FOURTH SECTION

DECISION

Application no. 19437/05
Eduards ANTONOVS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 11 February 2014 as a Chamber composed of:

 Päivi Hirvelä, *President,* Ineta Ziemele, George Nicolaou, Nona Tsotsoria, Zdravka Kalaydjieva, Krzysztof Wojtyczek, Faris Vehabović, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 20 May 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Mr Eduards Antonovs, is a Latvian national, who was born in 1972 and is currently serving a prison sentence in Jelgava. The applicant, who had been granted legal aid, was represented before the Court by Ms J. Averinska, a lawyer practising in Riga.

2.  The Latvian Government (“the Government”) were represented by their Agent at the time, Mrs I. Reine , and subsequently by Mrs K. Līce.

A.  The circumstances of the case

3.  The facts of the case, as submitted by the parties, may be summarised as follows.

1.  Criminal proceedings against the applicant

4.  On 2 April 2003 the applicant was arrested on suspicion of murder.

5.  On 20 October 2004 the Riga Regional Court (*Rīgas Apgabaltiesa*) convicted the applicant of murder and burglary and sentenced him to fourteen years’ imprisonment.

6.  On 7 April 2005 the Criminal Cases Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*) upheld the judgment of the first-instance court.

7.  The applicant lodged an appeal on points of law. He noted that the appellate court had not considered his complaint that his health was deteriorating. The applicant argued that he had contracted an incurable disease in detention, that he could not abide by prison rules because of the deteriorating state of his health, and that he was not receiving the medication he needed. Referring to section 59 (6) of the Criminal Law, he asked for his sentence to be reduced.

8.  On 19 May 2005 the Criminal Cases Division of the Senate of the Supreme Court (*Augstākās Tiesas Senāta Krimināllietu departaments*) in a preparatory meeting rejected the applicant’s appeal on points of law. The Senate noted that it did not have competence to release the applicant from serving his sentence. It referred to section 59 (6) of the Criminal Law and section 364 of the former Code of Criminal Procedure.

2.  The applicant’s medical care in prison

(a)  Riga Central Prison

9.  On 4 April 2003 the applicant was transferred to Riga Central Prison (*Rīgas centrālcietums*).

10.  On 7 April 2003 the applicant underwent a medical examination; a note was made that he smoked and drank alcohol, but did not use narcotics; he also had several tattoos. He was prescribed fluorography, and no pathology was found. A blood test (for HIV and syphilis) was carried out; its results were negative. He was found to be “practically healthy”.

11.  On 22 May 2003 the applicant complained to a prison doctor of a cough, cold symptoms and sweating; he was diagnosed with rhinopharyngitis. He was prescribed a five-day course of medication.

12.  On 22 September and 2 October 2003 the applicant complained about a cough and cold symptoms. He was diagnosed with rhinopharyngitis and pharyngitis respectively on those occasions, and some medication was prescribed, a five-day course each time.

(b)  Brasa Prison

13.  On 9 October 2003 the applicant was transferred to Brasa Prison (*Brasas cietums*). Although there is no information as to whether a medical examination was carried out when the applicant was admitted to the prison, or whether any tests were done, the applicant’s medical record contains a note made by a prison doctor on the date of admission that the applicant had no complaints, accompanied by the results of a basic health check (blood pressure readings and visual inspection). The applicant was found to be “practically healthy”.

14.  On 12 December 2003 the applicant received some vitamins (one per day).

15.  On 7 June 2004 the applicant’s lungs were examined; no pathology was found.

16.  On 24 February 2005 the applicant complained of stomach pain: an examination was ordered, but no pathology was found. He was prescribed a seven-day course of medication.

17.  On 15 March 2005 the applicant complained of skin problems. He was diagnosed with a skin disease and prescribed a ten-day course of medication. At the same time the applicant requested a blood test for the hepatitis C virus (HCV) at his own expense.

18.  On 22 March 2005 the test detected the presence of HCV antibodies (anti-HCV) in the applicant’s blood.

19.  On 11 and 12 April 2005 the applicant complained of a cold; a prison doctor concluded that he had pharyngitis. He received a three-day and a five-day course of medication; two days later he was prescribed multivitamins.

20.  On 18 May 2005 the applicant complained of stomach pain and a prison doctor concluded that he had HCV. He received a ten-day course of liver medication (Carsyl), which was extended for another ten days with another medication (Cholagol) on 8 June 2005.

(c)  Jelgava Prison

21.  On 16 June 2005 the applicant was transferred to Jelgava Prison (*Jelgavas cietums*) to serve his sentence.

22.  On 17 June 2005 the applicant underwent a medical examination. The applicant was found to be “practically healthy”. A note was made that the applicant was infected with the hepatitis C virus.

23.  On 20 June 2005 the applicant visited a prison doctor to request treatment for the HCV (Carsyl or Essenciale forte). His status of health was noted as satisfactory, and it was explained to him that HCV treatment could only be carried out at his own expense.

24.  On 19 August 2005 the applicant received a ten-day course of liver medication (Carsyl).

25.  On 5 and 23 September 2005 the applicant requested that an examination and a liver biopsy be carried out. They were refused, and on the latter date a note was made in his medical record that he had no objections to this decision.

26.   On 5 October 2005 the applicant asked the head of the Jelgava Prison Medical Unit for an in-depth HCV examination and treatment. It was explained to the applicant that in accordance with domestic law (regulation no. 358, paragraph 12) these could only be provided at his own expense.The applicant disagreed, and took the view that the treatment should be paid for by the State. The applicant was prescribed tests (fibrogastroscopy, blood and urine tests) and consultations with a general practitioner and a psychiatrist.

27.  On 11 November 2005 the applicant consulted a psychiatrist and was prescribed a seven-day course of medication.

28.  On 21 December 2005 the applicant was prescribed a five-day course of medication for bile duct problems.

29.  On 17 June 2006 the applicant was prescribed a five-day course of medication for dermatitis.

30.  On 20 July 2006 the applicant was prescribed skin medication at his own expense.

31.  On 13 February 2007 the applicant underwent a prophylactic check-up and a DNA sample was taken from him.

32.  On 26 April 2007 the applicant complained of headache, flu, cough and fever. He was diagnosed as suffering from an upper respiratory tract infection and prescribed a four-day course of medication.

33.  On 6 June 2007 another prophylactic check-up was carried out. The conclusion was that he was “practically healthy”.

34.  On 28 June 2007 the applicant underwent lung screening; no pathology was found.

35.  On 21 April 2008 the applicant complained of fever, headache, and a cough; he was diagnosed with an upper respiratory tract infection and prescribed a four-day course of medication.

36.  On 13 September 2008 the applicant was examined by an oculist.

37.  On 1 July 2009 the applicant was diagnosed as suffering from an upper respiratory tract infection and was prescribed a four-day course of medication.

38.  On 3 July 2009 the applicant underwent a prophylactic check-up. The conclusion was that his state of health was satisfactory.

39.  On 26 October 2009 the applicant was prescribed a five-day course of medication for tracheitis.

40.  On 21 January 2010 another medical examination was carried out and tests were taken.

3.  The applicant’s complaints

41.  On 13 July 2005 the Latvian Infectious Diseases Centre (*Latvijas Infektoloģijas centrs*) replied to the applicant that they could not help if they did not have any medical documents describing the applicant’s illness. The applicant had to approach his prison doctor, who could assign, within the limits of available resources, appropriate examinations to verify any diagnosis.

42.  On 9 August 2005 the applicant submitted a complaint to the Minister of Justice, with a copy to the Minister of Health and the Prisons Administration. He stated that he had never used narcotics in his life but that soon after imprisonment he had been “infected with hepatitis C”. He requested that the State re-establish a programme for detecting and treating infectious diseases and that he be allowed to use his own darning needles, slippers and scissors in prison.

43.  On 18 August 2005 the Prisons Administration replied that the applicant was not allowed to have these items, pursuant to domestic law. They noted that the applicant did not have objective symptoms requiring treatment for hepatitis C at that time. A reference was made to regulation no. 358, which allowed him to purchase medication at his own expense.

44.  On 19 August 2005 the Ministry of Health replied that a diagnosis of the hepatitis C virus was generally confirmed in the Latvian Infectious Diseases Centre, using a range of examinations such as blood tests to detect if the virus was in the body or if only its antibodies were present. If the virus was detected, its genotype and activity were identified. Liver puncture biopsy was further necessary to establish the range and depth of inflammation. Only when the hepatitis C virus diagnosis had been confirmed could a decision be made as regards treatment. From 1 January 2005 medication was available in Latvia to effectively (but not 100%) treat chronic hepatitis C, if a patient did not have any other health problems or contraindications. With reference to regulation no. 1036, paragraph 15.2, it was explained that the Ministry of Justice was responsible for ensuring that medication was available to treat patients with chronic hepatitis C in prisons, therefore the applicant was advised to enquire about it there. At the same time, the Ministry of Health advised that a prison doctor was responsible for assessing convicted persons’ state of health, for providing medical care in accordance with the established diagnosis, and for prescribing medicine within the allocated budgetary resources. If an in-depth examination and special treatment was necessary, a specialist doctor (a hepatologist) from the Latvian Infectious Diseases Centre was invited to assess the patient’s state of health and draw up a treatment plan. The applicant was advised to consult a prison doctor.

45.  On 19 August 2005 the Ministry of Justice replied that, taking into account that the applicant was suffering from a serious infectious disease (hepatitis C), he could require the relevant prison authority to take the necessary prophylactic measures if there was a risk of the disease being spread. They also referred to paragraph 2 of regulation no. 358.

46.  On 22 August 2005 the applicant submitted a complaint to the Jelgava Court, with a copy addressed to the prosecutor’s office and the Prisons Administration. He noted that he had never used narcotics in his life but that soon after imprisonment he had been “infected with hepatitis C”. He did not request to be released on health grounds, but rather that his state of health be fully assessed by specialists from the Latvian Infectious Diseases Centre, that his sentence be reduced, and that he be transferred to an open prison.

47.  On 29 August 2005 a judge sent those complaints back to the applicant with an explanation of the procedure for release on health grounds under section 364 of the Code of Criminal Procedure.

48.  On 1 September 2005 the prosecutor’s office forwarded the applicant’s complaint to the head of Jelgava Prison in connection with assessment of his health and his request for his sentence to be reduced.

49.  On 9 September 2005 the Prisons Administration replied that in accordance with regulation no. 358 convicted persons received minimum standard of health care. Assistance that was not paid for from the State budget was provided at their own expense. It was noted that the applicant had received the minimum standard of health care, including hepatoprotectives. An in-depth examination was not included in the minimum standard and was not paid for by the State. In addition, as the applicant’s state of health was satisfactory there was no need for the in-depth examination.

50.  On 10 October 2005, in response to another complaint by the applicant, the Prisons Administration noted that a doctor was responsible for patient examination, assessment of state of health and for providing treatment; they also repeatedly explained the minimum standard of health care in prisons and that the in-depth examination was not included in the minimum standard (regulation no. 358). This examination and any further treatment could be provided at his own expense (paragraph 12).

51.  On 10 and 11 October 2005 the Ministry of Justice responded that only a doctor can establish diagnosis and choose the most adequate therapy. They reiterated that the minimum standard did not include an in-depth examination or treatment; these could be provided at his own expense in accordance with regulation no. 358 (paragraph 12).

52.  On 26 November 2007 the Latvian Infectious Diseases Centre informed the applicant that they provided treatment for chronic hepatitis C, but that they were not responsible for arranging for the provision of health care in prisons. The prison doctor was responsible for the applicant’s health care. They informed the applicant about the following expenses in relation to laboratory examinations related to hepatitis C: LVL 42.75, 91.60 and 128.60 for HCV RNA, HCV viral load and HCV genotype respectively (approximately 61, 130 and 183 euros (EUR)).

53.  On 23 November 2011 the Ministry of Health replied to the applicant’s enquiry about convicted persons’ health care. They relied on regulation no. 199 and explained that primary medical care was provided by prison doctors and that secondary medical assistance was available upon prescription by prison doctors. The applicant was advised to contact prison doctor. The possibility of making a complaint to the Health Inspectorate (*Veselības inspekcija*) if a prison doctor did not carry out his or her professional duties was explained to him.

B.  Relevant domestic law and practice

1.  Criminal responsibility for medical negligence and other related offences

54.  Section 138 (1) of the Criminal Law (*Krimināllikums*) provides that in cases of inadequate performance of professional duties by a medical professional resulting in “serious” (*smagi*) or “moderate” (*vidēja smaguma*) “bodily injury” (*miesas bojājumi*) those professionals may be held criminally responsible. In Latvian criminal law bodily injury is defined as anatomical damage to, or functional impairment of, a person’s tissue, organs or systems caused by physical (mechanic, thermic, electric, acoustic, radiation-related, chemical, biological) or psychological effects or interference (Annex no. 3 to the Law on Entry into Force of the Criminal Law).

55.  Section 138 (2) of the Criminal Law provides that in the event of inadequate performance of professional duties by a medical professional resulting in a person’s death or infection with HIV, that professional may be held criminally responsible.

56.  Criminal responsibility for inadequate performance of professional duties by a medical professional resulting in infection with the hepatitis B or C viruses was established by way of amendments to section 138 (2) of the Criminal Law effective from 1 July 2009.

57.  Section 133 of the Criminal Law provides criminal responsibility for wilful infection with HIV.

58.  Criminal responsibility for wilful infection with the hepatitis B or C viruses was established by way of amendments to section 133 of the Criminal Law effective from 1 July 2009.

59.  Finally, with effect from 1 July 2009 criminal responsibility for infection with a dangerous disease resulting in serious bodily injury or death was established (section 1331).

2.  Release from imprisonment on health grounds

60.  According to section 59 (6) of the Criminal Law if a convicted person has fallen ill with a severe and incurable illness after the pronouncement of a judgment, a court may release that person from serving the remainder of the sentence.

61.  According to section 116 of the Sentence Enforcement Code (*Sodu izpildes kodekss*), if a convicted person has fallen ill with a severe and incurable illness owing to which he or she is unable to serve the remainder of his or her sentence, the relevant penal institution has to order a medical examination and, on the basis of the results, make an application for release to the appropriate court.

62.  The relevant part of section 640 (4) of the Criminal Procedure Law (*Kriminālprocesa likums*), in force since 1 October 2005, provides that a judge may release a convicted person from serving the remainder of his or her sentence if that person has fallen ill while serving their sentence, taking into account the personality of the convicted person, the nature of the offence, and other circumstances. Before the entry into force of the Criminal Procedure Law, the relevant provision was contained in section 364 of the Code of Criminal Procedure (*Kriminālprocesa kodekss*).

3.  Medical care

63.  Section 10 of the Medical Treatment Law (*Ārstniecības likums*), as in force at the material time, provided that the Inspectorate of Quality Control for Medical Care and Working Capability (“the MADEKKI”) was responsible for monitoring the professional quality of medical care in health-care establishments. With legislative amendments effective from 5 October 2007 onwards that task was entrusted to the Health Inspectorate.

64.  Under the relevant regulation of the Cabinet of Ministers (no. 218 (2005) entitled “*Medicīniskās aprūpes un darbspējas ekspertīzes kvalitātes kontroles inspekcijas nolikums*”), effective from 6 April 2005 to 9 February 2008, one of the main functions of the MADEKKI and its successor, the Health Inspectorate, was monitoring the professional quality of medical care in all health-care establishments regardless of their property type and subordination (paragraph 3.1.). Their main tasks included carrying out examinations and providing opinions about the quality of medical care in all health-care establishments, monitoring compliance with the domestic law in health-care establishments and dealing with (individual) applications concerning medical care (paragraphs 4.1., 4.4. and 4.7.). They had the right to request and receive from all health-care establishments or other persons medical documentation, information and documents necessary to carry out examinations, request and receive oral and written explanations from the person who provided medical care or who was responsible for compliance with the compulsory requirements in the institution, and examine cases of administrative offences and impose fines in accordance with the Code of Administrative Violations (paragraphs 5.1., 5.2. and 5.4.).

65.  At the relevant time, under the Code of Administrative Violations the MADEKKI or subsequently the Health Inspectorate could impose a fine up to 100 Latvian lati (LVL) (approximately EUR 142) for breaches of the relevant medical care regulations, and up to LVL 250 (approximately EUR 355) for a repeat offence. With effect from 21 July 2010 this fine was increased to LVL 250 (approximately EUR 355) and LVL 500 (approximately EUR 710).

66.  In accordance with Annex No. 3 to regulation of the Cabinet of Ministers no. 1036 (2004), effective from 1 April 2005 until 1 January 2007, the following outpatient laboratory tests were carried out free of charge, if prescribed by a general practitioner:

- anti-HCV test to establish the presence of antibody in blood serum;

- anti-HCV (WB – Western Blot) to confirm the presence of antibody in blood serum;

- HCV RNA (nucleic acid) (PCR – polymerase chain reaction) test to determine the presence of the virus itself in blood serum;

- anti-HCV IgM (immunoglobulin M).

67.  In accordance with paragraph 15.2. of this regulation, the Ministry of Justice was responsible for covering costs for medical care in prisons, apart from medical treatment for those suffering from tuberculosis and HIV/AIDS, which expenses were covered from the State budget.

68.  In accordance with Annex No. 6 to regulation of the Cabinet of Ministers no. 1046 (2006), effective from 1 January 2007, the same outpatient laboratory tests were available free of charge as under regulation no. 1036 (2004) at least until 16 May 2009, when amendments as regards the laboratory tests for hepatitis C were made.

69.  Regulation of the Cabinet of Ministers no. 358 (1999), in force at the material time and effective until 28 March 2007, provided as follows:

“2.  Convicted persons shall receive the minimum standard of health care free of charge up to the amount established by the Cabinet of Ministers. In addition, the Prisons Administration, within its budgetary means, shall provide convicted persons with:

2.1.  primary, secondary and tertiary (in part) medical care;

2.2.  emergency dental care;

2.3.  medical examinations/check-ups;

2.4.  preventive and anti-epidemic measures;

2.5.  medication and injections prescribed by a (prison) doctor; and

2.6.  medical equipment.

3.  Detainees shall receive medical care in accordance with paragraph 2 of this regulation, excluding planned inpatient treatment ... Detainees shall be sent to receive inpatient treatment only in acute circumstances...

12.  The prison authorities may agree with [a civilian hospital or medical centre] that the latter is to provide consultation and treatment at convicted persons’ ... own expense if they so wish.”

70.  Regulation of the Cabinet of Ministers no. 199 (2007), effective from 28 March 2007, provides as follows:

“2.  [Convicted persons and detainees] shall receive free of charge in prison:

2.1.  primary medical care, but not scheduled/planned dental care,

2.2.  emergency dental care,

2.3.  secondary medical assistance in emergency situations, as well as secondary medical assistance which is provided by prison doctors within their field of expertise,

2.4.  the most effective and affordable medicine, prescribed by prison medical practitioners ...

15.  Upon application by a [convicted person or detainee], and with the approval of a prison doctor, the prison authorities may agree with [a civilian hospital or medical centre] that the latter is to provide consultations and treatment outside prison territory. Such consultations and treatment are to be paid for by the [convicted person or detainee], including transport and security-related expenses.”

4.  Domestic case-law

71.  On 19 November 2009 the Administrative District Court (*Administratīvā rajona tiesa*) (in case no. A42398506) adopted a judgment concerning a MADEKKI decision, whereby no shortcomings had been found in medical care as regards the treatment of hepatitis C in a prison. The claimant in that case, by instituting the administrative proceedings, had insisted that he had to be tested for hepatitis C virus (and not only its antibodies, anti-HCV) and that he should receive treatment. The claimant sought the quashing of the 31 October 2005 decision and compensation for distress in the amount of LVL 15,000 as well as compensation for pecuniary loss in the amount of LVL 12,884 (LVL 352 for the costs of laboratory examinations and LVL 12,532 for the costs of treatment) and for physical damage in the amount of LVL 8,000.

72.  The court found that the MADEKKI decision (the assessment of the quality of medical care) had constituted “unlawful action by a public authority”, but did not award any compensation. This judgment took effect on 10 December 2009.

73.  The court established the following facts:

“[8.1] In response to the claimant’s application, on 15 March 2005 [the Latvian Infectious Diseases Centre, hereinafter – the LIC] stated that prison doctors were responsible for providing medical care in prisons, that claimant was obliged to consult them, and that the LIC did not have documents attesting that the claimant was suffering from a chronic condition [hepatitis C virus, hereinafter – HCV]...

[8.3] On 19 August 2005 [the claimant was informed that] the Medical Unit of Matīsa Prison and the LIC specialists did not have confirmed data that the claimant was suffering from chronic HCV, but that they had data indicating that the claimant had been in contact with HCV. Tests for HCV to confirm or exclude [the diagnosis] of chronic HCV [did] not correspond to the notion of “acute circumstances” laid down in paragraphs 2 and 3 of regulation no. 358.

[8.4] The claimant lodged an application with [the MADEKKI] complaining about the refusal to treat him for HCV in Matīsa Prison and asking for an assessment of the quality of medical care provided to him ...

[8.7] On 10 October 2005 the [MADEKKI] drew up a report [in case no.7-25-K-771] about the claimant’s medical care in prison. The report’s conclusions indicate that on 21 December 2000 the LIC laboratory established that a positive result for HCV antibodies (anti-HCV) test in the claimant’s body had been established and that he had HIV infection in stage “C” (Aids); it was also noted that he regularly received antiretroviral therapy for the latter.

[8.8] [On 12 October 2005] administrative offence proceedings in case no.7-25-K-771 were terminated ...

[8.10] Disagreeing with this decision, the claimant lodged a complaint against it with the head of [the MADEKKI]. By a decision [of 31 October 2005, no.7-25-K-1027/8573], the decision to terminate administrative offence proceedings was left to stand and his complaint was dismissed.

[8.11] On 21 December 2005 the Ministry of Justice ... in response to the claimant’s request for LVL 12,884 to be allocated from the budget for his HCV treatment, noted that there were no resources in its budget that could be allocated to treat him ...

[8.13] On 1 February 2006 the Ministry of Justice [in response to a repeated request] explained that HCV treatment with antivirus medication was prescribed after an in-depth examination and that specific therapy ... was assigned only according to medical indications. In order to ensure State-guaranteed medical care pursuant to regulation no. 358 for persons in prisons taking into account their needs, these issues have been included in the Green Paper on Medical Care for Prisoners.

[8.14] On 13 June 2006 the claimant lodged a claim with the Riga City Central District Court against the Ministry of Justice seeking compensation for pecuniary loss in the amount of LVL 12,884 (LVL 352 for the costs of laboratory examinations and LVL 12,532 for the costs of treatment) and for physical damage in the amount of LVL 17,000. These civil proceedings ... were terminated with a judgment of 26 March 2008, whereby his claim was dismissed.”

74.  As regards the claimant’s request for the MADEKKI decision to be quashed and for compensation for distress, the court made the following findings:

“[9.1] ... The claimant’s subjective right to request [the MADEKKI’s assessment of quality of medical care provided in prisons] is established under section 22 of the Medical Treatment Law...

[9.2] As established by the Administrative Cases Division of the Senate of the Supreme Court in its judgment of 16 October 2008 ... in case SKA-411/2008 (hereinafter – the Senate’s judgment), the law does not specify the purpose of the [MADEKKI] assessment [of the quality of medical care]. In examining [the provisions of the Medical Treatment Law] in their entirety, the Senate considers that it has several purposes – to improve the quality of medical care, a patient can use [a MADEKKI] assessment as one piece of evidence in another set of proceedings concerning medical care, and it gives a person the opportunity to ascertain the quality [of medical care] provided by a given medical institution or doctor when a choice is being made. [A MADEKKI] assessment of the quality of medical care is not binding on anyone, but as a person has a right to receive [such an assessment], it constitutes an action of a public authority.

The [MADEKKI’s] obligation to carry out the assessment pursuant to section 22 of the Medical Treatment Law was set out in regulation no.218 (no longer effective from 9 February 2008), paragraph 4.1. which at the [relevant] time provided that one of [the MADEKKI’s] tasks in carrying out its functions [was] to carry out examinations and provide opinions about the quality of medical care ... in [all] health-care establishments ...

[9.3] In accordance with order no. 432 of the Cabinet of Ministers of 11 July 2007 ... [the MADEKKI] was merged with the State Pharmacy Inspectorate and the State Sanitary Inspectorate, and ... the Health Inspectorate was established.

Pursuant to section 10 of the Medical Treatment Law, as currently effective, the Health Inspectorate is responsible for monitoring of the professional quality of medical care ... in health-care establishments.

Accordingly, at present the monitoring of the quality of medical care provided to the claimant comes within the competence of the Health Inspectorate.

Taking into account that the assessment of the quality of the claimant’s medical care within these administrative offence proceedings as expressed in [the MADEKKI] report constitutes an action of a public authority, the court, pursuant to section 250 (3) of the Administrative Procedure Law, has to determine whether the action of a public authority complies with procedural and formal criteria and whether it corresponds to provisions of substantive law.

[9.4] According to the facts of the case, by lodging the request for an assessment of the quality of his medical care the claimant insisted that he be immediately tested for possible infection with HCV and that he be treated...

It can be established from the letters sent by the LIC that its doctors, following regular examinations of the claimant’s state of health in connection with his HIV infection, have established the necessary treatment plan – antiretroviral therapy with efavirenz, zidovudine and lamivudine..., and have regularly informed the head of the Medical Unit of the Prisons Administration about it; however, they have left the claimant’s infection with HCV unattended to and have not taken measures in accordance with the Epidemiological Safety Law – they have not arranged for the necessary laboratory examinations with a view to arriving at an HCV-related diagnosis and treatment.

The claimant contends that the prison where he is being held is under an obligation to provide an in-depth examination of his state of health in connection with HCV.

At the hearing, a specialist doctor of the [Health] Inspectorate explained that any assignment to undergo a particular examination was issued only in circumstances where there are recommendations for such an examination to be carried out. If a doctor considers that a person’s request for examination is unsubstantiated, he or she may have such an examination at his or her own expense. This procedure applies to all people, with no exceptions.

The court considers this view unfounded, as health-care practitioners’ obligation to provide immediate diagnosis and treatment for a person who is infected with HCV arises from provisions of the Epidemiological Safety Law. As regards convicted persons, according to paragraph 2 of regulation no. 358 they receive the minimum standard of health care free of charge ... and also, within budgetary means ... preventive and anti-epidemic measures...

It appears from [the case material] that measures envisaged in section 14 (1) (1) of the Epidemiological Safety Law were not carried out in respect of the claimant until 23 August 2005.

Pursuant to section 37(1) of the Medical Treatment Law a doctor, within the scope of his/her professional activities, performs illness prophylaxis, diagnosis, treatment and rehabilitation of patients; evaluates illnesses and the functional restrictions to the body caused thereby in terms of activity and participation; and examines the cause of illnesses and the prophylactic possibilities.

Taking into account the aforementioned, the court finds that in the present circumstances the conclusions of [the MADEKKI] that no violations had been detected in the patient’s medical care, that the patient had been appropriately examined in response to his complaints, diagnosed and received medical care in accordance with regulation no.358 were unjustified, since in connection with his HCV infection the necessary laboratory tests with a view to specifying diagnosis had not been set up and no treatment had been prescribed.

[9.5] ... The court concludes that up to 30 June 2006 the patient did not receive compensation for expenses in relation to treatment of diseases triggered by HCV infection ...”

75.  As regards specifically the claimant’s request for compensation for distress, the court left it without examination, as he had not requested it in the pre-trial proceedings. The court made the following findings:

“[10] It appears from the complaint [to the head of the MADEKKI] that the claimant did not request compensation for distress ...

In accordance with section 278 (1) of the Administrative Procedure Law the court leaves an application without examination (*atstāj pieteikumu bez izskatīšanas*) if the claimant has not complied with preliminary extrajudicial examination procedures prescribed by law. Pursuant to section 281[of the same Law], if an application is left without examination, the claimant may submit the application to the court anew in compliance with the procedure prescribed by law.”

76.  As regards the claimant’s request for compensation for pecuniary loss and physical damage, the court considered that these claims had already been decided in the civil proceedings before the Riga City Central District Court and dismissed. It accordingly terminated administrative proceedings in this respect, as they had the same subject matter and were based on the same facts as had already been examined by another court.

77.  The same claimant, after having properly exhausted pre-trial proceedings, instituted another set of administrative proceedings (no. A420416111) requesting compensation for distress caused by an “unlawful action of a public authority”. On 28 February 2013 the Administrative District Court granted that claim in part and imposed an obligation on the Heath Inspectorate (the successor to MADEKKI) to issue a written apology to the claimant. This judgment took effect on 29 March 2013.

78.  As regards compensation for distress in the amount of LVL 15,000, the court made the following findings:

“[11] Pursuant to section 92 of the Administrative Procedure Law everyone has the right to receive appropriate compensation for pecuniary loss (*mantiskais zaudējums*) and personal harm (*personiskais kaitējums*), including distress (*morālais kaitējums*), caused by an administrative act or action of a public authority.

According to section 94 (2) of the same Law, the relevant public authority may comply with the obligation to compensate (*atlīdzināšanas pienākums*) by restoring the situation which existed before the damage was caused, or if it is not fully or partly possible or adequate, by paying appropriate monetary compensation *(atlīdzinājums naudā)*.

According to section 9 of the Law on Compensation for Damage Caused by State Institutions (hereinafter – the Law on Compensation for Damages), distress within the meaning of this Law is personal harm in the form of human suffering that has been caused by a significant [and] unlawful interference (*būtisks, prettiesisks* *aizskārums*) with rights or legal interests of an individual.

Section 14 (1) of the Law on Compensation for Damages provides that personal harm and distress is determined in proportion to the significance of rights or legal interests interfered with and the severity of the specific interference, taking into account the legal and factual grounds and the reasons for the institution’s action, the victim’s actions and share of the responsibility, as well as other significant circumstances of the particular case. According to section 14 (3), monetary compensation for distress is determined in proportion to the severity of the interference. Section 14 (4) provides that an institution may issue a written or public authority, as independent or supplementary redress [for damage], in circumstances where interference is not severe.

It follows from the above-mentioned legal provisions that the ground for compensation for distress is not [interference] but rather significant [and] unlawful interference with rights or legal interests. In turn, if such [interference] has been established, compensation is determined in proportion to the severity of the harm engendered. Harm may be redressed by restoring the situation, issuing an apology or granting monetary compensation. Therefore, compensation for distress, its type and amount are determined by the significance of the interference and the severity of the harm engendered. Accordingly, if significant interference has occurred but no severe harm has been done, all types of the above-mentioned redress may generally [be afforded]. Hence also in such circumstances in determining appropriate compensation it is necessary [that] harm and compensation be proportionate.”

79.  The court then went on to consider that the “unlawful action of a public authority” (the MADEKKI decision) did not constitute significant interference with the claimant’s rights and legal interests that would have had any influence on his right to receive medical care in prison and would have called for monetary compensation, in addition to any harm to life or serious harm to health. The court’s reasoning was as follows:

“[14]... The court considers that action of a public authority – the MADEKKI decision in the present case, where it assessed the quality of medical care, does not trigger any legal or factual consequences for the claimant...

The Senate has on several occasions pointed out that a MADEKKI assessment [of the quality of medical care] is only one of the possible pieces of evidence in a particular case, for example as concerns proceedings for compensation for damage to health. However, a MADEKKI assessment plays neither a decisive nor a determining role in deciding other matters (see the Senate’s decisions of 25 January 2005 in case SKA-76/2005 and the Senate’s judgment of 22 November 2005 in case SKA-378/2005). Therefore, the fact in itself that the MADEKKI has not found any shortcomings in the medical care provided in a prison cannot stand in the way of a decision on a question, for example, relating to the scope of medical care in prison or its availability.

The court cannot establish, either from the case material or from the claimant’s statements (answers to the court’s questions during the hearing) ... that the claimant contested an action of a public authority (the particular prison) of not providing him with medical care as required by law ...

[15] ... In determining the type and amount of compensation for distress, the court finds that the institution’s action of issuing the 10 October 2005 report and giving its assessment about treatment in prison could not harm the claimant’s life or seriously harm his health ...

The MADEKKI report – the assessment of the quality of medical care – did not directly harm the claimant’s health to the extent that the court should have set monetary compensation up to LVL 20,000 pursuant to section 14 (1) of the Law on Compensation for Damages ...

However, in determining whether distress has been caused to the claimant by [the fact] that the institution in its report did not provide a full assessment of the quality of medical care, as it has been found ... in the 19 November 2009 judgment, and taking into account the legal characteristics of the report, the court considers that pursuant to section 14 (4) of the Law on Compensation for Damages written apology may be considered independent redress.”

COMPLAINTS

80.  The applicant complained that he had contracted hepatitis C in detention and that he had not received adequate medical assistance in prison.

THE LAW

A.  Preliminary objection under Article 34 of the Convention and Rule 47 of the Rules of Court

1.  The parties’ submissions

81.  The Government submitted a preliminary objection that the applicant had not provided the Court with any information to show that he had exhausted domestic remedies. They considered that he had thereby failed to comply with Article 34 of the Convention and had not properly lodged an application in the sense of Rule 47 of the Rules of Court, as in force at the material time.

82.  The applicant noted that there could have been negative consequences for him if he had made a compensation claim to the domestic authorities. He asserted that he had submitted the necessary information.

2.  The Court’s assessment

83.  The Court reiterates that it examines the applications lodged before it within the meaning of Article 34 of the Convention and Rule 47 of the Rules of Court, according to their content and their meaning. It further notes that the applicant provided some evidence that he had approached the domestic authorities and that he had received negative replies. In such circumstances the Court considers that the application form and the evidence submitted by the applicant contained sufficient information for those documents to be considered “an application” within the meaning of Article 34 of the Convention and Rule 47 of the Rules of Court.

84.  Accordingly, the Government’s objection has to be dismissed.

B.  Complaint under Article 3 of the Convention on account of being infected with hepatitis C

85.  The applicant complained that he had contracted hepatitis C in detention. The Court will examine this complaint under the substantive and procedural aspects 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.”

1.  The applicant’s infection with hepatitis C

86.  The Government raised two preliminary objections under this head. First, they submitted that the applicant had not complained to any domestic authority about infection with the hepatitis C virus for which State authorities could be held responsible. They indicated that the applicant had not availed himself of any of the opportunities provided by the domestic law to raise a complaint on this matter, whether before the authorities of the relevant prison, the Prisons Administration, or the prosecutor’s office. Secondly, they argued that the applicant’s allegation was manifestly ill-founded, as he had not provided credible assertions or evidence in support of it. Although he had been diagnosed while he was in detention, the Government submitted that this in itself did not imply that he had been infected in detention or that the State authorities had been at fault. The Government argued that the applicant could have been infected with the hepatitis C virus while getting tattoos, using contaminated razors, or even from birth.

87.  The applicant did not provide any argument in response to the Government’s first preliminary objection. As regards the second, he noted in the application form that he had no way of finding out how he had contracted the virus. He supposed that it could have happened at any moment “when they beat me”. The applicant considered that the fact that there was no indication of the virus in his medical record prior to 2005 was evidence to support his submission that he did not have it prior to his detention. He concluded that he “had been infected with the virus” in prison. In his observations on the admissibility and merits of the case the applicant maintained that he had been infected while in prison.

88.  The Court observes that the circumstances in which the applicant was infected with the hepatitis C virus (HCV) are contested by the parties and remain unclear. In actual fact, the diagnostic test of 22 March 2005 indicated only that the applicant had shown a positive result for HCV antibodies (anti-HCV). It is therefore impossible to establish whether the positive result for HCV antibodies indicated past or present infection or whether it was an acute or chronic infection. Admittedly, only further diagnostic tests, as indicted by the Ministry of Health and the Government, could have detected the presence or absence of the virus itself.

89.  In any event, the Court notes that an ordinary medical check-up does not suffice to reveal chronic hepatitis, and that the disease can remain asymptomatic for extended periods of time (see *Mitkus v. Latvia*, no. 7259/03, § 68, 2 October 2012). Considering that the applicant did not submit any medical evidence that he had undergone a specific blood test for the hepatitis C virus before his arrest in April 2003, the Court concludes that the applicant’s allegations that he had been infected with hepatitis C in prison did not go beyond an assumption. The Court cannot discern any information in the case file that would suggest that the applicant was infected with hepatitis C due to action or negligence on the part of prison staff (see *Žarskis v. Latvia* (dec.), no. 33695/03, § 44, 17 March 2009).

90.  In the light of the above, the Court finds that the material in the case file does not enable it to conclude that the applicant had been infected with the hepatitis C virus after his arrest on 2 April 2003 or that his infection could be attributed to the respondent State.

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

2.  The investigation of the applicant’s infection

92.   The Government reiterated their previously raised preliminary objection of non-exhaustion. In addition, they argued that this part of the application was manifestly ill-founded, and noted that the State was required to ensure that there was an effective official investigation in cases where an individual makes a “credible assertion” that he has suffered ill-treatment contrary to Article 3 of the Convention at the hands of police or other State agents. The Government insisted that the applicant did not make such a credible assertion, or in fact any assertion at all which would allow the competent State authorities to respond immediately and to conduct a timely investigation.

93.  The applicant, in his observations on the admissibility and merits of the case, relying on his medical record and the Government’s observations, maintained that there had been no investigation, without providing more detail in respect of this argument.

94.  The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000‑IV).

95.  The Government contested that the applicant had made a credible or indeed any allegation to the effect that State agents were implicated in his infection with the hepatitis C virus in prison. The Court is therefore called upon to examine whether the applicant’s allegations gave rise to a positive obligation on the State to carry out an effective investigation.

96.  Although the Court has previously considered that even in the absence of an express complaint an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred (see *Members of the Gldani Congregation of Jehovah’s Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007), it cannot do so in the circumstances of the present case.

97.  The Court observes that the applicant lodged a number of complaints with the domestic authorities. His complaints, however, did not include an indication that he considered any State authority to be responsible for the infection. The applicant’s complaints were limited to a mere allegation that he had been infected with hepatitis C. The applicant did not mention, even in summary fashion, that he suspected his infection had been caused by action or negligence on the part of medical staff in prison (see § 54 et seq. above, contrast with *Mitkus*, § 33, cited above, *Ismatullayev v. Russia* (dec.), no. 29687/09, § 8, 6 March 2012; see *a contrario* *Jeladze v. Georgia*, no. 1871/08, § 35, 18 December 2012) or that the State was otherwise responsible for the infection or for failure to prevent it. In his application to the Court, the applicant supposed that he could have been infected during a fight, but he failed to provide any further indication as to who had been involved in that fight and where and when it had taken place.

98.  In the light of the above-mentioned, the Court considers that the applicant’s submissions to the domestic authorities or to the Court as described above cannot be considered as “sufficiently clear” or constituting a “credible assertion”, or an “arguable complaint” which would bring about a positive obligation on the part of a State under Article 3 of the Convention (see, *mutatis mutandis*, *Starovoitovs* *v. Latvia* (dec.), no. 27343/05, § 36, 27 November 2012; *Ledyayeva and Others v. Russia* (dec.), nos. 53157/99, 53247/99, 56850/00 and 53695/00, 16 September 2004; and *Fadayeva v. Russia* (dec.), no. 55723/00, 16 October 2003, the last two as regards the complaints raised under Articles 2 and 3 of the Convention).

99.  In these circumstances, the Court concludes that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

C.  Complaint under Article 3 of the Convention on account of lack of adequate medical care

100.  The applicant complained that he had not received adequate medical care in prison as concerns hepatitis C. He relied on Article 3 of the Convention (quoted above).

1.  The parties’ submissions

101.  The Government raised a preliminary objection of non-exhaustion of domestic remedies. They argued that the applicant could have complained to the MADEKKI or the Health Inspectorate (*Veselības inspekcija*), which took over the MADEKKI’s functions in 2007. The Government pointed out that these authorities were responsible for monitoring the professional quality of health care provided in health-care institutions, including medical units in prisons; their conclusions were authoritative and binding. They could issue binding decisions and instructions concerning further courses of medical treatment. An appeal could be lodged against their decisions, first with the head of the authority, and then with the administrative courts. The Government took the view that the domestic case-law referred to by the applicant explicitly demonstrated the effectiveness of the remedy put forward by the Government. They considered that the remedy ensured that it was possible to assess the quality of the health care provided to the applicant, as well as to claim compensation for damages if that care proved unsatisfactory.

102.  The applicant disagreed. He referred to a ruling of the Administrative District Court (in case no. A42398506), where a lack of proper treatment for hepatitis C had been established but where no compensation had been awarded, and also to the case-law of the domestic courts (see paragraph 71 et seq. above). In addition, he indicated that in the proceedings referred to the appeal had been lodged on 28 November 2005, but the judgment was issued by the first-instance court only four years later, on 19 November 2009. He considered this a very long time for a person who has been infected with an infectious disease. He considered that the administrative court’s competence did not cover questions regarding the reduction of a prison sentence on the grounds of illness as well as ensuring proper medical treatment.

2.  The Court’s assessment

103.  The Court reiterates that where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, preventive and compensatory remedies have to be complementary in order to be considered effective. The need, however, to have both of these remedies does not imply that they should be available in the same judicial proceedings. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. Indeed, the special importance attached by the Convention to this provision requires, in the Court’s view, the States parties to establish, over and above a compensatory remedy, an effective mechanism to put an end to such treatment rapidly (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 98, 10 January 2012, and *Melnītis v. Latvia*, no. 30779/05, § 48, 28 February 2012).

104.  The Court considers that an important question in assessing the effectiveness of a domestic remedy for a complaint under Articles 2 and 3 of the Convention concerning lack of sufficient care for an applicant suffering from a serious illness in prison is whether that remedy can bring direct and timely relief. Such a remedy can, in principle, be both preventive and compensatory in nature (see *Goginashvili v. Georgia*, no. 47729/08, § 49, 4 October 2011).

105.  Turning to the present case, the Court notes the Government’s argument that recourse to the MADEKKI or the Health Inspectorate subsequently pursued before the administrative courts, depending on the circumstances, would constitute either a preventive or a compensatory remedy.

106.  The Court notes that in some cases against Latvia it has been able to scrutinise monitoring activity undertaken by the MADEKKI as regards the quality of medical care in prison (see *Daģis v. Latvia* (dec.), no. 7843/02, 20 June 2009; *Krivošejs v. Latvia*, no. 45517/04, 17 January 2012; *Van Deilena v. Latvia* (dec.), no. 50950/06, 15 May 2012; and *Leitendorfs v. Latvia* (dec.), no. 35161/03, 3 July 2012). The Court observes that in these cases no conclusions were drawn as regards the effectiveness of the review by the MADEKKI for the purposes of Article 35 § 1 of the Convention, as the Government had not raised a preliminary objection to that effect. Conversely, in some other cases, where the Government did raise such an objection, the Court did not find it necessary to examine their non-exhaustion argument, because the applicants’ complaints about medical care in prison were inadmissible on other grounds under Article 35 of the Convention (see *Ruža v. Latvia* (dec.), no. 33798/05, § 35, 11 May 2010; *Buks v. Latvia* (dec.), no. 18605/03, § 38, 4 September 2012; *Grimailovs v. Latvia*, no. 6087/03, § 128, 25 June 2013; and *Fedosejevs v. Latvia* (dec.), no. 37543/06, § 46, 12 December 2013).

107.  The Court examined the effectiveness of the MADEKKI review as a preventive remedy for the first time in the case of *Čuprakovs v. Latvia* (no. 8543/04, 18 December 2012). The Court concluded that in situations where a prisoner complains about shortcomings in treatment of serious acute diseases liable to lead to irreparable deterioration of health or even to a person’s death, a complaint to the MADEKKI cannot be considered a preventive remedy capable of bringing timely relief. In that case it was not necessary to examine further whether such a complaint was capable of bringing direct relief (ibid., §55).

108.  In the present case, however, the Court has to examine this matter further, in view of the fact that there is no information as to whether the applicant was suffering from acute or chronic hepatitis C, or whether irreparable damage to his health was imminent at the time.

109.  In assessing whether or not a complaint to the MADEKKI or the Health Inspectorate could bring direct relief to the present applicant, the Court will proceed on the assumption that these authorities could indeed issue binding decisions and instructions concerning further courses of medical treatment in prisons, as claimed by the Government and not disputed by the applicant.

110.  At the outset the Court refers to the results of the MADEKKI monitoring as noted in the *Žarskis* case. The applicant in that case complained to the MADEKKI about infection with hepatitis C and medical care in prison. Having established that Mr Žarskis’ allegations could neither be confirmed nor refuted, the MADEKKI explained that the most relevant examinations in his case were testing of serum for antibody to HCV and for HCV RNA using polymerase chain reaction, as well as liver biopsy followed by histological examination, all of which were to be carried out at his own expense pursuant to paragraph 12 of regulation no. 358 (see *Žarskis*, cited above, § 23). It has to be noted, however, that Mr Žarskisdid not lodge an appeal against the MADEKKI’s decision with the head of the organisation. He did not subsequently pursue it before the administrative courts. While the lack of an appeal was not decisive in that case, since the applicant had received treatment for HCV and did not properly substantiate his claim that it was inadequate (ibid., § 44), the Court considers that in the present case the absence of a complaint to the MADEKKI and its appeal is important.

111.  The Court observes that the present applicant provided an example of domestic proceedings in which it appears that the MADEKKI’s conclusions that the medical care provided in a prison had been in compliance with regulation no. 358 were found to constitute “unlawful action of a public authority” taking into account that the necessary laboratory tests with a view to specifying a diagnosis in connection with hepatitis C infection had not been set up, and no treatment had been prescribed (paragraph [9.4] *in fine* of the 19 November 2009 ruling, see paragraph 74 above) and that the MADEKKI therefore had failed to provide a full assessment of the quality of medical care (paragraph [15] of the 28 February 2013 ruling, see paragraph 79 above). The Court also takes note of the administrative court’s findings that the obligation to arrange for immediate medical examinations and treatment for a patient as soon as it has been established that he or she has an infectious disease such as hepatitis C stems from the Epidemiological Safety Law (paragraph [9.4] *in fine* of the 19 November 2009 ruling, see paragraph 74 above). It appears that the administrative courts are competent to deal with the complaints pertaining to the MADEKKI assessment of the quality of medical care in prisons.

112.  The Court finds that there is no information brought before it that would indicate that the applicant, having obtained the MADEKKI assessment of the quality of medical care in prison and the administrative courts’ rulings in that regard, or even without such an assessment, could not directly address to the prison authorities a request for compliance with their obligations stemming from, *inter alia,* regulation no. 358 or the Epidemiological Safety Law. Indeed, according to domestic case-law, in particular rulings in cases SKA-76/2005, SKA-378/2005 and SKA-411/2008 (cited in the rulings of 19 November 2009 and 28 February 2013), the MADEKKI assessment is only one of the possible pieces of evidence in other proceedings concerning compensation for damage to health or in proceedings concerning the scope of medical care.

113.  The Court takes note of the fact that the present applicant did make several complaints to domestic authorities in this regard and received negative replies explaining that an in-depth examination of HCV and any related treatment would not be paid for by the State and would have to be procured at his own expense pursuant to regulation no. 358 (see paragraphs 25, 28, 45, 51-53 above). However, the Court also notes that he did not pursue these complaints further, and did not lodge an appeal with the administrative courts in the context of proceedings about the lack of medical care in prison as required by law. As established by the domestic courts, an individual may institute proceedings and contest an “action of a public authority” in refusing to provide medical care in prison as required by law. Availability of this remedy is expressly mentioned in the 28 February 2013 ruling (paragraph [14] *in fine* of the ruling, see paragraph 79 above). Domestic case-law on the basis of which this conclusion has been made dates back to 2005 (SKA-76/2005 and SKA-378/2005), which corresponds to the time when the present applicant was facing problems with receiving medical care in prison.

114.  Therefore the Court cannot but note that the applicant pursued none of the available remedies – neither a complaint to the MADEKKI or the Health Inspectorate requesting the assessment of the quality of medical care in prison or an application with the administrative courts contesting an “action of public authority” of refusing to provide medical care in prison. While it is true that in *Goginashvili*, the Court noted that since that applicant had opted for preventative remedial action by declaring the treatment dispensed in prison inadequate and requesting certain additional medical treatment at the time when such measures were the most needed, he should not be criticised, under Article 35 § 1 of the Convention, for not also requesting monetary compensation from the prison authority (see *Goginashvili*, cited above, § 57). By contrast, the applicant in the present case did not make use of either preventive or compensatory remedy.

115.  In view of the foregoing considerations, the Court finds that the applicant’s complaint under Article 3 of the Convention on account of lack of medical care should be dismissed, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

 Françoise Elens-Passos Päivi Hirvelä
 Registrar President