to unbearable pain. A doctor called by inmates only gave painkillers to him. The applicant could only walk by taking small steps as walking caused a great deal of pain. He had to endure the pain each time he wanted to go to the prison shower room, which was located in the basement area of the prison. The authorities did not give him any hygiene products. Even toilet paper was supplied by his relatives.

35. On 6 January 2007 the applicant was admitted to the medical unit in the remand prison. Six days later, at the request of the applicant’s lawyer, the head of the colorectal department of the State Regional Civilian Hospital, Dr N., examined the applicant in the remand prison and found his condition to be moderately serious. The applicant was diagnosed with a serious dysfunction of the anal sphincter and the presence of rectal strictures. An inpatient in-depth examination in a civilian hospital, as well as rectal surgery, was prescribed. Dr N. noted that the detention authorities were unable to ensure that the applicant receive the necessary examinations or provide him with treatment owing to a lack of equipment and medical specialists. Dr N. stressed that any delay in treatment could lead to complications and even death.

36. At the end of January 2007 the applicant was seen by a prison surgeon. Considering the applicant’s condition to be satisfactory, the doctor concluded that there was no urgent need to perform surgery or admit the applicant to hospital. The applicant was, however, relieved from morning physical exercises, marching drills and lifting weights.

37. On 2 February 2007, again at the initiative of the applicant’s lawyer, a senior doctor from the State Regional Civilian Hospital, Dr Z., visited him and recorded a further deterioration of his health in the form of an inflammation of the prolapsed part of his bowels. The doctor interpreted the inflammation as a serious complication which could result in the patient’s death if urgent medical examinations and treatment did not take place. He stated that the penitentiary institutions were unable to perform a fibre endoscopic examination of the colon and a multislice computed tomography, the tests required for the correct diagnosis and treatment of the applicant’s condition. The doctor endorsed the recommendations made on 12 January 2007 and added that bed rest was required.

38. On 22 March 2007 the applicant was admitted to the Penitentiary Hospital where, by means of an endoscopy, he was diagnosed with dysfunction of the sphincter, and prolapse and inflammation of the sigmoid colon. Treatment with drugs was prescribed. The treatment was meant to reduce the applicant’s pain and help cure his secondary illness.

39. On 2 April 2007 Dr Z. visited the applicant and confirmed the diagnosis. The doctor established that the inflammation had progressed, the patient’s health had deteriorated and that the overall state of his health had become serious. He was in need of urgent colorectal surgery.

40. On 10 May 2007 the applicant was sent back to the medical unit in the remand prison, where he stayed for eleven days. Treatment with painkillers in that period was unsuccessful and the applicant was re-admitted to hospital, apparently with a complication of his heart conditions.

41. At the end of May 2007 Dr N. examined the applicant and noted further progression of the inflammatory process and the aggravation of other

illnesses. He insisted on an in-depth medical examination and surgery, noting that surgery could only be performed after bringing the applicant's heart-related problems under control.

42. The applicant was taken back to the prison medical unit at the beginning of June 2007. However, re-admission to the Penitentiary Hospital followed after just seven days. The applicant was again sent back and forth between the two institutions in August 2007. In that period he received painkillers and antispasmodic drugs. His condition deteriorated further. The attending doctors recorded enlargement of the prolapsed segment of the bowel and that the surrounding skin was macerated and oedematous.

43. On 20 and 27 June 2007 the applicant's lawyer arranged for an ultrasound examination by an independent doctor, who recorded pathologic changes in the liver and suggested that they could, in fact, be a sign of metastasis caused by the developing colorectal cancer. A liver puncture test was required for the correct diagnosis.

44. On 9 August 2007 the applicant was released from the Penitentiary Hospital and sent to the remand prison, where he stayed for a month.

45. On 16 August 2007 the applicant was examined by a surgeon from the Penitentiary Hospital who confirmed the necessity for colorectal surgery on the patient "in due course in the very near future".

46. Eight days later Dr N. stated that owing to the deterioration of the applicant's condition he was in need of urgent colorectal surgery. Any postponement, in his view, could lead to irreparable damage, including the applicant's death.

47. According to a written statement by Mr S., who shared a cell with the applicant at the beginning of autumn 2007, at the time in question the applicant looked very sick. He had a sallow complexion, was thin and exhausted. The applicant could only take small steps when walking and supported the lower part of his abdomen. A pungent smell surrounded him. Mr S. helped the applicant to bathe. The applicant's perineum was inflamed. A bleeding segment of bowel the size of a fist prolapsed through his rectum. The applicant was not provided with incontinence wear and had to wash himself in a sink with cold water.

48. After another stay in the Penitentiary Hospital, from 6 September to 3 October 2007, the applicant was taken back to the prison medical unit. In the notes accompanying his discharge the doctors noted that the applicant was suffering from stage 2 colorectal cancer. They recommended colorectal surgery after the applicant's release from detention.

49. On the following day the applicant was taken back to the Regional Hospital as an urgent case as his condition had become worse.

50. In the meantime, on 1 October 2007 he had lodged an application with the Court and had also asked for the application of an interim measure under Rule 39 of the Rules of Court. He wanted an indication to the Russian Government that he should be allowed to have colorectal surgery, an X-ray

computer tomography and a paracentesis of a space-occupying lesion of the liver.

51. On 3 October 2007 the applicant had a new ultrasound examination. It was unable to give a definite answer as to whether the changes in the applicant's liver were indeed caused by metastasis.

52. According to a medical certificate issued in the Penitentiary Hospital on 29 October 2007, the applicant's health condition was considered to be satisfactorily and stable with no signs of negative trends. The detention authorities repeatedly insisted that there was no need for urgent surgery.

53. On 23 November 2007, following receipt from the Government of information on the applicant's state of health, the Court decided to apply Rule 39 and to draw the Russian Government's attention to the urgent necessity of the applicant having the following medical procedures: colorectal surgery in a specialist hospital, an X-ray computed tomography, as well as a surgical puncture of the space-occupying lesion of the liver.

54. Between 21 and 26 November diagnostic tests indicated by the Court were performed. They revealed no signs of liver metastasis or space-occupying lesions.

55. On 26 November 2007 Dr N. examined the applicant. He observed a tumor-like stained mass measuring 10 cm in diameter with an opening measuring 1.3 cm, surrounded by coarse cicatrix. The doctor again urged the authorities to perform colorectal surgery.

56. The applicant's fellow inmate, Mr R., in a statement submitted to the Court, wrote that in November and December 2007 the applicant's state of health was serious. The applicant was stained with faeces, being unable to control his defecation function. He had to defecate in a standing position, supporting the prolapsed bowel, otherwise his rectum began bleeding. The faeces were liquid and flowed down his legs. He had to wash himself with cold water as no hot water was available in the cell.

57. On 24 December 2007 the applicant was admitted to Omsk Regional Hospital where a colostomy was performed. After a month-long stay, the applicant was discharged from the hospital back to the prison medical unit. Seventeen days later he was released from detention.

58. On 14 October 2008 the Court decided to lift the interim measure indicated under Rule 39.

59. According to the applicant, he underwent inpatient and outpatient treatment in various hospitals after his release.

C. Conditions of detention

60. The parties provided conflicting descriptions of the conditions of the applicant's detention in the remand prison.

1. The Government's version

61. On the applicant's admission to the remand prison, on 3 November 2006, the administration found him unfit for detention in a cell for common occupation and ordered his confinement in a cell for single occupation. An order to that effect was issued and the applicant signed it.

62. Relying on certificates issued by the administration of the remand prison in December 2011 the Government claimed that the facility had not been overcrowded. The applicant had been detained in ten different cells which fully complied with regulatory standards. Lavatory pans in the cells had been separated from the living area by a partition. The Government's submissions may be summarised as follows:

Period of detention	Cell no.	Cell surface area (sq.m.)	Design capacity (pers.)	Height of the partition (m.)
3 November 2006 to 4 January 2007	143	21	6	1.6
4 January to 6 January 2007	239	39.9	10	ceiling height
6 January to 22 March 2007	252	10.16	2	1.1
11 to 21 May 2007	248	11.35	2	1.1
8 to 16 June 2007	232	40	10	ceiling height
10 August 2007	39	-	-	-
10 August to 6 September 2007	249	11.4	2	1.1
4 October 2007	276	40	5	ceiling height
17 to 20 December 2007	247	12.6	2	1.1
20 to 24 December 2007	278	41	10	ceiling height

63. According to the Government, there was hot and cold water in the cells. The facility had had separate shower rooms. The applicant had been given a bucket for his daily washing needs.

2. The applicant's version

64. The applicant disputed the idea that he had been put in a cell for single occupation and stated that no such order had ever been issued by the detention authorities. He stressed that he had always shared a cell with other

detainees in the remand prison. To support that statement, the applicant submitted a certificate issued by a remand prison official on an unspecified date, apparently between 2006 and 2007.

65. In 2012 the applicant's lawyer questioned three inmates, Mr P., Mr. S. and Mr R., who stated that they had been detained with the applicant in overcrowded cells. One cell had measured 41 square metres and housed between eighteen and twenty detainees, while two of the cells had measured between 18 and 20 square metres and had accommodated at least eight detainees. Each inmate, including the applicant, had thus been afforded between 2.05 and 2.5 square metres of living space.

66. The applicant submitted that during his detention in the remand prison he had only been able to take a shower once a week. However, acute pain while walking had sometimes prevented him from using the shower even on those occasions. After each instance of uncontrolled defecation he had had to wash himself while standing over the lavatory pan, exposed to the view of his cellmates. The partitions were low and therefore could not provide any privacy. No special arrangements had been made for him by the authorities.

67. In their statements, Mr P., Mr. S. and Mr R. also confirmed the applicant's submissions about the lack of any possibility for him to take regular showers and about the conditions in which he had had to perform the daily washes caused by his illness. The inmates described the insults that the applicant had had to endure as a result of the need to wash himself in front of his cellmates. The three former detainees stressed that the applicant had had to make amends for the inconvenience he had caused to his fellow detainees by, for instance, giving them cigarettes, tea, or other valued products supplied by his relatives.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

A. Health care of detainees

68. The relevant provisions of domestic and international law on the general health care of detainees are set out in *Vasyukov v. Russia* (no. 2974/05, §§ 36-50, 5 April 2011), and *Khudobin v. Russia* (no. 59696/00, § 56, 26 October 2006, ECHR 2006-XII (extracts)).

B. Conditions of detention

69. For a summary of the relevant provisions of domestic and international law governing conditions of detention see *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 25-58, 10 January 2012).

C. Extension of detention

70. Russian legal regulations in respect of detention during pre-trial and judicial proceedings are explained in *Pyatkov v. Russia* (no. 61767/08, §§ 48-68, 13 November 2012), and *Isayev v. Russia* (no. 20756/04, §§ 67-80, 22 October 2009).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE QUALITY OF MEDICAL TREATMENT

71. The applicant complained that the authorities had not taken the necessary steps to safeguard his health and well-being, having failed to provide him with adequate medical assistance, in breach of Article 3 of the Convention, which reads:

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

A. Submissions by the parties

72. The Government submitted that the applicant had been provided with adequate medical treatment. The authorities had ensured his placement in the prison medical unit and his admission to the Penitentiary Hospital when necessary. During the applicant's detention his state of health had been stable and his medical condition had not called for urgent surgery. As soon as the Court had indicated to the Government the need for a colostomy, under Rule 39, the applicant had undergone the surgery.

73. The applicant maintained his complaints. He argued that his health had seriously deteriorated while in detention. In addition, he had not received adult absorbent briefs or the hygiene products required for his condition. The detention authorities had demonstrated a lax attitude to his health and had delayed the required medical tests and surgical treatment.

B. The Court's assessment

1. Admissibility

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

2. *Merits*

(a) General principles

75. 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, 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. 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, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

76. 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 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

77. 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 sick people, the Court has examined whether or not the applicant received adequate medical care in prison. The Court reiterates in this regard that even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to assure the health and well-being of detainees as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Kudła,* cited above, § 94; *Khudobin*, cited above, § 96, and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

78. In the absence of an effective remedy to air complaints of inadequate medical services afforded to inmates, the Court may find itself obliged to perform a first-hand evaluation of evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention have been respected (see *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; *Gorelov v. Russia*, no. 49072/11, 9 January 2014; and *Amirov v. Russia*, no. 51857/13, 27 November 2014, § 90). In that role, paying particular attention to the vulnerability of applicants in view of their detention, the Court has consistently called on Governments to provide credible and convincing evidence showing that the applicant concerned has received comprehensive and adequate medical care in detention.

79. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists, in particular, that authorities must ensure that diagnosis and care are prompt and accurate (see *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 100, 27 January 2011; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik v. Ukraine*, no. 72286/01, §§ 104-06, 28 March 2006; and, *mutatis mutandis, Xiros v. Greece*, no. 1033/07, § 72, 9 September 2010 and *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 successfully treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114, and *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005).

80. 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 provide to 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 *Blokhin v. Russia* [GC], no. 47152/06, § 137, 23 March 2016 and *Cara-Damiani v. Italy*, no. 2447/05, § 66, 7 February 2012).

81. On the whole, the Court reserves a fair degree of flexibility in defining the required standard of health care, deciding 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 v. Russia*, no. 46468/06, § 140, 22 December 2008).

82. While the mere fact that an applicant's state of health has deteriorated may raise, at an initial stage, certain doubts concerning the adequacy of his or her treatment in prison, it cannot suffice, by itself, for a finding of a violation of the State's positive obligations under Article 3 of the Convention if, on the other hand, it can be established that the relevant

domestic authorities have provided in a timely fashion all reasonably available medical care in a conscientious effort to hinder development of the disease in question (see, among other authorities, *Goginashvili v. Georgia*, no. 47729/08, §§ 69-71, 4 October 2011).

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

83. Turning to the facts of the present case, the Court notes that it is not disputed by the parties that the applicant suffered from colon cancer and that his condition could only be addressed by colorectal surgery. The main subject of the parties' disagreement is whether the applicant's state of health called for urgent surgery and, accordingly, whether the colostomy was performed in a timely fashion.

84. The Court observes that the parties provided different medical opinions on that issue. While the senior medical officials from the colorectal department of the State Regional Civilian Hospital, Dr N. and Dr Z., unanimously described the applicant's condition as serious and insisted on the urgency of the surgery (see paragraphs 39, 46 and 55 above), a surgeon from the Penitentiary Hospital consistently held that the applicant was in a stable and satisfactory condition and did not see an urgent need for surgery (see paragraphs 36, 45, 48 and 52 above).

85. Taking into account that Dr N. and Dr Z. are specialists in the treatment of conditions such as the applicant's, the Court is prepared to attach particular weight to their opinion and to conclude that surgery was indeed urgent for the applicant. Moreover, that conclusion is supported by other evidence submitted by the parties. The applicant's medical history convincingly demonstrates that his condition continued rapidly to deteriorate in detention in the absence of surgical treatment. It was accompanied, and this fact was not disputed by the Government, by intense pain in his ordinary daily physical activities, such as walking. It also manifested itself through physical impairments, the prolapsed sigmoid colon and faecal incontinence. The medical condition not only significantly undermined the quality of the applicant's life, but it was also described as life-threatening by medical specialists. In those circumstances, the Government's argument that there was no urgency in carrying out surgery is unacceptable. It is particularly so when taking account of the fact that they did not cite any alternative treatment the applicant received or could have received to ameliorate his condition and prevent the progress of the cancer.

86. The Court thus finds that radical curative treatment was a necessity for the applicant. However, the authorities delayed surgery for almost a year and only performed it in response to the interim measure applied by the Court. The Court sees no circumstances in the case justifying such a lengthy delay in the treatment of advanced cancer. It is also concerned with the authorities' decision to postpone surgery until his release from detention,

which, in fact, they could neither foresee nor guarantee would happen in the near future (see paragraph 48 above).

87. The Court would also note the applicant's argument, supported by evidence and not rebutted by the Government, that the authorities did not provide him with the much-needed adult absorbent briefs. That failure on the part of the detention authorities must have been a cause of serious distress and embarrassment for the applicant.

88. To sum up, the Court finds that the authorities' failure to provide the applicant with adequate medical treatment for the particularly serious condition in which he found himself amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. Accordingly, there has been a violation of Article 3 of the Convention on account of the quality of medical treatment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION

89. Relying on Article 3 of the Convention, the applicant complained that the conditions of his detention in the remand prison were inhuman, degrading and incompatible with his state of health. The provision of the Convention which he invoked reads as follows:

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

A. Submissions by the parties

90. The Government stated that the detention authorities had taken due consideration of the state of the applicant's health and had therefore ensured his detention on his own in spacious cells which fully satisfied the applicable standards.

91. The applicant maintained his complaints. He disputed the Government's statement about his confinement on his own by questioning the authenticity of the supporting evidence. According to him, he had shared cells with other detainees and had entirely lacked the privacy which he desperately needed. His serious health condition had caused significant distress to him and to other inmates and had strained relationships in the cells.

B. The Court's assessment

1. Admissibility

92. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

(a) General principles

93. The Court reiterates that the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita*, cited above, § 119).

94. Measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, the level of suffering and humiliation involved must not go beyond that which is inevitably connected with a given form of legitimate treatment or punishment.

95. In the context of prisoners, the Court has emphasised that a detained person does not lose, by the mere fact of his incarceration, the protection of his rights guaranteed by the Convention. On the contrary, persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Under Article 3 the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII).

96. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

97. In the context of prison conditions the Court has frequently found a violation of Article 3 of the Convention in cases which involved overcrowding in prison cells (see, among many other authorities, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007). However, in other cases where the overcrowding was not so severe as to raise an issue in itself under Article 3 of the Convention, the Court noted other aspects of the physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the availability of ventilation, access to natural light or air, the adequacy of heating arrangements, compliance with basic sanitary requirements and the possibility of using the toilet in private (*Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, § 76, 20 October 2011).

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

98. Turning to the facts of the present case, the Court notes that the core of the applicant's complaint is that he was detained in overcrowded cells without the privacy which he particularly needed in view of his medical condition. However, the Government submitted that he had never shared a cell with other inmates.

99. The Court observes that both parties provided documentary evidence to support their statements. The applicant supported his argument with written statements by three former co-detainees who insisted they had shared cells with the applicant. In addition, he submitted a certificate issued at the time of his detention (see paragraph 64 above). The Government also supported their version of events with certificates, the only difference being that the latter were issued long after the applicant's release (see paragraph 62 above). Although it was open to the Government to submit copies of registration logs recording cell population and showing the names of inmates detained together with the applicant in the relevant period, they failed to do so. The Government's certificates therefore, are of little evidential value for the Court's analyses (see *Chudun v. Russia*, no. 20641/04, § 84, 21 June 2011). Taking into account the general problem of overcrowding in Russian remand prisons (see *Ovchinnikov v. Russia*, no. 9807/02, §§ 67-73, 17 June 2010; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 88-97, 25 June 2009; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts*); Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Kalashnikov*, cited above, §§ 97 et seq.) the Court has doubt as to the Government's submission that the authorities allocated detention cells measuring around 40 square metres and suitable for ten inmates for the applicant's exclusive use.

100. The Court further notes that at the time of the applicant's admission to the detention facility in early November 2006, his health problems had not yet become particularly serious. His medical condition worsened only several weeks later, in December 2006 (see paragraphs 31 and 32 above). In light of the above, the authenticity of the remand prison's order dated 3 November 2006 for the applicant to be placed in detention in a single occupancy cell on account of his medical condition is doubtful.

101. On the other hand, the Court is persuaded by the arguments of the applicant, supported by documentary evidence and witness statements, which the Government failed to rebut. These arguments provided a convincing and clear description of the applicant's conditions of detention in the remand prison. The Court therefore accepts that he shared cells with other inmates and was afforded less than 2.5 square metres of living space for a considerable amount of time.

102. The Court reiterates that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of

establishing whether the detention conditions described are "degrading" within the meaning of Article 3 of the Convention and may disclose a violation, both alone or taken together with other shortcomings (see, amongst many other authorities, *Ananyev and others*, cited above, §§ 146-49, and *Karalevičius v. Lithuania*, no. 53254/99, §§ 39-40, 7 April 2005).

103. In addition to overcrowding, the applicant's situation was exacerbated by a lack of privacy. The height of the partitions installed to separate the lavatory from the living area in several of the cells where the applicant was kept, was not able to ensure his privacy when he had to use the toilet and wash himself. For several months of his detention, the applicant could be seen by his cellmates, and possibly by guards, while carrying out such intimate procedures. The situation must have taken a particularly heavy toll on him, being a source of serious distress and hardship which exceeded the unavoidable level of suffering inherent in detention, and going beyond the threshold of severity under Article 3 of the Convention (see, *mutatis mutandis, Moiseyev v. Russia*, no. 62936/00, § 124, 9 October 2008).

104. The Court finds no need to look at other aspects of the applicant's detention as the conditions noted above demonstrate that there has been a violation of Article 3 of the Convention in the applicant's case.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

105. The applicant complained of a violation of his right to a trial within a reasonable time and alleged that the orders for his detention had not been founded on sufficient reasons. He relied on Article 5 § 3 of the Convention, which provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Submissions by the parties

106. The Government's position was that the gravity of the charges against the applicant, the complexity of the case and other circumstances noted by the domestic courts were sufficient to warrant the applicant's detention pending investigation.

107. The applicant maintained his complaints. He argued that he had had neither the intention nor the possibility to abscond. He had a family and a home and he had been suffering from such a serious medical condition that he had barely been able to perform simple daily activities, let alone go on the run. The courts' findings as to the risks of his absconding and

influencing witnesses had not been supported by any evidence. He stressed that the courts had used stereotyped formulae when extending his detention and had relied mainly on the seriousness of the charges. They had failed to assess whether the length of his pre-trial detention had been reasonable. He concluded by noting that his detention had not been based on relevant and sufficient grounds.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

109. The persistence of a reasonable suspicion that a person who has been arrested has committed an offence is a *conditio sine qua non* for the lawfulness of his or her continued detention, whatever other grounds may exist. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are found to have been "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify his or her continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short,

must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

110. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts for or against the existence of a genuine requirement of public interest justifying a departure from the rule of respect for individual liberty, with due regard to the principle of the presumption of innocence, and must set them out in their decisions dismissing applications for release.When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see *Idalov v. Russia [GC],* no. 5826/03, § 140, 22 May 2012, and *Suslov v. Russia*, no. 2366/07, § 86, 29 May 2012, with further references). It is not the Court's task to establish such facts and take the place of the national authorities which ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the established facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

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

111. The Court notes that the entire period of the applicant's pre-trial detention lasted slightly more than one year and three months.

112. Having regard to this considerable period of detention in the light of the presumption in favour of release, the Court finds that the Russian authorities were required to put forward weighty reasons for keeping the applicant in detention.

113. When extending the applicant's pre-trial detention, the domestic authorities mainly referred to the gravity of the charges against him, and a risk of him absconding and interfering with the administration of justice by putting undue pressure on witnesses.

114. In sum, the Court is prepared to admit that the combination of the above arguments could justify the applicant's detention as a suspect in the criminal proceedings for some time. The question arises whether the arguments adduced by the courts were sufficient to justify the period of over fifteen months in which this seriously ill applicant was held in custody.

115. As regards the domestic authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that this reason cannot in itself serve to justify long periods of detention. Although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can a continuation of detention be used to anticipate a custodial sentence (see, among other authorities, *Fedorenko v. Russia*, no. 39602/05, § 67, 20 September 2011). This is particularly true in cases such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial review of whether the evidence collected supported a reasonable suspicion that the applicant had committed the offences he was charged with (see *Yevgeniy Gusev v. Russia*, no. 28020/05, § 84, 5 December 2013, and *Rokhlina*, cited above, § 66).

116. The risk of absconding was inferred primarily from the gravity of the charges and the applicant's presumed fear of receiving a lengthy prison sentence, the grounds discussed above. However, the Court reiterates that such a risk cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko v. Russia*, no. 45100/98, § 106, 8 February 2005; and *Letellier v. France*, 26 June 1991, § 43, Series A no. 207). In the present case the decisions of the domestic authorities gave no reasons why they considered the risk of his absconding to be decisive. The Court finds that the existence of a risk that the applicant might abscond was not established. Moreover, the applicant's health condition made the risk of absconding very slight as he was mostly bedridden and had difficulties walking on his own.

117. As regards the last major reason for detention put forward by the domestic courts, namely the risk of putting pressure on witnesses, the Court notes that it appears from the documents in its possession that the domestic courts accepted the prosecution's statements in that regard without asking for any evidence in support. In any event, even if a risk of undue influence existed, it may be assumed that it would decrease gradually as the investigation proceeded and the witnesses were interviewed, with the records of their questioning being attached to the case file as evidence. The Court is therefore not persuaded that compelling reasons existed to fear that he would interfere with witnesses or otherwise hamper the investigation of the case throughout the entire period of his detention, and certainly not compelling enough to outweigh the applicant's right to trial within a reasonable time or release pending trial.

118. The Court also notes that in ordering the extensions of the applicant's detention the national courts used identical or similar wording repeatedly. Such an approach may suggest that there was no genuine judicial review of the need for detention at each extension of detention (see *Yağcı and Sargın v. Turkey*, 8 June 1995, § 50 et seq., Series A no. 319-A).

119. Having regard to the above, the Court considers that by relying essentially on the seriousness of the charges, by failing to substantiate their findings by pertinent specific facts, and by failing to assess the alleged risks in the light of the applicant's health condition, the authorities extended his detention on grounds which, although "relevant", cannot be regarded as sufficient to justify a duration of over fifteen months. In those circumstances it is not necessary for the Court to examine whether the domestic authorities acted with "special diligence".

120. There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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

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

123. The Government submitted that that claim was excessive.

124. The Court, making its assessment on an equitable basis, considers it reasonable to award EUR 16,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

125. The applicant also claimed EUR 7,000 for the legal expenses incurred before the Court.

126. The Government argued that the applicant's legal expenses were excessive.

127. 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 documents in its

possession and the above criteria, the Court considers it reasonable to award EUR 4,000, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

128. 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 there has been a violation of Article 3 of the Convention on account of the quality of the medical treatment in detention;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of detention in the remand prison;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay, within three months from 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 16,500 (sixteen thousand and five hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to be paid to the applicant;
      (ii) EUR 4,000 (four thousand euros), in respect of legal expenses incurred before the Court, plus any tax that may be chargeable to the applicant on that amount.
   (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 21 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President